

FILED / PRODUIT

Date: September 19, 2025

CT- 2024-010

Sarah Sharp-Smith for / pour
REGISTRAR / REGISTRAIRE

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CT-2024-010

OTTAWA, ONT.

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THE COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF certain conduct of Google Canada Corporation and Google LLC relating to the supply of online advertising technology services in Canada;

AND IN THE MATTER OF an application by the Commissioner of Competition for one or more orders pursuant to section 79 of the *Competition Act*.

B E T W E E N:

COMMISSIONER OF COMPETITION

Applicant

and

GOOGLE CANADA CORPORATION AND GOOGLE LLC

Respondents

**REPLY BOOK OF AUTHORITIES OF GOOGLE CANADA CORPORATION
AND GOOGLE LLC
VOLUME 6 OF 11**

PUBLIC

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September 19, 2025

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**EUROPEAN COMMISSION**

DG Competition

Please see in particular para. 1467**CASE AT.40684 – Facebook
Marketplace**

(Only the English text is authentic)

**ANTITRUST PROCEDURE
Council Regulation (EC) 1/2003**

Article 7 Regulation (EC) 1/2003

Date: 14/11/2024**This is a provisional non-confidential version.**

This text is made available for information purposes only. A summary of this decision will be published in all EU languages in the Official Journal of the European Union.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].



EUROPEAN
COMMISSION

Brussels, 14.11.2024
C(2024) 8053 final

COMMISSION DECISION

of 14.11.2024

**relating to a proceeding under Article 102 of the Treaty on the Functioning of the
European Union and Article 54 of the Agreement on the European Economic Area**

(AT.40684 – Facebook Marketplace)

(Text with EEA relevance)

(Only the English text is authentic)

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COMMISSION DECISION

of 14.11.2024

relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the Agreement on the European Economic Area

(AT.40684 – Facebook Marketplace)

(Text with EEA relevance)

(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (“TFEU”),¹

Having regard to the Agreement on the European Economic Area,²

Having regard to Council Regulation (EC) No 1/2003, of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the TFEU³, and in particular Article 7 and Article 23(2) thereof,

Having regard to the Commission decision of 4 June 2021 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation 1/2003 and Article 12 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the TFEU,⁴

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case,

Whereas:

1. INTRODUCTION

- (1) This Decision is addressed to Meta Platforms Ireland Limited, formerly Facebook Ireland Limited (referred to as “Meta Ireland”) and Meta Platforms, Inc., formerly

¹ OJ, C 115, 9.5.2008, page. 47.

² OJ L, 3.1.1994, page 1 (“the EEA Agreement”).

³ OJ L 1, 4.1.2003, page 1 (“Regulation 1/2003”). With effect from 1 December 2009, Articles 81 and 82 of the TFEU have become Articles 101 and 102, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the TFEU when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

⁴ OJ L 123, 27.4.2004, page 18 (“Regulation 773/2004”).

Facebook Inc. (“Meta Platforms” and, together with Meta Ireland referred to as “Meta”).

- (2) In the present Decision the Commission finds that some business practices of Meta infringe Article 102 of TFEU and of Article 54 of the EEA Agreement.⁵
- (3) This Decision focuses on Meta’s activities in online display advertising on social media platforms, in personal social networking services including hybrid social media platforms, as well as in online classified advertising services.
- (4) The Decision finds that (i) the tying of Meta’s online classified advertising service Facebook Marketplace with the Facebook personal social network (also designated simply as “Facebook”) constitutes an abuse of Meta’s dominant position in the EEA-wide⁶ market for personal social networking services including hybrid social media platforms and that (ii) the trading conditions imposed by Meta on advertising clients are unfair and constitute an abuse of Meta’s dominant position in the EEA-wide market for online display advertising on social media platforms.
- (5) Section 2 of this Decision provides an overview of Meta’s and the complainants’ activities. Section 3 summarises the procedure in this case. Sections 4 to 6 set out the Commission’s conclusions regarding the relevant product and geographic markets and Meta’s dominant position in those markets. Section 7 explains the Commission’s findings that Meta abused its dominant position. Section 8 sets out the Commission’s jurisdiction. Section 9 discusses the effect of the infringements on trade between Member States and between Contracting Parties to the EEA Agreement. Section 10 lists the addressees of this Decision. Section 11 outlines the remedies imposed by this Decision, sets out the method for calculating the fine and the amount of the fine imposed.

2. PARTIES TO THE PROCEEDINGS

2.1. The addressee of the decision: Meta

- (6) Meta is a multinational technology company specialised in Internet-related services and products that include personal social networking services, online advertising technologies, online communication apps, virtual and augmented reality products and photo and video-sharing functionalities. It offers various services in the territories of all the Contracting Parties to the EEA Agreement, bringing together different apps and technologies within one undertaking.
- (7) Meta provides Facebook, Facebook Messenger, Instagram and WhatsApp. Meta offers most of its services at no cost to users (consumers) and its primary revenue-generating activity is offering ads space and related services (such as tools for designing and measuring the effectiveness of ads campaigns) to third parties, which currently accounts for the vast majority of its annual revenues globally.

⁵ References in the Decision to Article 102 TFEU, to effect on trade between Member States or to competition within the internal market are to be taken to include Article 54 of the EEA Agreement, effect on trade between Contracting Parties to the EEA Agreement, and competition within the territory covered by the EEA Agreement.

⁶ For the purposes of this Decision, references to the EEA should be understood as covering the 27 Member States of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden) as well as Iceland, Liechtenstein and Norway.

- (8) Meta Platforms was founded in 2004 and is headquartered in the United States of America (“USA”), in Menlo Park, California. Meta Platforms is incorporated in Delaware, USA.
- (9) Meta Ireland was established in October 2008 and is indirectly fully owned by Meta Platforms. Meta Ireland provides the services Facebook, Messenger and Instagram for all users within the European region.
- (10) Meta’s 2023 worldwide revenues were EUR 122 billion, of which EUR 28 billion or 23% were generated in Europe (including Russia and Turkey).⁷

2.1.1. *The Facebook personal social network*

- (11) Facebook is a personal social networking service, available as a mobile application and via a website, which allows its registered users to post and to see other users’ content. It is called “Facebook Blue” inside Meta. It was founded in 2004 by Mark Zuckerberg and a group of students to connect the students of the University of Harvard. The majority of the services on Facebook are provided to users free of monetary charges but they can be monetised through other means such as advertising or charges for premium services.⁸
- (12) As described by Meta,⁹ Facebook’s website and mobile application (or “app”) include the following features:
 - (1) **User profile:** it allows users to organise and display the events and activities that matter most to them, enabling them to curate their memories in a searchable personal narrative that is organised chronologically. People choose what information to share on their user profile, such as their interests, photos, education, work history, relationship status and contact information, and people can control with whom content is shared.
 - (2) **News Feed:** is the core feature of a person's homepage on the Facebook website and mobile app and is a regularly updating list of stories from friends, Pages and other entities to which the person is connected. It includes posts, photos, event updates, group memberships, application updates, and other activities. Each person's News Feed is personalised based on his or her interests and the sharing activity of his or her friends and connections. Stories in each person's News Feed are prioritised based on several factors, including how many friends have Liked or Commented on a certain piece of content, who posted the content, and what type of content it is.
 - (3) **Friend List:** it allows users to organise their friends on Facebook, by creating specific lists. Users can share information and see posts with/from those lists.
 - (4) **Graph Search:** it is a structured search tool that enables people to find people, places, photos and other information shared with them on Facebook. People can search using simple phrases such as "Photos of my friends in New York" or "Restaurants in London that my friends have been to," and browse the

⁷ Meta Earnings Presentation Q4 2023, available at https://s21.q4cdn.com/399680738/files/doc_financials/2023/q4/Earnings-Presentation-Q4-2023.pdf, downloaded on 26 March 2024 (ID13004). Average conversion rate of the European Central Bank from 1 January to 31 December 2023 was used to convert the figures in USD to EUR.

⁸ Commission decision of 3 October 2014 in case M.7217 – Facebook/WhatsApp, paragraph 47.

⁹ “Form 10K – Facebook Inc.”, 31 January 2014, FB_DGC_0000635026 (ID25-5).

results. Once turned on, Graph Search replaces the search bar at the top of every page on Facebook.

- (5) **Stories:** the Stories function allows users to share photos and/or videos in a slideshow format that is visible for 24 hours. After a Story expires, it is no longer visible to other users. Users may delete a Story at any time prior to the expiry of the 24-hour period. They can also limit the visibility of a Story to specific groups of friends. Stories posted on Facebook are automatically visible on Facebook Messenger and *vice versa*.
- (6) **Facebook Groups:** place where users can communicate about shared interests with other people.
- (7) **Buy and Sell Groups:** they enable users to join Facebook Groups with tailored functionalities to facilitate buying and selling between users.
- (8) **Facebook Login:** it is a tool that enables users to use their Facebook's account to log-in into non-Facebook websites and apps.
- (9) **Events:** it allows users to find events they might be interested in and to receive updates from events they are already following.
- (10) **Pages:** place where artists, public figures, businesses, brands, organisations and non-profits can connect with their fans or customers. When someone likes or follows a Page on Facebook, they can start seeing updates from that Page in their News Feed.
- (13) Meta offers other products under the “*Facebook Blue*” website and app, namely Facebook Messenger, Facebook Marketplace, Facebook Jobs, Facebook Shop, Facebook Watch, Facebook Dating and Facebook Gaming.

2.1.2. *Facebook Messenger*

- (14) Facebook Messenger is a free messaging service which allows its users to send text messages, to share photos, videos and audio recordings and to chat in groups. It was originally launched in 2011 within Facebook and it was expanded in 2014 into a standalone application and website.

2.1.3. *Instagram*

- (15) Instagram is a photo and video sharing social networking service. It was founded by Kevin Systrom and Mike Krieger in 2010 in San Francisco, California, USA. Meta acquired Instagram in 2012. The service allows users to upload and edit photos and short videos with filters and to organise them by hashtags and geographical tagging. The content can be shared either publicly or with preapproved followers. Users can browse other users' content by tag and location, view trending content, like photos, and follow other users to add their content to a personal feed (see section 4.3.8.1 below). On 5 July 2023, Meta launched a text based app from Instagram called Threads (see recital (214) below) which is a content discovery platform, where users can view and share public conversations. On 14 December 2023 the app was launched in the European Union.

2.1.4. *WhatsApp*

- (16) WhatsApp was founded by Jan Koum and Brian Acton in Mountain View, California, USA in 2009 and it was acquired by Meta in 2014. It is an instant messaging service, which uses a network protocol for data exchanges. It is available as an app and as a desktop version. The users can communicate via this service after

registering their mobile number. They can send and receive text messages, photos, videos, documents, location, voice messages and voice calls.¹⁰

2.1.5. *Meta's online display advertising services*

- (17) Meta monetises the products described in sections 2.1.1 to 2.1.4 above mostly by offering online display advertising services through the sale of advertising space ("advertisement inventory" or "inventory") on its websites and apps (including Facebook, Instagram and Facebook Messenger) to advertisers. On the basis of the large amount of data that Meta has about the users of its personal social network, Meta can offer advertisers the ability to apply very granular targeting and thereby show their ads to a very specific and well-defined audience. The definition of a target audience can be based on many different criteria, such as demographic aspects, the location, activities or preferences of users.
- (18) Advertisers on Meta's platforms use Ads Manager, a self-service ad platform offered by Meta, to launch and manage their advertising campaigns. This provides advertisers with a process for creating a marketing campaign.
- (19) As described at recitals (341) to (343) below, the possibility to target users is based on on-site data and off-site data. On-site data is data generated by Meta's users on the websites and app of Meta's products and services (including Facebook, Instagram, WhatsApp and Facebook Messenger). These include users' posts, likes and comments, but also clicks on ads.
- (20) Off-site data consists of data collected from third parties or on third party-websites and apps. Such data are, in particular, gathered by Meta from its advertising clients as well as other apps and websites, which install the so-called Meta Business Tools (such as Meta Pixel¹¹, Meta SDK¹², Social plug-ins¹³ or Facebook Login) on their websites and apps. The Meta Business Tools allow Meta to collect data about its users' actions on those third-party websites. If an advertiser uses, for example, the Meta Pixel, Meta will receive data (in real-time) about the pages the users open on the advertiser's website, the products which they look at or put into the cart of the advertiser's online shop. On this basis, Meta offers to those advertisers for example the possibility to retarget Facebook users specifically with Facebook ads¹⁴ in order to remind these users, when they are visiting Facebook, of a product, which they looked at on the advertisers' website (the same applies accordingly also to Instagram).

¹⁰ About WhatsApp page available at <https://www.whatsapp.com/about>, downloaded on 29 August 2022 (ID5349).

¹¹ Meta Pixel (previously called "Facebook Pixel" before the company name was changed from Facebook to Meta) is a small piece of code that can be added to third-party websites in order to measure, optimise and build audiences for their advertising campaigns.

¹² Meta SDK is the software development kit (SDK) which provides for apps similar functions as the Meta Pixel for websites.

¹³ Facebook Social Plugins are a set of tools that let users share their experiences on other websites or apps with their friends on Facebook. Facebook Social Plugins include, for instance: i) Like button: enables clicking "Like" to share and connect with content from websites; ii) Share button: enables clicking "Share" to comment about a link and then post it to the user's timeline; iii) embedded posts: enables adding any public post from Facebook to user's blog or website; iv) comments box: enables commenting publicly on a website using user's Facebook account; v) account kit - enables creating accounts and logging into apps or websites by using a user's phone number or email address.

¹⁴ Facebook ads refer to online advertisements that are created and published on Facebook to be targeted to its users.

Advertisers may also choose to share with Meta further data, such as customer lists, in order to define specific custom audiences on this basis.

- (21) Accumulation of data by Meta is primarily used for current monetisation through advertising but also to inform future growth and in particular to feed and train Meta's machine learning and artificial intelligence in order to develop new products and services - such as virtual reality products.

2.1.6. *Facebook Marketplace*

- (22) Facebook Marketplace is an online classified ads service ("OCAS") for private and professional users. It is a "horizontal platform", also sometimes referred to as "generalist platform", given that various categories of products and services are sold on the platform. It is technically integrated in Facebook, allowing its registered users to search/offer for sale various types of goods. Launched in October 2016 in the UK (as well as in other countries outside the EEA), and starting from August 2017 in the EU and Norway, it is currently offered in 70 different countries by more than 800 million people each month.
- (23) On Facebook Marketplace, sales are primarily made on a consumer to consumer basis (often of second hand items). A smaller part of the offers is made also by professional sellers.
- (24) Even before the launch of Facebook Marketplace, users could sell and buy products on Facebook, through the Buy and Sell Groups, which are Facebook Groups with additional features such as the option to list items for sale, search items to buy, and mark items as sold. Such Buy and Sell Groups still exist and are in use on Facebook. Facebook Marketplace, on the other hand, has a complete shop-like feature that connects users directly with the product they want to buy or sell.
- (25) In the EEA, Facebook Marketplace does not facilitate sales transactions but simply provides a place for sellers to advertise their products without getting involved in price and shipping processes between the buyer and seller.
- (26) Until Meta's designation as gatekeeper pursuant to the Digital Markets Act (the "DMA")¹⁵, only users with a Facebook account (and who are logged in) were able to interact with Facebook Marketplace – namely, post offers, contact sellers, etc. After its designation as gatekeeper, in order to comply with its obligations under the DMA, such as the obligation laid down in Article 5(8), Meta has enabled users to access a logged-out version of Facebook Marketplace as a standalone and independent version of Facebook. Meta has removed the Facebook login screen gating Facebook Marketplace on desktop and mobile web, which now ensures that the logged-out Facebook Marketplace correctly surfaces listings relevant for the geographic location the user indicates.¹⁶

¹⁵ 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), OJ L 265, 12.10.2022, pages 1 to 66.

¹⁶ Meta's compliance with the Digital Markets Act, Non-confidential public summary of Meta's compliance report, 6 March 2024, available for download at <https://digital-markets-act-cases.ec.europa.eu/reports/compliance-reports> (ID13022).

2.2. The complainants

2.2.1. [...]

(27) [...].

(28) [...].

(29) [...].¹⁷ [...].

2.2.2. [...]

(30) [...].

(31) [...].

(32) [...].

(33) [...].

2.2.3. [...]

(34) [...].

(35) [...].

(36) [...].

(37) [...].

3. PROCEDURE

3.1. Timeline of procedural steps

(38) On 14 May 2020, the Commission received a complaint under Article 7 of Regulation 1/2003, lodged by [...] against Meta. On 2 November 2020, the Commission sent Meta a non-confidential version of that complaint. On 1 February 2020, Meta provided comments on the same complaint.

(39) On 4 June 2021, the Commission decided to initiate proceedings in the present case within the meaning of Article 2(1) of Regulation 773/2004 and Article 11(6) of Regulation 1/2003.

(40) Prior and after the decision to initiate proceedings, based on the information obtained from the market and other public sources, the Commission sent twelve requests for information (“RFIs”) pursuant to Regulation 1/2003 to Meta, namely:

- (1) RFI 1 to Meta sent on 13 March 2019, to which Meta replied in three tranches, respectively, on 23 April 2019, on 21 May 2019 and on 18 June 2019;
- (2) RFI 2 to Meta sent on 30 August 2019, to which Meta replied in three tranches, respectively, on 30 September 2019, on 10 October 2019 and on 5 November 2019;
- (3) RFI 3 to Meta sent on 11 November 2019 including an internal document request, to which Meta replied in three tranches, respectively, on 18 December 2019, on 3 February 2020 and on 9 March 2020;

¹⁷ [...].

- (4) RFI 4 to Meta sent on 4 May 2020 and replacing the internal document request included in RFI 3 to Meta, to which Meta replied submitting 211 233 internal documents on 17 August 2020;
 - (5) RFI 5 to Meta sent on 11 December 2020 and amending RFI 4¹⁸;
 - (6) RFI 6 to Meta sent on 16 June 2021, to which Meta replied in two tranches, respectively, on 30 June 2021 and on 11 August 2021;
 - (7) RFI 7 to Meta sent on 20 July 2021, to which Meta replied in eight tranches, respectively, on 30 September 2021, on 8 October 2021, on 15 October 2021, on 4 November 2021, on 23 November 2021, on 25 November 2021, on 6 December 2021 and on 15 December 2021;
 - (8) RFI 8 to Meta sent on 29 October 2021, to which Meta replied on 16 November 2021;
 - (9) RFI 9 to Meta sent on 3 December 2021, to which Meta replied on 17 December 2021;
 - (10) RFI 10 to Meta sent on 11 March 2022, to which Meta replied in three tranches, respectively, on 8 April 2022, on 14 April 2022 and on 29 April 2022;
 - (11) RFI 11 to Meta sent on 29 March 2022, to which Meta replied on 17 May 2022; and
 - (12) RFI 12 to Meta sent on 30 August 2022, to which Meta replied on 12 September 2022.
- (41) In addition, the Commission sent RFIs to several third parties pursuant to Article 18(2) of Regulation 1/2003.
- (42) In particular, the Commission sent RFIs to OCAS providers, namely:
- (1) RFI 1 to OCAS providers sent on 17 June 2019, to which they replied by August 2019;
 - (2) RFI 2 to OCAS providers sent on 30 August 2019, to which they replied by October 2019;
 - (3) RFI 3 to OCAS providers sent on 6 March 2020, to which they replied by May 2020;
 - (4) RFI 4 to OCAS providers sent on 3 May 2021, to which they replied by June 2021; and
 - (5) RFI 5 to OCAS providers sent on 31 January 2022, to which they replied by March 2022.
- (43) The Commission also sent RFIs to social media platforms, namely:
- (1) RFI 1 to social media platforms sent on 30 August 2019, to which they replied by November 2019;

¹⁸ Meta did not reply to RFI 5 because it was adopted by the Commission only to linguistically align, for the sake of good administration, the previous RFI 4 of May 2020 with the Order of the President of the General Court concerning the virtual data room procedure set out in the context of the *Facebook Ireland v Commission* lawsuit.

- (2) RFI 2 to social media platforms sent on 20 March 2020, to which they replied by June 2020;
 - (3) RFI 3 to social media platforms sent on 24/25 November 2021, to which they replied by January 2022; and
 - (4) RFI 4 to social media platforms sent on 29 March 2022, to which they replied by May 2022.
- (44) Furthermore, the Commission sent RFIs to other third parties, namely:
- (1) RFI 1 to online marketplaces sent on 18 March 2020, to which they replied by May 2020;
 - (2) RFI 1 to advertisers sent on 18 March 2020, to which they replied by June 2020;
 - (3) RFI to [...] sent on 9 July 2021, to which it replied by September 2021;
 - (4) RFI to [...] ¹⁹ sent on 20 July 2021, to which it replied by September 2021; and
 - (5) RFI to online advertising market participants sent on 15 October 2021, to which they replied by November 2021.
- (45) On 15 July 2020, by applications lodged at the Registry of the General Court, Meta brought two applications pursuant to Article 263 TFEU seeking partial annulment of Article 1 of RFI 4 to Meta, dated 4 May 2020²⁰, in so far as it requested the internal documents specified in Annex I.B thereto (T-451/20 - *Facebook Ireland v Commission* in case AT.40628 and T-452/20 - *Facebook Ireland v Commission* in case AT.40684).
- (46) On 15 July 2020, by separate document lodged at the Registry of the General Court, Meta brought an application for *interim* measures, requesting the President of the General Court to suspend the operation of Article 1 of RFI 4 to Meta (cases T-451/20 R and T-452/20 R respectively).
- (47) By order of 24 July 2020 *Facebook Ireland v Commission*, adopted on the basis of Article 157(2) of the Rules of Procedure of the General Court, the President of the General Court ordered that the operation of RFI 4 to Meta be suspended until the date of the order concluding the proceedings for interim relief.
- (48) By order of 29 October 2020, the President of the General Court set aside the order of 24 July 2020 referred to above, and ordered a virtual data room procedure for the production of any documents which are not linked to Meta's business activities and which contain sensitive personal data, while dismissing the remainder of the application for interim relief.
- (49) On 22 June 2022, Meta sent the Commission a commitments proposal covering the Commission's concerns on unfair trading conditions.
- (50) On 25 August 2022, the Commission informed Meta that its commitments proposal did not cover one of the two concerns (the tying practice) and was too weak to justify discussions on the other concern (the unfair trading conditions).

¹⁹ [...].

²⁰ On 4 May 2020, the Commission adopted two decisions under Article 18(3) of Regulation 1/2003, a decision relating to the Case AT.40628 – Facebook's Data-related Practices and another one relating to the Case AT.40684 – Facebook Marketplace.

- (51) On 19 December 2022, the Commission adopted a Statement of Objections (“the SO”) in the above referenced case addressed to Meta.
- (52) Following the adoption of the SO, the Commission granted Meta access to the case file. On 5 January 2023, the Commission provided Meta with an electronic device including the non-confidential version of all accessible documents in the file registered until the date of adoption of the SO. The Commission provided additional, less redacted non-confidential versions of those documents to Meta upon its request, in subsequent exchanges. Unredacted versions of confidential information in the file were disclosed to External Advisers of Meta, subject to Non-Disclosure Agreements (“NDAs”), in data rooms in the Commission’s premises between 31 January 2023 and 10 July 2023.
- (53) On 21 February 2023, the Commission sent a non-confidential version of the SO to [...]. [...] submitted its comments on the SO on 5 April 2023.
- (54) On 24 March 2023, the Commission received a complaint under Article 7 of Regulation 1/2003, lodged by [...] against Meta. On 5 July 2023, the Commission sent Meta a non-confidential version of that complaint.
- (55) On 13 April 2023, the Commission received a complaint under Article 7 of Regulation 1/2003, lodged by [...] against Meta. On 5 July 2023, the Commission sent Meta a non-confidential version of that complaint.
- (56) On 14 April 2023, the Commission sent a non-confidential version of the SO to [...]. [...] submitted its comments on the SO on 29 May 2023 and a corrigendum to its comments on 5 June 2023.
- (57) On 17 May 2023, the Commission sent a non-confidential version of the SO to [...]. [...] submitted its comments on the SO on 16 June 2023.
- (58) On 24 May 2023, the General Court dismissed Meta’s applications in cases T-451/20 and T-452/20²¹. The General Court confirmed that the decisions adopted by the Commission (i) did not go beyond the Commission’s powers under Regulation 1/2003 since the information requested was relevant and necessary to the investigation; and (ii) did not infringe Meta’s rights of defence nor breach the fundamental right to privacy and the principles of proportionality and good administration. In addition, the General Court found that the Commission had adequately stated the reasons on which the decisions were based, in accordance with Article 296 TFEU.
- (59) On 2 June 2023, Meta submitted a response to the SO (“the SO Response”). At Meta’s request, an oral hearing took place on 13 July 2023.
- (60) After adopting the SO, the Commission sent six RFIs pursuant to Regulation 1/2003 to Meta, namely:
- (1) RFI 13 to Meta sent on 14 June 2023, to which Meta replied in two tranches, respectively, on 23 June 2023 and on 19 July 2023;
 - (2) RFI 14 to Meta sent on 11 July 2023, to which Meta replied in two tranches, respectively, on 25 August 2023 and on 13 September 2023;

²¹ Judgments of 24 May 2023, *Meta Platforms Ireland Ltd v Commission*, T-451/20 and T-452/20, EU:T:2023:276 and EU:T:2023:277.

- (3) RFI 15 to Meta sent on 26 July 2023, to which Meta replied on 25 August 2023;
 - (4) RFI 16 to Meta sent on 14 August 2023, to which Meta replied on 13 September 2023;
 - (5) RFI 17 to Meta sent on 26 September 2023, to which Meta replied on 6 October 2023;
 - (6) RFI 18 to Meta sent on 23 November 2023, to which Meta replied on 7 December 2023; and
 - (7) RFI 19 to Meta sent on 6 August 2024, to which Meta replied on 9 September 2024.
- (61) In addition, between 28 June 2023 and 25 September 2023 the Commission sent RFIs to several third parties pursuant to Article 18(2) of Regulation 1/2003.
- (62) In particular, the Commission sent RFIs to OCAS providers, namely:
- (1) RFI 6 to OCAS providers sent on 4 and 5 July 2023, to which they replied by August 2023;
 - (2) RFI 7 to OCAS providers sent on 25 September 2023, to which they replied by October 2023;
 - (3) RFI to [...] sent on 22 September 2023, to which [...] replied on 22 October 2023;
 - (4) RFI to [...] sent on 22 September 2023, to which [...] replied in three tranches, respectively, on 13 October 2023, on 20 October 2023 and on 23 November 2023; and
 - (5) RFI to [...] sent on 22 September 2023, to which [...] replied on 10 October 2023.
- (63) The Commission also sent RFIs to social media platforms, namely:
- (1) RFI 5 to social media platforms sent on 30 June 2023, to which they replied by July 2023;
 - (2) RFI to [...] sent on 4 July 2023, to which [...] replied by August 2023;
 - (3) RFI to [...] sent on 4 July 2023, to which [...] replied on 25 July 2023;
 - (4) RFI to [...] sent on 14 July 2023, to which [...] replied on 16 August 2023; and
 - (5) RFI to [...] sent on 4 July 2023, to which [...] replied on 25 July 2023.
- (64) Furthermore, the Commission sent RFIs to other third parties, namely:
- (1) RFI 2 to online marketplaces sent on 22 September 2023, to which they replied by October 2023;
 - (2) RFI 2 to advertisers/media agencies sent on 29 June 2023, on 14 July 2023, on 18 July 2023 and on 25 July 2023, to which they replied by August 2023;
 - (3) RFI 3 to advertisers/media agencies sent on 25 September 2023, to which they replied by October 2023; and
 - (4) RFI to providers of online display advertising services sent on 30 June 2023, to which they replied by September 2023.

- (65) On 24 August 2023, Meta submitted an updated commitments proposal to the Commission regarding both the tying and the unfair trading conditions concerns.
- (66) On 19 December 2023, Meta appealed the General Court's judgments in cases T-451/20 and T-452/20 to the Court of Justice (respectively, cases C-497/23 P and C-496/23 P).
- (67) On 10 January 2024, a State of Play meeting took place where Meta was informed about the Commission's position regarding the case. The Commission also informed Meta that the commitments proposal of 24 August 2023 did not meet the Commission's concerns expressed to Meta in the SO.
- (68) On 24 January 2024, the Commission sent Meta a Letter of Facts ("the LoF") to draw Meta's attention to certain pieces of evidence which Meta had received in the access to file. Although this evidence was not expressly mentioned in the SO it supports the Commission's preliminary conclusions set out in the SO. In addition, the Commission informed Meta about additional evidence obtained after the adoption of the SO.
- (69) On 25 January 2024, following the LoF, the Commission granted Meta additional access to the file in an electronic device which contains the non-confidential version of all accessible documents that were registered in the file in the period between the adoption of the SO and the LoF. The Commission provided additional, less redacted non-confidential versions of these documents to Meta upon its request in subsequent exchanges. Unredacted versions of confidential information in the file were disclosed to External Advisers of Meta, subject to NDAs, in data rooms in the Commission's premises between 25 January 2024 and 12 March 2024.
- (70) On 28 March 2024, Meta submitted comments on the LoF. On 31 July 2024, Meta submitted amended version of their comments ("the Comments on the LoF").
- (71) On 5 July 2024, the Commission sent Meta a Letter on Fines to provide Meta with further clarification of the fining methodology that the Commission intended to apply.
- (72) On 8 August 2024, Meta submitted Comments on the Letter on Fines.

3.2. Meta's allegations that the Commission's investigation suffers from procedural errors

- (73) Meta claimed that the Commission's investigation suffers from a number of procedural errors:
 - (1) Meta argued that it was not offered a state of play meeting by the Commission or made aware of the case the Commission intended to bring against Meta before the announcement of the issuance of the SO. According to Meta, this approach directly contradicted the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU ("Best Practices");^{22,23}

²² Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU, OJ C 308, 20.10.2011, p. 6-32, undated, available at: https://competition-policy.ec.europa.eu/antitrust/procedures/best-practices_en.

²³ SO Response, paragraphs 507 to 511.

- (2) Meta argued that the Commission granted access to file in a fragmented, time-consuming and difficult manner with a significant number of heavily redacted third-party documents. Meta additionally pointed out that the Commission's inappropriate use of the data room procedure resulted in withholding a user survey performed by [...] for more than five months. According to Meta, the Commission's approach to access to file therefore failed to satisfy the requirements, or at the very least the spirit, of Article 27(1) and (2) of Regulation 1/2003 and Article 15(1) of Regulation 773/2004;²⁴ and
- (3) Meta argued that the Commission has unlawfully relied on documents collected in the context of a separate investigation. Meta claimed that following the adoption of the SO, the Commission provided Meta with over 1.2 million documents on its file, [...]. According to Meta, all documents obtained by the Commission in Case AT.40628 – Facebook's Data-related Practices should not have been placed in the current case file.²⁵
- (74) For the reasons set out below, Meta's claims in relation to the procedure followed in this case should be dismissed as the procedural aspects raised by Meta do not amount to procedural errors that violate Meta's rights of defence.
- (75) First, based on the case law²⁶, Meta's rights of defence were properly protected by informing them in the SO of all the objections the Commission holds against them. Second, Meta knew and understood the Commission's concerns and was aware about the Commission's investigation at the latest four months in advance of the adoption of the SO.
- (76) In the first place, Meta received a non-confidential version of [...] complaint, on 13 May 2020. The complaint covered the two practices in the SO. Meta sent observations on [...] complaint on 1 February 2021.
- (77) In the second place, on 4 June 2021, the Commission adopted a decision initiating proceedings in this case. The decision explained the two aspects that correspond to the preliminary conclusions in the SO:
- (1) the potential tying of Facebook's OCAS – Facebook Marketplace – to Facebook's personal social network; and
 - (2) the potential use of data obtained by Facebook in the context of advertising on Facebook for the benefit of other Meta products, such as Facebook Marketplace.
- (78) In the third place, Meta's interactions with the Commission during the year preceding the SO showed that Meta knew and understood the Commission's concerns. As regards the concern on the use of ads-related data of the OCAS for the benefit of Facebook Marketplace, Meta submitted on 22 June 2022 a commitments proposal with the aim to address it. Meta could not have submitted commitments to address concerns if it was not aware of those concerns by the latest in June 2022. As regards the concern on the tying of Facebook Marketplace to Facebook, Meta asked DG Competition for a meeting to explain this concern in more detail. The meeting took place on 25 August 2022. This sets out without any doubt that Meta was

²⁴ SO Response, paragraphs 512 to 516. Comments on the LoF, paragraphs 292 to 297.

²⁵ SO Response, paragraphs 517 to 522.

²⁶ Case C-457/16 P *Global Steel Wire v Commission*, EU:C:2017:819, paragraphs 139 to 142; Case T-342/18 *Nichicon Corporation v Commission*, EU:T:2021:635, paragraph 64.

informed of the nature and the constitutive elements of the tying concern, at the very latest in August 2022.

- (79) In the fourth place, before issuing the SO, Meta was offered a call or meeting to receive an explanation from the Commission regarding the concerns in detail. In the phone call of 14 December 2022, the Commission informed Meta in advance of the upcoming adoption of the SO. Furthermore, DG Competition proposed to continue the call to provide Meta any detail it wished, which Meta declined. Soon thereafter, on 15 December 2022, DG Competition reiterated its availability for a detailed explanation in a later call – and again, Meta did not avail itself of that opportunity.
- (80) Second, the Commission granted access to the file in a timely and complete manner.
- (81) In the first place, the Commission struck an appropriate balance between the proper exercise of Meta's rights of defence and the right of information providers to protect their business secrets and other confidential information.²⁷
- (82) On the one hand, the Commission granted Meta access to non-confidential versions of all the documents in the Commission's file. The file contained documents submitted by third parties which included business secrets and confidential information. All information used in the SO, with the exception of the quantitative information used for the purpose of calculating market shares, was fully accessible without any redactions in the first access to file. As regards the quantitative information used for the purpose of calculating market shares, Meta's External Advisers received that information in a data room and were able to verify the calculations of the Commission and provide any comment of their own on the data. Meta's External Advisers produced a report on their findings, a non-confidential version of which was disclosed to Meta.
- (83) On the other hand, the Commission also granted Meta's External Advisers access in data rooms, subject to NDAs, to entirely unredacted or less redacted versions of documents in the case file pursuant to 10 data room procedures.²⁸ The documents to which the Commission granted Meta's External Advisers access subject to NDAs contained business secrets and other confidential information within the meaning of Article 339 of the TFEU, Article 27(2) of Regulation 1/2003, and Articles 15(2) and 16(1) of Regulation 773/2004. Disclosure to Meta's External Advisers was in this case a sufficient and proportionate means to ensure the respect of Meta's rights of defence.
- (84) In the second place, the Commission diligently addressed all of Meta's several requests for further access to file, and specifically those requesting less redacted versions of documents in the file. Those requests led to the disclosure of additional information, either to Meta or to Meta's External Advisers by means of data room procedures. Any delay in providing access to certain non-confidential versions of

²⁷ Case T-30/91 *Solvay v Commission*, EU:T:1995:115, paragraph 88; Case T-36/91 *ICI v Commission*, EU:T:1995:118, paragraph 98; Joined Cases T-305/94 *LVM v Commission*, EU:T:1999:80, paragraph 1016; Joined Cases T-25/95 etc. *Cimenteries and Others v Commission*, paragraph 147; Case T-203/01 *Michelin v Commission*, EU:T:2003:250, paragraph 125; Case T-410/03 *Hoechst v Commission*, EU:T:2008:211, paragraph 153; Case C-450/06 *Varec v Belgian State*, paragraph 52.

²⁸ Data rooms took place on 31 January 2023 to 3 February 2023, 15 February 2023 to 28 February 2023, 13 March 2023, 20 March 2023 to 24 March 2023, 17 April 2023 to 21 April 2023, 3 May 2023 to 5 May 2023, 10 July 2023, 25 January 2024 to 7 February 2024, 27 February 2024 to 1 March 2024, 8 March 2024 to 11 March 2024 and 11 March 2024 to 12 March 2024.

documents was taken into account when granting extensions of the time-limit for Meta to respond to the SO and to comment the LoF.

- (85) In the third place, Meta's allegations that it was unable "*to comprehend all of the evidence on the Commission's file in the round which forms the case against it (or is helpful for its rebuttal of the Commission's allegations)*" and that "*the broad and repeated use of data room processes in this investigation, with a highly redacted report being the only output Meta is able to view, cannot be a replacement for Meta's own consideration of the evidence the Commission is presenting against it*"²⁹ are unfounded.
- (86) Firstly, Meta had access to all information in the case file in a way that strikes an appropriate balance between Meta's rights of defence and the rights of information providers for the protection of their business secrets and other confidential information covered by professional secrecy. Whenever Meta asked to have access to more information, the Commission diligently followed-up to seek to grant Meta the widest possible access to that information. When necessary for the balancing of Meta's rights of defence and the right of information providers for the protection of their business secrets and other confidential information covered by professional secrecy, access was granted to Meta's External Advisers within the framework of a data room. Meta's External Advisers could draft a report on the data room, which was placed in the Commission's file. Secondly, contrary to Meta's claim, the non-confidential version of the reports drafted by Meta's External Advisers on the data rooms was not highly redacted. Whilst there were instances where Meta indicated to the Commission that it considered that a first version of a non-confidential report on a data room was too redacted, the Commission always followed-up on such instances. Meta did not identify any instance where it disputed the redactions in the final non-confidential version of the data room reports. Thirdly, and in any event, Meta did not give sufficient explanations on what evidence it was allegedly unable to comprehend, nor does it identify evidence which it asked the Commission to obtain but was refused by the Commission on invalid grounds.
- (87) In the fourth place, the fact that, following Meta's requests, the Commission provided it on an ongoing basis with less redacted non-confidential versions of certain documents is common in investigations in competition matters.³⁰ Additionally, Meta has not adduced any evidence showing that its rights of defence were infringed because of the redacted documents or any alleged belated access to files.
- (88) In the fifth place, the allegation that the Commission withheld during five months a user survey performed by [...], which according to Meta was a critical piece of evidence, is baseless. Firstly, the [...] survey in question was not withheld at any point in time. Considering its confidential nature, the survey was disclosed in a data room, to Meta's External Advisers. The disclosure happened diligently after the adoption of the LoF. Indeed, the LoF was adopted on 24 January 2024, and the [...] survey was disclosed for the first time in the data room on the following day, on 25 January 2024. Secondly, while it is true that the disclosure to Meta of the non-confidential version of the report by Meta's External Advisers on their findings on

²⁹ SO Response, paragraph 515.

³⁰ Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the TFEU, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (Text with EEA relevance) OJ C 325/7, 22.12.2005, paragraph 47.

the [...] survey (as opposed to the [...] survey itself) took a longer period, this was nevertheless done diligently, taking into account procedural constraints applicable to the balancing of the protection of business secrets and other confidential information and rights of defence. Indeed, [...] did not voluntarily accept the disclosure of the information in question to Meta in the non-confidential version of the data room report. As a result, DG Competition sent on 20 March 2024 a letter pursuant to Article 8(1) of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (“Decision 2011/695/EU”), informing [...] of its intention to disclose the information in question to Meta, unless [...] exerts its right to refer the matter to the Hearing Officer. By letter of 29 March 2024, [...] referred the matter to the Hearing Officer. The Hearing Officer examined the referred matter and adopted on 21 June 2024 a decision pursuant to Article 8 of Decision 2011/695/EU mandating the disclosure to Meta of the non-confidential version of the comments of Meta’s External Advisers on the [...] survey, subject to [...] not exercising within one week after the date of notification of the decision its rights to apply for the annulment of the decision. On 4 July 2024, having received the confirmation that [...] would not apply for the annulment of the decision, the Commission sent that information to Meta. The Commission gave Meta a deadline of 19 July 2024 to provide comments about the disclosed information, a deadline which was extended on 15 July 2024 to 31 July 2024. By email of 31 July 2024, Meta sent its Comments on the LoF, which included comments on the [...] survey.

- (89) Third, the Commission has not unlawfully relied on documents collected in the context of a separate investigation.
- (90) The case file with the number AT.40628 – Facebook’s Data-related Practices was created on 22 February 2019 with the name “Facebook practices concerning inter alia data, access to Facebook’s APIs and Facebook Marketplace”. This case file included the documents relating to the two practices covered by the SO and this Decision but also documents relating to allegations about other conduct by Meta. In the course of 2019, the Commission decided to focus the investigation on the conduct that is relevant for the current Decision. As a result and to allow for a more efficient file management, on 19 December 2019, the Commission created a separate case file with the number AT.40684 – Facebook Marketplace in which it included the documents relating to the conduct relevant for the SO and this Decision in order to separate them from documents relating to different allegations against Meta.
- (91) The documents relating to the conduct that is relevant for the current case were henceforth registered under the new separate case number AT.40684. In the case file with the number AT.40628, the Commission continued registering documents concerning the investigation of all other allegations against Meta, which do not form part of the SO and the Decision in the current case.
- (92) This Decision, as well as the SO and the LoF, rely only on documents that were registered (i) in the case file with the number AT.40628 before 19 December 2019, and (ii) in case file with the number AT.40684 after 19 December 2019. It does not rely on documents that were registered solely in case AT.40628 after 19 December 2019. It follows that for the purpose of the present Decision, the Commission does not rely on evidence that was obtained during an investigation that was not related to the subject-matter of the present Decision.

- (93) The Commission granted Meta access to all documents registered under the file number AT.40628 from the opening of that file until 19 December 2019, when the file number AT.40684 was created. This means that Meta had access to all documents that the Commission had in its file until the date it created AT.40684, including the documents relating to the allegations that are not relevant for the SO and the Decision in the current case. In addition, for the sake of completeness, the Commission also granted access to documents solely registered under file number AT.40628 after 19 December 2019, when the file number AT.40684 was created. This gave Meta the opportunity to verify whether there were any documents that could be relevant for its defence in the case file relating to the current Decision but were registered only under the pre-existing different case file number (AT 40628).

4. RELEVANT PRODUCT MARKETS

4.1. Principles relating to product market definition

- (94) In the context of the application of Article 102 TFEU, the definition of the relevant product and geographic market is useful in assessing whether the undertaking concerned has a dominant position and whether this enables it to prevent effective competition from being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers.³¹
- (95) The concept of the relevant market implies that there can be effective competition between the products or services which form part of it and this presupposes that there is a sufficient degree of interchangeability between all the products or services forming part of the same market in so far as a specific use of such products or services is concerned.³²
- (96) An examination to that end cannot be limited solely to the objective characteristics of the relevant products and services, but the competitive conditions and the structure of supply and demand on the market must also be taken into consideration.³³
- (97) The identification of relevant product markets by the Commission derives from the existence of competitive constraints.³⁴ Undertakings are subject to three main sources of competitive constraints: demand-side substitution, supply-side substitution and potential competition. From an economic point of view, for the definition of the relevant market, demand-side substitution constitutes the most immediate and effective disciplinary force on the suppliers of a given product.³⁵

³¹ Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraphs 10 and 11; Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraphs 38 and 39; Case 322/81 *Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 37; Case T-83/91 *Tetra Pak II*, EU:T:1994:246, paragraph 63.

³² Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 28; Case C-179/16 *F. Hoffmann-La Roche and Others*, EU:C:2018:25, paragraph 51. See also Commission Notice on the definition of the relevant market for the purposes of Union competition law (C/2024/1645) (the ‘Market Definition Notice’), paragraph 6.

³³ Case 322/81 *Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 37; Case T-556/08 *Slovenská pošta v Commission*, EU:T:2015:189, paragraph 112; Case C-179/16 *F. Hoffmann-La Roche and Others*, EU:C:2018:25, paragraph 51.

³⁴ Market Definition Notice, paragraph 6.

³⁵ Market Definition Notice, paragraph 23.

- (98) The effective and immediate competitive constraints faced by the undertakings offering particular products or services for the purposes of defining the relevant market have to be assessed by reference to demand substitution of customers. Factors to be taken into account in that respect include the nature and technical features of the products or services concerned, the facts observed on the market, the history of the development of the products or services concerned and the undertaking's commercial practice.
- (99) In particular, while assessing the relevant market, the Commission determines the range of products that customers of the undertaking(s) involved regard as effective and immediate substitutes, as well as the degree of substitutability with the products of the undertaking(s) involved by examining a variety of evidence. Such evidence includes, depending on the requirements and particularities of each case, indicators for the reasons why customers would or would not substitute one product with another, such as customer preferences relating to product characteristics, prices, functionalities, intended use, barriers to switching and switching costs.³⁶
- (100) In case of multi-sided platforms which supply a product to a user group at a zero monetary price, for the assessment of substitution the Commission will take into account different non-price parameters, including: product functionalities³⁷, intended use³⁸, evidence of past or hypothetical substitution, barriers or costs of switching, such as, for example, data portability.³⁹
- (101) Supply substitution can also be relevant when defining markets in those situations in which its effects are equivalent to those of demand substitution in terms of effectiveness and immediacy and when it leads to similar competition conditions across the products or services concerned.⁴⁰ This may be the case when suppliers use the same assets and processes to produce these related products or services that are not substitutable for customers.⁴¹
- (102) Supply substitution is, however, not taken into account at the stage of defining the relevant market when it would entail each time the need to adjust significantly existing tangible and intangible assets, additional investments, strategic decisions or time delays.⁴²
- (103) The relevant market is an autonomous concept of Union competition law and it might differ from a term “market” used in other contexts. To define the relevant market, the Commission may rely on various sources of information and types of evidence.⁴³ The Commission does not apply a strict hierarchy of evidence in this

³⁶ Market Definition Notice, paragraphs 26 and 48 to 50.

³⁷ See for instance the market definition of consumer communication services and social networking services in case M.7217 *Facebook/Whatsapp*, paragraphs 24 to 33 and 51 to 61.

³⁸ See for instance the market definition of general search services in case AT.39740 – *Google Search (Shopping)*, paragraphs 163 to 183.

³⁹ Market Definition Notice, paragraph 98.

⁴⁰ Market Definition Notice, paragraph 23(b).

⁴¹ Market Definition Notice, paragraph 32.

⁴² Market Definition Notice, paragraph 37.

⁴³ Market Definition Notice, paragraph 76, which states: “*The Commission uses various sources of information and types of evidence to define the relevant market and it may rely on both qualitative and quantitative information. Certain types of evidence may be decisive in one case, but of limited or no importance in other cases involving a different industry, a different product or different circumstances. [...] The Commission adopts an open approach to empirical evidence, aimed at making effective use of*

respect. The value of different types of evidence is assessed in the context of each specific case.⁴⁴

4.2. Application to this case

(104) The Commission concludes that the relevant product markets for the purpose of the present Decision are:

- (1) the market for personal social networking services including hybrid social media platforms;
- (2) the market for online display advertising on social media platforms; and
- (3) the market for OCAS.

4.3. The market for personal social networking services including hybrid social media platforms

4.3.1. Personal social networking services as a type of social media service

(105) Based on its investigation, the Commission notes that there is a broad category of online social media platforms offering services to consumers.

(106) The term “social media platforms” refers to a broad category including all online interactive media platforms used by internet users for the purpose of communication and/or content engagement. Social media platforms include personal and professional social networking services, consumer communication services, content discovery platforms, entertainment platforms and any hybrid mix between the aforementioned.⁴⁵

(107) Most social media platforms are available through both a web browser and a mobile app. They usually offer their user-facing services free of charge and derive revenues by selling inventory space on their platforms to advertisers.⁴⁶

(108) Meta is present in the social media platforms sector via Facebook, Instagram, which is a hybrid social media platform, Threads, a text-based app, which is integrated with

all available information which may be relevant in individual cases, and makes an overall assessment based on that evidence”.

⁴⁴ Market Definition Notice, paragraph 67, which points out that the Commission “does not apply a rigid hierarchy of different sources of information or types of evidence” and “Certain types of evidence may be decisive in one case, but of limited or no importance in other cases involving a different industry, a different product or different circumstances”.

⁴⁵ Competition and Markets Authority (2020), *Online platforms and digital advertising*: “Social media platforms facilitate interaction between their users, allowing them to communicate with each other, and share and discover engaging content.” (paragraph 2.30), available at <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study#final-report>, downloaded on 14 November 2022 (ID6557).

See also the August 2022 Issues paper released by the Australian Competition and Consumer Commission for its “Report on Social media services” as part of its “Digital Platform Services Enquiry”: “Social media services are online services that allow users (both individual consumers and businesses) to participate in social networking, communicate with other users, and share and consume content generated by other users (including professional publishers)” (page 2), available at https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20March%202023%20report%20-%20Issues%20paper_0.pdf, downloaded on 14 November 2022 (ID6559).

⁴⁶ Some social media platforms may be alternatively or additionally financed based on subscription payments.

Instagram and is a content discovery platform, as well as via Facebook Messenger and WhatsApp, both of which are consumer communication services.

- (109) While all uses of social media platforms involve to some extent communication and content engagement, the various types of social media platforms may serve different main purposes. Some social media platforms are more focused on a specific form of user activity and purpose use⁴⁷ than others. Similarly, while different social media platforms may offer similar or identical functionalities or features (such as messaging, content discovery or sharing functionalities or content organisation features such as feeds or timelines), the purpose or main use of those functionalities may differ, depending on the type of social media platform.
- (110) Based on their main purpose and use enabled by a combination of essential features and functionalities, the Commission's investigation indicates that personal social networking services constitute a distinctive subset of the various types of social media platforms. In particular, there is a specific user demand for personal social networking services, which is different from the user demand for other social media services: users use personal social networking services primarily to maintain and develop interpersonal relationships. This specific use is enabled by a set of certain essential features and functionalities, which are necessary but not exclusive to personal social networking services. The Commission considers that it is the cumulative presence of both the set of necessary features and functionalities as well as the specific main use (or purpose) enabled by said features, which distinguishes personal social networking services from other types of social media services.
- (111) More specifically, as outlined in the following sections, the Commission's conclusion is that, for the purpose of product market definition, personal social networking services are distinct from the other types of social media platforms. For the purpose of this Decision, it can be left open whether hybrid social media platforms are part of the same relevant product market. In the sub-sections below, the Commission begins by defining the characteristics which distinguish personal social networking services from other social media platforms (section 4.3.2), it then lists the providers of personal social networking services since they have those characteristics (section 4.3.3). Next, the Commission sets out the reasons why:
- (1) personal social networking services do not belong to the same product market as professional social networking services (section 4.3.4);
 - (2) personal social networking services do not belong to the same product market as consumer communication services (section 4.3.5);
 - (3) personal social networking services do not belong to the same product market as content discovery platforms (section 4.3.6);
 - (4) personal social networking services do not belong to the same product market as video entertainment platforms (section 4.3.7);
 - (5) hybrid social media platforms impose a less effective and immediate competitive constraints on Facebook but for the purpose of this Decision they are included in the same relevant product market (section 4.3.8); and
 - (6) Meta's claim that all possible social media platforms are substitutes is unfounded (section 4.3.9).

⁴⁷ The reasons why a social media platform is used.

4.3.2. *Specific characteristics of personal social networking services*

- (112) The Commission finds that personal social networking services are characterised by the cumulative presence of three necessary features, namely public or semi-public user profiles, a social graph reflecting the connections between users, and a shared space enabling a rich social experience for the interconnected users, used for a particular main purpose, namely to build and maintain personal social relationships. Most personal social networking services are multi-sided platforms comprised of private users and advertisers.⁴⁸ On one side of the platform, private users (hereinafter “users”) are the end-consumers of personal social networking services. They use personal social networking platforms to stay in contact and maintain personal relationships with people they know. On the other side, advertisers use personal social networks as a digital space for marketing campaigns (for instance, to make their own business known among users).
- (113) On advertising-funded personal social networking services, users are typically not charged for using the platform, which is monetised by selling advertising space. Generally, the higher the number of users, and the more user data the platform has, the more appealing its services are to advertisers.
- (114) The Commission’s assessment to determine the substitutability of personal social networking services takes into account the criterion of demand-side substitution from the perspective of the users. In the section about the market for online display advertising on social media platforms, the Commission takes into account the advertiser’s side. Given the link between the two sides, where user demand on one side (*i.e.* by private users) affects the value of the platform to users on the other side (*i.e.* to advertisers), resulting in indirect network effects, the Commission also assessed the potential indirect competitive constraints on personal social networks (see section 6.3.4 below).
- (115) From a (private) user’s perspective, personal social networking services are dedicated online services, offered via mobile apps and/or desktop websites, which they use to maintain and foster their interpersonal relationships online. In other words, the purpose of a personal social networking service is to be in contact and share experiences with one’s real-life connections,⁴⁹ be it family, friends or other interpersonal relationships in an online environment.
- (116) In previous decisions, the Commission found that social networking services have a number of essential functionalities like the creation of a public or semi-public profile and a list of contacts, and often allow for other features like exchanging messages (one-to-one, one-to-group or one-to-many), sharing information (for example, by posting pictures, videos or links), commenting on postings or recommending content to other connections.⁵⁰

⁴⁸ A third group can also be considered to interact with personal social networks, namely app developers. This group interoperates with the personal social network through a set of Application Programming Interface (“APIs”), which grant them access to the platform and allow them to be present with their apps within the personal social network.

⁴⁹ Real life connection denotes a connection to/from/with an account of a person that a user personally knows or might easily know in their offline life.

⁵⁰ Commission decision of 3 October 2014 in case M.7217 – *Facebook/WhatsApp*, paragraph 51.
Commission decision of 6 December 2016 in case M.8124 – *Microsoft / LinkedIn*, paragraph 98.

- (117) Based on the investigation in the present case, the Commission takes the view that personal social networking services are characterised by the cumulative presence of three elements, all of which are essential to achieve their distinct purpose, which is to build and maintain personal social relationships: (i) detailed public or semi-public user profiles, (ii) a social graph reflecting the connections between these profiles and (iii) a shared social space for interaction. These elements also feature in publications, including academic work aiming to conceptualize social networking services.⁵¹ Each of these three elements is described in more detail below.
- (118) First, a user profile is a representation of an individual, through different pieces of information, on the personal social network. This representation may consist of demographic, location and social information, images and various other pieces of personal information, such as hobbies or interests. The user profile is a means of self-expression on the personal social network and serves as a user's identity representation. A majority of respondents to the Commission's request for information consider a user profile to be amongst the main features of a personal social networking service.⁵²
- (119) Second, the social graph is a virtual map of connections between user profiles, which mediates users' interactions in the social space of the personal social networking service. The social graph allows the personal social networking service to suggest to the user new connections and display content liked and followed by his/her connections. In essence, the social graph is a comprehensive mapping of how every user profile is connected to other user profiles on the personal social networking service. A majority of respondents to the Commission's request for information consider a social graph to be amongst the main features of a social networking service.⁵³
- (120) The social graph can be undirected or directed. An undirected social graph includes a user's reciprocal connections. Reciprocal connections denote symmetrical relationships, *i.e.* if A is connected to B, B is also connected to A in the same manner. These reciprocal relationships are referred to as "friends"⁵⁴ or

⁵¹ For example, in an early review of scholarship on social networking sites, boyd and Ellison (2007) recognize user profiles as well as the social graph as key functionalities of a social networking site. boyd, d., & Ellison, N. (2007). "Social network sites: Definition, history, and scholarship." in *Journal of computer-mediated Communication*, 13(1), 210-230, available at <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1083-6101.2007.00393.x>, downloaded on 6 September 2022 (ID5386). In an updated definition, Ellison and boyd (2013) define a social networking site as "a networked communication platform in which participants 1) have uniquely identifiable profiles that consist of user-supplied content, content provided by other users, and/or system-level data; 2) can publicly articulate connections that can be viewed and traversed by others; and 3) can consume, produce, and/or interact with streams of user-generated content provided by their connections on the site" (page 7). Ellison, N., & boyd, d. (2013). "Sociality Through Social Network Sites." in W. H. Dutton (Ed.), *The Oxford Handbook of Internet Studies* (2013, online edition, pages 151 to 172). Oxford Academic, available at <https://doi.org/10.1093/oxfordhb/9780199589074.013.0008>, downloaded on 6 September 2022 (ID5393).

⁵² Replies to Q5 of the Commission's RFI to social media platforms of August 2019. For Google, this question corresponds to Q3 of the Commission's RFI to social media platforms of August 2019.

⁵³ Replies to Q5 of the Commission's RFI to social media platforms of August 2019. For Google, this question corresponds to Q3 of the Commission's RFI to social media platforms of August 2019.

⁵⁴ Establishing a reciprocal connection on the Facebook service is called "Friending". Facebook Help Center page on "Friending", available at https://www.facebook.com/help/1540345696275090?helpref=hc_global_nav, downloaded on 5 September 2022 (ID5398).

“connections”⁵⁵ on some social networking services. A directed social graph consists of unilateral “following” connections. Following someone on a personal social network means the act of establishing a non-reciprocal connection with another account, *i.e.* A can follow B, without B following A. Personal social networking services can also employ both models at the same time.

- (121) Third, a shared social space enables a rich social experience for the users connected on a personal social networking service. To create the shared social space, personal social networking services typically offer a range of features, which allow content sharing and content engagement for users in different communicative settings. These settings include one-to-one, one-to-group and one-to-many. Users can communicate with each other via direct messaging as well as asynchronously by posting text or audio-visual content on the platform that can be accessed by different subsets of all other users to which they are connected on the platform, creating a layered, thick social space. Users can react to the information posted by other users in the shared space (*i.e.* posts) by liking or by commenting it. A majority of respondents to the Commission’s request for information consider a shared social space with opportunities for content sharing between connections to be amongst the main features of a personal social networking service.⁵⁶ The exact make-up of the social space is in constant flux as communicative and interactive functionalities develop over time, with new ones added and exchanged constantly as technological capabilities change.
- (122) While the combined presence of the three features discussed above can be considered a key necessary characteristic of personal social networking services, demand-side substitutability also needs to take into account how these functionalities interplay and how users engage with the overall product offering. In this respect, personal social networks can be further delineated as a separate product market distinct from other social media platforms, based on users’ demand, expectations, user experience and the main purpose use, which are specific to personal social networking services.
- (123) In particular, the Commission’s investigation indicates that the core purpose of a personal social network for (private) users is building and maintaining personal social relationships and ultimately this is what distinguishes personal social networking services from other types of social media platforms.
- (124) This purpose is enabled in particular by the presence of a user profile, the social graph and a shared social space. Users of a personal social network are individuals connected by interpersonal relationships (such as friends, acquaintances, colleagues or co-workers, *etc.*). On a personal social network, users have a proper virtual identity thanks to the possibility to set up a detailed (public or semi-public) personal user profile. Recording each user profile’s connections, the social graph not only enables “connection-finding” features which help users to expand their network (*e.g.*

⁵⁵ Establishing a reciprocal connection on the LinkedIn professional social networking service is called “Connecting”. A user’s direct connections are called “1st-degree connections.” LinkedIn Help page on “Your Network and Degrees of Connection”, available at <https://www.linkedin.com/help/linkedin/answer/a545636>, downloaded on 5 September 2022 (ID5390).

⁵⁶ Replies to Q5 of the Commission’s RFI to social media platforms of August 2019. For [...], this question corresponds to Q3 of the Commission’s RFI to social media platforms of August 2019.

by suggesting second-degree connections) but can also inform the content users are exposed to on the platform and guide content engagement.⁵⁷

- (125) In other words, personal social networking services enable users to further develop their interpersonal relationships, including those that they established or are in the process of establishing offline, like friends and family. This assessment was shared by the majority of respondents to the Commission's requests for information who considered staying in touch with one's social contacts as one of the main reasons why users use personal social networking services.⁵⁸ The overall relevance of this main purpose to users distinguishes personal social networking services from other forms of social media platforms.
- (126) This assessment was shared by a majority of those respondents to the Commission's requests for information who consider their services not to qualify as personal social networking services because they either lack the necessary features listed in recital (117) above and/or the core purpose of personal social networking services, *i.e.*, they do not (primarily) aim at enabling and maintaining interpersonal connections. For example:
- (1) According to [...].⁵⁹
 - (2) According to [...].⁶⁰
 - (3) According to [...].⁶¹
 - (4) According to [...].⁶²
 - (5) According to [...].⁶³
 - (6) According to [...].⁶⁴
- (127) The Commission's conclusion that personal social networking services are characterised by the cumulative presence of three features, all of which are essential, namely public or semi-public user profiles, a social graph reflecting the connections between users, and a shared social space enabling a rich social experience for the interconnected users, all used for a particular main purpose, namely to build and maintain personal social relationships, is not contradicted by Meta's arguments stating that:
- (1) the Commission's focus on functional characteristics is incorrect as it fails to undertake any substitutability analysis regarding users' behaviour, as required by the Court of Justice, for instance, in *Servier*⁶⁵, which indicates a requirement to conduct an economic substitutability assessment,⁶⁶ and

⁵⁷ By means of the social graph, personal social networking services can inform the type and the order of the content they display to users, tailoring it to provide the distinct user experience of staying in touch with one's connection by means of exchanging content.

⁵⁸ Replies to Q6 of the Commission's RFI to social media platforms of August 2019. For [...], this question corresponds to Q4 of the Commission's RFI to social media platforms of August 2019.

⁵⁹ [...].

⁶⁰ [...].

⁶¹ [...].

⁶² [...].

⁶³ [...].

⁶⁴ [...].

⁶⁵ Case C-176/19 P, *Commission v Servier a.o.*, EU:C:2024:549.

⁶⁶ SO Response, paragraph 85 and Comments on the LoF, paragraph 40.

- (2) social media platforms' functionalities overlap significantly and therefore there is significant competition between them.⁶⁷
- (128) First, this Decision properly assesses substitutability from a demand-side perspective in view of users' behaviour.
- (129) In the first place, contrary to Meta's allegations, to delineate the relevant market, this Decision considers not only the functional characteristics of different social media platforms, but also their main purpose (that is, to build and maintain personal social relationships).
- (130) In the second place, in *Servier*⁶⁸ the Court of Justice does not introduce a systematic requirement to conduct assessment of economic substitutability based on a change in relative price, and the Commission can rely on all available evidence to make such an assessment. The Market Definition Notice,⁶⁹ in line with the established case law⁷⁰ and the Commission's practice provides a general framework for delineating relevant markets. However, as explained at recital (131) below, the Market Definition Notice distinguishes a situation when a product or service in question is offered at zero monetary price⁷¹, which is common in the case of the user side of social media platforms. In such a situation, the Commission should analyse non-price parameters of competition between such platforms.⁷² In the present case, the Commission has conducted the assessment of the economic substitutability of different social media platforms tailored to the circumstances of the case. In contrast, in *Servier* the competition between the medical products in question was largely price-driven, which explains the Court of Justice's reasoning regarding the need to determine the changes in their relative prices.⁷³ Thus, Meta's argument does not call into question the accuracy of the Commission's analysis to define the market for personal social networking services including hybrid social platforms.
- (131) In the third place, as mentioned at recitals (99) and (100) above, the Market Definition Notice explains that while defining the relevant market, the Commission determines substitutability of the products or services in question by examining a number of factors, which are case-specific. In the case of multi-sided platforms that offer products or services at zero cost, the Commission examines non-price factors, including in particular, product functionalities and intended use, as done in this Decision.⁷⁴
- (132) In the fourth place, this Decision's focus on the functionalities of the services as well as their main purpose is appropriate because this approach enables an assessment of

⁶⁷ SO Response, paragraphs 86 to 90 and 93 to 96.

⁶⁸ Case C-176/19 P, *Commission v Servier a.o.*, EU:C:2024:549.

⁶⁹ Market Definition Notice, paragraphs 3 and 4.

⁷⁰ Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraphs 10 and 11; Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraphs 38 and 39; Case 322/81 *Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 37; Case T-83/91 *Tetra Pak II*, EU:T:1994:246, paragraph 63.

⁷¹ Market Definition Notice, paragraph 98.

⁷² See, to that effect, also Case T-699/14, *Topps Europe v Commission*, EU:T:2017:2, paragraph 82.

⁷³ Indeed, in *Servier* the Court of Justice stated that "[...] irrespective of the specific characteristics of the pharmaceutical sector [...], the economic substitutability between medicinal products must be assessed in the light of the shifts in sales between medicinal products intended for the same therapeutic indication, brought about by the changes in the relative prices of those medicinal products.", Case C-176/19 P, *Commission v Servier a.o.*, EU:C:2024:549, paragraph 388.

⁷⁴ Market Definition Notice, paragraph 98.

users' needs and whether they would be willing to switch away from personal social networking services. It allows to understand consumer behaviour and preferences, which are crucial factors in determining market dynamics and competitive landscape within the industry and thus for market definition. By examining how social media platforms fulfil user needs and preferences, the Commission can effectively assess market dynamics and identify the competitive constraints on Facebook.

- (133) Second, the fact that social media platforms, including Facebook, have experienced changes over the years and currently offer functionalities beyond their core functionalities, does not imply that they all compete in the same relevant market.
- (134) In the first place, even if different social media platforms may share certain functionalities, they tend to offer more specialised offerings to respond to users' needs they aim to satisfy. This means that some other social media platforms might compete with certain parts of a personal social network or for a segment of its users. However, such a partial overlap in terms of functionalities does not mean that personal social networking services face significant competitive constraints from more specialised social media platforms. In fact, such shared functionalities can be used differently by users depending on the main use case of a given social media platform.
- (135) In the second place, even if social media platforms tend to introduce new features or functionalities to enrich user experience or emulate other platforms, this does not imply that the main purpose of those social media platforms changes. Indeed, as explained in recital (109) above, different social media platforms generally tend to specialise in their purpose, regardless of sharing certain other functionalities.
- (136) In the case of Meta, whilst Facebook integrated progressively a broad ecosystem of various functionalities, at times enabling to meet Facebook users' needs beyond personal social networking services, those additional functionalities do not change the core purpose of Facebook, which is to allow users to build and maintain personal social relationships.
- (137) In the third place, the Commission notes that there are several distinct functionalities that justify a segmentation between personal social networking services and other types of social media platforms as further examined in sections 4.3.4 to 4.3.8 below.⁷⁵

4.3.3. *Providers of personal social networking services*

- (138) Based on the above considerations, the Commission finds that the following companies can be identified as providers of personal social networking services.

4.3.3.1. *Meta as a provider of personal social networking services*

- (139) The core service offered by Meta is Facebook, also known inside Meta as “*the blue app*”.⁷⁶ Facebook connects more than 2.9 billion people around the world and more than [...] people in the EEA.⁷⁷ It is mainly used by private users but also by a

⁷⁵ The list of categories of online services below focus on social media platforms. Other online platforms, such as online games, are not assessed since they also (i) do not have the three key functionalities of a personal social network and (ii) they are not about building or keeping connections.

⁷⁶ “*Repositioning Blue App*”, 30 October 2018, FB_DGC_LEV_000007250.pdf (ID2122-5871).

⁷⁷ Meta's reply to Q30 of the Commission's RFI to Meta of March 2022 (ID3245, Annex ID3249).

plethora of business users, such as advertisers and app developers. Facebook can be accessed via a browser website or through its specific app on mobile devices.

- (140) As described below, Facebook offers all three features identified as essential for the qualification as personal social networking services, namely detailed user profiles, a social graph and a shared social space.
- (141) Users of Facebook need to create a public or semi-public profile, using their real names, entering information on themselves (such as past and present work and education, places lived in, family and relationships, interests, religious and political views) and putting a personal profile picture. Based on the information inserted, Facebook shows the user a personalised version of the personal social network, which is made up of: (i) a profile page, (ii) the “find friends” page (reflecting the social graph) and (iii) the newsfeed (*i.e.*, the shared social space).
- (142) The profile page contains a list of activities (*e.g.* pictures, videos, events attended, newspapers articles or any other posts shared by the user) in an inverted chronological order. Users can determine which type of information is visible to whom. Facebook provides for a variety of customizations of the user profile, allowing users to adjust the degree of publicity of their information, content and content engagement. In this respect, Meta notes that “*users can choose who can see the user’s future and past posts, who can send friend requests to them, who can see the email address/phone number that the user provided, who can comment on the user’s posts, what information (e.g. current city, date of birth, languages) is shown on their profile. Users can therefore customise their settings based on their own preferences.*”⁷⁸ These functionalities allow users to adjust and adapt layers of accessibility on the platform, creating a rich social space.
- (143) Once a profile has been set up, a user can start creating connections by “adding friends”. Users can discover and add Facebook friends by running a search for their name in the Facebook search bar, by importing their e-mail or phone contact list or by using the “find friends” page. Users are encouraged to only send and accept friends’ requests from persons they know, such as their friends, family, co-workers or classmates.⁷⁹
- (144) The “find friends” page allows users to find people with whom they could be friends in order to expand their network. Users can also communicate bilaterally or in groups via Facebook Messenger, which is a standalone app for mobile devices⁸⁰, linked to Facebook and allowing the exchange of messages, photos, videos, audio files and video calls. Users can react to the information posted by other users via the so-called “like” button, which gives people ways to share their reaction to a post in a quick and easy way.⁸¹
- (145) Finally, the newsfeed is a page through which users can consume information on Facebook, consisting of a constantly updating feed of friends’ activity and third-party advertisements.

⁷⁸ Meta’s reply to Q12 of the Commission’s RFI to Meta of March 2022 (ID3604).

⁷⁹ Facebook Help Center page on “Finding friends”, available at <https://www.facebook.com/help/549554678399389>, downloaded on 16 September 2022 (ID5609).

⁸⁰ Facebook Messenger has been offered as a standalone app for mobile devices since 2014.

⁸¹ Facebook offers to users other kind of reactions, which are an extension of the like button and the collection of reactions includes like, love, care, laugh, surprised, sad and angry.

- (146) Based on the above, Facebook enables users to connect, share, discover and communicate with each other by means of a variety of functionalities (in particular, via chats, search, posts, videos, reactions and recommendations). The platform is used to build and maintain social relations among people who share similar personal interests, activities, backgrounds and, in particular, real-life connections. Moreover, Facebook’s “*People you may know*” feature,⁸² as well as its newsfeed ranking rely on the social graph which shapes users’ interactions with content liked and followed by family and friends. Content from accounts that users are connected with makes up the vast majority of a person’s Facebook feed, with currently only “*about 15% of content in a person’s Facebook feed [...] recommended by [Meta’s] AI from people, groups, or accounts that you don’t follow.*”⁸³ Meta explicitly recognizes that “[s]ocial content from people you know is going to remain an important part of the experience and some of our most differentiated content.”⁸⁴
- (147) The fact that Facebook’s purpose is primarily to maintain and develop one’s real-life relationships is confirmed by Meta’s own description of Facebook and, in particular, by the Facebook Terms of Service (section “*Your commitments to Facebook and our community*”),⁸⁵ which requires users to provide their real name and accurate information when using their account. Indeed, the real-name policy shows how the core of Facebook’s user experience is creating a virtual identity, which reflects the user’s real life.
- (148) The Commission’s assessment that real-life connections are at the heart of the Facebook experience is further confirmed by the Facebook Help Center page, which states the following: “*We recommend sending friend requests to people you know in real life, such as your: (i) friends, (ii) family, (iii) colleagues, (iv) classmates.*”⁸⁶ Moreover, Meta’s own description of the Facebook service on its homepage reads as follows: “*Facebook helps you connect with friends, family and communities of people who share your interests. Connecting with your friends and family as well as discovering new ones is easy with features like Groups, Watch and Marketplace.*”⁸⁷
- (149) This assessment is confirmed by Meta’s own executives:
- (1) Meta’s co-founder, executive chairman and CEO Mark Zuckerberg who in a statement from August 2020 in the matter of *Facebook, INC* before the FTC emphasised Meta’s importance in facilitating social connections between users

⁸² Facebook Help Center page on “*People you may know*”, available at <https://www.facebook.com/help/336320879782850> downloaded on 16 September 2022 (ID5388).

⁸³ Meta Q2 2022 Earnings Call transcript, available at https://s21.q4cdn.com/399680738/files/doc_financials/2022/q2/Meta-Q2-2022-Earnings-Call-Transcript.pdf, downloaded on 13 September 2022 (ID5385).

⁸⁴ Meta Q2 2022 Earnings Call transcript, available at https://s21.q4cdn.com/399680738/files/doc_financials/2022/q2/Meta-Q2-2022-Earnings-Call-Transcript.pdf, downloaded on 13 September 2022 (ID5385).

⁸⁵ Facebook Terms of Service available at <https://www.facebook.com/terms>, downloaded on 9 November 2022 (ID6551).

⁸⁶ Facebook Help Center Page available at https://www.facebook.com/help/246750422356731/?helpref=hc_fnav, downloaded on 9 November 2022 (ID6507).

⁸⁷ Facebook homepage available at: https://about.meta.com/technologies/facebook-app/?utm_source=about.facebook.com&utm_medium=redirect, downloaded on 9 November 2022 (ID6506).

and underlined that “[...] the use cases that we’ve focused on the most over time are helping you to connect ... with your friends and family.”⁸⁸

- (2) During Meta Q2 2022 Earnings Call, Mark Zuckerberg in the same vein underscored that: *“I want to be clear that we’re still ultimately a social company focused on helping people connect. [...] social content from the people you know is going to continue being very important. And obviously, following people is an important signal.”*⁸⁹
- (3) Meta’s former COO, Ms. Sheryl Sandberg, also confirmed that the main use case of Facebook is to keep in touch with friends and family on 1 September 2020 in the matter of *Facebook, INC* before the FTC: *“[Facebook is] a place where you go to see what your friends are doing and share with them what you’re doing. [...] helping you stay in touch with friends and family and helping you know what’s going on with them in a very efficient way. [...]. So would you say staying connected with friends and family is a core part of Facebook Blue service? I think it’s the majority of what people do. Yes.”*⁹⁰
- (150) This conclusion is also endorsed by a number of market studies as well as empirical social science research. In a market study conducted by [...], participants were asked about the percentage of people they personally know among their connections on 14 social media platforms. The average percentage in relation to Facebook was [...].⁹¹
- (151) The study also shows that amongst the 14 platforms surveyed, Facebook is the one for which respondents who feel pressure to check social media platforms feel by far the most social pressure to check, primarily to see what friends have posted⁹² Spending time on a platform to see updates from one’s connections is a key part of the purpose of maintaining real life connections.
- (152) Relatedly, in its interim report on the digital platform services inquiry from March 2023, the Australian Competition and Consumer Commission (ACCC) confirmed that: *“Facebook’s features, and the types of social connections that they facilitate, are differentiated from Twitter, TikTok and Snapchat. Facebook’s features are differentiated from other services by its focus on facilitating interactions between family and friends, and the functionality that it provides through Facebook Groups.”*⁹³
- (153) Similarly, in a consumer survey conducted by the UK’s communication regulator Ofcom, keeping in touch with friends and family is identified as the most important activity on Facebook, with 79% of respondents considering this activity either very important (42%) or important (37%) when accessing Facebook, a share higher than

⁸⁸ Federal Trade Commission complaint against Facebook, INC. of 19 August 2021 in case No.: 1:20-cv-03590-JEB), page 58, available at: https://www.ftc.gov/system/files/documents/cases/ecf_75-1_ftc_v_facebook_public_redacted_fac.pdf (the “FTC Complaint”).

⁸⁹ Meta Q2 2022 Earnings Call transcript, available at https://s21.q4cdn.com/399680738/files/doc_financials/2022/q2/Meta-Q2-2022-Earnings-CallTranscript.pdf, downloaded on 13 September 2.

⁹⁰ “Meta_DGC_00000004” provided by Meta in reply to Q1(d) of the Commission’s RFI to Meta of July 2023 (ID10811).

⁹¹ [...].

⁹² [...].

⁹³ ACCC (2023), Digital platforms services inquiry – March 2023 interim report, page 101, available at: https://www.accc.gov.au/system/files/Digital%20platforms%20services%20inquiry%20-%20Interim%20report%206%20-%20Report%20on%20social%20media%20services_0.pdf, downloaded on 14 November 2023 (ID11740).

on any of the other social media platforms surveyed.^{94,95} Similarly, a consumer survey commissioned by the German Bundeskartellamt also found Facebook to be either the most frequently or second most frequently used service respondents used to look for people they knew.⁹⁶ The similarity in consumers' user experiences and the purpose of Facebook across different geographical markets underscores the importance of keeping in touch with friends and family as a key differentiator of personal social networking services.

- (154) Empirical social science research studying user perceptions of different social media platforms also supports this assessment: when asked to rank different purpose categories in an exercise to define the essence of different social media platforms, Facebook was the only platform for which respondents ranked “social interaction” as the top category.⁹⁷ This underscores that users' perception of the essence or central purpose of Facebook is distinctive.
- (155) The Commission's conclusion that Facebook is as a provider of personal social networking services is not contradicted by Meta's arguments that:
- (1) the main purpose of Facebook is not to enable building and maintaining personal social relationships, considering that content produced by users who qualify as Facebook “friends” account only for a minority of content views on Facebook. According to Meta, those represented [...] % of total content views in April-December 2022 and [...] % of total content views in January-February 2024 in the EEA;⁹⁸
 - (2) The ACCC's interim report does not support the Decision's conclusion about the main purpose of Facebook.⁹⁹
 - (3) The quoted statements from Meta's executives do not support the Decision's conclusion that the main use case of Facebook is to stay in touch with friends and family, as they should be read in their appropriate context. In particular, they most likely relate to the use of the Facebook platform in the USA or globally, while there exist differences in its use across geographies. Statements made during depositions in the context of regulatory proceedings in the USA cannot be presumed to describe users' behaviour in the EEA.¹⁰⁰ Other

⁹⁴ Ofcom Online Nation report 2019, page 132, available at https://www.ofcom.org.uk/data/assets/pdf_file/0025/149146/online-nation-report.pdf, downloaded on 13 September 2022 (ID5303).

⁹⁵ The other social media platforms included in the relevant survey question are Instagram, Twitter, Snapchat and YouTube.

⁹⁶ Bundeskartellamt decision of 6 February 2019 in case B6-22/16 - *Facebook*, paragraph 253.

⁹⁷ The platforms considered in this study of January 2019 were Facebook, Twitter, Instagram and Snapchat. The scale included seven categories: entertainment, news, photo/video, events, social interaction, shopping, and dating. The survey was completed by 250 adult participants (roughly equally split across the 4 platforms, with one mixed group) living in the US.

Rhee, L., Bayer, J. B., Lee, D. S., & Kuru, O. (2021). „*Social by definition: How users define social platforms and why it matters*”. *Telematics and Informatics*, 59, 101538, available at <https://doi.org/10.1016/j.tele.2020.101538>, downloaded on 31 August 2022 (ID5387).

⁹⁸ SO Response, Annex 3, paragraph 1(a) and Comments on the LoF, Annex 3 “Evidence on user engagement with Facebook”, paragraph 4(a).

⁹⁹ Comments on the LoF, paragraphs 87 to 90.

¹⁰⁰ Comments on the LoF, paragraphs 95 to 100, Annex 3 of the Comments on the LoF, paragraphs 45 and 46.

contemporaneous statements made by Meta executives emphasize the focus of the Facebook platform on video or other “unconnected” content.¹⁰¹

- (156) First, as to Meta’s argument regarding Facebook’s main use purpose, in the first place, the data on content views provided by Meta is calculated in a way that does not provide any meaningful information on actual user engagement with Facebook, let alone on the main reason why users engage with it. This is for the following reasons:
- (1) Meta counts a piece of content as “viewed” as soon as that piece of content is visible for at least [...] and [...];¹⁰²
 - (2) a view counts irrespective of how a user navigates to the content (via a user scrolling, clicking or otherwise navigating);¹⁰³ and
 - (3) a piece of content can be counted as viewed multiple times by a single user (*e.g.*, by scrolling down and then scroll back up again).¹⁰⁴
- (157) This implies that Meta counts as “viewed” even content which the user can by no reasonable measure be considered to have effectively consumed (for instance, because it has been viewed for [...]).¹⁰⁵ With that methodology, Meta counts as “viewed” most of the content displayed on a users’ newsfeed around the material produced by users’ Facebook friends, as well as in between the content generated by the those friends where the user has to scroll up or down to find the material from friends. This means that Facebook users, to be able to review content from their friends or family, need to scroll through content available on their newsfeed, which elevates the count of content viewed. As a result, Meta’s calculations are likely to overestimate the number of instances where a Facebook user genuinely engaged with content originating from “non-friends”.
- (158) In the second place, the fact that Facebook also enables users to engage in activities other than building and maintaining personal social relationships does not imply that these other activities constitute Facebook’s main purpose. As explained above in recitals (147) to (154), the Commission does not suggest that Facebook’s main purpose is Facebook’s sole purpose.
- (159) In the third place, Facebook’s content originating from sources of “non-friends” is often prompted to users by Facebook and not actively sought by the users themselves. For this reason, the fact that users interact on such content gives limited information on the main purpose for which users engage with Facebook.
- (160) In fact, in the context of Facebook’s technology deployed by Meta, the presentation of content originating from sources outside users’ immediate social circles is facilitated by algorithmic mechanisms designed to predict and suggest material deemed relevant to individual users’ interests. Such content may encompass articles, videos, or posts sourced from pages liked by the user, groups they are affiliated with, or content aligning with their past interactions.

¹⁰¹ For example, statements made during the Meta earning calls in Q3 2020, Q4 2021, Q1-Q4 2022, Comments on the LoF, paragraph 98 and footnote 103.

¹⁰² Annex 3 of the SO Response, section 2.1.

¹⁰³ Meta’s reply to Q9 (of the Commission’s RFI to Meta of July 2023 (ID10812)).

¹⁰⁴ Annex 3 of the SO Response, section 2.1.

¹⁰⁵ Annex 3 of the SO Response, section 2.1.

- (161) However, the mere presence of, and subsequent user interaction with, “non-friend” content on the platform does not indicate that “non-friend” content constitutes their primary motivation for engaging with Facebook. Users may engage with such content due to transient curiosity, temporary diversion, or superficial interest, but, according to the Commission’s market investigation (see recitals (147) to (154)), it does not accurately reflect their fundamental purpose for utilizing the platform.
- (162) Therefore, gauging user engagement exclusively through interactions with suggested content may inadequately capture the principal drivers of user behavior on Facebook. While users may intermittently engage with content beyond their immediate social circles, the Commission finds that their overarching objective remains grounded in social interaction with individuals they personally know (see recitals (147) to (154)). Consequently, the assessment of user engagement metrics should be nuanced and take into account the fundamental motivations underpinning user activity on the platform.
- (163) Second, contrary to Meta’s claims, the excerpts from the ACCC’s interim report fully support the Commission’s findings regarding Facebook’s main purpose.
- (164) In the first place, Meta claims that the ACCC’s report covers Australia and therefore it cannot support the Commission’s findings regarding user behavior in the EEA. However, even if the report covers Australia, this does not automatically exclude the relevance of its findings for the landscape of social media platforms in other regions. This is because the excerpts cited by the Commission primarily concern the features of Facebook (and other social media platforms) and the type of the interactions they facilitate. These elements do not differ across geographics, and consequently, the excerpts fully corroborate the Commission’s findings.
- (165) In the second place, Meta argues that the report contains caveats regarding the interpretation of its content, especially with regard to the conclusions on the degree of platform competition. However, the Commission uses those excerpts to support its findings that relate to the features and the main purpose of Facebook *vis-à-vis* other social media platforms. The excerpts from the report belong to a wider body of evidence that the Commission relied on in reaching its conclusions on the main use case of Facebook, and thus, are not the only piece of evidence used for that purpose. Even if the ACCC formulated certain caveats regarding the results of its analysis, the report still supports the Commission’s conclusions, among others, concerning the main purpose of Facebook and is neither the main nor the only piece of evidence the Commission relied on.
- (166) Third, contrary to Meta’s allegations, the statements by Meta’s executives fully corroborate the conclusion that the main purpose of Facebook is to stay in touch with friends and family.
- (167) In the first place, Meta claims that the quoted statements from its executives most likely relate to the use of the Facebook platform in the USA or globally as they were not made with specific reference to the EEA.
- (168) However, Meta did not provide any evidence that the statements are limited to the USA and, conversely, that they are not also related to the EEA. Likewise, there are no such indications in the quotes themselves.
- (169) This applies to both the statements made in depositions and during Meta Q2 2022 Earnings Call.

- (170) For completeness, Meta further relies on its data showing the differences in content views (both across all and organic content) from “friends” in the EEA compared to the USA or analyzed globally. However, Meta does not specify if users from different geographies, whose content views were analysed, were exposed to the same or at least a similar content mix and were using a version of Facebook offering comparable features and functionalities. Given these limitations, the analysis provided by Meta cannot credibly support its assertion that there exist significant differences in content views across regions.
- (171) In the second place, the other statements of Meta executives to which Meta is referring do not rebut, but instead support, this Decision’s conclusion. For instance, in the Q2 2022 earnings call transcript quoted by Meta,¹⁰⁶ Mark Zuckerberg states that, still in Q2 2022, the news feeds of users of Facebook was “*being driven primarily by the people and accounts you follow*”. Whilst Mark Zuckerberg indicated that Meta was aiming at making that newsfeed also increasingly driven by AI recommending content from creators unknown to the user, he also stressed that “*[s]ocial content from people you know is going to remain an important part of the experience and some of our most differentiated content.*” Admittedly, in the Q1 2023 earnings call transcript, Mark Zuckerberg indicated that: “*Along with surfacing content from friends and family, now more than 20% of content in your Facebook and Instagram feeds are recommended by AI from people, groups, or accounts that you don’t follow.*”¹⁰⁷ However, this number of 20% was not only limited, but also far from Meta’s goal to at least double such type of content, as declared during its Q2 2022 Earnings Call.¹⁰⁸ In its Q1 2024 Earnings Call, Meta stated that “*Right now, about 30% of the posts on Facebook feed are delivered by our AI recommendation system*”¹⁰⁹. However, this means that in Q1 2024 the vast majority of content available in Facebook users’ news feeds was friend-related content (and not non-friends content recommended by AI.)

4.3.3.2. Other providers of personal social networking services

- (172) Besides Facebook, based on the information at its disposal, the Commission identified only two other social media platform services with a market presence in the EEA that can be considered personal social networking services. These platforms are Jappy and Vero.
- (173) Jappy is a personal social networking service launched in Germany in 2001. Its business model is based on advertising and the service is provided only for German speaking users. Vero is a personal social networking service launched in New York, the USA in 2005. Its business model is not advertising-based but subscription-based. Both platforms can be considered personal social networks given that they have the three necessary features and functionalities of personal social networking services outlined in section 4.3.2 above (i.e. a profile page, a social graph and a shared social

¹⁰⁶ Comments on the LoF, paragraph 98.

¹⁰⁷ Meta Q1 2023 Earnings Call transcript, available at https://s21.q4cdn.com/399680738/files/doc_financials/2023/q1/META-Q1-2023-Earnings-Call-Transcript.pdf, downloaded on 5 May 2024 (ID13025).

¹⁰⁸ Comments on the LoF, paragraph 98.

¹⁰⁹ Meta Q1 2024 Earnings Call transcript, available at https://s21.q4cdn.com/399680738/files/doc_financials/2024/q1/META-Q1-2024-Earnings-Call-Transcript.pdf, downloaded on 5 May 2024 (ID13025).

space), and that their platforms are used by users to be in contact and share experiences with their real life connections.

- (174) The Commission's assessment is consistent with the conclusions of the Bundeskartellamt, which considered Jappy to be part of the market for private social networks in its 2019 Facebook decision.¹¹⁰ The Bundeskartellamt recently confirmed this assessment in its decision pursuant to Section 19a(1) German Competition Act (GWB), stating the following: *"the market for social networks for private users in Germany can, in addition to Facebook, currently only include the very small networks Jappy and Vero in terms of easily comparable functionalities and purposes of use."*¹¹¹
- (175) [...]. In this regard, [...] confirmed that [...] ¹¹² [...], in a similar vein, explained that [...].¹¹³
- (176) In this respect, [...] stated that its [...].¹¹⁴ Similarly, [...] stated that [...].¹¹⁵ As such, both services exhibit a shared social space, which is mediated by the social graph.
- (177) [...] submitted that [...] ¹¹⁶ indicating that the [...].
- (178) Until 2019, Google+ also offered personal social networking services. Its version for private users was meant to connect people that already knew each other. The platform was launched in 2011, in an attempt to challenge other personal social networks, but due to a low user engagement, it was discontinued in 2019. [...],¹¹⁷ offering the core functionalities described above (*i.e.* a profile page, a shared social space and a social graph).
- (179) Finally, Meta argues that the social media platform BeReal competes closely with Facebook.¹¹⁸ BeReal is a photo sharing application launched in 2020 in France. Its main feature is to offer users each day a two-minute window to share photos with friends. For the purpose of this Decision, it is not necessary to take a position on this matter. Indeed, even if BeReal is included in the relevant market, its position is so marginal in the EEA ([...]) that it could not have a material impact on Meta's market shares in the relevant market, and hence on the finding of dominance.

4.3.4. Personal social networking services and professional social networking services

- (180) The Commission concludes that personal and professional social networking services do not belong to the same product market.
- (181) While professional social networking services, such as Xing or LinkedIn, exhibit all three features considered necessary as functionalities of a social networking service, *i.e.* they allow for the creation of a detailed user profile, they contain a social graph and provide users with a rich social space for interaction, their purpose is different from that of personal social networking services.

¹¹⁰ Bundeskartellamt decision of 6 February 2019 in case B6-22/16 - *Facebook*, paragraph 264.

¹¹¹ Bundeskartellamt decision for the determination of the status as norm addressee pursuant to Section 19a(1) German Competition Act (GWB) of 4 May 2022, B 6 – 27/21, paragraph 144.

¹¹² [...].

¹¹³ [...].

¹¹⁴ [...].

¹¹⁵ [...].

¹¹⁶ [...].

¹¹⁷ [...].

¹¹⁸ SO Response, paragraph 65.

- (182) Professional social networking services focus solely on interactions and relationships of a business nature, rather than personal and private interactions. Professional social networks are usually meant to show professional skills, employment history and educational path of the user and they aim at showing business updates and job opportunities to users.
- (183) In *Microsoft/LinkedIn*, the Commission found that professional social networking services may constitute a separate product market within social networks, given that they present different functionalities, features and usage cases. The Commission's assessment concluded that users appear to rely on a professional social network for different use cases, content, goals and connections as opposed to a personal social network.
- (184) More specifically, in *Microsoft/LinkedIn*, the Commission referred to a LinkedIn study, called "*The Mindset Divide*", in which LinkedIn distinguishes professional social networks from personal social networks based on their different purposes. In particular, the study estimates that the reasons for using a professional social network are different from those for using a personal social network. The former is used to "1. *Maintain professional identity*, 2. *Make useful contacts*, 3. *Search for opportunities*, 4. *Stay in touch*", the latter is used to "1. *Socialize*, 2. *Stay in touch*, 3. *Be entertained*, 4. *Kill time*". The same document also emphasises differences in the type of content people expect on a professional social network ("1. *Career info*, 2. *Updates on brands*, 3. *Current affairs*") as opposed to a personal network ("1. *Info on friends and family*, 2. *Info on personal interests*, 3. *Entertainment updates*").¹¹⁹ Furthermore, the Commission found that the conversion of a personal social network into a professional one is not immediate and straightforward.¹²⁰
- (185) The Commission's investigation in this case confirms the above-mentioned analysis.
- (186) From a demand side perspective, the majority of respondents to the Commission's requests for information indicated that personal and professional social networking services should be distinguished by their different use cases.¹²¹ This is due to the fact that, *inter alia*, users tend to keep various aspects of their lives separate.
- (187) More specifically, the Commission's investigation showed that, while some functionalities may overlap, generally, professional and personal social networking services seem to have different features, which are tailored to their main different objectives. For example, social networks aimed at professionals have functionalities that are related to job opportunities and sharing resumes. Professional social networks focus on – from the user's point of view – highlighting the user's professional qualifications (education, job experience, connections), including business updates and job opportunities. A personal social network does not have such focus and may not offer such features. Professional social networks are geared towards enabling their users to connect and share within tightly defined parameters – promoting their current skills/employment or searching for new positions or potential new employees – as opposed to other social networks which are used for a wider variety of reasons. Users of professional social networks are also more willing to pay

¹¹⁹ Commission decision of 6 December 2016 in case M.8124 - *Microsoft / LinkedIn*, paragraph 106.

¹²⁰ Commission decision of 6 December 2016 in case M.8124 - *Microsoft / LinkedIn*, paragraph 115.

¹²¹ Replies to Q14 of the Commission's RFI to social media platforms of August 2019. For [...], this question corresponds to Q12 of the Commission's RFI to social media platforms of August 2019.

for these services as many professional networks are offered in the format of “freemium” services where some functionalities are subject to the payment of fees.

- (188) A majority of social media platforms who responded to the Commission’s requests for information, including personal social networks and professional social networks, confirmed this assessment.¹²² For example:
- (1) According to [...].¹²³
 - (2) According to [...].¹²⁴
 - (3) According to [...].¹²⁵
 - (4) According to [...].¹²⁶
- (189) Finally, from a supply side perspective, respondents to the Commission’s requests for information stated that turning a professional social network into a personal one is not possible in the short term without additional risk and resources, given that such a switch is difficult and requires important investments.¹²⁷
- (190) In this respect, [...] stated [...].¹²⁸
- (191) [...] also confirmed that [...].¹²⁹
- (192) Finally, according to [...].¹³⁰
- (193) The Bundeskartellamt confirmed this assessment in a recent decision of 2022 concluding that “suppliers of similar products are neither willing or nor able to change their services at short notice and at economically acceptable costs. [...] Irrespective of technical aspects and the investments required in this respect (which could make it more difficult to change services in the short term), it cannot simply be assumed that large platforms and services are able to enter neighbouring markets at any time in the short term and have the same success there, which would make them current competitors in a wide variety of internet markets. This is particularly true in the event that the change would alter the product in its underlying philosophy and appearance.”¹³¹

4.3.5. Personal social networking services and consumer communication services

- (194) The Commission concludes that personal social networking services and consumer communication services do not belong to the same product market.
- (195) Consumer communication services are multimedia communication solutions that allow people to reach out to their friends, family members and other contacts in real

¹²² Replies to Q14 of the Commission’s RFI to social media platforms of August 2019. For [...], this question corresponds to Q12 of the Commission’s RFI to social media platforms of August 2019.

¹²³ [...].

¹²⁴ [...].

¹²⁵ [...].

¹²⁶ [...].

¹²⁷ Replies to Q19 of the Commission’s RFI to social media platforms of August 2019. For [...], this question corresponds to Q17 of the Commission’s RFI to social media platforms of August 2019.

¹²⁸ [...].

¹²⁹ [...].

¹³⁰ [...].

¹³¹ Bundeskartellamt decision for the determination of the status as norm addressee pursuant to Section 19a(1) German Competition Act (GWB) of 4 May 2022, B 6 – 27/21, paragraphs 58 and 59.

time.¹³² Examples of consumer communication services are Facebook Messenger, WhatsApp, Signal, Telegram and Viber.

- (196) In *Facebook/WhatsApp*, the Commission found that personal social networking services should be distinguished from consumer communication services. While these two services may offer a certain number of common functionalities, the Commission noted that personal social networking services tend to offer a richer social experience compared to consumer communications services. Furthermore, while both personal social networks and consumer communications services enable communication between users, the communication's functionalities and their usage differ. Finally, the Commission noted that personal social networking services tend to enable communication and information sharing with a wider audience than consumer communications services, which are more personal and targeted.¹³³
- (197) The results of the Commission's investigation in this case are in line with the above-mentioned findings. Consumer communication services lack some of the essential functionalities of personal social networking services, namely a proper profile page, a social graph and a shared social space. As a result, consumer communication services have a very different user experience.
- (198) In the first place, user profiles on consumer communication platforms have typically limited functionalities.
- (199) In the second place, consumer communication services do not offer any contact-finding functionalities, *i.e.* the opportunity to traverse the list of connections of the users one is chatting with. As such, consumer communication platforms do not exhibit a social graph on the user side and their user experience, unlike on personal social networking services, is not mediated by it.¹³⁴
- (200) While consumer communication services serve to communicate with others, an activity also offered by personal social networking services, the nature of the communication enabled by consumer communication services is different. Consumer communication services lack a shared social space comparable to social networking services as the communicative settings and interactive elements they offer are far more limited than those on personal social networking sites. User profiles on consumer communication platforms typically have limited options for one-to-many communication in the form of image or video elements, rich demographic and personal information and status updates. Primarily, consumer communication services enable instant one-to-one or many-to-many communication in the form of bilateral and group chats.
- (201) This assessment is shared by [...], which submitted that [...].¹³⁵
- (202) Relatedly, [...] submitted that [...].¹³⁶

¹³² Commission decision of 3 October 2014 in case M.7217 – *Facebook/Whatsapp*, paragraph 13.

¹³³ Commission decision of 3 October 2014 in case M.7217 – *Facebook/Whatsapp*, paragraphs 20 to 33.

¹³⁴ Companies operating consumer communication services based on user phone numbers still have access to the social graph, consisting of user phones numbers who have signed up to their service. Depending on their business model, companies either use the insights from this social graph for monetization purposes or bar themselves from accessing it by encrypting it. In either case, the social graph is not built into the user-facing experience.

¹³⁵ [...].

¹³⁶ [...].

- (203) In the third place, unlike on social networking services, where users' social graphs play a key role in organising the content they see on the platform, content on consumer communication services is organised by individual chat conversations. Chats are ranked chronologically according to the most recent activity. This organisational structure underscores that the social interaction enabled by consumer communication services and by personal social networking services is different. On consumer communication platforms, social interaction is compartmentalized and simultaneously co-exists in the individual chat conversations, which the user manages independently from one another. On a personal social networking platform, the shared social space created by the interconnection of one-to-one, one-to-few and one-to-many elements serves as a larger point of reference and global interaction. It allows users to simultaneously engage with, share and connect with their network of connections as a whole rather than maintain the individual relationships that it consists of separately.
- (204) As such, from a demand side perspective, the main purpose of consumer communication services is different from that of personal social networks: While personal social networking services enable interaction with the whole network of a user's interpersonal connections, consumer communication platforms are used primarily to maintain individual relationships.
- (205) Relatedly, [...] submitted [...].¹³⁷
- (206) The Commission's market investigation reflects this assessment, with several respondents classifying WhatsApp as a consumer communication platform distinct from personal social networking services.¹³⁸
- (207) From a supply-side perspective, switching from a communication app to a personal social network is not possible in the short term without additional risk, in particular in the form of high investments required to build up a new personal social network.
- (208) More specifically, the Commission's market investigation¹³⁹ shows that it takes a substantial amount of work and time to build a new scalable personal social network and it may often be faster for communication services that wish to enter the market of personal social networks to buy an existing one, instead of trying to build a company from scratch. There are a number of investments that a communication service would need to face in starting a new personal social networking service. These investments are linked, *inter alia*, to its ability to attract and retain skilled employees, to the need to comply with regulatory barriers, including General Data Protection Regulation (GDPR)¹⁴⁰ and local consumer protection laws (*i.e.* a new personal social network will encounter regulatory compliance costs, which ultimately limit the finance resources available for innovation). Furthermore, often, if new personal social network services are offered via an app, this implies new challenges because the new app would need to meet the requirements of the Apple iOS app store and the Google Android store to ensure that the new personal social networking service is able to gain traction. Finally, as shown in section 6.3.2 below, attracting

¹³⁷ [...].

¹³⁸ Replies to Q8 of the Commission's RFI to social media platforms of August 2019.

¹³⁹ Replies to Q34 of the Commission's RFI to social media platforms of August 2019.

¹⁴⁰ 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), OJ L 119, 4.5.2016, pages 1 to 88.

users to a new platform is difficult. This is because users are usually interested in services in which they already have connections and may be reluctant to try a new personal social networking service if the use of the service is not sufficiently widespread.

4.3.6. *Personal social networking services and content discovery platforms*

- (209) The Commission concludes that personal social networking services and online services focusing on the discovery of content based on users' interests ("content discovery platforms") do not belong to the same product market.
- (210) As to their use, content discovery platforms facilitate the discovery and exploration of content on specific topics, news, hobbies or interests of their user base. Their value proposition is content-centric, *i.e.* users spend time on these platforms primarily due to the content they offer. Unlike on personal social networks, the users' connection to and even the identity of the creators of said content is less relevant on content discovery platforms. Therefore, the main use case of these platforms is different from the use case of personal social networks. Examples of online services focusing on content discovery are X¹⁴¹, Pinterest and Reddit.
- (211) In more detail, X is an online micro-blogging service founded in 2006, which focuses on the dissemination of short-form messages called "tweets". Originally, tweets were limited to 140 characters, a limit extended to 280 for non-CJK languages¹⁴² in 2017. Users can share ("retweet") and interact with tweets in a variety of ways, for example, by replying to them or liking them. Replies to a tweet are displayed as a conversation thread.
- (212) Pinterest is an image-sharing platform focused on the visual exploration of topics of interest through the collection and organisation of photos. On Pinterest, a user can create different content-focused collections, known as boards, by saving images (known as pins) uploaded or linked from other websites to these boards or by adding pins from other users' boards ("re-pinning"). Pinterest aims at providing visual input to inspire and organise ideas for passions and projects its users pursue.
- (213) Reddit is a news aggregation and discussion platform set up as a bulletin board system. Its different boards are called "subreddits" in which content is ranked according to votes of its user base ("redditors"). Individual subreddits have their own self-imposed content moderation policies, which can vary widely and are enforced by volunteer moderators.
- (214) Threads is a text-based application developed by Meta, serving as a platform for exchanging thoughts and ideas through messages/posts (like tweets). Joining Threads requires an existing Instagram account.¹⁴³ In Threads, members can engage in conversations, share personal updates, delve into current events, and participate in dialogues, creating a space for text-based social sharing.
- (215) As to features/functionalities, content discovery platforms do not offer the core functionalities of personal social networks.

¹⁴¹ X is formerly known as Twitter.

¹⁴² CJK characters is a collective term for characters used to write the Chinese, Japanese, and Korean languages.

¹⁴³ The distinction between Instagram and Threads lies in their primary modes of communication. While Instagram emphasizes sharing experiences through visual content like images and videos, Threads fosters discussions and facilitates the sharing of events through text-based conversations.

- (216) Indeed, a key difference between this type of social media platforms and personal social networks is the different role that connections with other users play on the platform.
- (217) In a market study conducted by [...], participants were asked about the percentage of people they do not know among their connections on various social media platforms. Respondents indicated that they did not know the majority of people they are connected to on all three platforms mentioned above ([...] for X, [...] for [...] and [...] for Reddit). This shows that the real-life connection with other users of the same platform is not particularly relevant to the user experience of Reddit, Pinterest or X. People interact with each other on these platforms rather on a content-driven basis. Indeed, when asked why they followed people they do not know on social media platforms, by far the most frequent answer respondents provided was that they were interested in the type of content these connections posted.¹⁴⁴ Relatedly, respondents to a consumer survey conducted in 2019 by the UK's regulator for the communication services, Ofcom, listed "following public figures or influencers" among the top three activities important for accessing X, with 50% of respondents considering it either very important or fairly important when accessing X.¹⁴⁵
- (218) This finding is confirmed by [...] which indicated that [...].¹⁴⁶
- (219) Furthermore, content discovery platforms provide a set of functionalities which are geared towards facilitating the discovery and organisation of content: discovery, search and bookmarking features are key functionalities of these services, which enable users to find, explore, browse, organise, curate and interact with content they are interested in. For example, one of X's key functionalities, the hashtag, operates as a social bookmarking system to structure the content a user interacts with on the platform. Users can follow hashtags, prompting content posted under a specific hashtag to be prominently displayed on a user's timeline. As such, the hashtag functionality organises content around areas of interest or different content categories instead of a user's connections on the platform. Similarly, on Pinterest and Reddit users can follow individual boards and subscribe to individual posts respectively, irrespective of their individual or personal connections to the users.¹⁴⁷
- (220) In this respect, [...] submitted that [...].¹⁴⁸
- (221) Additionally, the different nature of content discovery platforms and personal social networks is further reflected in differences in the user profiles they offer: to facilitate posting public statements, articles, pictures and/or videos that can be seen by whomever is interested in that content, user profiles are mostly public, unlike on

¹⁴⁴ [...].
¹⁴⁵ Ofcom Online Nation report 2019, page 132, available at https://www.ofcom.org.uk/data/assets/pdf_file/0025/149146/online-nation-report.pdf, downloaded on 13 September 2022 (ID5303).

¹⁴⁶ [...].
¹⁴⁷ Pinterest Help Center page "Find boards on Pinterest", available at <https://help.pinterest.com/en/article/find-and-follow-boards>, downloaded on 6 September 2022 (ID5383).

Screenshot of Reddit's "post-follow" button, available at https://www.reddit.com/r/help/comments/whra5l/how_do_i_post_anywhere/, captured on 6 September 2022 (ID5384).

¹⁴⁸ [...].

personal social networks where sharing status, pictures or videos of one's private life gives rise to semi-public content and content contained within specific groups.

- (222) [...] confirmed this [...] ¹⁴⁹ Likewise, [...] submitted that [...]. ¹⁵⁰ Similarly, [...] stated that [...]. ¹⁵¹
- (223) These services can also be distinguished by the prominent role in user experience played by content discovery spaces and functionalities, particularly for content the user is not yet familiar with. As such, they can be viewed as the content-centric analogy to the “connection-finding” functionalities of a personal social network.
- (224) In this respect, [...] submitted that [...] ¹⁵², [...] ¹⁵³ Similarly, [...] ¹⁵⁴ Additionally, [...] ¹⁵⁵ Furthermore, [...] submitted that it [...]. ¹⁵⁶
- (225) [...] confirmed its [...]. ¹⁵⁷
- (226) Similarly, when asked about the primary activities they accessed X for, respondents to Ofcom's 2019 consumer survey conducted listed ‘keeping up to date with the news/current affairs’ as the top one, with 62% of respondents considering it either very important or important. ¹⁵⁸
- (227) In sum, the Commission's investigation indicates that the purpose of content discovery platforms is not to enable users to interact with their network of family and friends but rather to let users follow discussions, image collections and conversations on specific topics of their interest. Reflecting their content-centric use cases, X, Pinterest and Reddit have been dubbed “information network”, ¹⁵⁹ “front page of the internet” ¹⁶⁰ and “a catalogue of ideas,” ¹⁶¹ respectively.
- (228) From a supply perspective, the market investigation showed that switching from a content discovery platform to a personal social network is not easy because it implies significant work, time and costs. In this regard, [...] stated that [...]. ¹⁶²

149 [...].

150 [...].

151 [...].

152 [...].

153 [...].

154 [...].

155 [...].

156 [...].

157 [...].

158 Ofcom Online Nation report 2019, page 132, available at https://www.ofcom.org.uk/_data/assets/pdf_file/0025/149146/online-nation-report.pdf, downloaded on 13 September 2022 (ID5303).

159 Inc.com, “Ev Williams on Twitter's Early Years”, available at <https://www.inc.com/issie-lapowsky/ev-williams-twitter-early-years.html?cid=em01011week40day04b>, downloaded on 06 September 2022 (ID5389).

160 Donald W. Reynolds National Center for Business Journalism, “Reporting on Reddit, the ‘front page of the internet’”, available at <https://businessjournalism.org/2021/05/reporting-on-reddit-the-front-page-of-the-internet/>, downloaded on 06 September 2022 (ID5397).

161 Fortune, “Pinterest CEO Ben Silbermann: We're not a social network”, available at <https://fortune.com/2015/07/13/pinterest-ceo-ben-silbermann/>, downloaded on 06 September 2022 (ID5392).

162 [...].

4.3.7. *Personal social networking services and video entertainment platforms*

- (229) The Commission concludes that personal social networking services and video entertainment platforms do not belong to the same product market.
- (230) Video entertainment platforms let users watch videos made available not by family or friends but mainly by unknown people, which are also users of this platform. The latter may include private users but also business users.
- (231) Video entertainment platforms lack the core functionalities of a personal social network (*i.e.* the profile page, the social graph and the shared social space), and the purpose for which users employ this type of platforms is not driven by users' willingness to connect with family and friends and thus get interpersonal connections, but rather by the intention of passively enjoying the consumption of videos uploaded by other users. Examples of video entertainment platforms include YouTube and Vimeo.¹⁶³
- (232) YouTube is a video entertainment platform launched in 2005 by YouTube, LLC and now owned by Google Inc. It is offered free of charge as a web service and as an app for mobile devices and smart TVs. Some users of YouTube upload videos through specific "channels" containing a playlist of similar videos. These users can upload videos up to 15 minutes each, unless they have a verified account, thanks to which they can upload videos up to 12 hours in length, as well as produce live streams videos. Other users can watch the videos and subscribe to channels. Having a proper profile on YouTube is not mandatory to enjoy the underlying content, but it allows to comment and rate individual videos.
- (233) Personal social networks are not interchangeable with video entertainment platforms such as YouTube, and this is because YouTube lacks the core functionalities of personal social networks, *i.e.* a profile page, the social graph and a shared social space which reflects the social graph feature. Moreover, YouTube is used almost exclusively for the consumption of videos or music uploaded and enjoyed by people that do not know each other in their offline life. In other words, video entertainment platforms such as YouTube are not used to get in touch with family and friends or with other personal connections. Therefore they do not exert a competitive constraint on Facebook.
- (234) This is exemplified by the fact that YouTube facilitates the exchange of videos between two mostly separate groups of users, *i.e.* the users uploading the videos and the users watching the videos. Out of YouTube's 2.6 billion monthly active users, only a small fraction of 4.4% (113.9 million users) have their own channel,¹⁶⁴ what underscores the fact that the vast majority of users passively consumes rather than actively creates content on the platform. Contrary to personal social networking services, on YouTube, communication between the two groups is limited to public comments to which everyone can post a public reply.

¹⁶³ Twitch is another video entertainment platform, conceived as an interactive livestreaming service for content spanning gaming, entertainment, sports, music, and more.

¹⁶⁴ timqueen.com, "HOW MANY YOUTUBE CHANNELS ARE THERE?", available at <https://timqueen.com/youtube-number-of-channels/>, downloaded on 14 November 2022 (ID6558).

- (235) While Facebook has certainly some functionalities, such as Facebook Watch¹⁶⁵ or Facebook Reels¹⁶⁶, which are similar to YouTube's features, those do not constitute the core of Meta's platform but a supplemental service meant to further develop the user's own network.
- (236) [...].¹⁶⁷ Emphasizing this point further, [...]. also stated that [...].¹⁶⁸
- (237) Further statements [...]:
- (1) [...].¹⁶⁹
 - (2) [...].¹⁷⁰
 - (3) [...].¹⁷¹
- (238) [...].
- (1) [...].
 - (2) [...].¹⁷²
- (239) Similarly, [...].¹⁷³
- (240) Other statements by [...] highlight how the features and functional characteristics of video entertainment platforms differ from those of a personal social networking platform:
- (1) [...].¹⁷⁴
 - (2) [...].¹⁷⁵
 - (3) [...].¹⁷⁶
 - (4) [...].¹⁷⁷
 - (5) [...].¹⁷⁸
- (241) [...] shared this approach and explained that [...].¹⁷⁹
- (242) This view is also confirmed in Ofcom's 2019 consumer survey, in which a majority of respondents indicated that they perceive YouTube primarily as a platform for video consumption: 76% of respondents stated that they consider "watching videos" a very important or important activity when accessing the platform. Only 14% of respondents considered "keeping in touch with family and friends" an important

¹⁶⁵ Facebook Watch is a section on Facebook that allows you to view, share, react and comment on videos uploaded by creators and publishers.

¹⁶⁶ Facebook Reels are a way to create short, entertaining videos with effects and music which can be easily added.

¹⁶⁷ [...].

¹⁶⁸ [...].

¹⁶⁹ [...].

¹⁷⁰ [...].

¹⁷¹ [...].

¹⁷² [...].

¹⁷³ [...].

¹⁷⁴ [...].

¹⁷⁵ [...].

¹⁷⁶ [...].

¹⁷⁷ [...].

¹⁷⁸ [...].

¹⁷⁹ [...].

(9%) or very important (5%) activity on YouTube. As such, despite their presence, social features were only relevant to a minority of survey respondents on YouTube.¹⁸⁰

- (243) Findings of the ACCC in its interim report on the digital platform services inquiry from March 2023 also support the finding that users use YouTube and Facebook services for different purposes, since YouTube is not designed to facilitate social connections: *“Other social media services, such as YouTube, are significantly differentiated [from Facebook] as they lack features designed to facilitate social connections, and are used by users differently (for example, YouTube is often accessed through connected TVs).”*¹⁸¹
- (244) As to Vimeo, it is a video entertainment platform owned by IAC/InterActive Corp, through which users can upload and livestream videos. Its mission is to deliver high-definition videos across a range of devices and not to connect individuals that are linked by a friendship, by a family or employment relationships.
- (245) [...] is of the opinion that [...].¹⁸²
- (246) [...] also added that [...].¹⁸³
- (247) From a supply side perspective, the Commission’s investigation shows that switching from a video entertainment platform to a personal social network is not easy because it implies significant time and costs. In this regard, [...] stated that [...].¹⁸⁴
- (248) The Commission’s conclusion that personal social networking services and video entertainment platforms do not belong to the same product market is not contradicted by Meta’s claims:
- (1) Video content is now the primary feature of social networking services, including Facebook, with videos representing a large number of content views and watching videos a large fraction of the time spent on Facebook. This results in a convergence between the functionalities offered by Facebook and services such as YouTube and Vimeo.¹⁸⁵
 - (2) [...].
 - (a) [...].¹⁸⁶
 - (b) [...].¹⁸⁷
 - (c) [...].¹⁸⁸

¹⁸⁰ Ofcom Online Nation report 2019, page 132, available at https://www.ofcom.org.uk/data/assets/pdf_file/0025/149146/online-nation-report.pdf, downloaded on 13 September 2022 (ID5303).

¹⁸¹ ACCC (2023), Digital platforms services inquiry – March 2023 interim report, page 89, available at: https://www.accc.gov.au/system/files/Digital%20platforms%20services%20inquiry%20-%20Interim%20report%206%20-%20Report%20on%20social%20media%20services_0.pdf, downloaded on 14 November 2023 (ID11740).

¹⁸² [...]

¹⁸³ [...]

¹⁸⁴ [...]

¹⁸⁵ SO Response, paragraphs 91 and 92 and Comments on the LoF, paragraph 75(a). For example, in February 2024, 18.3% of time spent on Facebook was spent on Reels. Comments on the LoF, paragraph 75(b), Annex 3 of the Comments on the LoF, section 1.2., section 2.2.

¹⁸⁶ Comments on the LoF, paragraph 59.

¹⁸⁷ Comments on the LoF, paragraph 60.

- (d) [...].¹⁸⁹
- (e) There is third party survey evidence concerning TikTok on the Commission's file which illustrates that both YouTube and Facebook are considered substitutes by TikTok's users, alongside many other services, even though those services having a different "main purpose of use" based on the Commission's approach.¹⁹⁰
- (3) Google's response to the Commission's request for information is not a reliable piece of evidence for assessing demand substitution on the relevant market.¹⁹¹
- (4) The ACCC's interim report does not support the Decision's conclusion that the main use purpose of Facebook differs from that of YouTube.¹⁹²
- (249) First, the increasing importance of videos on Facebook does not imply that YouTube is a substitute for it.
- (250) In the first place, Meta's arguments conflate the question of the evolution of the format of content on a service with that of the evolution of the purpose of that service. Just like text or images, videos can serve different purposes. For instance, text, images or videos can be used in advertising, and this does not imply that all text, images or videos are meant to serve as advertising. The mere observation that there are more and more videos on Facebook cannot therefore as such imply that the main reason to use that social network becomes the same as the main reason to use a video entertainment platform.
- (251) In the second place, in any event, the metrics used by Meta to assert the relative importance of video content on Facebook do not allow a faithful representation of the importance of that content.
- (252) In particular, Meta measured the time spent by Facebook users watching videos and determined that this represented [...] % of the total time spent by users on Facebook in February 2024.¹⁹³ To begin with, this count also includes time spent viewing video ads, which is not relevant here.¹⁹⁴ But most importantly, even for organic (non-ads) content, time spent cannot accurately reflect the relative interest of a user in videos compared to other types of content. Indeed, videos require by nature a longer attention to engage. A user with the same degree of interest in one image and one video would spend a few seconds watching the image, but several tens of seconds watching the videos. Merely comparing time spent is not an accurate measure of the main purpose for which the respective services are used.
- (253) Meta submitted that the numbers of videos "viewed" by users amounted to [...] % of the total pieces of content "viewed" on Facebook in the period from April to December 2022.¹⁹⁵ However, the metrics used by Meta cannot give an accurate account of the actual interest of users in those "viewed" videos. As already explained

¹⁸⁸ Comments on the LoF, paragraph 62.

¹⁸⁹ Comments on the LoF, paragraph 64.

¹⁹⁰ Comments on the LoF, paragraph 65.

¹⁹¹ Comments on the LoF, paragraphs 50 to 57.

¹⁹² Comments on the LoF, paragraphs 87 to 90.

¹⁹³ Comments on the LoF, paragraph 75(a).

¹⁹⁴ Annex 3 of the Comments on the LoF, paragraph 1(a).

¹⁹⁵ Annex 3 of the SO Response, Table 5.

in recital (156)(1) above, Meta counts as “viewed” any piece of content that is visible for at least [...].¹⁹⁶

- (254) Moreover, recitals (156) to (162) above already explained why Meta’s way of counting “views” cannot accurately measure the number of pieces of content with which a user has genuinely engaged. This is because any content around or in between a piece of content that interested the user is likely to be counted as “viewed”.
- (255) The inaccuracy of the metrics when it comes to measuring actual user engagement is even more relevant in the case of video content. Indeed, it is implausible that a user can be deemed to have engaged with a video, let alone to have shown active interest in it, by watching that video during a quarter of a second.¹⁹⁷
- (256) This is confirmed by a further analysis of the data provided by Meta. Indeed, the data show that [...] % of the “views” of videos calculated by Meta relate to videos that started playing automatically (auto-play), and that [...] % of those were interrupted by the user within three seconds.¹⁹⁸ This further indicates that many of video content considered “viewed” by Meta were merely displayed by Meta to the user, often for a short moment, without the user having any intention to view that video content.
- (257) This observation is not contradicted by Meta’s assertion that [...] % of time spent on viewing videos on Facebook is spent on videos that were not interrupted within the first three seconds, and this pattern is similar for both auto-play and non-auto-play content.¹⁹⁹ It is only normal that the time spent on videos that are interrupted is small compared to the time spent on videos that are not interrupted. This is merely the logical consequence of the fact that the former were interrupted.
- (258) In addition, this representation hides differences in the pattern between auto-play and non-auto-play content. For instance, if one were to assume that non-autoplay videos are interrupted on average 30% of the times after 1 second and are watched until the end for an average 100 seconds the rest of the time, whereas autoplay videos are interrupted on average 60% of the times (twice as much as non-auto-play videos) and left running on average 100 seconds the rest of the time, Meta’s calculation will show that less than 2% of the time spend on video content was on video content views that are interrupted both for autoplay and non-autoplay videos, even though autoplay videos were interrupted twice as much as non-autoplay ones.
- (259) By way of comparison, Google reports the number of views of YouTube videos in a way that is much more representative of users’ actual engagement with the videos. Indeed, [...],²⁰⁰ [...].²⁰¹

¹⁹⁶ The piece of content has to be either entirely visible on the screen in that 250 milliseconds period, or to occupy at least 50% of the screen.

¹⁹⁷ Furthermore, using the same metric to measure both views of video and non-video content gives the same prominence to video content, while engagement with such content differs compared to non-video content (e.g., seeing a photo or a post versus watching (short) video).

¹⁹⁸ Meta’s reply to Q11 (tab “Output – Q11bcde” of “Annex Q11”) of the Commission’s RFI to Meta of July 2023 (ID11027).

¹⁹⁹ Comments on the LoF, section 2.2.5. to 2.2.6. This data has been calculated for a 1% sample of EEA users in February 2024.

²⁰⁰ Comments on the LoF, paragraph 81.

²⁰¹ [...].

- (260) In the third place, even taking Meta's own metrics as representative of users' actual engagement with videos (which they are not), those still show that, until very late in the period covered by this Decision, videos accounted for a minority of users' engagement with Facebook. Indeed, time spent on video content (including ad video content) only surpassed [...] % as of February 2024.²⁰² It went above [...] % only in late 2022. In the whole period between 2019 and 2022, time spent on videos stayed around [...] %.²⁰³ Even *per* Meta's biased metrics of counting views, videos represent only [...] % of the total number of pieces of content viewed in the period from April to December 2022.²⁰⁴ This is in stark contrast with YouTube's content, as YouTube contains only videos.
- (261) In the fourth place, according to Meta's reply to the Commission's request for information of July 2023, the proportion of advertiser expenditure spent on video ads (as opposed to non-video ads) on Facebook was only [...] % in August 2017, [...] % in January 2023²⁰⁵ and [...] % in February 2024²⁰⁶ thus increasing by only [...] % within a year. This is far from constituting a video sharing platform.
- (262) In the fifth place, despite the fact that video content is currently more prominent on Facebook compared to the past, its main use purpose still differs from YouTube. YouTube is not aimed at keeping in touch with friends and family. YouTube's primary purpose is the consumption of video content. It was not initially designed as a platform for personal social networking or keeping in touch with friends and family. Users primarily visit YouTube to watch videos on various topics of interest, from educational content to entertainment. While YouTube may have added social features such as comments, likes, and shares, these are primarily focused on engaging with content rather than fostering personal relationships. The platform fosters communities around shared entertainment interests rather than personal relationships.
- (263) In the sixth place, while over time Meta extended its offering on Facebook to video content and other features, its core functionalities and main purpose have not changed. Facebook was specifically created as a platform for connecting with friends and family. Its core functionality revolves around social interactions, sharing personal updates, photos, and messages within one's social circle. Users on Facebook typically interact with people they know offline, maintaining existing relationships and forming new connections with acquaintances and friends of friends.
- (264) Thus, YouTube exercises very limited constraint, if any, on Facebook in personal social networking services, as it is not able to substitute the offering of Facebook in this area. This does not mean, however, that Facebook, with its extensive user base and evolving video features, would not now exert some constraints on YouTube's video offering. Facebook's video features serve as an additional offering rather than a direct substitute for YouTube. Consequently, Facebook's and YouTube's services do not belong to the same relevant market.
- (265) Second, contrary to Meta's allegations, [...].

²⁰² Comments on the LoF, paragraph 75(a).

²⁰³ Comments on the LoF, Figure 3.

²⁰⁴ Annex 3 of the SO Response, Table 5.

²⁰⁵ Meta's reply to Q2 of the Commission's RFI to Meta of July 2023 (ID11031).

²⁰⁶ Comments on the LoF, paragraph 75(c).

- (266) In the first place, [...].²⁰⁷
- (267) In the second place, [...]²⁰⁸, [...]. As explained in recital (260) above, even using Meta's own flawed interpretation of the relevance of the time spent on videos and flawed metrics to measure it, the time spent by users on video content in Facebook has remained largely constant in the whole period between 2019 and 2022, and increased slightly only in the following years, never getting close to the time users spend on video content in YouTube. This is also confirmed by the extracts from Meta's Earnings Calls mentioned in recital (171) above, which show little evolution in the type of the content on Facebook in that period.
- (268) In the third place, [...]. The Commission considers that the demographics and economy of the USA and that of the EEA are comparable. Meta claims that its own internal data shows differences in how users use Facebook worldwide and in the EEA, because the proportion of content viewed that was created by Facebook friends is lower in the EEA than in other countries. For example, as pointed out by Meta, in the period from April to December 2022, across all content, content from Facebook friends on Facebook was [...] % more prevalent worldwide than in the EEA.²⁰⁹ However, firstly, as already explained in recitals (156) to (162) above, the definition of content "viewed" used by Meta does not allow accurately to measure the content with which users actually engage. Secondly, even using Meta's own flawed metrics, the data only shows a minor difference between the prevalence of content from Facebook friends worldwide compared to the EEA. Indeed, it means that, where an EEA user "views" on average [...] pieces of content from a Facebook friend, a worldwide user would "view" on average [...] pieces of such content. This difference does not in any way explain the fact that, as seen in recital (238)(2) above, there are [...] times as many users of Facebook who use the Facebook platform principally to stay connected to friends and family than those who use YouTube principally for the same reason.²¹⁰
- (269) In any event, while Meta takes the view that EEA and USA users are too dissimilar for one category of users to be representative of the other for this exercise, it relies at the same time on the behaviour of users in India for the same purpose (see recital (311) below).
- (270) In the fourth place, there is no contradiction [...].
- (271) Moreover, it is important to note, as also stipulated in the ByteDance DMA Designation, that the DMA pursues an objective that is different from EU competition law, including Article 102 TFEU, and consciously departs from the concept of market definition. Article 2 of the DMA provides an exhaustive list of core platform services which the legislator considered as particularly prone to certain types of market failure. Accordingly, the definitions of core platform service laid down in the DMA itself are the only relevant standard to determine if a given service qualifies as a particular type of core platform service, without requiring the Commission to conduct a market investigation within the meaning of EU

²⁰⁷ [...].

²⁰⁸ [...].

²⁰⁹ Comments on the LoF, paragraph 70; Annex 3 to Comments on the LoF, paragraph 7. For clarity, in this context Meta explained that worldwide includes the EEA, and thus the difference between rest of the World and the EEA would be even larger (Annex 3 to Comments to the LoF, footnote 10).

²⁰⁹ Comments on the LoF, paragraph 70; Annex 3 to Comments on the LoF, paragraph 7. For clarity, in
²¹⁰ [...].

competition law, which is conversely without prejudice to any definition of the relevant market under any competition law investigations, as also stipulated under recital 10 the DMA.

- (272) In any event, [...].
- (273) The first reason is that, [...].²¹¹ However, [...].
- (274) The second reason is that [...].²¹² However, [...]. In any event, if anything this Decision reaches a conclusion that is analogous to that of the ByteDance DMA Decision, since it includes TikTok within the scope of the relevant product market but not YouTube.²¹³
- (275) The third reason is that ByteDance only provided very limited extracts from the relevant studies and research on which it sought to rely in the context of the investigation leading to the ByteDance DMA Designation.²¹⁴ However, [...].
- (276) In the fifth place, Meta refers to a third-party survey in the Commission's file and it argues that this survey illustrates that TikTok's users consider Facebook and YouTube substitutes. However, this survey is not indicative of substitutability between these services, as it concerns a hypothetical situation where TikTok is banned. Consequently, it does not reflect a "small but significant change" in supply conditions and users' preferences and actual substitution patterns. Moreover, the survey's primary focus appears to be on potential substitution between Facebook and TikTok, rather than specifically addressing YouTube's role as a substitute for Facebook.
- (277) Third, Google's response to the Commission request for information²¹⁵ offers reliable evidence for the purpose of assessing substitutability between Facebook and YouTube.
- (278) In the first place, in line with the Market Definition Notice, while defining the relevant market the Commission relies on a variety of evidence including in the case of multi-sided platforms, among others, product intended use and product functionalities. Google provided a comprehensive comparison between Facebook and YouTube as to the main purpose and features of these services based on its knowledge of its own platform and its understanding of the services offered by Facebook and their purpose. This information serves as one of numerous pieces of evidence in the Commission's assessment of the relevant market. Contrary to Meta's allegation, this evidence has probative value irrespective of whether or not it relates to actual behavior of users.
- (279) In the second place, [...].²¹⁶

²¹¹ ByteDance DMA Designation, recital 61.

²¹² ByteDance DMA Designation, recital 62.

²¹³ This is without prejudice to the point that the delineation of an online social networking core platform service under the DMA has no bearing on the definition of a personal social networking service for the purpose of market definition under Article 102 TFEU. As recital 11 of the preamble to the DMA points out, that regulation pursues an objective that is complementary to, but different from, that of EU competition rules, which is to protect undistorted competition on any given market. Consequently, the application of EU competition rules, including competition law precedents, is without prejudice to the application of the DMA, and *vice versa*.

²¹⁴ ByteDance DMA Designation, recital 63.

²¹⁵ [...].

²¹⁶ [...].

- (280) Fourth, contrary to Meta's allegations, the excerpts from the ACCC's interim report fully support the Commission's findings that the main purpose of Facebook differs from the one of YouTube. In this regard, see recitals (164) and (165).
- (281) In conclusion, it follows from the above that YouTube and Facebook serve distinct purposes and cater to different user behaviors. While Facebook may incorporate video content, its core purpose and user interactions fundamentally differ from those of YouTube. Consequently, Meta's claim that YouTube significantly constrains Facebook is unfounded. The differences in platform functionalities and features and platform main intended use show that these platforms operate in distinct relevant markets.

4.3.8. *Personal social networking services and hybrid social media platforms*

- (282) This section assesses whether other social media platform services, which do not fall within any of the above-mentioned categories, may be considered as substitutes for personal social networks, and thus as belonging to the same product market. For the purpose of this Decision, the term "hybrid social media platforms" refers to social media platforms that exhibit characteristics from more than one of the different categories of social media platforms examined above.
- (283) Based on the assessment below, the Commission concludes that hybrid social media platforms, such as Instagram, Snapchat and TikTok, may share some features, functionalities and use cases with personal social networking services, as set out in section 4.3.2 above, but they also present significant distinct features.

4.3.8.1. *Instagram as a hybrid social media platform*

- (284) Instagram was released in 2010 as an iOS mobile application for photo editing and image sharing.²¹⁷ Initially, its functionalities were geared towards replicating vintage pictures, allowing users to create digital polaroid-style pictures through resizing and the addition of filters. These editing functionalities have since been expanded to include a wide range of filters and effects like captions, frames and stickers. Initially, Instagram's feed displayed photos of accounts users followed in reverse chronological order. In 2012, Meta completed the acquisition of Instagram for USD 1 billion. Shortly after, advertisements were introduced on Instagram (in 2013 in the USA and in 2015 globally), with sponsored posts and video advertisements complementing these feed elements.
- (285) While it retains a focus on visual content, Instagram has become more video-heavy over time, introducing the option to share videos in 2013, adding Instagram live videos (*i.e.*, an option to broadcast a live video) in 2016 and more recently adding IGT (also known as Instagram TV) and the short-form video features Reels (*cf.* Figure 1, middle image). With the introduction of these features, Instagram increasingly took on elements of a video entertainment platform, offering a content-creator-driven user experience as well as the possibility to post longer videos.
- (286) A second key shift in Instagram's user experience was the introduction of more ephemeral and intimate content, most notably through the introduction of Instagram stories (added in 2016), photo or video slides, which are ephemeral and available for 24 hours. Additionally, disappearing direct messages, photos and videos (added in

²¹⁷ Instagram was released for Android in 2012.

2016) and the option to filter and switch off comments (added in 2016) have contributed to this shift.

- (287) Various social features such as hashtags (added in 2011), a way of topically marking images, photo tagging (added in 2013), direct messaging (added in 2013), video calls (added in 2018) have been added, changing the way interactivity is built into the platform.

Figure 1: Instagram surfaces: Home, Reels & Shop tabs²¹⁸



- (288) Instagram also combines the three essential features of personal social networking services outlined in section 4.3.2 above (i.e. a profile page, a social graph and a shared social space). Instagram's profile page is where users can find photos, videos, a list of people followed by the user as well as a list of people that the user follow along with their brief general description, which is generally called Instagram's bio. The presence of a proper social graph is testified by the number of interconnections that match real life's relationships of Instagram users (see recital (293) below). Finally, the shared social space, called Instagram feed, includes posts from accounts that the user follows, suggested posts and ads from businesses that may be interesting and relevant to the user.
- (289) As such, while it remains a platform centred on visual content, the addition of the above-mentioned social features as well as the increasing focus on video content has transformed Instagram from a photo-editing tool with social features into a platform that unites elements of a content discovery platform, a video entertainment platform and a personal social network.
- (290) This hybrid nature is also reflected in a market study conducted by [...], in which respondents were asked about the percentage of people they personally know among their connections on various social media platforms. The figure respondents provided for Instagram was [...] considerably lower than the figure provided for Facebook, but still [...].²¹⁹ Relatedly, respondents to Ofcom's 2019 consumer survey ranked "photo

²¹⁸ Screenshot of Instagram's "Home", "Reels" and "Shop" surfaces, available at <https://www.theverge.com/2020/11/12/21561099/instagram-reels-shopping-home-screen-tab-update>, captured on 16 September 2022 (ID5421).

²¹⁹ [...].

and video sharing” as the most important activity they accessed Instagram for (with 66% of respondents considering it to be very or fairly important), while also ranking “keeping in touch with friends and family” highly (with 59% of respondents considering it to be very or fairly important).²²⁰

- (291) This is confirmed by data from [...] in which [...].²²¹ This shows that whilst Instagram has features that allow social networking, those are not used primarily to connect with friends, family and personal acquaintances.
- (292) The evolution of the Instagram feed stream (for a snapshot of its current layout, see Figure 1 above, left image) illustrates its hybrid nature as well. Initially chronological, different post engagement metrics were added as ranking factors when the feed ranking turned algorithmic in 2016, focusing more heavily on the content-discovery elements of the platform. In 2019, Instagram removed the following activity tab, showing users the activities from accounts they are connected with, a key element of its shared social space. In 2022, Instagram reintroduced the chronological feed as an additional option for its users who can now decide between a chronological order based on the accounts they follow or an algorithmic feed geared towards interest-based suggestions, allowing for different ways to tailor the Instagram user experience.²²²
- (293) In fact, users’ desire for a feed experience based on the accounts they follow has been illustrated in a recent backlash against further amplifications of algorithmic content recommendation introduced by Instagram, tipping users’ feed composition to accounts they do not follow. A viral meme demanding to “Make Instagram Instagram Again ” *clearly recognised Instagram’s social network elements as part of its essence: “stop trying to be TikTok I just want to see cute photos of my friends. Sincerely, Everyone”* received over 2 million likes and was reshared by some of the largest accounts on the platform.²²³ In response to the user backlash, Instagram rolled back the feed update. This incidence is a testament to Instagram’s hybrid nature. It illustrates that Instagram’s main use case is not limited to content discovery and that users clearly value its social network elements as well.
- (294) Like X, Instagram’s hashtag system equips it with a strong bookmarking function, facilitating content discovery based on user interests. Since 2017, it is possible to follow hashtags in addition to following user accounts. Users can center their platform experience around interests and hobbies in addition to or instead of the content shared by their network on the platform. Indeed, 47% of respondents to Ofcom’s 2019 consumer survey indicate that “accessing to groups with similar interests” is a fairly or very important purpose when using Instagram.²²⁴ This change

²²⁰ Ofcom Online Nation report 2019, page 132, available at https://www.ofcom.org.uk/_data/assets/pdf_file/0025/149146/online-nation-report.pdf, downloaded on 13 September 2022 (ID5303).

²²¹ [...].

²²² Control your Instagram Feed with Favourites and Following, available at <https://about.instagram.com/blog/announcements/favorites-and-following>, downloaded on 8 September 2022 (ID5394).

²²³ The Guardian, “Instagram rolls back some changes to app after user backlash”, available at <https://www.theguardian.com/technology/2022/jul/28/instagram-rolls-back-some-changes-to-app>, downloaded on 8 September 2022 (ID5391).

²²⁴ Ofcom Online Nation report 2019, page 132, available at https://www.ofcom.org.uk/_data/assets/pdf_file/0025/149146/online-nation-report.pdf, downloaded on 13 September 2022 (ID5303).

reflects a key evolution in the role of the social graph in driving content engagement on the platform from suggested connections.

- (295) Furthermore, the Instagram Explore Tab added in 2012 is designed as a content discovery space within the app (see Figure 2 below). It includes search functionalities and displays a collection of popular content based on a user's interests.

Figure 2: Instagram Explore tab²²⁵



- (296) Based on the above, the Commission concludes that, while Instagram might have all three essential features of a personal social network, the main purpose of Instagram is not unequivocally to build and maintain interpersonal connections between people that already know each other. In particular, other key purposes of the platform include discovering content based on users' own interests and operating as an entertainment platform focused on the passive consumption of short videos (*i.e.* reels). This makes Instagram a hybrid service which is not a full substitute for a personal social network.

4.3.8.2. Snapchat as a hybrid social media platform

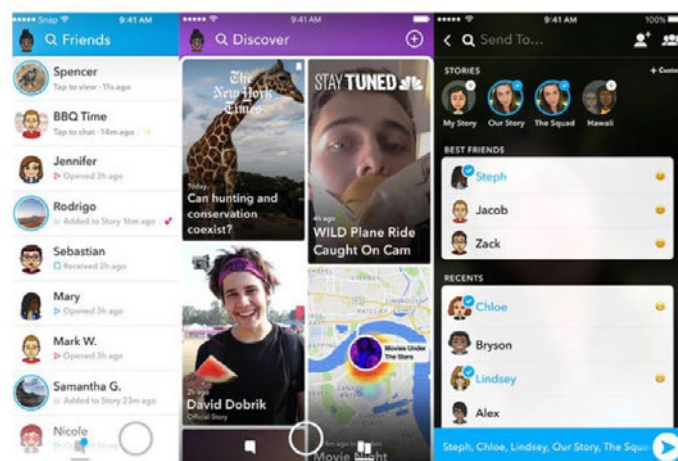
- (297) Snapchat was launched in 2011 as an instant photo-messaging app, pioneering disappearing content called “Snaps”. Users can share photos or videos directly with their connections on the platform (see Figure 3 below). Snaps are then only temporarily available for the recipient. [...].²²⁶
- (298) In 2013, Snapchat's functionalities were expanded to include “Stories”, a collection of snaps available to all of one's followers for a 24-hour timeframe. This feature was later adopted by Instagram. In 2015, Snapchat added a “Discover” space in which users can interact with content from a selection of advertisers (see Figure 3 below, middle picture).

²²⁵ Screenshot of Instagram's “Explore” tab, available at <https://about.instagram.com/features/search-and-explore>, captured on 16 September 2022 (ID5424).

²²⁶ [...].

- (299) Snapchat popularized the use of face filters and augmented reality elements in photos and videos. In 2014, it introduced geo-filters. This, in combination with a user interface in which access to different elements of the platform is built around swiping rather than clicking buttons, has made it popular with a young user public.
- (300) Snapchat is a hybrid platform because of the presence of two of the essential features of personal social networking services outlined in section 4.3.2 above (*i.e.* a social graph and a shared social space). Indeed, Snap lacks a fully-fledged profile page, but it enjoys a strong social graph, since users can follow their real-life friends or family members. It also offers a shared social space, which allows users to chat and to send and receive ephemeral photos and videos, which disappear shortly after they have been posted. Moreover, through the stories features, Snapchat allows for sharing updates with one's followers. But, at the same time, the core functionality of a Snap is multimedia messaging and thus Snap's focus on person-to-person photo sharing also affords the platform some elements of a messaging service. The Commission thus considers that Snapchat is a hybrid between a personal social networking service and a consumer communication service.

Figure 3: Snapchat surfaces²²⁷



- (301) This is confirmed in a market study conducted by [...], which asked participants about the percentage of people they personally know among their connections on various social media platforms. The figure respondents provided for Snapchat was [...].²²⁸ Relatedly, respondents to Ofcom's 2019 consumer survey identified "keeping in touch with friends and family" as the most important activity on Snapchat. 65% of respondents considered this activity either very important (29%) or fairly important (36%) when accessing Snapchat, the second highest share of any of the social media platforms surveyed, surpassed only by Facebook.²²⁹ The high share of connections users personally know and the importance of maintaining personal relationships on the platform reflect that Snapchat has some elements of a personal social network, while its focus on real-time communication demonstrate its particular

²²⁷ Screenshot of surfaces from Snapchat's user interface, available at <https://www.wsj.com/articles/snapchat-simplifies-design-to-spur-use-1511964000?mod=e2twd>, captured on 16 September 2022 (ID5416).

²²⁸ [...].

²²⁹ Ofcom Online Nation report 2019, page 132, available at https://www.ofcom.org.uk/data/assets/pdf_file/0025/149146/online-nation-report.pdf, downloaded on 13 September 2022 (ID5303).

nature as a hybrid between a personal social network and a consumer communication platform.

4.3.8.3. TikTok as a hybrid social media platform

- (302) TikTok is a short-form video sharing service that emerged from ByteDance's acquisition of Musical.ly. Its initial focus on music videos and lip sync challenges has since been expanded, with users creating 15-second videos on any topic (for a screenshot of the TikTok feed, see Figure 4 below). [...].²³⁰
- (303) TikTok's filter and editing functionalities facilitate media mixes, making it easy for its users to become creators. In a survey conducted by GlobalWebIndex in 2018, 68% of the respondents reported to have watched someone else's video in the last month, while 55% reported uploading a video in the last month.²³¹ Thus, compared to YouTube, the split between creators and consumers is much less pronounced.

Figure 4: TikTok surfaces²³²



- (304) [...] also confirmed that [...].²³³
- (305) TikTok combines the three essential features of a personal social network (*i.e.* a profile page, a social graph and a shared social space). The profile page is a collection of short videos posted by the users and it includes a list of people followed by the users as well as a list of people that they follow along with a brief general user description, which is generally called TikTok's bio. TikTok also enjoys a social graph that allows users to follow, among others, people that they know in their real life and a shared social space, called "For You" page. Despite the high number of features, functionalities and characteristics that are typically based on the social graph (*i.e.* messaging options, "For You" and a "Discovery" pages (see Figure 4 above), TikTok users can be "Friends" if they mutually follow each other, etc.), TikTok's mission is at core entertainment-based. Its main use case is to allow users to create and share 15-second videos on any topic, rather than to build and maintain personal relationships.

²³⁰ [...].

²³¹ Global Web Index, "Is TikTok setting the scene for music on social media?", available at <https://blog.gwi.com/trends/tiktok-music-social-media/>, downloaded on 16 September 2022 (ID5419).

²³² Screenshot of TikTok surfaces, available at <https://www.socialpilot.co/blog/best-time-to-post-on-tiktok>, captured on 16 September 2022 (ID5430).

²³³ [...].

- (306) By its own description, TikTok is [...].²³⁴ While [...],²³⁵ i.e. it has a social graph,²³⁶ [...],²³⁷ centering the TikTok user experience much more around entertainment than around relationship building.
- (307) Unlike on Facebook where “*the most important categories of signals for predicting how relevant a post may be to a particular user include [...]*”²³⁸ or on [...] where [...]²³⁹ the content delivered on a TikTok “For You” feed is primarily created and shared outside of a user’s own personal network, making the user experience of TikTok much more consumption-focused and introspective than the highly interpersonal user experience on Facebook.
- (308) This is confirmed by data from [...].²⁴⁰ This shows that whilst TikTok has features that allow social networking, those are not used primarily to build and maintain relationships with friends, family and personal acquaintances.
- (309) It is further worth mentioning [...].²⁴¹ More precisely, [...] added [...].²⁴²
- (310) Finally, [...] submitted that [...].²⁴³
- (311) The Commission thus concludes that TikTok is not an effective and immediate competitive constraint to Facebook. That conclusion is not contradicted by Meta’s argument that switching between Facebook and TikTok is evidenced by the ban of TikTok in India, which resulted into [...].²⁴⁴
- (312) In the first place, a permanent ban on a service is not informative on users’ preferences and actual substitution patterns. If a product or service is permanently removed from a market, consumers might consider alternatives that they would not have considered in the normal course of business. The relevant measure for the purpose of market definition is a small but significant change in supply conditions. As explained in the Market Definition Notice, “*reactions to a significant change, such as the complete unavailability of a product or the introduction of a new product, may not always indicate how customers would react to more limited changes in relative supply conditions*”.²⁴⁵
- (313) In the second place, the analysis of the TikTok ban in India pointed out by Meta measures the competitive constraints imposed by Facebook on TikTok rather than by TikTok on Facebook.
- (314) While Facebook might have become more similar to TikTok, introducing additional “TikTok-like” features, the opposite is not true. Hence, while TikTok users might be able to partially replicate their TikTok experience on Facebook, those Facebook users who place more value in interacting with their real-life social circle cannot

²³⁴ [...].

²³⁵ [...].

²³⁶ [...].

²³⁷ [...].

²³⁸ Meta’s reply to Q10 of the Commission’s RFI to Meta of March 2022(ID3604).

²³⁹ [...].

²⁴⁰ [...].

²⁴¹ [...].

²⁴² [...].

²⁴³ [...].

²⁴⁴ SO Response, paragraphs 82 and 83 and Annex 2 of the SO Response.

²⁴⁵ Market Definition Notice, paragraph 51.

replicate their Facebook experience on TikTok. As such, Facebook is unlikely to face an effective competitive constraint from TikTok for the latter type of users.

- (315) Moreover, Facebook users are likely to be concerned by the presence of their own real-life social circles on an online social media platform as evidenced by [...] described in recitals (238) and (239). As such, they would switch to a different platform if they can reasonably expect to find such social circle there as well. This is not necessarily a concern for TikTok users, who for the most part consume online content which is not created by their real-life social circle.
- (316) In the third place, an analysis conducted by the ACCC in the context of its interim report on the digital platform services inquiry from March 2023²⁴⁶, which studied the evolution of time spent on Facebook in Australia following the launch of TikTok in the country in 2020, shows that time spent on Facebook by Australian users has remained approximately constant in the two years following the launch of TikTok. During this time, total time spent on TikTok by Australian users more than doubled. The ACCC notes that *“This [evolution] could reflect a lack of switching away from Meta’s services in response to TikTok’s entry, and therefore that TikTok may not be a close alternative to Meta’s services (or potential complementarity between the 2 services).”*²⁴⁷
- (317) In the fourth place, in any event, the Commission includes TikTok, and other hybrid social media platforms, in the relevant product market, even though they impose less effective and less immediate competitive constraints on Facebook.

4.3.8.4. Conclusion on hybrid social media platforms

- (318) In view of the above, the Commission concludes that although Instagram, Snapchat and TikTok may share some features, functionalities and use cases with personal social networking services, they also present significant distinct features.
- (319) In fact, the Commission’s investigation shows that while these hybrid platforms contain some of the essential features of personal social networking services, users use these services for different purposes. Thus, Instagram combines elements of a content discovery platform, a video entertainment platform and a personal social network. Snap unites elements of messaging services and personal social networking services. Finally, TikTok is a social video platform focused on intra-personal content discovery, which unites elements of content discovery platforms, video entertainment platforms and personal social networking services.
- (320) Nevertheless, for the purposes of this Decision, the Commission takes into account the broader market for personal social networking services including hybrid social media platforms such as Instagram, Snapchat and TikTok.²⁴⁸ Accordingly, the

²⁴⁶ ACCC (2023), *Digital platforms services inquiry – March 2023 interim report*, available at: <https://www.accc.gov.au/system/files/Digital%20platforms%20services%20inquiry%20-%20Interim%20report%206%20-%20Report%20on%20social%20media%20services0.pdf>, downloaded on 14 November 2023 (ID11740).

²⁴⁷ ACCC (2023), *Digital platforms services inquiry – March 2023 interim report*, page 111, available at: <https://www.accc.gov.au/system/files/Digital%20platforms%20services%20inquiry%20-%20Interim%20report%206%20-%20Report%20on%20social%20media%20services0.pdf>, downloaded on 14 November 2023 (ID11740).

²⁴⁸ Meta claims that by applying the broader market definition the Commission implicitly accepts that Facebook competes with TikTok and other hybrid platform and given the similarities between TikTok and YouTube, this implies that Facebook competes with YouTube (Comments on the LoF, paragraph

Commission considers not only Facebook's close substitutes (i.e. the other personal social networking services) but also hybrid social media platforms that impose less effective and less immediate competitive constraints on Facebook. This is consistent with Meta's claim that Facebook competes with hybrid social media platforms.²⁴⁹

4.3.9. *Meta's argument that all possible social media platforms are substitutes is unfounded*

- (321) Meta argued that Facebook competes on the market for users attention with a range of services.²⁵⁰ In particular, Meta claimed that Facebook competes closely with the following social media platforms: [...].²⁵¹ Meta also claimed that Facebook competes for users attention with a number of other players, in particular: [...].²⁵²
- (322) In addition, Meta argued that, in its market definition assessment, the Commission should have relied more on evidence from users.²⁵³
- (323) Finally, Meta claimed that Meta's documents, third-party documents on the Commission's file, and widespread public information all support that Meta competes for user attention with a wide variety of services.²⁵⁴ According to Meta, the Commission has not reflected this evidence in its definition of the relevant market, and it relied on certain reports which are not up-to-date.²⁵⁵
- (324) For the reasons set out below, the Commission finds that Meta's arguments that all possible social media platforms are substitutes for Facebook are unfounded.
- (325) First, there is no relevant product market for users' attention.
- (326) In the first place, as indicated in Market Definition Notice: *"The relevant product market comprises all those products that customers regard as interchangeable or substitutable to the product(s) of the undertaking(s) involved, based on the products' characteristics, their prices and their intended use, taking into consideration the conditions of competition and the structure of supply and demand on the market"*.²⁵⁶ Users attention does not constitute a distinct product market, because attention is a result of users' choices and preferences for different services, influenced by various factors such as those services characteristics including price, content, quality, relevance or marketing efforts, and the user's interest. As such, attention is not a tangible product or service that can be offered by a company. It is just something that can be sought by suppliers of a given product or service as the suppliers of any product seek to obtain money. Consequently, user attention cannot constitute a separate relevant product market for the purpose of application of competition law.
- (327) In the second place, users have a number of needs that can be satisfied by a range of different providers. However, this does not mean that competition takes place at the level of providers seeking to meet such different users' needs. Even if different

56(c)). However, this conclusion is unfounded, as the Decision does not qualify Facebook and TikTok as close competitors. Similarly, the Decision finds that that TikTok and YouTube do not belong to the same relevant market even if both services offer video content.

²⁴⁹ SO Response, paragraph 88.

²⁵⁰ SO Response, paragraphs 62 and 63.

²⁵¹ SO Response, paragraph 64.

²⁵² SO Response, paragraphs 64, 68 to 73 and Annex 3 of the SO Response, section 3.

²⁵³ SO Response, paragraph 75.

²⁵⁴ SO Response, paragraphs 67(c) to 72.

²⁵⁵ SO Response, paragraph 74, 74(b).

²⁵⁶ Market Definition Notice, paragraph 12(a).

providers seek to capture attention of users, ultimately users decide how much time they wish to spend to satisfy their specific needs and, consequently, which providers to use to satisfy these needs. Only providers aiming at fulfilling the same need of users can impose competitive constraints on one another. Thus, the competitive process takes place among providers meeting a given users' need, but not among providers aiming at fulfilling distinct users' needs.

- (328) In the third place, a relevant product market for users' attention would not adequately capture the effective and immediate competitive constraints faced by the undertakings. Distinguishing the relevant product market for users' attention for the purpose of applying competition law would lead to an opaque result whereby providers responding to often very distinct user needs would be considered to be competing against one another. To provide a practical example, delineating a market for user attention would mean that reading a book competes with having a drink or dinner with friends, working out or playing video games.
- (329) In the fourth place, while claiming that on such broadly defined relevant market Facebook competes most closely with a number of other social media platforms or other services, Meta fails to provide any specific evidence demonstrating that each of the mentioned alleged alternatives imposes an effective and immediate competitive constraint on Facebook. In this context, the Commission notes that compared to Facebook, the services listed by Meta have more targeted and dedicated offerings and, on balance, a different main use case compared to Facebook.
- (330) Second, while there exists no requirement to rely on a user survey for the purpose of defining the relevant market, contrary to Meta's allegations, the Commission did consider evidence from users. Indeed, the Commission analysed surveys conducted by providers of social media platforms in the ordinary course of business (*e.g.*, a market study conducted by [...] and [...]) as well as surveys from other public authorities (*e.g.*, Ofcom's 2019 consumer survey).
- (331) Third, the Commission rejects Meta's claims that different types of social media platforms compete with each other, based on the public report filings or public statements of these platforms. Such filings and statements are not sufficient in themselves to define the relevant product market. Moreover, these public filings and public statements do not cast doubt on the Commission's conclusions regarding the relevant product market.
- (332) In the first place, the Commission recalls that the concept of the relevant market for the purpose of applying competition rules has an autonomous character. Indeed, in the public statements/filings or internal documents, undertakings often describe their competition in a broad sense, taking into account various factors such as customer demographics, preferences and geographic location, which they individually consider important. Typically, undertakings focus on specific segments of the industry where they can provide unique value and establish a competitive advantage. Therefore, in their statements/filings or internal documents, undertakings might claim that they compete with a range of companies in specific segments or taking into account different factors, even if their direct competition is likely to be limited within their target markets. Thus, it is not unusual that there might exist a difference between how undertakings themselves define their competitors and how, in a given case, the boundaries of the relevant product market are delineated.
- (333) This is confirmed by paragraph 19 of the Market Definition Notice, according to which: *"the concept of 'relevant market' in Union competition law is different from*

the use of the term ‘market’ in other contexts, in particular in business contexts. Undertakings often use the term ‘market’ to refer to the area or place where they sell their products, or to refer broadly to the industry or sector to which they belong. [...] Moreover, the concept or the definition of a ‘market’ used in fields of law other than competition law [...] is not decisive for the purposes of Union competition law.”²⁵⁷

- (334) In the second place, while defining the relevant market for personal social networking services including hybrid social media platforms, the Commission relied on evidence from various sources. While some of them might present certain limitations, *e.g.*, they are not the most recent or they do not cover the territory of the EEA, they nevertheless provide useful evidence for the reconstruction of the relevant market, in particular taking into account the long duration of the infringement and the international nature of these platforms. In addition, these reports present solely a fraction of the evidence that the Commission used to define the relevant market in this Decision. Indeed, the main pieces of evidence the Commission used to define the relevant market are specified in section 4.3, and they include the responses to the Commission’s request for information and academic studies. In the third place, for the purpose of defining the relevant market, the Commission can rely on various types of evidence and no strict hierarchy of evidence applies.²⁵⁸ Thus, Meta’s assertions that while defining the relevant market the Commission did not rely on certain specific evidence is unfounded.

4.3.10. *Conclusion on the market for personal social networking services including hybrid social media platforms*

- (335) In light of the above, for the purpose of this Decision, the Commission concludes that the relevant product market is the market for personal social networking services including hybrid social media platforms. Accordingly, the Commission thus considers not only the close substitutes for Facebook but also services that impose less effective and less immediate competitive constraints on Facebook.

4.4. The market for online display advertising on social media platforms

- (336) An advertisement can take the form of online and offline advertising. In both cases, the demand-side is represented by advertisers and the supply-side by publishers. While offline advertising consists of ads being shown on TV, in newspapers or on billboards, online ads are placed on websites and apps. The main types of online advertising are online search advertising, online display advertising (and among this display advertising on social media platforms and off-social media platforms) and online classified ads.

- (337) In this section, the Commission first describes Meta’s activities in online advertising (section 4.4.1). On the basis of the information available to it, the Commission concludes that online display advertising on social media platforms constitutes a separate relevant product market. This conclusion is based on the following considerations:

- (1) Online advertising services and offline advertising services belong to different product markets (section 4.4.2);

²⁵⁷ Market Definition Notice, paragraph 19.

²⁵⁸ See Market Definition Notice, paragraph 76 and related case law.

- (2) Online display advertising and online search advertising belong to different product markets (section 4.4.3);²⁵⁹ and
 - (3) Online display advertising on social media platforms and off social media platforms belong to different product markets (section 4.4.4).
 - (4) Meta's claim that all possible advertising channels are substitutes is unfounded (section 4.4.5)
- (338) The Commission will further discuss other potential segmentations of the relevant product market (section 4.4.6) and its conclusion is set out in section 4.4.7.

4.4.1. *Meta's activities in online advertising*

- (339) Meta offers online display advertising services mainly on Meta's core platforms: Facebook and Instagram.
- (340) Meta mainly offers online display advertising by selling its own inventory, which is the focus of this Decision. Via the Meta Audience Network ("MAN"), it is also active to a certain extent in the intermediation between publishers who want to sell their inventory and advertisers who want to place ads. MAN mainly offers advertisers who already advertise on Meta's own platforms the possibility to extend the reach of their ads by placing them also on third-party apps. Intermediation services provided to publishers and advertisers represent an activity which is different from the sale of own advertising inventory and are not part of the market which is relevant in this case.
- (341) Advertisers regularly intend to target those audiences that are most interested in their products in order to ensure the effectiveness of their ads, increase the return on their investment in advertising and to keep costs low. In online advertising, data is available about the visitors of websites and apps, which can be used for targeting purposes. The actions of such visitors can be tracked online (*e.g.* the purchase of a product in an online shop after having clicked on an online ad). This allows for enhanced possibilities to measure the effectiveness of online ads.
- (342) Meta collects large amounts of data about the users of Facebook and Instagram, which it uses for the purpose of its online advertising services. Meta analyses that data in order to serve ads which are targeted at the users of its platforms according to the targeting criteria selected by the advertisers (*e.g.* interests, demographic characteristics, location *etc.*).
- (343) Meta also offers analysis and measurement services to advertisers who place ads on Facebook and Instagram. For this, advertisers may use so-called "Meta business tools" - the main ones include the Meta Pixel for websites and the Facebook software development kit (SDK) for apps. Based on those business tools, Meta collects and analyses certain data in relation to an advertiser's ads and makes reports available to this advertiser, which allow for measuring the effectiveness of the ads. Advertisers thereby learn, for example, the number of people who saw or clicked on their ads on Facebook, the number of people who visited the advertiser's website or even bought a product in the advertiser's online shop after viewing an ad on Facebook.

²⁵⁹ The distinction between online display ads and online classified ads is discussed in section 4.5.2.3, where the Commission concludes that they belong to different relevant markets.

4.4.2. *Online and offline advertising*

- (344) The Commission finds that online and offline advertising do not belong to the same product market.
- (345) In previous decisions, the Commission distinguished between the provision of online and offline advertising inventory.²⁶⁰ Offline advertising comprises traditional advertising forms, such as advertisements on TV, radio and in newspapers. Online advertising refers to advertising on the internet and in apps.
- (346) In line with past decisional practice and the results of the investigation in this case, the Commission concludes that offline and online advertising are not substitutable. Advertisers can place advertisements on several media channels, among them the internet, TV, newspapers, *etc.* In the market investigation, some media agencies did not consider the mere distinction between online and offline advertising as precise enough to examine market definition. If anything, this confirms the Commission's analysis that there are distinct relevant product markets even within online advertising, and thus that offline advertising is clearly not part of the same relevant market as online advertising.
- (347) First, the market investigation has shown that online and offline media channels cannot be considered as substitutable from a demand-side (*i.e.* the advertiser's) perspective. This is mainly due to differences in the audiences reached, differences in targeting as well as differences in user engagement.
- (348) **Differences in audiences:** Consumers spend an increasing amount of time online, and offline media consumption is declining especially among those in the younger age groups. To adequately reach these consumers, advertisers must ensure the visibility of their business online.²⁶¹ Advertising online is also particularly important for the (increasing number of) businesses that are only active in e-commerce. For these businesses especially, offline ads do not constitute a viable alternative.
- (349) **Differences in targeting:** Offline and online advertising serve largely different purposes, mainly since they do not allow for the same type of targeting. Through online advertisement, advertisers can more precisely target their audience by combining information regarding demographic characteristics, geographic location, areas of interest, previous purchasing records of the user and search preferences.²⁶² Advertisers responding to the market investigation indicated, for example that [...]

²⁶⁰ Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraphs 148 to 155; Commission decision of 20 March 2019 in Case AT.40411 – *Google AdSense*, paragraphs 124 to 134; Commission decision of 6 September 2018 in case M.8788 – *Apple/Shazam*, paragraphs 133 to 135; Commission decision of 6 December 2016 in case M.8124 – *Microsoft/LinkedIn*, paragraphs 159 to 161; Commission decision of 3 October 2014 in Case M.7217 – *Facebook/Whatsapp*, paragraph 79; Commission decision of 18 February 2010 in Case M.5727 – *Microsoft/Yahoo! Search Business*, paragraph 61; Commission decision of 11 March 2008 in Case M.4731 – *Google/DoubleClick*, paragraphs 45 to 47 and 56.

²⁶¹ [...].

²⁶² Replies to Q3 of the Commission's RFI to advertisers of March 2020. Better targeting possibilities in online advertising were confirmed by almost all respondents. This was also confirmed by majority of OCAS providers in their replies to Q18 (and respectively Q14) of the Commission's RFI to online classified services of March 2020: The RFI to OCAS providers of March 2020 was sent out in two slightly different versions, which changed the numbering for the relevant (identical) question on targeting possibilities. For some it was Q18, for others it was Q14.

²⁶³ and that [...].²⁶⁴ This was also confirmed by the majority of social media platforms that replied to the Commission's request for information.²⁶⁵

- (350) The majority of media agencies that replied to the Commission's request for information also confirmed that there are significant differences between online and offline advertising channels in terms of targeting.²⁶⁶ For instance:

(1) According to [...].²⁶⁷

(2) According to [...].²⁶⁸

- (351) Audiences in offline media are largely defined by the context (the content of the TV-program, the magazine or article)²⁶⁹ and measured by panel-based audience studies, whereas online media allow for a more precise targeting based on cookies or identifiers, as explained for example by [...]:²⁷⁰ Behavioural inferences can be taken into account in online advertising channels: audiences can be selected according to their preferences and recent visits of certain websites.²⁷¹

- (352) Most of the media agencies that considered that there are significant differences between online and offline advertising with respect to targeting also confirmed that such differences have an impact on their choice between online and offline channels for an advertising campaign.²⁷²

- (353) Due to the less targeted nature of offline advertisements, advertisers primarily use offline advertising to create brand awareness among a wide-spread public. Online advertising is used as well for the creation of brand awareness, but also in order to target specific customer groups who are more likely to be interested in a product or have purchasing plans.²⁷³

- (354) **Differences in direct response:** The majority of the advertisers²⁷⁴ and social media platforms²⁷⁵ that replied to the Commission's requests for information confirmed a difference between online and offline advertising with respect to the possibility to directly respond to an ad (even though the ability of different forms of online advertising to indeed trigger such reactions differ in particular between online display advertising and online search advertising, as will be shown in section 4.4.3). Users can immediately engage with online advertising by clicking on the ads delivered to them. Online advertising can therefore steer users directly to websites on

²⁶³ [...].

²⁶⁴ [...].

²⁶⁵ Replies to Q13 of the Commission's RFI to social media platforms of March 2020. The majority of respondents to the Commission's RFI confirmed advantages in online advertisement with respect to targeting as opposed to offline advertisement.

²⁶⁶ Replies to Q C.C.4 of the Commission's RFI to media agencies of June / July 2023.

²⁶⁷ [...].

²⁶⁸ [...].

²⁶⁹ [...].

²⁷⁰ [...].

²⁷¹ [...].

²⁷² Replies to Q C.C.5 of the Commission's RFI to media agencies of June / July 2023.

²⁷³ Commission decision of 20 March 2019 in Case AT.40411 – *Google AdSense*, paragraph 126.

²⁷⁴ Replies to Q3 of the Commission's RFI to advertisers of March 2020. Advantages of online advertising regarding user engagement were confirmed by the majority of respondents.

²⁷⁵ Replies to Q13 of the Commission's RFI to social media platforms of March 2020. The majority of respondents confirmed differences between online and offline advertisement with respect to user engagement.

which they can make a purchase. By contrast, users cannot immediately respond to offline advertising. Their response requires additional action and does not warrant the same level of immediacy (for example, visit to the shop or the website of the advertiser).

- (355) Online advertisement also often aims at triggering a direct consumer response (for example, a purchase or other types of engagement such as registration for an advertiser's e-newsletter), which is normally not the case for offline advertisement. Several respondents to the market investigation indicated that online advertising allows for direct engagement by the user, which is not the case in offline advertising, by stating, for example:
- (1) According to [...].²⁷⁶
 - (2) According to [...].²⁷⁷
 - (3) According to [...].²⁷⁸
- (356) In addition to this, several respondents to the market investigation noted that online advertising offers a reporting system that enables the advertiser to check exactly, for example, how many users have viewed the ad or clicked on it and engaged in subsequent purchasing activities (see also recital (341) above).²⁷⁹ User engagement can be measured more precisely and in real-time in online advertising, as explained by the following responses: [...].²⁸⁰ and [...].²⁸¹ Hence, also the measurement of the effectiveness of online ads can be more precise compared to the traditional measurement systems used in offline advertising.
- (357) Second, there is also limited supply-side substitutability (*i.e.* from the publisher's perspective) between online and offline advertising, which would allow defining an overall advertising market. The supply side of offline advertising consists of offline publishers offering advertisement space, for example in newspapers or on TV. In the case *Google/Fitbit*,²⁸² the Commission has found that suppliers of offline advertising services could not develop and start offering online advertising services in the short term without incurring significant investments. In fact, even if they could develop a website or app that could serve as an inventory for online advertising, it cannot be expected that they could easily and in the short term expand their sale of inventory significantly to achieve the level of their offline presence since this would require a major increase of their online audiences and the data they gather about their users in order to allow for diverse targeting possibilities and make their offering attractive to advertisers. In addition, it is also very costly for market players only active in online advertising to enter into offline advertising services by setting up an activity as a newspaper or TV-station since these are completely different businesses which require specific knowledge and investment.
- (358) The Commission's conclusion that online and offline advertising do not belong to the same relevant product market is also not contradicted by Meta's arguments that

²⁷⁶ [...].

²⁷⁷ [...].

²⁷⁸ [...].

²⁷⁹ Replies to Q3 of the Commission's RFI to advertisers of March 2020. Better measuring possibilities (monitoring of effectiveness) in online advertising were confirmed by the majority of respondents

²⁸⁰ [...].

²⁸¹ [...].

²⁸² Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraph 151.

previously purely offline channels, such as TV, have developed also online features and offerings.²⁸³

- (359) The fact that new formats for digital advertising are now available on connected TVs, which benefit from richer targeting capabilities than non-connected TVs, does not imply that advertising on non-connected TV belongs to the same market as advertising on connected TVs. Rather, it means that some advertising on TVs now belongs to the market(s) of online advertising, simply because connected TVs are online and benefit from all capabilities of the internet, whereas non-connected TVs remain on the market for offline advertising.
- (360) Furthermore, in any event, it is also worth noting that the majority of media agencies that replied to the Commission's request for information did not mention digital TV as an alternative online advertising channel.²⁸⁴

4.4.3. *Online display advertising and online search advertising*

- (361) The Commission finds that online display advertising and online search advertising do not belong to the same product market.
- (362) In previous decisions, the Commission considered a possible segmentation between online search and online display advertising.²⁸⁵ In both the *Google AdSense* decision²⁸⁶ and the *Google/Fitbit* decision,²⁸⁷ the Commission concluded that there were separate relevant product markets for the supply of online search advertising services on the one hand, and the supply of online display advertising services on the other hand. In the *Google/DoubleClick* decision, the Commission also distinguished a third market for OCAS, which constitutes a separate market from the online display and the online search advertising market.²⁸⁸ This market is described in detail in section 4.5.
- (363) In line with its past decisional practice and the results of the market investigation in this case, the Commission concludes that online search advertising and online display advertising are not substitutable, due to their differences in format, triggering, targeting capabilities and purposes.
- (364) First, the market investigation has shown that online search advertising and online display advertising cannot be considered as substitutable from a demand-side (*i.e.* the advertiser's) perspective.
- (365) **Differences in format:** Online display advertising can be distinguished from online search advertising based on its appearance or format. Online search advertising is typically exclusively text-based, whereas online display advertising includes a variety of textual, graphical and video media formats.²⁸⁹ Consequently, advertisers incur lower costs when designing online search ads compared to the costs of

²⁸³ SO Response, paragraph 159 (c).

²⁸⁴ Replies by media agencies to Q C.C.4 of the Commission's RFI to media agencies of June/July 2023 including the reply by [...].

²⁸⁵ Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraphs 148 to 155; Commission decision of 6 September 2018 in case M.8788 – *Apple/Shazam*, paragraphs 133 to 135; Commission decision of 6 December 2016 in case M.8124 – *Microsoft/LinkedIn*, paragraphs 159 to 161; Commission decision of 3 October 2014 in case M.7217 – *Facebook/WhatsApp*, paragraphs 74 to 79.

²⁸⁶ Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*, paragraphs 121 to 183.

²⁸⁷ Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraph 155.

²⁸⁸ Commission decision of 11 March 2008 in Case M.4731 – *Google/DoubleClick*, paragraphs 11 to 17.

²⁸⁹ For example, [...].

designing online display ads, particularly ads containing graphic elements and rich features (e.g., video).²⁹⁰

- (366) **Differences in triggering**: As indicated in the Commission decision *Google AdSense*,²⁹¹ online search and online display advertising can also be distinguished by the way in which an ad is triggered to appear on screen. Online search ads are triggered as the result of a query entered into the search box on a website and are selected based on the keywords in the query. They can thus only appear on the search results page, above, below or next to the search results. By contrast, online display ads are not triggered by a search query and can appear on any website. Despite the passage of time since the *Google AdSense* decision, this difference still exists. It was also confirmed by the responses to the market investigation in this case.²⁹²
- (367) **Differences in targeting and purposes**: Online search ads are distinguishable from online display ads because of their different capability to trigger and capture a user's interest in a product. Online search advertising providers serve online search ads in real time in response to the expression of interest for a service or product that a user makes through the keywords in a query. Online search ads therefore reach an already interested audience at the point in time when such an audience is closest to responding to a particular advertising message (for example, by making a purchase). Advertisers identify this moment as being at the end of the customer journey (also referred to as “purchase funnel” or “marketing funnel”), that is when the user is close to the final purchase step.²⁹³
- (368) In contrast, online display advertising offers a lesser degree of immediate targeting precision, as it lacks the key ability of online search advertising to respond to a user's precise request for a specific product at a given moment in time. Instead, online display advertising relies on a different targeting mechanism. It is adjustable to a user's location, general interests and other characteristics (depending on the data available to the provider), being more suitable for creating and maintaining brand awareness among relevant consumers. As explained by a respondent to the market investigation, [...].²⁹⁴
- (369) Online search and online display advertising are therefore used for different purposes by advertisers, with online search advertising being more suitable for converting existing demand into an immediate purchase and thus the ROI of search advertising being perceived as higher than that of online display advertising for such purposes²⁹⁵ while online display advertising is being employed primarily for brand awareness objectives.
- (370) This was confirmed by the majority of media agencies that replied to the Commission's request for information, that indicated that online search advertising and online display advertising are predominantly used for different marketing objectives.²⁹⁶ In particular, according to those media agencies, online search

²⁹⁰ For example, [...].

²⁹¹ Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*, paragraph 136.

²⁹² Replies to Q14 of the Commission's RFI to social media platforms of March 2020. For example, [...].

²⁹³ [...].

²⁹⁴ [...].

²⁹⁵ [...].

²⁹⁶ Replies to Q C.D.1 – C.D.3 of the Commission's RFI to media agencies, June / July 2023.

advertising is generally used for so-called lower funnel objectives like conversion, and not for upper funnel objectives such as brand awareness. For instance:

- (1) According to [...].²⁹⁷
 - (2) According to [...].²⁹⁸
 - (3) According to [...].²⁹⁹
- (371) As regards conversion (or lower-funnel) objectives, some media agencies explained that, although online display advertising is more flexible than online search advertising and it can in principle be used for such objectives, this is not its primary use: [...].³⁰⁰ [...].³⁰¹
- (372) Therefore, while it is possible to also use online display advertising for conversion, the majority of media agencies that replied to the Commission's request for information indicated that in most cases search advertising is more effective than display advertising at achieving conversion.³⁰² For example:
- (1) According to [...].³⁰³
 - (2) According to [...].³⁰⁴
 - (3) According to [...].³⁰⁵
- (373) The majority of media agencies that replied to the Commission's request of information indicated that, rather than being substitutes, online search ads and online display ads are complements. The media agencies indicated that they enhance each other's performance in their respective objectives.³⁰⁶ For instance:
- (1) According to [...].³⁰⁷
 - (2) According to [...].³⁰⁸
 - (3) According to [...].³⁰⁹
 - (4) According to [...].³¹⁰
- (374) Other replies by media agencies to the Commission's request of information confirm the complementarity between online search and display advertising:
- (1) According to [...].³¹¹
 - (2) According to [...].³¹²

²⁹⁷ [...].

²⁹⁸ [...].

²⁹⁹ [...].

³⁰⁰ [...].

³⁰¹ [...].

³⁰² Replies to Q C.D.1 and C.D.4 of the Commission's RFI to media agencies, June / July 2023.

³⁰³ [...].

³⁰⁴ [...].

³⁰⁵ [...].

³⁰⁶ Replies to Q C.D.12 of the Commission's RFI to media agencies, June / July 2023.

³⁰⁷ [...].

³⁰⁸ [...].

³⁰⁹ [...].

³¹⁰ [...].

³¹¹ [...].

³¹² [...].

- (375) Second, there is also limited supply-side substitutability between online display advertising and online search advertising. The supply side of online search advertising consists of players offering inventory for advertisements on search results pages. In the case *Google Ad Sense*,³¹³ the Commission has found that it would be difficult for a market player in online display advertising services to switch to the provision of online search advertising services, mainly due to significant investments to set up an online search engine, requiring specific technical know-how regarding search technology and auction systems to enter into the online search advertising market.
- (376) From the supply-side substitutability perspective, a switch from online search advertising to the provision of online display advertising services appears easier at first sight since a provider of search services can develop its own website or app in order to sell advertising display inventory. However, in order to attract advertising clients at a significant scale, a website or app would have to provide interesting content or specific functionalities to users in order to generate large amounts of traffic and data. Providers of online search advertising do not necessarily produce specific content since they are focussed on providing a search engine to internet users. For instance, the largest market player in online search advertising, Google, is also active in online display advertising services, mainly via YouTube, which Google, however, did not build itself, but acquired in 2006. The creation of interesting content, like a news website, or a social media platform which would allow for a significant online display advertising service cannot be considered as easily possible in the short term (see also section 6.4.5).
- (377) The Commission's above findings are not put in doubt by Meta's arguments as set out in sections 4.4.3.1 to 4.4.3.3 below.

4.4.3.1. On marketing objectives and the way ads are triggered

- (378) Meta argued that it is artificial to state that display ads are primarily used for brand awareness, i.e. upper funnel objectives, while search ads tend to be used for lower funnel objectives.
- (379) According to Meta, the way ads are triggered is irrelevant for market definition since in both cases (online search and display advertising), the ads are triggered by certain actions taken by the user: in online search advertising this is the entry of a search query, in online display advertising this can be the interaction with commerce content or searching for an interest group on Facebook.³¹⁴
- (380) Meta also claimed that online display ads and online search ads are capable of servicing the same array of ad objectives across the purchase funnel. According to Meta, advertisers on Meta's platforms mainly and increasingly target "action-based" objectives (e.g., visiting a website or downloading an app), aligning with the objectives advertisers traditionally sought to achieve through online search ads. In the same vein, Meta explained that of the three categories of marketing objectives available on Meta's services ("brand awareness", "consideration" and "conversion"), [...].³¹⁵

³¹³ Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*, paragraphs 150 to 154.

³¹⁴ SO Response, paragraphs 165 and 166.

³¹⁵ SO Response, paragraphs 151 to 155.

- (381) Meta also indicated that targeting capabilities of online search and display ads have converged in terms of both precision, due to the advancements in the machine-learning and AI models which target display ads, and technical infrastructure. In particular, Meta submitted that the development of retargeting – whereby a user can be targeted with ads on one website based on their activity on another website – enables it to compete head-to-head with search ads providers for lower funnel objectives.³¹⁶
- (382) Those arguments do not show that the Commissions’ conclusion that display ads are primarily used for brand awareness, i.e. upper funnel objectives, while search ads tend to be used for lower funnel objectives is artificial.
- (383) First, and contrary to Meta’s claim, the way ads are triggered is essential. Since online search ads are triggered by an active search undertaken by a user, they are capable of capturing the exact moment in time when the buyer has an intent to buy. This moment in time cannot be captured to the same extent by online display ads since they are not triggered by a user’s active search. Online display ads are triggered by the context of the website or app the users look at as well as by the users’ personal interests, demographic and geographic criteria etc., rather than by the users’ current interest in a specific product.
- (384) Second, while it is correct that advertisers can also pursue the objective of conversion on Meta’s platforms (and potentially also on other non-search platforms), the relevant question is whether an increase in conversions can be achieved to the same degree with online display ads as with online search ads. Replies to the Commission’s requests for information have shown that market participants consider online search advertising as more effective than display advertising at achieving conversion (see recitals (371) and (372) above). They also demonstrate that market participants consider online search ads and online display ads as complements, not as substitutes (see recitals (373) and (374) above).
- (385) Third, the technological developments in online display advertising, and in particular that of retargeting, do not have the effect of making online display ads a substitute to online search ads. Retargeting ads are served to users that have already visited an advertiser’s website or app and that may have already expressed purchasing intent (e.g. by placing products in a shopping cart of an online shop they have visited). In this sense, retargeting ads are indeed aimed at users situated in the lower part of the funnel, like online search ads. However, unlike online search ads which can be used to attract new users to an advertiser’s website or app at the time when they are interested in making a purchase, retargeting ads can only be addressed to those users who are already aware of an advertiser’s products. This does not therefore make them substitutable to online search ads, even though their performance in specific situations may be similar.

4.4.3.2. On ATT and the application of the SSNDQ test

- (386) The Commission’s conclusion that online display advertising and online search advertising do not belong to the same relevant product market is not contradicted by Meta’s arguments regarding Apple’s App Tracking Transparency (‘ATT’) policy.
- (387) Apple’s ATT policy, introduced in April 2021, enables iOS users to block the sharing of their data with third parties, and thereby limits the ability of providers of

³¹⁶ SO Response, paragraphs 156 and 159 (b).

online advertising services, including Meta, to collect off-site data (see recital (20)) for the targeting of their ads on iOS. According to Meta, this has led to a decrease in the quality of online display ads, which in turn made advertisers substitute them with online search ads which rely less on third party data. Meta submitted that the ATT event is a natural experiment that constitutes a real life SSNDQ test³¹⁷ for online display ads. Meta stated that this real-life test shows advertisers switch towards online search advertising, which demonstrates in Meta's view that the relevant product market definition should encompass at least both of these channels.³¹⁸

(388) Meta purported to have applied the SSNDQ test using a critical loss analysis ("CLA") approach by estimating (i) the loss in quality of its ads due to the introduction of ATT and (ii) the critical loss in revenue that would render that loss in quality unprofitable.³¹⁹ In this exercise, Meta used the following data:

- (1) An estimate of the change in the quality of Meta's display advertising after the introduction of ATT in price-equivalent terms. For this, Meta used a "cost per action" ("CPA") metric, which measures an advertiser's costs of achieving a certain marketing outcome. An increase in CPA implies that advertisers have to pay more to achieve a certain objective and, according to Meta, it can therefore be thought of as a price increase or quality decrease.³²⁰ Based on this assumption, Meta estimated that the CPA to Meta advertisers increased by 37%.³²¹
- (2) An estimate of the actual revenue lost by Meta as a result of the ATT, based on a public statement made in February 2022 by Meta's then-CFO that the impact of ATT is "*on the order of \$10 billion.*" Meta considered these USD 10 billion to be a conservative estimate.³²²
- (3) Two alternative estimates of Meta's advertising variable margin: [...] % (considering as variable costs only cost of goods sold, costs of reviewing ads, indirect taxes and a small subset of marketing and sales expenses) and [...] % (considering a broader range of costs as variable).³²³

(389) Using this data, Meta applied the CLA approach as follows: first, based on Meta's advertising variable margin, Meta calculated the critical quantity loss that would

³¹⁷ In the context of a SSNDQ test the question is whether a hypothetical monopolist in the candidate market would find it profitable to implement a "Small but Significant Non-transitory Decrease in Quality". If not, this would show that customers switch to a significant extent to other products outside the candidate market which would prevent the monopolist's possibility to increase profits via the quality reduction and would accordingly point to a broader definition of the relevant market. See Market Definition Notice, paragraphs 29 and 30 and footnote 54.

³¹⁸ SO Response, paragraphs 139 to 143 and Annex 6 of the SO Response.

³¹⁹ Since in Meta's exercise the decrease in quality was translated into price terms, Meta's SSNDQ is converted in practice in a "Small but Significant Non-transitory Increase in Price – SSNIP" test.

³²⁰ Annex 6 of the SO Response, paragraph 37. In this case, the CPA considered was "cost per offsite conversion", namely the cost of ads required to achieve a conversion off-site (i.e. off of Meta's sites and apps). As a proxy for the CPA change as a result of Apple's ATT, Meta uses an estimate of the value of off-site data from a recent working paper Wernerfelt, N., Tuchman, A., Shapiro, B., & Moakler, R. (2022). Estimating the Value of Offsite Data to Advertisers on Meta. Available at SSRN: <https://ssrn.com/abstract=4176208> and <http://dx.doi.org/10.2139/ssrn.4176208> (ID13016).

³²¹ Annex 6 of the SO Response, paragraphs 37 to 40.

³²² Annex 6 of the SO Response, paragraphs 41 to 43. Meta submits that two alternative estimates of Meta's advertising revenue loss as a result of ATT are available from other sources. These alternatives estimate the loss as USD 12.8 billion and [...], respectively.

³²³ Annex 6 of the SO Response, paragraphs 44 to 47.

make a CPA increase of 37% unprofitable for Meta. Based on this, Meta calculated a critical revenue loss and compared it to its estimate of actual revenue loss from the ATT policy. As its (conservative) estimated actual loss of USD 10 billion is higher than the critical revenue loss that Meta calculated (of USD [...] under the [...] variable margin assumption, and of USD [...] under the [...] variable margin estimate), Meta concluded that a quality reduction in the form of a CPA increase of 37% would be unprofitable and hence the relevant product market is broader than online display advertising.³²⁴

- (390) However, the Commission considers that Meta's application of the SSNDQ test suffers from a number of fundamental conceptual and empirical limitations which invalidate its conclusion that online display advertising and online search advertising belong to the same relevant product market.
- (391) First, a CLA is a way to implement the SSNIP test³²⁵ which rests on the observation that any price rise normally has two effects: a decrease in the quantity of sales, as some customers are no longer willing to buy at the higher price, and a higher profit margin on the sales to those customers who continue to buy at the higher price. While the first effect has a negative effect on profits, the second increases profits. The critical loss is the loss in quantity at which the two effects exactly offset each other. It offers a benchmark with which to compare the actual loss in the quantity of sales following a price increase.³²⁶ If the actual loss in quantity is higher than the critical loss, this points to a lack of profitability of the underlying price increase due to too high losses in quantity caused by customers switching to other products and therefore to a broader market.
- (392) By analogy, the same applies to the SSNDQ framework. On the one hand, the decrease in quality lowers the costs incurred by the hypothetical monopolist thereby increasing its profits on the sales it retains. On the other hand, the quantity of sales would decrease due to the lower quality of the product. The critical loss is again the quantity at which the two effects offset each other.
- (393) However, in adjusting and applying this framework, Meta commits a fundamental mistake in comparing Meta's estimated actual loss in revenue resulting from Apple's introduction of ATT to the critical revenue loss of a hypothetical monopolist that increases price by 37%. This mistake invalidates Meta's CLA analysis and any conclusions Meta draws from it.
- (394) Specifically, because sales revenue is the product of sales price and sales quantity, a price increase affects revenue through two channels: directly by increasing the price and hence revenue on quantities retained; and indirectly through reducing the quantity demanded. As these effects work in opposite directions, the change in revenue resulting from a price increase initiated by the hypothetical monopolist is lower than the change in revenue resulting from a quality reduction caused by an external event as Apple's introduction of ATT which can only affect revenue by reducing the quantity demanded (and not by earning a higher price). Therefore, even

³²⁴ SO Response, paragraph 142 (i) and Annex 6 of the SO Response, paragraphs 48 to 54.

³²⁵ In this test the question is asked whether a hypothetical monopolist in the candidate market would find it profitable to implement a small but significant non-transitory increase in price (the 'SSNIP test'), see Market Definition Notice 2024, paragraph 29. A lack of profitability would point to a wider market due to the customers' possibilities to switch to products outside of the candidate market.

³²⁶ Market Definition Notice, paragraph 59.

if the quality reduction through ATT had the same effect on advertisers as a 37% price increase, and hence the same effect on the quantity demanded of such a price increase, the reduction of Meta's actual revenues following the ATT quality reductions is significantly higher than the revenue reduction of a corresponding hypothetical price increase. Put differently, as the observed revenue reduction following the ATT introduction does not include the positive effect on revenue of the price increase on the remaining quantity which would result from any such price increase by the hypothetical monopolist, Meta's critical revenue loss cannot be compared to the actual revenue loss. Meta's analysis is hence invalid.

- (395) Given that when price is held constant the percentage reduction in the quantity demanded is the same as the percentage reduction in revenue, as a first approximation, Meta could even have used the estimated actual revenue loss as a measure of the quantity reduction as a reaction to an equivalent 37% price increase. Comparing this quantity reduction to the critical volume loss in its standard quantity formulation would no longer support Meta's conclusion.³²⁷ This demonstrates that Meta's analysis and conclusions are flawed.
- (396) Second, in any event, the 37% price increase to which Meta equates the decrease in quality triggered by the ATT is significantly higher than the 5-10% increase that is typically considered in the application of the SSNIP test.³²⁸ The size of the price increase considered is relevant since a price increase that is large enough will always be unprofitable – even for a hypothetical monopolist – because it leads to the loss of too many customers. 37% is not a small increase in price and therefore cannot form the basis for a reliable implementation of the SSNIP test. As the SSNDQ test performed by Meta is supposed to mirror a SSNIP test, it is equally flawed for the same reason: the considered decrease in quality is so large that it would always lead even a hypothetical monopolist to lose too many customers.
- (397) In this context, according to Meta, [...]. Meta submitted that after the introduction of ATT, [...]. In Meta's view, [...]. Meta concluded on this basis that in reality the ATT-induced increase in CPA [...].³²⁹
- (398) The Commission finds this conclusion, and indeed the finding that the ATT only leads to a marginal decrease in advertising revenue, to be inconsistent with Meta's other assertion that the ATT resulted in a sizeable loss of advertising revenue in 2022, of at least USD 10 billion, an impact that Meta's then-CFO qualified as a "significant headwind".³³⁰ In any event, Meta's statement that the ATT-induced increase in CPA may have been lower than 37% lacks any empirical assessment, and thus cannot be sufficient to show that the ATT-induced increase in CPA was in line with the 5-10% increase that is typically considered in the application of the SSNIP test.

³²⁷ Meta estimates an actual revenue loss linked to the ATT introduction of USD 10 billion, or a reduction in revenue from USD [...] to USD [...]. In percentage terms, Meta's estimates correspond to an actual revenue loss of [...] which would be the same percentage as the actual quantity loss for a fixed price. By standard logic, the critical volume loss is computed as $x/(m+x)$, where x is the price increase and m is the variable margin. This results in a critical volume loss of [...] in Meta's high margin scenario and [...] in Meta's low margin scenario. Both of these thresholds are above the estimated actual loss, and thus, if anything, support a narrow market.

³²⁸ Market Definition Notice, paragraph 27, footnote 53.

³²⁹ Annex 6 of the SO Response, paragraph 39 (a).

³³⁰ SO Response, paragraph 142 (c).

- (399) Third, and in any event, Meta's CLA calculations, even if they were correct, cannot be used to infer that the candidate market for online display advertising should be broadened to include online search advertising as they do not reflect the impact of ATT on a hypothetical monopolist on a candidate market for online display advertising. Meta's CLA calculations rely on estimates of Meta's margins as well as the impact of Apple's ATT on Meta. Such calculations, even if they were correct, are not necessarily representative of the impact of a 37% price increase on a hypothetical monopolist over all the candidate market for online display advertising. In particular, according to estimates reported by Meta, the impact on some other important players offering online display advertising (such as YouTube, Twitter or Amazon) was likely significantly lower.³³¹ It also cannot be assumed that profit margins for other players are in line with Meta's.
- (400) Fourth, even a correctly applied CLA to a candidate market of online display advertising could also not disprove that the market considered by the Commission, i.e. online display advertising on social media platforms, is a relevant market.³³²
- (401) In the context of candidate markets in which there is an undertaking which is an actual monopolist or comes close to an actual monopolist, applications of the SSNIP test or its variants such as CLA are likely to be misleading as they are subject to the "cellophane fallacy".³³³ As a profit maximising firm will set its price (or other competitive parameters) at a level which already maximises profit, any further increase in price must be unprofitable for such a firm due to the too high losses in quantity it would cause. Therefore, where there is already a dominant firm in the market, a finding that a 5-10% increase in price would be unprofitable for a hypothetical monopolist should not lead to the conclusion that the candidate market is broader.
- (402) As set out in section 6.4.1 below, Meta holds a 2023 market share above [...] in all national markets in the EEA for online display advertising on social media platforms. This market share is above [...] in the vast majority of Member States and above [...] in [...] of the 30 EEA Member States. According to Meta's margin estimates for its CLA calculations, Meta earns high profits on its online display advertising.³³⁴ These elements indicate that Meta already holds and exercises a high degree of market power. A conclusion that the candidate market for online display advertising on social media platforms does not form a relevant market based on arguments that a hypothetical monopolist on such a market would not find a price increase (or quality reduction) profitable would hence be flawed due to the "cellophane fallacy".
- (403) Meta further submitted additional evidence allegedly demonstrating substitution from online display advertising to online search advertising in response to the ATT, as follows:
- (1) Different media reports of advertisers' switch in spending away from online display ads and towards online search ads;³³⁵

³³¹ SO Response, Annex 6, paragraph 59, Table 2 and Figure 5.

³³² Meta claims that "the SSNDQ test implies that the appropriate advertising product market definition must be wider than just Meta's conversion-based advertising offering", SO Response, Annex 6, para 51.

³³³ Market Definition Notice, paragraph 30 and footnote 55.

³³⁴ SO Response, Annex 6, paragraph 45 and Table 5.

³³⁵ SO Response, paragraph 142 (a), and Annex 6 of the SO Response, paragraphs 81 to 86.

- (2) A decrease in the advertising revenues of online display advertising providers, while the revenues of online search advertising providers have increased;³³⁶
 - (3) While prior to Q1 2021, online display advertising had a higher growth rate than online search advertising, this trend was reversed following the introduction of the ATT;³³⁷ and
 - (4) An increase in the price of Google's and Apple's online search ads in the period of the ATT's introduction, which is consistent with increased demand for online search advertising.³³⁸
- (404) Those considerations also do not invalidate the Commission's conclusion that online search and online display advertising do not belong to the same relevant product market.
- (405) There have indeed been media reports and articles which expressed views as to whether the introduction of ATT made advertisers switch away from online display advertising and/or from certain platforms. Evidence of past substitution following exogenous supply shocks can be informative for market definition.³³⁹ However, as also explained in the Market Definition Notice, *"reactions to a significant change, such as the complete unavailability of a product or the introduction of a new product, may not always indicate how customers would react to more limited changes in relative supply conditions"*.³⁴⁰
- (406) Based on the evidence put forward by Meta, the change in the quality of online display ads (and the equivalent increase in advertisers' costs) cannot be considered as a limited change:
- (1) As set out in section 4.4.3.2, the price equivalent of a decrease in the quality of off-site data, as submitted by Meta itself, was of 37%;
 - (2) Some of the other sources quoted in the SO Response report that the shift from online display advertising to online search advertising has occurred in response to a large perceived increase in advertisers' costs following the introduction of ATT. For example, the Wall Street Journal article *"Inside Facebook's \$10 Billion Breakup with Advertisers"* of 18 February 2022³⁴¹ cites one advertiser who indicated her costs of acquiring customers increased 10-fold as a result of the ATT, and another advertiser saying his costs doubled.³⁴²
- (407) The decrease in quality triggered by ATT cannot be therefore considered sufficiently small to allow conclusions on the substitutability of online display advertising and online search advertising for the purpose of the market definition.

³³⁶ SO Response, paragraphs 142 (b) – (d), and Annex 6 of the SO Response, paragraphs 59 to 73 and 78 to 80.

³³⁷ SO Response, paragraphs 142 (e) – (g), and Annex 6 of the SO Response, paragraphs 74 to 77.

³³⁸ SO Response, paragraph 142 (h), and Annex 6 of the SO Response, paragraphs 87 to 90.

³³⁹ Market Definition Notice, paragraph 51.

³⁴⁰ Market Definition Notice, paragraph 51.

³⁴¹ Wall Street Journal, "Inside Facebook's \$10 Billion Breakup with Advertisers", available at <https://www.wsj.com/articles/facebook-apple-google-advertising-privacy-changes-11645199877> (ID13017).

³⁴² SO Response, paragraphs 83(a) and (b).

4.4.3.3. On the Facebook Boycott

- (408) The Commission’s conclusion that online display advertising and online search advertising do not belong to the same relevant product market is also not contradicted by Meta’s arguments regarding the “Facebook Boycott”.
- (409) For a limited period in July 2020, a number of large advertisers suspended their advertising campaigns on Meta’s platforms as a reaction to its handling of hate speech and misinformation (the “Facebook Boycott”).³⁴³ Meta submitted that the Facebook Boycott evidences substitutability between online display and online search advertising.
- (410) The Commission considers that the survey cited by Meta as the basis for its allegation does not constitute sufficient evidence that search advertising and display advertising belong to the same relevant product market.
- (411) First, although it was limited in time (a month for some advertisers, and for others a single day in July 2020), the Facebook Boycott involved the suspension of the participants’ *entire* advertising spend on Facebook. The switch to another product under such conditions does not mean such product belongs to the same relevant product market. Indeed, when one product is entirely unavailable, customers may well divert to products outside the market, which – under normal conditions – do not pose a competitive constraint on it.³⁴⁴ That is why the SSNIP test focuses on substitution at the margin.
- (412) Nevertheless, diversion ratios can be indicative of the closeness of substitution between products.³⁴⁵ However, the survey on which Meta relies does not provide diversion ratios. It indicates *how many* customers diverted to each alternative channel considered but does not indicate *how much* of their spend went to each channel. Indeed, it is clear from the figures provided (which add up to more than 100%) that some advertisers diverted their spending to more than one channel.
- (413) Second, a significant share of customers subject to the survey either did not participate in the boycott at all (36% of customers) or did so for less than the entire month of July (38%). Indeed, the majority of participants did so on a single day in July (“Blackout Day”) since that allowed them “*to show support for the social justice movement without incurring the more significant opportunity cost of pausing ads for an entire month*”. Thus, even when they wanted to temporarily suspend their spending on Facebook to make a policy point, some advertisers ultimately found such an action to be untenable. For these companies, Facebook is thus an unavoidable provider of advertising services. Furthermore, the survey notes that “*some advertisers who initially paused at the start of July turned ads back on before*

³⁴³ SO Response, paragraphs 144 and 145 and Annex 6 of the SO Response, paragraphs 91 to 96. Meta cited a survey carried out by digital marketing agency Tinuiti (“the Tinuiti survey”) which indicates that the majority of advertisers who participated in the Facebook Boycott re-allocated their advertising budget to other advertising channels, with 40% of survey respondents indicating they re-allocated to search advertising, 24% to other social media providers, and 24% to other display, while 36% of respondents did not re-allocate their advertising budget. Annex Q2.e of Meta’s reply to the Commission’s RFI to Meta of June 2023 (ID8757-213).

³⁴⁴ Market Definition Notice, paragraph 51.

³⁴⁵ Market Definition Notice, paragraph 53.

*the end of the month due to the impact to performance, which can spread to other channels like search which typically receive a boost from social spending”.*³⁴⁶

- (414) This therefore suggests that, rather than being substitutes, online search advertising and online display advertising act as complements to each other. This assessment is indeed in line with the results of the Commission’s own market investigation and analysis as set out above (see recital (361) to (376) above).

4.4.4. *Online display advertising on social media platforms and off social media platforms*

- (415) The Commission finds that online display advertising on social media platforms and off social media platforms do not belong to the same product market.

- (416) As set out in section 4.3.1, social media platforms are interactive online media used by internet users for the purpose of communication and content engagement, with interactivity playing a key role. Social media platforms consist of personal and professional social networking services, consumer communication services, content discovery platforms, entertainment platforms and any hybrid mix between the aforementioned.

- (417) Social media platforms currently active in the market are personal social networks, such as Facebook, professional social networks, such as LinkedIn, as well as consumer communication platforms, such as WhatsApp. Further social media platforms include entertainment platforms focused on the passive consumption of videos, such as YouTube, online services focusing on the discovery of content based on users’ interest, such as X, as well as hybrid social media platforms, such as TikTok, Snapchat and Instagram (see sections 4.3.3 to 4.3.8).

- (418) In past decisions, the Commission considered a further segmentation of the market for online display advertising into online display advertising on and off social media platforms, without ultimately concluding on the definition of such markets.^{347,348} In the more recent merger decision *Facebook/Kustomer*,³⁴⁹ the Commission found, however, strong indications speaking for the existence of separate markets. Apart from significant differences in terms of targeting capabilities, user engagement, ad format, design, content and ad tech services required, the *Facebook/Kustomer* decision also points to the fact that industry reports³⁵⁰ consider these services separately, which may reflect advertisers’ view that they are two separate markets. The decision also indicates that while a switch from online display advertising services on social media platforms to online display advertising services off social media platforms would be technically feasible for advertisers, it would be difficult from a commercial perspective, mainly due to the differences in targeting

³⁴⁶ Tinuiti study, page 4.

³⁴⁷ Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraph 154, Commission decision of 6 December 2016 in case M.8124 – *Microsoft/LinkedIn*, paragraph 160 and Commission decision of 3 October 2014 in case M.7217 – *Facebook/Whatsapp*, paragraph 77.

³⁴⁸ It is worth noting that in previous decisions, reference was made mainly to online display advertising on/off “social networks”. In the present case, “personal social networks” are specifically defined (see section 4.3.2). In the context of the market definition of online display advertising, not only those personal social networks are of relevance, but a wider group of social media platforms since they provide similar characteristics from the viewpoint of advertisers. For this reason, the term “social media platforms” is used in the context of the online display advertising market definition.

³⁴⁹ Commission decision of 27 January 2022 in case M.10262 *Facebook/Kustomer*.

³⁵⁰ The decision refers in particular to reports by IDC, see Commission decision of 27 January 2022 in case M.10262 *Facebook/Kustomer*, paragraph 150.

considering that social media platform offered unique possibilities for interests-based targeting.^{351,352}

- (419) The market investigation in this case confirmed that online display advertising on social media platforms significantly differs from online display advertising off social media.
- (420) First, from a demand-side (advertiser) perspective, the majority of media agencies that replied to the Commission's request for information indicated that they typically distinguish between online display advertising on social media platforms and online display advertising on other types of websites and apps (such as news or sports websites which offer ad inventory directly to advertisers or using ad tech services and intermediaries) in their business practice.³⁵³ Media agencies illustrated the general differences between the two channels as consisting, for example, of the ways the ads can be presented to the users (integrated with content or alongside content) and the ways they are used by the media agencies and advertisers (as distinct ways of communication). For instance:
- (1) According to [...] ³⁵⁴ and [...] ³⁵⁵
 - (2) According to [...] ³⁵⁶
- (421) The majority of media agencies that replied to the Commission's request for information stated that although in principle the two channels may be used for the same advertising objectives, they differ significantly in their effectiveness to achieve those advertising objectives.³⁵⁷ Social media platforms were considered as more effective.³⁵⁸ More specifically, the following aspects were highlighted:
- (422) **Different audiences:** Not all consumers are users of social media. Accordingly, different audiences can be reached by advertising off social media platforms, in

³⁵¹ Commission decision of 27 January 2022 in case M.10262 *Facebook/Kustomer*, paragraphs 150 and 151.

³⁵² A comparable view was taken by the German competition authority Bundeskartellamt in its Facebook decision of February 2019, where it considered (but not concluded on) an online display advertising market on social media platforms (original in German): „Die Ermittlungen der Beschlussabteilung haben starke Indizien dafür ergeben, dass suchungebundene Werbung auf sozialen Medien sowie suchungebundene Werbung außerhalb sozialer Medien sachlich getrennte Märkte darstellen könnten. Grund hierfür ist vor allem, dass sich beide Werbeformen nach Einschätzung der befragten Unternehmen für verschiedene Werbezwecke unterschiedlich gut eignen. Werbung auf sozialen Medien ist demnach vor allem besser geeignet für die gezielte Ansprache bestimmter Zielgruppen sowie für die Verbindung von Werbung mit sozialen und emotionalen Elementen. Als weitere Vorteile werden die Minimierung von Streuverlusten sowie die Möglichkeit des Cross-Device-tracking genannt.“

(English translation: “The Bundeskartellamt’s investigations have revealed strong indications suggesting that non-search advertising on social media and non-search advertising outside social media could represent separate product markets. The primary reason for this is that, according to the surveyed companies, the two forms of advertising fulfil different advertising purposes. The companies said that social media advertising was better suited for targeted approaches to certain target groups and for linking advertising to social and emotional elements. Further benefits indicated include the minimisation of scatter losses and opportunities for cross-device tracking.” Bundeskartellamt decision of 6 February 2019 in case B6-22/16, paragraph 361.

³⁵³ Replies to Q C.E.1 of the Commission's RFI to media agencies of June / July 2023.

³⁵⁴ [...].

³⁵⁵ [...].

³⁵⁶ [...].

³⁵⁷ Replies to Q C.E.2 and C.E.3 of the Commission's RFI to media agencies of June / July 2023.

³⁵⁸ See for example, [...].

particular those audiences who are not active on social media platforms, but who nevertheless visit other websites and apps.³⁵⁹ Media agencies also mentioned in the market investigation that off-social media advertising on apps and websites may allow reaching not only broader audiences (going beyond the users of social networks), but also very specific niche audiences.³⁶⁰

- (423) **Targeting / amount and quality of data:** A main difference between social media and off-social media online display advertising is the effectiveness of targeting.³⁶¹ This is mainly based on the social media platforms' specific wealth of data.
- (424) Social media platforms mostly require users to log-in in order to use the services of the social media platform. This allows them to identify their users, also across devices. They typically provide ample possibilities for users to interact with the platform and with other users, for example by allowing to share content or opinions, to react to posts with comments or "likes" or to create groups on specific interests or topics and to exchange messages and content between the group members.
- (425) By following their users' actions on their platforms, social media platforms collect a large amount of very detailed information about their users (so-called "first-party" or "on-site" data) which may be combined with off-site data. Such on-site data are not only often very granular since they result from regular interactions by the users on diverse topics, but also particularly reliable since users themselves indicate their views, preferences and interests via their actions on the social media platforms. By contrast, most other providers of online display advertising only have comparably limited access to first-party data from their users because the nature and features of their websites or apps do not induce the latter to disclose such varied information about themselves. Although these providers could get access to data from data brokers (entities that collect data from various online sources to create consumer profiles and sell them to advertisers), such "third-party" data is typically less detailed and less reliable, especially if the identity of users is uncertain and specific information cannot (reliably) be combined with other information available about the user.³⁶²
- (426) The higher granularity and reliability of first-party data was confirmed in the market investigation, as the following statements by media agencies show:
- (1) According to [...].³⁶³
 - (2) According to [...].³⁶⁴
 - (3) According to [...].³⁶⁵
 - (4) According to [...].³⁶⁶

³⁵⁹ See for example [...].

³⁶⁰ [...].

³⁶¹ Replies to Q C.E.5 and C.E.3 of the Commission's RFI to media agencies of June / July 2023.

³⁶² A reduced accuracy of third-party data is also confirmed by an article by Neumann, N., Tucker, C. E., & Whitfield, T. (2019). Frontiers: How effective is third-party consumer profiling? Evidence from field studies. *Marketing Science*, 38(6), pages 918 to 926 available at <https://pubsonline.informs.org/doi/abs/10.1287/mksc.2019.1188>, downloaded on 13 September 2022 (ID5359).

³⁶³ [...].

³⁶⁴ [...].

³⁶⁵ [...].

³⁶⁶ [...].

- (5) According to [...].³⁶⁷
- (6) According to [...].³⁶⁸
- (427) Social media platforms are therefore uniquely positioned to provide advertisers with audience targeting possibilities, which are superior to those available on websites or apps from other providers of online display advertisement inventory, such as news or sports websites. Based on their wealth of data, social media platforms create user profiles in the form of characteristics attributed to each user and subsequently generate target audiences, which comprise all users showing certain characteristics, such as “fashion lovers” of a certain age and in a certain geographic location. Advertisers can use those target audiences for their advertising campaigns and thereby ensure that their ads on the social media platform are shown exactly to those users who have the highest likelihood of being interested in the promoted product or service.
- (428) The better targeting via online display advertising on social media was also confirmed by statements from media agencies, for example:
- (1) According to [...].³⁶⁹
- (2) According to [...].³⁷⁰
- (3) According to [...].³⁷¹
- (429) When being asked about the differences between online display advertising on social media platforms and online display advertising off social media platforms in general, also the majority of advertisers³⁷² and OCAS providers³⁷³ highlighted differences in targeting capabilities. Almost all of them considered targeting capabilities as stronger on social media platforms. Advertisers explained that the more detailed and granular data collected by social media platforms helps them to target more precisely, as exemplified by the following statements:
- (1) According to [...].³⁷⁴
- (2) According to [...].³⁷⁵
- (3) According to [...].³⁷⁶
- (4) According to [...].³⁷⁷

³⁶⁷ [...].

³⁶⁸ [...].

³⁶⁹ [...].

³⁷⁰ [...].

³⁷¹ [...].

³⁷² Replies to Q7 of the Commission’s RFI to advertisers of March 2020. The majority of respondents confirmed that targeting capabilities are the biggest difference between online display advertising services on social media platforms comparing to online display advertising services off social media platforms.

³⁷³ Replies to Q22 (and respectively Q18) of the Commission’s RFI to OCAS providers of March 2020. The majority of respondents confirmed that targeting capabilities are better while advertising on social media platforms. The RFI to OCAS providers of March 2020 was sent out in two slightly different versions, which changed the numbering for the relevant (identical) question on targeting possibilities: For some it was Q22, for others it was Q18.

³⁷⁴ [...].

³⁷⁵ [...].

³⁷⁶ [...].

- (430) Some social media platforms expressed similar views in the market investigation, such as the following:
- (1) According to [...].³⁷⁸
 - (2) According to [...].³⁷⁹
- (431) **User engagement:** Apart from better targeting capabilities, some advertisers³⁸⁰ and OCAS providers³⁸¹ also pointed to the superior user/consumer engagement while advertising on social media platforms. This is explained by the fact that social media platforms are more personal and allow for immediate interaction with users especially through the features ‘like’, ‘share’ and ‘comment’. From the business or marketing perspective, the aim is to engage users (people active on social media) to like, comment on, or share their posts in order to increase their pages’ engagement because the more reactions a post receives, the more people will see the post. Such a post is then spread from people who are engaged in the content to their friends and so on, increasing the number of page followers.³⁸² From the advertisers’ point of view, when they display their ads on users’ profiles which are then liked, commented or shared by these users, this helps to reach more people who can become their customers as their posts contain links to external websites where the users can buy advertised products. This is confirmed by the following statements:
- (1) According to [...].³⁸³
 - (2) According to [...].³⁸⁴
 - (3) According to [...].³⁸⁵
 - (4) According to [...].³⁸⁶
 - (5) According to [...].³⁸⁷
 - (6) According to [...].³⁸⁸
- (432) [...] referred to the possibility of [...] via the monitoring of online discussions by users about the brand as being special to online display advertising on social media

³⁷⁷ [...].

³⁷⁸ [...]

³⁷⁹ [...].

³⁸⁰ Replies to Q7 of the Commission’s RFI to advertisers of March 2020. Advantages of online display advertising on social media platforms regarding user engagement were confirmed by the majority of respondents.

³⁸¹ Replies to Q22 (and respectively Q18) of the Commission’s RFI to OCAS providers of March 2020. The majority of respondents confirmed better user engagement while advertising on social media platforms: The RFI to OCAS providers of March 2020 was sent out in two slightly different versions, which changed the numbering for the relevant (identical) question on user engagement. For some it was Q22, for others it was Q18.

³⁸² For example, Meta explained the mechanism behind this saying that “[...]”. See Meta’s reply to Q5 of the Commission’s RFI to Meta of August 2019, paragraph 27 (ID344).

³⁸³ [...].

³⁸⁴ [...].

³⁸⁵ [...].

³⁸⁶ [...].

³⁸⁷ [...].

³⁸⁸ [...].

platforms, like Facebook.³⁸⁹ [...] summarized both advantages of social media platforms (targeting and user engagement) by stating [...].³⁹⁰

- (433) The delineation of a separate market for online display advertising on social media platforms is also supported by public sources. An industry report from a European-level association for the digital marketing and advertising ecosystem ('IAB') also segments the online display advertising services in social and non-social and indicates that online display advertising services on social networks are the key driver of growth in display advertising.³⁹¹
- (434) From a demand-side perspective, there is therefore only limited substitutability between online display advertising services on social media platforms and online display advertising services off social media platforms. The majority of media agencies that replied to the Commission's request for information confirmed that both channels have unique strengths and weaknesses which make each of those channels more or less suitable for an individual campaign.³⁹² The majority of media agencies also stated that the two channels should be considered as complements and can function as substitutes only in exceptional cases.³⁹³ For instance:
- (1) According to [...].³⁹⁴
 - (2) According to [...].³⁹⁵
 - (3) According to [...].³⁹⁶
- (435) Second, there is also limited supply-side substitutability, which would allow market players active in online display advertising off social media platforms to easily switch to the market for online display advertising on social media platforms. Social media platforms have in common that they are used for communication purposes, with interactivity playing a key role. Interactivity typically requires a sufficiently large audience/reach in order to provide users sufficient possibilities for interaction. This in turn requires offering functionalities that can attract such large audiences. In addition, a social media platform derives lots of data from such interactivity in order to provide advertisers with targeting possibilities (see recitals (423) to (430) above). While it is not impossible to enter the market with innovative functionalities (a company that entered in the recent years is, for example, Tiktok), such entry by an undertaking active in online advertising outside social media would generally not be possible in the short run. The barriers to entry are even higher due the existence of strong network effects, which incentivize users to stick to those social media platforms that have already achieved a very large reach (see also section 4.3.2).
- (436) The Commission's conclusion that online display advertising on social media platforms and off-social media platforms do not belong to the same relevant product

³⁸⁹ [...].

³⁹⁰ [...].

³⁹¹ See Adex Benchmark 2021 Report, June 2022, available at https://iab europe.eu/wp-content/uploads/2022/06/IAB-Europe_AdEx-Benchmark-2021_REPORT_V3.pdf, downloaded on 13 September 2022 (ID5358). Note that in this report YouTube is not included as part of social media platforms group.

³⁹² Replies to Q C.E.3 and C.E.14 of the Commission's RFI to media agencies of June / July 2023.

³⁹³ Replies to Q C.E.14 of the Commission's RFI to media agencies of June / July 2023.

³⁹⁴ [...].

³⁹⁵ [...].

³⁹⁶ [...].

market is not contradicted by Meta's arguments that it competes against numerous advertising venues (such as Google, Amazon, Apple or Microsoft as well as open display publishers and intermediaries) other than social media.³⁹⁷

(437) Indeed, the mere existence of other advertising venues is not sufficient to support the claim that their advertising services are substitutes from a demand-side or supply-side view. The replies to the market investigation highlighted that the social media's wealth of granular first-party data is specific (see recitals (424) to (426)) and consequently allows for very precise and reliable targeting (see recitals (427) to (430)). They did not indicate that this could be matched by any of the undertakings or sectors mentioned by Meta, but – to the contrary – considered online display advertising on social media platforms as complementary to online display advertising off social media platforms (see recital (434)).

4.4.5. *Meta's claims that all possible advertising channels are substitutes and that the Commission has only relied on functional characteristics is unfounded*

(438) Meta more generally argued that an overall advertising market should be defined without distinction between the different channels on the basis that advertisers would allegedly easily switch advertising spend between advertising channels. This is according to Meta enhanced by the fact that advertisers are not locked-in to long-term or exclusive contracts and that a range of intermediaries make it easy for advertisers to re-allocate spend. Meta indicated that advertisers easily multi-home across ad channels.³⁹⁸

(439) Meta further explained that when investing in an ad campaign, advertisers look to deploy their advertising budgets in a way that best achieves the desired result at the lowest cost. Meta claimed that advertisers are focused on maximising their Return on investment ("ROI"), which is in Meta's view the key driver determining advertiser behaviour, and that they therefore flexibly allocate their ad spend across alternative advertising channels in an approach following the principle of efficient resource allocation.³⁹⁹ In that respect, Meta argued that it would be sufficient to look at the marginal ROI instead of an average ROI thereby apparently referring to switching that could render any price increase by a hypothetical monopolist unprofitable.⁴⁰⁰

(440) Finally, Meta argued that it competes with a wide range of highly substitutable services from other players to deliver a competitive ROI, namely Google, Amazon, Apple, Microsoft, Snap, Spotify, TikTok, open display, retail advertisers and other venues, such as streaming services, gaming platforms and ride hailing apps, and that some of them have been rapidly growing.⁴⁰¹

(441) Those arguments do not show that all possible advertising channels are substitutes.

(442) First, the fact that advertisers might strive towards an overall maximization of their ROI in the field of advertising and that they are not contractually locked-in does not mean that all advertising channels are substitutes.⁴⁰² To the contrary, media agencies

³⁹⁷ SO Response, paragraph 159 (a).

³⁹⁸ SO Response, paragraphs 137 and 138.

³⁹⁹ SO Response, paragraphs 122 to 128.

⁴⁰⁰ Comments on the LoF, paragraph 117.

⁴⁰¹ SO Response, paragraphs 129 to 134.

⁴⁰² In paragraph 124 and footnote 230 of the SO Response, Meta referred to a survey showing according to Meta that 90% of advertisers consider the measuring/proving of ROI as important. However, the original source (Kantar, Getting media right: marketing in motion, 2019, page 29 submitted by Meta in

and advertisers regularly use different media channels which have different characteristics and fit different purposes. Depending on the purpose of the advertising campaign, one channel will have a better ROI than another and will therefore be better fit for that purpose. As set out in sections 4.4.2 to 4.4.4, different advertising channels are complements rather than substitutes.

- (443) Media agencies and advertisers follow a number of criteria when planning an advertising campaign. In order to set up their mix of advertising channels, advertisers and media agencies consider, among others the characteristics of their target audience. [...] explained, for example, with respect to its selection of advertising channels: [...].⁴⁰³
- (444) Further, the advertising channels need to correspond to the advertising objectives of the company, as set out, for example, by [...].⁴⁰⁴
- (445) Important campaign aims relate to the marketing funnel. Companies may, for example, aim with their campaigns at a short-term conversion target (lower marketing funnel) or at a long-run increase of brand awareness (upper marketing funnel), which might not lead to any immediate increase in turnover, but will ultimately contribute as well to conversions. They may also have more specific aims, such as, for example, to generate leads or nurture customer relationships.⁴⁰⁵
- (446) Media agencies have confirmed that different advertising channels have different characteristics and are not all suitable to the same extent for the different advertising objectives. This is indicated, for example, by [...].⁴⁰⁶
- (447) Accordingly, advertisers normally do not use just one advertising channel. Meta itself stated that advertisers normally “multi-home” with respect to advertising channels.⁴⁰⁷ When being asked whether the allocation of the entire (or almost entire) advertising budget to one advertising channel is a strategy which the agency or its clients typically consider, [...] explained, for example: [...].⁴⁰⁸
- (448) When deciding on how to implement a marketing campaign, the advertisers choose advertising channels in order to create the best mix of advertising channels with the aim of achieving the specific objectives of such campaign for the specific target audience. Advertisers choose advertising channels against the background of their specific strategy with respect to their target audience and campaign objectives, and taking account of their constraints (budget, availability of formats, timing etc.).
- (449) The fact that media agencies and intermediaries conduct a comparison of ROI per campaign and advertising channel for their advertising customers does not imply that such advertising channels function as substitutes. Rather, this ROI assessment may contribute to the selection of the best mix of advertising channels and should – if correctly done - reflect the different strengths of each advertising channel for a specific target audience and campaign objective. The ROI is ultimately only a tool to

reply to the Commission’s RFI of June 2023, question 2c) shows that 90% of advertisers consider measuring and proving the ROI of campaigns an “important challenge” which speaks against its use by advertisers as the only basis for the choice of their advertising channels (ID8757-149).

403 [...].

404 [...].

405 [...].

406 [...].

407 SO Response, paragraphs 137 and 138.

408 [...].

estimate the suitability of an advertising channel for a specific campaign. The existence and use of such an analytical tool does not allow concluding that all advertising channels are substitutable.

- (450) Second, the Commission has conducted a market investigation regarding the substitutability of advertising channels covering substitutability for any reasons, including ROI considerations. As set out in the sections 4.4.2 to 4.4.4, the market investigation confirmed that advertising channels are not generally substitutable and that a separate market for online display advertising on social media platforms should be defined.
- (451) Third, the companies listed by Meta (see recital (440) above) are indeed active in the provision of advertising services. However, this does not mean that they compete against Meta in the same relevant product market. Apart from its argument that advertisers optimize their ROI, Meta does not substantiate the alleged substitutability of those companies' services with its own, but only lists them as alleged competitors. The market investigation has shown (see sections 4.4.2 to 4.4.4) that companies offering advertising services on the market for online display advertising on social media platforms, such as Snap and Tiktok, are indeed competitors to Meta, whereas the others are active in different advertising markets.
- (452) From a conceptual perspective, Meta argued that the Commission has mainly relied on functional characteristics⁴⁰⁹ instead of conducting an economic substitutability test which – in Meta's view – has to be undertaken on the basis of *Servier*^{410,411}
- (453) However, as indicated above (see recital (130)), the Commission takes the view that *Servier* has not introduced a systematic requirement to conduct an assessment of economic substitutability based on a change in relative price for defining relevant markets. As set out in recital (103), the Commission may rely on various sources of information and types of evidence⁴¹² and does not apply a strict hierarchy of evidence. Where price information is available which allows concluding on the economic substitutability of certain products, this information has to be taken into account.
- (454) In any case, the Commission has asked market participants about the complementarity or substitutability of certain forms of advertising and took into account the replies in its analysis.⁴¹³ The questions on this defined substitutability by reference to a 5-10% change in price.⁴¹⁴ Furthermore, Meta has provided information

⁴⁰⁹ SO Response, paragraph 58 b).

⁴¹⁰ Case C-176/19 P, *Commission v Servier and Others*. EU:C:2024:549, paragraph 383 and 384.

⁴¹¹ Comments to the Letter of Facts, paragraph 40.

⁴¹² Market Definition Notice, paragraph 76, which states: "*The Commission uses various sources of information and types of evidence to define the relevant market and it may rely on both qualitative and quantitative information. Certain types of evidence may be decisive in one case, but of limited or no importance in other cases involving a different industry, a different product or different circumstances. [...]. The Commission adopts an open approach to empirical evidence, aimed at making effective use of all available information which may be relevant in individual cases, and makes an overall assessment based on that evidence.*" See also: T-699/14 *Topps Europe v Commission*, ECLI:EU:T:2017:2, paragraph 82 and case T-334/19, *Google and Alphabet v Commission (Google AdSense for Search)*, paragraphs 155 to 162.

⁴¹³ See, for example, questions C.D.4 and C.E.14 of the Commission's RFI to media agencies, June / July 2023.

⁴¹⁴ See, for example, the footnote to questions C.D.4 and C.E.14 asking for complementarity / substitutability: "*For the purpose of this questionnaire, two products (or services), X and Y are*

on certain past events in the market, in particular the introduction by Apple of its ATT policy (see section 4.4.3.2) and the Facebook Boycott (see section 4.4.3.3), which in its view allowed for an economic substitutability assessment and the conclusion of a wider market definition. The Commission analysed Meta's arguments on those events in detail and therefore took this information into account but reached different conclusions than Meta.

4.4.6. *Further segmentations*

- (455) The Commission has considered whether, for the purpose of the assessment in the present case, the market for online display advertising on social media platforms should be further segmented.⁴¹⁵ The market investigation has not provided sufficient evidence that would support the necessity for further segmentation of the relevant market.
- (456) Although some customers indicated that different ad formats (in particular, video versus non-video ads) are used for different advertising objectives,⁴¹⁶ this view was expressed by a minority of respondents. In any event, this segmentation can be left open as it would not change the outcome of the competitive assessment in the present case. In particular, Meta's market position would not significantly differ if the market was segmented into video/non-video online display advertising on social media platforms.
- (457) The Commission concludes that a segmentation of the online display advertising market on social media platforms into video versus non-video can be left open for the purposes of this Decision. This has not been contested by Meta.

4.4.7. *Conclusion on the market for online display advertising on social media platforms*

- (458) In light of the above, for the purpose of this Decision, the Commission concludes that the relevant product market is the market for online display advertising services on social media platforms.

4.5. **The market for OCAS**

- (459) OCAS provide a platform for sellers to list and for (potential) buyers to review online advertisements in an easily searchable and comparable way, filtered by product/services categories. These advertisements, specifically designed for OCAS platforms, usually contain not just a photo or photos of the product/service on sale but also a detailed description containing information *e.g.* of its brand, condition, location and price. Buyers can contact a seller using the contact details the latter provided on the website/application and negotiate the conditions of the sale, which is then often concluded without the intervention of the OCAS provider.
- (460) The Commission's investigation shows that OCAS constitute a separate relevant product market. This conclusion is based on the following considerations:

considered as substitutes if, as a customer, you would replace all or part of X by Y, if the price of X increased by 5-10%, whereas the price of Y remained stable."

⁴¹⁵ The Commission has considered further segmentation of the online display advertising market in previous decisions, *e.g.* Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraphs 148 to 155; Commission decision of 6 September 2018 in case M.8788 – *Apple/Shazam*, paragraphs 133 to 135; Commission decision of 6 December 2016 in case M.8124 – *Microsoft/LinkedIn*, paragraphs 159 to 161; Commission decision of 3 October 2014 in case M.7217 – *Facebook/WhatsApp*, paragraphs 74 to 79.

⁴¹⁶ [...].

- (1) online and offline classified ads belong to different product markets (section 4.5.2.1);
 - (2) online classified ads and online search ads belong to different product markets (section 4.5.2.2);
 - (3) online classified ads and online display ads belong to different product markets (section 4.5.2.3);
 - (4) OCAS and online retail services belong to different product markets (section 4.5.3);
 - (5) OCAS and online marketplaces belong to different product markets (section 4.5.4); and
 - (6) it can be left open whether further sub-segmentation is warranted (section 4.5.5).
- (461) Before discussing its detailed findings, the Commission will first briefly describe Meta's activities regarding OCAS (section 4.5.1).

4.5.1. *Meta's activities in OCAS*

- (462) Meta is active on the market for OCAS through its Facebook Marketplace product. Facebook Marketplace was launched in October 2016 in the US, Australia, New Zealand and the UK, and rolled out gradually in the rest of the EEA starting in August 2017.⁴¹⁷
- (463) Meta describes its product as an “*an easy, convenient way to buy and sell in your area. You can look through listings or search for items near you to find great things to buy.*”⁴¹⁸ Users can browse items by categories such as vehicles, property rentals, apparel, garden & outdoor or pet supplies.⁴¹⁹

4.5.2. *Online classified ads and other types of advertisement*

4.5.2.1. Online and offline classified ads

- (464) For the reasons elaborated in section 4.4.2, the Commission concludes that online and offline classified ads, belonging respectively to online and offline advertising, do not belong to the same relevant product market.

4.5.2.2. Online classified ads and online search ads

- (465) The Commission concludes that online classified ads do not belong to the same product market as online search ads for the following reasons.
- (466) First, from a demand-side perspective, online classified ads are used for a different purpose than online search ads. In addition, the Commission's investigation suggests that online classified ads give more details than online search ads and OCAS platforms provide more services to users than websites displaying online search ads.

⁴¹⁷ Meta's reply to Q44 of the Commission's RFI to Meta of March 2019 (ID196) and Meta's reply to Q1 of the Commission's RFI to Meta of August 2024 (ID13051).

⁴¹⁸ Learn more about using Facebook Marketplace, available at <https://en-gb.facebook.com/marketplace/learn-more/>, downloaded on 19 August 2022 (ID4865).

⁴¹⁹ Facebook Marketplace, available at <https://www.facebook.com/marketplace/>, last visited on 14 July 2022.

- (467) Indeed, [...] emphasised the [...].⁴²⁰
- (468) [...] explained that online search ads are [...].⁴²¹
- (469) [...] added that [...].⁴²²
- (470) Second, the business model of OCAS and online search ads platforms differ significantly. The users (*i.e.* the demand-side) of online search ads are professional advertisers, while online classified ads are used by private and professional sellers and (mostly) private buyers.
- (471) [...] explained that [...].⁴²³
- (472) The payment model of online search and classified ads also differ. As [...] explained, there are [...].⁴²⁴
- (473) Furthermore, while platforms displaying online search ads show results to a search query irrespective of the relation of these sites with the platform, OCAS platforms index only products/services that were specifically listed on them. [...] submitted that [...].⁴²⁵
- (474) Third, from a supply-side perspective, that is, from the perspective of companies offering OCAS, responses to the Commission's requests for information suggest that while [...] ⁴²⁶ and online search ads providers may have an advantage in expanding to the market for OCAS, the technologies used for online classified ads and online search ads are not substitutable. OCAS platforms need to be able to pull the necessary information from sellers in order to construct, correctly categorise (including localisation) and list the detailed online classified ads.⁴²⁷ Therefore, it is not likely that online search ads providers could easily switch their resources in the short term and start offering online classified ads. Switching from online classified ads to online search ads would be even more difficult, since it would involve setting up a search engine, which is a highly demanding type of platform that requires heavy investment in technologies such as crawling, indexing and query matching algorithms.
- (475) As [...] explained [...].⁴²⁸
- (476) According to [...].⁴²⁹
- (477) [...] explained that [...].⁴³⁰
- (478) Meta has not contested that online classified ads do not belong to the same product market as online search ads.

⁴²⁰ [...].

⁴²¹ [...].

⁴²² [...].

⁴²³ [...].

⁴²⁴ [...].

⁴²⁵ [...].

⁴²⁶ [...].

⁴²⁷ Replies to Q25 of the Commission's RFI to OCAS providers of August 2019.

⁴²⁸ [...].

⁴²⁹ [...].

⁴³⁰ [...].

4.5.2.3. Online classified ads and online display ads

- (479) The Commission finds that online classified ads do not belong to the same product market as online display ads for the following reasons.
- (480) First, from a demand-side perspective, the majority of respondents to the Commission's request for information indicate that online classified ads are used for a different purpose than online display ads, both from the point of view of buyers and sellers.
- (481) [...] confirmed that [...].⁴³¹ [...] stated similarly that [...]. According to [...], and contrary to display ads, [...].⁴³²
- (482) [...] similarly stated that [...].⁴³³
- (483) Second, OCAS platforms and online display ads platforms have different structures. While online classified ads are the main content on OCAS platforms, this is not the case for online display ads on the webpages they appear. While online classified ads contain detailed information on the product/service in order for the buyer to decide whether or not to purchase it, the purpose of online display ads is to attract viewers to click on the ad, directing them to a separate site where more information can be found.
- (484) According to [...].⁴³⁴
- (485) [...] submitted that [...].⁴³⁵
- (486) Moreover, [...] explained that [...].⁴³⁶
- (487) Some respondents further emphasised that [...].⁴³⁷ [...] also stated that [...].⁴³⁸
- (488) Third, online classified ads and online display ads have different revenue models, as well as a different users:
- (1) According to [...].⁴³⁹
 - (2) According to [...].⁴⁴⁰
 - (3) According to [...].⁴⁴¹
- (489) [...] further explained that [...].⁴⁴²
- (490) Finally, from a supply-side perspective, the Commission's investigation suggests that online display ads providers (*i.e.* publishers of online display ads) entering the market for OCAS would entail significant additional costs.
- (491) As [...] explained, [...].⁴⁴³

⁴³¹ [...].

⁴³² [...].

⁴³³ [...].

⁴³⁴ [...].

⁴³⁵ [...].

⁴³⁶ [...].

⁴³⁷ [...].

⁴³⁸ [...].

⁴³⁹ [...].

⁴⁴⁰ [...].

⁴⁴¹ [...].

⁴⁴² [...].

- (492) This is confirmed by [...] which explains that [...].⁴⁴⁴
- (493) [...] also stated that [...]⁴⁴⁵ [...] equally explained that [...].^{446 447}
- (494) The above findings do not imply that a provider of online display ads could in no event enter the market for OCAS. However, given the barriers described above, it is not likely that online display ads providers could easily switch their resources in the short term and start offering online classified ads.
- (495) Meta has not contested that online classified ads do not belong to the same product market as online display ads.

4.5.3. *OCAS and online retail services*

- (496) For the purpose of the market investigation, online retailers were defined as sellers that hold directly the stock of the products and offer those products to users on their own websites/app, where consumers can conclude the transaction and purchase products from the online retailer directly. Third party sellers have no access to the platform of online retail services, as opposed to online marketplaces to which they have access.⁴⁴⁸
- (497) The Commission finds that OCAS do not belong to the same product market as online retail services for the following reasons.
- (498) First, from a demand-side point of view, replies to the Commission's requests for information indicated that OCAS and online retail services serve different purposes from the point of view of both the buyers and the sellers.
- (499) While the ultimate goal of buyers is to purchase goods/services on both OCAS and online retail platforms, the products displayed, as well as their variety differs significantly, and therefore the use case of online classified ads and online retail services are different.
- (500) As [...] explained, [...].⁴⁴⁹
- (501) Furthermore, while online retailers generally only offer new products, OCAS can promote both new and used goods. This was confirmed by a number of respondents to the Commission's requests for information.⁴⁵⁰
- (502) Responses to the Commission's request for information further indicate that private sellers choose to advertise via online classified ads.
- (503) [...] submitted that [...].⁴⁵¹ Similarly, [...] stated that [...].⁴⁵² According to [...].⁴⁵³
- (504) Another difference is that while the location of the product/service advertised on an OCAS platform is an important parameter for buyers,⁴⁵⁴ proximity is not necessarily important for customers of online retailers. As [...] explained [...].⁴⁵⁵

443 [...].

444 [...].

445 [...].

446 [...].

447 [...].

448 "Definitions" section of the Commission's RFI to OCAS providers of March 2020.

449 [...].

450 [...].

451 [...].

452 [...].

453 [...].

- (505) Furthermore, while recently some OCAS providers started to offer more transactional features (see further in section 4.5.4), the majority of OCAS providers do not provide services facilitating the conclusion of the transaction itself,⁴⁵⁶ which is typically undertaken directly between the seller and the buyer on the basis of the information provided in the online classified ad. [...].⁴⁵⁷
- (506) Second, from a supply-side point of view, the business model of OCAS and online retail services differ significantly, the main difference being that online retailers have an inventory of the products they sell, while OCAS providers only monetise advertisement space. Compared to online retailers, this also limits the liability of the OCAS providers regarding transactions based on ads displayed on their platforms.⁴⁵⁸
- (507) The Commissions' conclusion that OCAS and online retail services do not belong to the same relevant product market is not contradicted by Meta's claims that buyers and sellers use various channels when purchasing or selling a product or service, including any combination of physical stores, online stores, and online platforms that include marketplaces and other user attention services.⁴⁵⁹
- (508) The mere coexistence of different buy/sell channels does not warrant the definition of a broader relevant product market encompassing all these services. Indeed, as demonstrated above, the market investigation does not support such a conclusion based on the differences in use cases (see recitals (498) to (501) above) and business models (see recitals (502) to (506) above).

4.5.4. OCAS and online marketplaces

- (509) The Commission finds that OCAS do not belong to the same product market as online marketplaces for the following reasons.
- (510) First, while the ultimate goal of buyers and sellers is the same for both types of platforms, namely to purchase or sell an item/service, there are differences in the nature of merchandise they are looking for. On the one hand, online marketplaces tend to offer new, rather than used products and, on the other hand, certain types of goods – such as cars or real estate – are not available on online marketplaces. Furthermore, OCAS platforms are more attractive for private sellers, enabling therefore customer-to-customer transactions.
- (1) According to [...].⁴⁶⁰ It further added that [...].⁴⁶¹
 - (2) According to [...].⁴⁶²
 - (3) According to [...].⁴⁶³

⁴⁵⁴ See in this regard also section 5.5 with regard to the geographic market definition.

⁴⁵⁵ [...].

⁴⁵⁶ Replies to Q A.1 of the Commission's RFI to OCAS providers of September 2023.

⁴⁵⁷ [...].

⁴⁵⁸ Replies to Q15 of the Commission's RFI to OCAS providers of March 2020.

⁴⁵⁹ SO Response, paragraph 183. According to Meta, "attention services" include the examples of all social media platforms listed in sections 4.3.3 to 4.3.8 above and other attention services. For example, in Table 1 in paragraph 64 of the SO Response, Meta listed the following examples of attention services: Instagram, Snapchat, YouTube, LinkedIn, X, Jappy, Vero, Pinterest, Reddit, Vimeo, Twitch, Tumblr, and Discord. In paragraph 80 of the SO Response Meta also mentioned Netflix, Twitch and Amazon.

⁴⁶⁰ [...].

⁴⁶¹ [...].

⁴⁶² [...].

⁴⁶³ [...].

- (511) Similarly, from the point of view of sellers: [...].⁴⁶⁴
- (512) In line with the above, the majority of the online marketplaces that replied to the Commission's request for information indicated that while they offered second-hand goods for sale on their site,⁴⁶⁵ this represented only a small proportion in their portfolio.⁴⁶⁶ Similarly, while the majority of OCAS providers that replied to the Commission's request for information indicated that they listed new items for sale on their platforms,⁴⁶⁷ this represented only a small proportion in their portfolio.⁴⁶⁸
- (513) Second, as a result of those differences in the types of goods they give access to, online marketplaces, such as Amazon or eBay, can provide other types of services compared to OCAS providers. This includes for instance facilitating the conclusion of the transaction, payment, auctions and shipping,⁴⁶⁹ which would be difficult (or even unlawful) to offer regarding for example the three main vertical categories of products on OCAS platforms, that is real estate, cars and jobs, which on the other hand often require face-to-face meeting between buyer and seller and the prior inspection of the good to be sold by the buyer.
- (514) As [...] explained [...].⁴⁷⁰
- (515) While the Commission acknowledges that there is a tendency of OCAS providers to widen their service range, the majority of OCAS providers that replied to the Commission's request for information indicated that they did not provide shipping services or other transactional features.⁴⁷¹
- (516) This also means that contrary to OCAS, the geographic location is not an important parameter for online marketplaces. [...] submitted that [...].⁴⁷² In an internal document, Meta [...].⁴⁷³
- (517) Third, from the sellers' point of view, [...].⁴⁷⁴ On the other hand, [...].⁴⁷⁵ As [...] explained [...].⁴⁷⁶
- (518) However, in order to enable the conclusion of the transaction on their platform rather than by the sellers themselves, online marketplaces have to have a closer contractual relationship with them. [...] added that [...].⁴⁷⁷
- (519) Fourth, from a supply-side point of view, the majority of OCAS respondents indicated that they were currently not operating online marketplace services in

⁴⁶⁴ [...].

⁴⁶⁵ Replies to Q A.1 of the Commission's RFI to online marketplaces of September 2023.

⁴⁶⁶ Replies to Q A.3 of the Commission's RFI to online marketplaces of September 2023.

⁴⁶⁷ Replies to Q B.1 of the Commission's RFI to OCAS providers, [...] of September 2023.

⁴⁶⁸ Replies to Q B.2 of the Commission's RFI to OCAS providers, [...] of September 2023.

⁴⁶⁹ [...].

⁴⁷⁰ [...].

⁴⁷¹ Replies to Q A.1 of the Commission's RFI to OCAS providers, [...] of September 2023.

⁴⁷² [...].

⁴⁷³ [...] (ID2122-1776).

⁴⁷⁴ [...].

⁴⁷⁵ [...].

⁴⁷⁶ [...].

⁴⁷⁷ [...].

parallel, nor they were planning to do so in the next 5 years.⁴⁷⁸ [...] indicated that [...] ⁴⁷⁹ [...] explained that [...].⁴⁸⁰

- (520) The Commission's conclusion that OCAS and online marketplace services do not belong to the same relevant product market is not contradicted by Meta's arguments that:
- (1) buyers and sellers use various channels when purchasing or selling a product or service, including any combination of physical stores, online stores, and online platforms that include marketplaces and other user attention services;⁴⁸¹
 - (2) OCAS providers increasingly capture more aspects of the transaction process on their own sites, including by enabling on-site payment and shipping;⁴⁸² and
 - (3) the proportion of new and used items on a platform is not a reason to separate online marketplaces from OCAS providers for market definition purposes.⁴⁸³
- (521) First, as explained above in recital (508), the mere coexistence of different buy/sell channels does not warrant the definition of a broader relevant product market encompassing all these services.⁴⁸⁴
- (522) Second, the Commission recognises that there is a recent tendency of convergence between the two types of services and that indeed some OCAS providers started to widen the range of functionalities offered on their platforms. However, the Commission considers that, in view of the prevailing differences regarding the nature of goods (see recitals (510) to (512) above), available features (see recitals (513) to (516) above) and other supply-side considerations (see recital (519) above), this overlap does not warrant the definition of a broader relevant product market encompassing online marketplaces.
- (523) Third, the Commission considers that the nature of goods sold is an important factor of comparison between online marketplaces and OCAS platforms, because it informs the main use case of those platforms, but notes that it is only one element in its analysis of the relevant product market.

4.5.5. *Potential further segmentations within the OCAS market*

- (524) The Commission investigated whether further sub-segmentations within the market for OCAS would be appropriate. Based on the responses to its requests for information, the Commission analyses below (i) whether horizontal and specialised OCAS platforms belong to the same relevant product market and (ii) whether separate relevant product markets should be defined in respect of each category of products/services advertised on vertical OCAS platforms.⁴⁸⁵

⁴⁷⁸ Replies to Q16 of the Commission's RFI to OCAS providers of March 2020 and replies to Q16.3 of the Commission's RFI to OCAS providers of March 2020.

⁴⁷⁹ [...].

⁴⁸⁰ [...].

⁴⁸¹ SO Response, paragraph 183; Comments on the LoF, paragraphs 147 to 150.

⁴⁸² SO Response, paragraphs 198 to 207; Comments on the LoF, paragraphs 155 to 157.

⁴⁸³ Comments on the LoF, paragraphs 151 to 154.

⁴⁸⁴ On the analysis of the study commissioned by Meta on multi-homing, please recitals (890) to (901) below.

⁴⁸⁵ While the Commission recognises that there are potentially some overlaps between the two approaches, for the sake of ease, these will be analysed separately.

4.5.5.1. Horizontal and vertical (specialised) OCAS platforms

- (525) Horizontal OCAS providers offer classified ads for a variety of product/service categories, while vertical or specialised OCAS providers offer only products from one category, such as real estate, vehicles or jobs. In a previous decision, the Commission considered a narrow market for online classified vehicle advertising only, without concluding on the exact market definition.⁴⁸⁶
- (526) On the one hand, the Commission's investigation indicated that there are some differences between horizontal and vertical (specialised) OCAS providers.
- (527) From a demand-side perspective, the target audience of the platforms is different. Respondents to the Commission's requests for information also indicated that specialised OCAS providers offer more detailed information on the items advertised, as well as specific services for buyers.⁴⁸⁷
- (528) [...] further added that [...].⁴⁸⁸
- (529) From a supply-side perspective, [...] ⁴⁸⁹ [...] further added that [...].⁴⁹⁰
- (530) Furthermore, the majority of respondents to the Commission's requests for information submitted that specialised OCAS providers would need to incur a significant investment to develop a horizontal OCAS platform.⁴⁹¹
- (531) On the other hand, some respondents indicated that no further segmentation is warranted.
- (532) From a demand-side perspective there is some substitutability between horizontal and specialised OCAS providers. As [...] explained [...].⁴⁹² This was also confirmed by [...].⁴⁹³
- (533) From a supply-side point of view [...] explained that [...].⁴⁹⁴ It further added that [...].⁴⁹⁵
- (534) According to the input obtained via the market investigation, it appears that the technology required to operate horizontal and specialised platforms is similar. As [...] submitted [...].⁴⁹⁶
- (535) [...] further explained that [...].^{497,498}
- (536) [...] also confirmed that [...].⁴⁹⁹
- (537) Furthermore, a majority of horizontal OCAS providers responding to the Commission's investigation indicated that they directly compete with specialised

⁴⁸⁶ Commission decision of 7 March 2008 in case M.5051 – *APW/GMG/EMAP*, paragraph 28.

⁴⁸⁷ [...].

⁴⁸⁸ [...].

⁴⁸⁹ [...].

⁴⁹⁰ [...].

⁴⁹¹ Replies to Q9 of the Commission's RFI to OCAS providers of March 2020.

⁴⁹² [...].

⁴⁹³ [...].

⁴⁹⁴ [...].

⁴⁹⁵ [...].

⁴⁹⁶ [...].

⁴⁹⁷ [...].

⁴⁹⁸ [...].

⁴⁹⁹ [...].

OCAS providers.⁵⁰⁰ Similarly, the majority of specialised OCAS respondents consider to be constrained by horizontal OCAS providers.⁵⁰¹

(538) In any event, for the purpose of this Decision, the question whether horizontal and specialised OCAS platforms belong to the same relevant product market can be left open.

(539) Meta has not contested that the question of a further segmentation between horizontal and vertical (specialised) OCAS platforms can be left open.

4.5.5.2. OCAS according to product category

(540) From a demand-side perspective, online classified ads relating to different categories are not substitutable in the sense that [...],⁵⁰² and similarly, a seller looking to sell a used car would not post its advertisement on a job portal. However, horizontal OCAS providers can represent a real alternative and therefore, according to [...].⁵⁰³

(541) From a supply-side perspective, some respondents indicated that switching between product categories would require significant investment.⁵⁰⁴ [...] explained that [...].⁵⁰⁵

(542) Other respondents pointed towards more supply-side substitutability. [...] submitted that [...].⁵⁰⁶

(543) In any event, for the purpose of this Decision, the question whether the market for OCAS should be further sub-segmented according to product category can be left open.

(544) Meta has not contested that the question of such further segmentation according to product category can be left open.

4.5.6. *Conclusion on the market for OCAS*

(545) In view of the above, the Commission concludes that OCAS constitute a separate relevant product market. For the purpose of this Decision, the question whether this market should be further segmented can be left open.

4.6. **Conclusion on relevant product markets**

(546) In conclusion, for the purpose of this Decision, the relevant product markets are: (i) the market for personal social networking services, including hybrid social media platforms; (ii) the market for online display advertising on social media platforms; and (iii) the market for OCAS.

5. **RELEVANT GEOGRAPHIC MARKETS**

5.1. **Principles relating to geographic market definition**

(547) The relevant geographic market comprises an area in which the undertakings concerned are involved in the supply and demand of the relevant products or

⁵⁰⁰ Replies to Q6 of the Commission's RFI to OCAS providers of March 2020.

⁵⁰¹ Replies to Q7 of the Commission's RFI to OCAS providers of March 2020.

⁵⁰² [...].

⁵⁰³ [...].

⁵⁰⁴ See also [...] and replies to Q10 of the Commission's RFI to OCAS providers of March 2020.

⁵⁰⁵ [...].

⁵⁰⁶ [...].

services, in which area the conditions of competition are similar or sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different.⁵⁰⁷

- (548) The definition of the geographic market does not require the conditions of competition between providers of services to be perfectly homogeneous. It is sufficient that they are similar or sufficiently homogeneous.⁵⁰⁸

5.2. Application to this case

- (549) The Commission concludes that the relevant geographic markets for the purpose of this Decision are:

- (1) the EEA-wide market for personal social networking services including hybrid social media platforms;
- (2) the national markets for online display advertising on social media platforms; and
- (3) the national markets for OCAS.

5.3. The EEA-wide market for personal social networking services including hybrid social media platforms

- (550) The Commission concludes that the geographic scope of the market for personal social networking services including hybrid social media platforms is EEA-wide.⁵⁰⁹
- (551) In *Facebook / WhatsApp*, the Commission concluded that, while there are indications that the geographic scope of the market for social networks could be global, the relevant geographic market for the assessment of the case was EEA-wide.⁵¹⁰
- (552) The Commission's investigation confirms this conclusion. It is common for the same personal social networking services to be available throughout the world, or at least in most geographic regions. However, even if there are usually no differences in a personal social networking service offered in different geographic regions or countries, in particular in terms of price, functionalities, platforms and operating systems served, there are adjustments such as language and minor functionalities present that may distinguish the offer of different regions. In addition, privacy and other regulations may differ from region to region (*e.g.* GDPR only being applied in

⁵⁰⁷ Market Definition Notice, paragraph 38.

⁵⁰⁸ The Union Courts' case law has consistently referred to 'sufficiently homogeneous' – as opposed to identical – conditions of competition as being the criterion for defining a relevant geographic market. See Case *United Brands v Commission*, C-27/76, EU:C:1978:22, paragraphs 11 and 44; Case *Verband der freien Rohrwerke and Others v Commission*, T-374/00, EU:T:2003:188, paragraph 141; Case *Cableuropa and Others v Commission*, T-346/02 and T-347/02 (joined cases), EU:T:2003:256, paragraph 115; Case *NVV and Others v Commission*, T-151/05, EU:T:2009:144, paragraph 52; Case, *HeidelbergCement and Schwenk Zement v Commission*, T-380/17, EU:T:2020:471, paragraph 294.

⁵⁰⁹ In the Commission decision of 3 October 2014 in case M.7217 - *Facebook/WhatsApp*, paragraphs 64 to 68, the Commission concluded that, while there indications that the geographic scope of the market could be global, the relevant geographic market for the assessment of the case was EEA-wide, in line with a more conservative approach.

⁵¹⁰ Commission decision of 3 October 2014 in case M.7217 – *Facebook/WhatsApp*, paragraphs 64 to 68. In the Commission decision of 6 December 2016 in case M.8124 – *Microsoft/LinkedIn*, the Commission considered in a more conservative approach that the market for professional social networking services was national. However, this was mostly due to the fact that, unlike personal social networks, professional relations and employment tend to have a more local dimension and use (paragraphs 119 to 125 of that decision).

the EU) making the providers of the personal social network to implement to different applicable legal requirements across the countries.

(553) The majority of social media platforms responding to the Commission's request for information supported this assessment.⁵¹¹ For instance,

(1) According to [...].⁵¹²

(2) According to [...].⁵¹³

(3) According to [...].⁵¹⁴

(554) Meta has not contested the Commission's conclusion that the market for personal social networking services including hybrid social media platforms is EEA-wide.

5.4. The national markets for online display advertising on social media platforms

(555) The Commission concludes that the geographic market for online display advertising on social media platforms is national in scope or regional, following linguistic borders within the EEA.

(556) The Commission found in previous cases that the markets for online advertising should be defined as national in scope or following linguistic borders within the EEA.⁵¹⁵

(557) The market investigation in this case generally confirms the Commission's previous findings as regards the geographic market definition for online advertising services, and thus also for the market for online display advertising on social media platforms. First, the majority of the advertisers stated in their replies to the market investigation that online advertising campaigns are typically designed for national or regional markets.⁵¹⁶ Only a minority of respondents to the Commission's request for information to advertisers also pointed out that, depending on the type of campaign, global companies may also procure advertising space on a broader geographic scale (EEA-wide or even worldwide).⁵¹⁷

⁵¹¹ Replies to Q22 of the Commission's RFI to social media platforms of August 2019.

⁵¹² [...].

⁵¹³ [...].

⁵¹⁴ [...].

⁵¹⁵ Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraphs 158 to 160. Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*, paragraphs 203 to 217. Commission decision of 6 September 2018 in case M.8788 – *Apple/Shazam*, paragraphs 138 to 140; Commission decision of 6 December 2016 in case M.8124 – *Microsoft/LinkedIn*, paragraphs 163 and 164; Commission decision of 3 October 2014 in case M.7217 – *Facebook/WhatsApp*, paragraphs 44 and 83. Although some of these decisions concern the market for online search advertising, which is a distinct relevant product market from that of online display advertising, their findings are relevant for the latter insofar as the geographic and linguistic scope of advertising campaigns does not vary according to the type of ad or advertising channel used.

⁵¹⁶ Replies to Q9 of the Commission's RFI to advertisers of March 2020 in which majority of the respondents confirmed the national/regional scope of their advertising campaigns. Replies to Q24 (and respectively Q20) of the Commission's RFI to OCAS providers of March 2020. The majority of the respondents confirmed the national scope of their advertising campaigns. The RFI to OCAS providers of March 2020 was sent out in two slightly different versions, which changed the numbering for the relevant (identical) question on geographic market definition. For some it was Q24, for others it was Q20.

⁵¹⁷ Replies to Q9 of the Commission's RFI to advertisers of March 2020 in which some of the respondents confirmed that their advertising campaigns are designed for the entire EEA-wide market.

- (558) Second, due to the paramount importance of country or language specificities like cultural (such as people' traditions, customs, beliefs and attitudes) or regulatory ones, advertisers confirmed that they typically design their online advertising campaigns on a country-by-country basis, with many of them focusing on their home market.⁵¹⁸
- (559) It was pointed out by advertisers, for example, that: [...].⁵¹⁹
- (560) When asked about the advertising campaigns they run to promote their services, OCAS providers also confirmed this approach. For example,
- (1) According to [...].⁵²⁰
 - (2) According to [...].⁵²¹
- (561) Meta has not contested the Commission's conclusion that the market for online display advertising on social media platforms is national in scope.
- 5.5. The national markets for OCAS**
- (562) The Commission concludes that the markets for OCAS are national in scope for the following reasons.
- (563) First, the national delineation of the market for OCAS is in line with previous precedents, both at the Commission⁵²² and at national level.⁵²³
- (564) Second, responses to the Commission's requests for information confirm the importance of linguistic differences in the different Member States in view of which OCAS providers offer localised sites in different countries and in a variety of language versions.
- (1) According to [...].⁵²⁴
 - (2) According to [...].⁵²⁵
- (565) Third, it follows from the nature of the ads displayed and the core function of online classified ads platforms to link buyers and sellers, that the location of the advertised goods/services is an important parameter. As [...] explained [...].⁵²⁶
- (566) Fourth, some respondents to the Commission's requests for information indicated that there are certain cultural differences that lead to different competition characteristics on a national basis. [...] mentioned [...].⁵²⁷ [...] also explained [...].⁵²⁸

⁵¹⁸ Replies to Q10 of the Commission's RFI to advertisers of March 2020 in which majority of the respondents confirmed country/language specificities as important for the design of an online advertising campaigns.

⁵¹⁹ [...].

⁵²⁰ [...].

⁵²¹ [...].

⁵²² Commission decision of 7 March 2008 in case M.5051 – APW/GMG/EMAP, paragraph 29.

⁵²³ See e.g. Bundeskartellamt decision of 23 November 2020 in case B6-41/20 - *eBay Classified Group/Adevinta*; Competition and Markets Authority decision of 2 June 2021 in case ME/6987/20 - *Adevinta/eBay*, paragraph 2; with regard to real estate online classified ads, Autorité de la Concurrence decision of 1 February 2018 in case 18-DCC-18 - *Axel Springer Digital Classifieds France/Concept Multimedia*, paragraphs 87 to 106.

⁵²⁴ [...].

⁵²⁵ [...].

⁵²⁶ [...].

⁵²⁷ [...].

⁵²⁸ [...].

- (567) Fifth, the national scope of the markets for OCAS is also demonstrated by the fact that the competitive landscape differs in the various Member States. As [...] submitted [...].⁵²⁹ The majority of respondents to the Commission's investigation submitted that they operate their business at a national level.⁵³⁰
- (568) Sixth, while expansion into another country is possible for an OCAS platform, this would still require significant investment, relating to raising brand awareness and building up a customer base or acquiring new inventory, understanding the impact of different consumer behaviour, providing the service in another language and establish a local presence.⁵³¹ [...] listed in its response various cultural and technical barriers, as well as business distribution considerations as potential impediments to cross-country expansion.⁵³²
- (569) Finally, while some respondents to the Commission's requests for information indicated that there are no significant differences in the applicable legal framework within the EEA,⁵³³ others suggested that national requirements need to be taken into account. [...] explained that [...] ⁵³⁴ [...] mentioned legislative requirements for real estate brokers as another potential difference affecting OCAS platforms in different countries.⁵³⁵ As [...] submitted [...].⁵³⁶
- (570) Meta has not contested the Commission's conclusion that the market for OCAS is national in scope.

5.6. Conclusion on relevant geographic markets

- (571) In conclusion, for the purpose of this Decision, the relevant geographic markets are: (i) the EEA-wide market for personal social networking services including hybrid social media platforms; (ii) the national markets for online display advertising on social media platforms; and (iii) the national markets for OCAS.

6. DOMINANCE

6.1. Principles

- (572) A dominant position, as referred to in Article 102 TFEU, relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of its consumers.⁵³⁷

⁵²⁹ [...].

⁵³⁰ Replies to Q30 of the Commission's RFI to OCAS providers of August 2019 and replies to Q3 of the Commission's RFI to OCAS providers of March 2020.

⁵³¹ Replies to Q31 of the Commission's RFI to OCAS providers of August 2019.

⁵³² [...].

⁵³³ See *e.g.* [...].

⁵³⁴ [...].

⁵³⁵ [...].

⁵³⁶ [...].

⁵³⁷ Case 27/76 *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 65; Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 38; and Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 229.

- (573) A finding of dominance does not require that an undertaking has eliminated all opportunity for competition in the market.⁵³⁸ Even the existence of lively competition on a particular market does not rule out the possibility that there is a dominant position on that market, since the predominant feature of such a position is the ability of the undertaking concerned to act without having to take account of such competition in its market strategy and without for that reason suffering detrimental effects from such behaviour.⁵³⁹
- (574) The existence of a dominant position derives in general from a combination of several factors which, taken separately, are not necessarily determinative.⁵⁴⁰ One important factor is the existence of very large market shares, which are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position.⁵⁴¹ That is the case where a company has a market share of 50% or above.⁵⁴² Likewise, a share of between 70% and 80% is, in itself, a clear indication of the existence of a dominant position in a relevant market.⁵⁴³
- (575) A comparison between the market shares of the undertaking concerned and of its competitors is also an important indicator of dominance. For example, an undertaking which holds a very large market share for some time, without smaller competitors being able to meet rapidly the demand from those who would like to break away from that undertaking, is by virtue of that share in a position of strength which makes it an unavoidable trading partner and which, already because of this, secures for it, at the very least during relatively long periods, that freedom of action which is the special feature of a dominant position.⁵⁴⁴
- (576) While in fast-growing sectors characterised by short innovation cycles, large market shares may sometimes turn out to be ephemeral and not necessarily indicative of a dominant position,⁵⁴⁵ the fact that an undertaking may enjoy high market shares in a fast-growing market cannot preclude application of the competition rules, in particular Article 102 TFEU, especially if a fast-growing market does not show signs of market instability during the period at issue and, on the contrary, a rather stable hierarchy is established.⁵⁴⁶

⁵³⁸ Case 27/76 *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 113.

⁵³⁹ Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 70; and Case T-340/03 *France Télécom SA v Commission*, EU:T:2007:22, paragraph 101.

⁵⁴⁰ Case 27/76 *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 66.

⁵⁴¹ Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; and Case T-65/98 *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154.

⁵⁴² Case C-62/86 *Akzo v Commission*, EU:C:1991:286, paragraph 60; Case T-340/03 *France Télécom SA v Commission*, EU:T:2007:22, paragraph 100; and Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 150.

⁵⁴³ Case T-30/89 *Hilti v Commission*, EU:T:1991:70, paragraph 92; Joined Cases T-191/98, T-212/98 to T-214/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 907; Case T-66/01 *Imperial Chemical Industries v Commission*, EU:T:2010:255, paragraph 257; and Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 150.

⁵⁴⁴ Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; Case T-139/98 *AAMS v Commission*, EU:T:2001:272, paragraph 51; Case T-65/98 *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154; and Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 149.

⁵⁴⁵ Case T-79/12 *Cisco Systems, Inc. and Messagenet SpA v European Commission*, EU:T:2013:635, paragraph 69.

⁵⁴⁶ Case T-340/03 *France Telecom v Commission*, EU:T:2007:22, paragraphs 107 and 108.

- (577) The fact that a service is offered free of charge does not preclude the finding of dominance. In *Google Shopping*, the General Court rejected Google's arguments that the fact that its service was offered to users free of charge changed the assessment of dominance.⁵⁴⁷ The Commission also considers whether there are technical or economic constraints that might prevent users from switching providers.⁵⁴⁸
- (578) Other important factors when assessing dominance are the existence of countervailing buyer power and the existence of barriers to entry or expansion, preventing either potential competitors from having access to the market or actual competitors from expanding their activities on the market.⁵⁴⁹ Such barriers may result from a number of factors, including exceptionally large capital investments that competitors would have to match, network externalities that would entail additional cost for attracting new customers, economies of scale from which newcomers to the market cannot derive any immediate benefit and the actual costs of entry incurred in penetrating the market.⁵⁵⁰ Switching costs are therefore only one possible type of barrier to entry and expansion.

6.2. Application to this case

- (579) For the purpose of this Decision, the Commission concludes that Meta holds a dominant position in the following relevant markets at least since 2017:
- (1) the EEA-wide market for personal social networking services including hybrid social media platforms; and
 - (2) each national market for online display advertising on social media platforms in the EEA.

6.3. The EEA-wide market for personal social networking services including hybrid social media platforms

- (580) The Commission concludes that Meta holds a dominant position in the EEA-wide market for personal social networking services including hybrid social media platforms at least since 2017.
- (581) This conclusion is based on the following considerations:
- (1) The high market shares of Meta in that market (section 6.3.1);
 - (2) The existence of barriers to entry and expansion (section 6.3.2);
 - (3) The lack of countervailing buyer power (section 6.3.3);
 - (4) The fact that Meta does not experience any significant competitive constraints from the advertising side of the platform (section 6.3.4); and
 - (5) Meta's claims regarding the lack of dominance on the market for personal social network services including hybrid social media platforms are unfounded (section 6.3.5).

⁵⁴⁷ Judgment of the General Court of 10 November 2021, *Google Shopping*, T 612/17, EU:T:2021:763, paragraphs 54 and 314.

⁵⁴⁸ Case T-79/12 *Cisco Systems, Inc. and Messagenet SpA v European Commission*, EU:T:2013:635, paragraph 73.

⁵⁴⁹ Case 27/76 *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraph 122; and Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 48.

⁵⁵⁰ Case 27/76 *United Brands and United Brands Continental v Commission*, EU:C:1978:22, paragraphs 91 and 122.

6.3.1. Market shares

- (582) The Commission finds that Meta has enjoyed strong and stable market shares across the EEA since 2017 until the present, and that there have been few entries in EEA Member States during that period. This provides a strong indication of Meta's competitive strength in the EEA on the market for personal social networking services including hybrid social media platforms.
- (583) The Commission's assessment relies on market shares by usage volume (*i.e.* number of users) instead of value for the following reasons. First, given that personal social networking services as well as hybrid social media platforms are provided free of charge to the user, meaning that no revenues are directly generated by the user facing side of the platform, market power in relation to the user facing side cannot be measured in value. From this perspective, it is not possible to rely on market shares by value since the only revenues that could be calculated would be the one stemming from the advertising business. Second, the number and identity of connections available on a given platform play an important role in new users' decisions to join a personal social network. Third, as regards the advertising side, when deciding where to place their online display advertisements, advertisers look at the number of users on a platform. This indicates that the number of users is a relevant metric for the market position of personal social networks and hybrid social media platforms. The relevance of the number of (active) users as a metric for assessing the competitive position of a personal social network like Facebook is also reflected in Meta's own reliance on them as a key indicator of business performance.⁵⁵¹ Fourth and finally, the number of users of a platform is very important as the consequences of the direct network effects and indirect network effects stem from them.
- (584) There are several methods to calculate market shares for the market for personal social networking services including hybrid social media platforms by usage volume. In these proceedings, the Commission has relied on the metrics of daily active users ("DAU") and monthly active users ("MAU"). Daily active users are defined as the number of unique visitors who have logged into a given platform at least once in a given day. MAU are defined as the number of unique visitors who have logged into a given platform at least once in the relevant month.
- (585) As set out in section 4.3.8.4, the Commission considers that hybrid social media platforms impose less effective and less immediate competitive constraints on Facebook as users use these services for different reasons and purposes than Facebook.
- (586) Nevertheless, in order to evaluate the strength of the possible competitive constraints by these hybrid social media platforms exercised on personal social network services, the Commission has calculated usage shares on a market that includes, besides personal social network services, Instagram, TikTok and Snapchat (see Table 1 and Table 2). These market shares of TikTok and Snapchat over-estimate the constraints posed by these three platforms on Facebook given that they are calculated

⁵⁵¹ As used in public and internal Meta documents, *e.g.* Meta's 2021 Annual Report, available at <https://investor.fb.com/financials/default.aspx>, downloaded on 6 September 2022 (ID5125): "The size of our user base and our users' level of engagement are critical to our success [...]. The numbers for our key metrics are calculated using internal company data based on the activity of user accounts. We have historically reported the numbers of our daily active users (DAUs), monthly active users (MAUs), and average revenue per user (ARPU)". See also [...] (ID29-80) [...] (ID29-3).

under the assumption that those three platforms are sufficiently close competitors of Facebook to be in the same relevant market.

- (587) As indicated in Table 1, Meta's usage shares based on DAU on the EEA-wide market for personal social networking services including hybrid social media platforms was above [...] in the period 2017-2019 and remained above [...] in 2020–2023. There are no indications that Meta's position on the relevant market in 2024 has changed.

Table 1: Usage shares based on daily active users (EEA) for the market for personal social networking services including hybrid social media platforms⁵⁵²

[...]

- (588) As indicated in Table 2, Meta's usage shares based on MAU on the EEA-wide market for personal social networking services including hybrid social media platforms was above [...] in the period 2017-2021 and remained above [...] in the period 2022–2023.

Table 2: Usage shares based on MAU (EEA) for the market for the personal social networking services including hybrid social media platforms⁵⁵³

[...]

- (589) Independently of the volume metric used, Meta holds market shares on the relevant market above [...] since August 2017. As set out in section 6.1, according to the case law, such large market shares represent a clear indication of a dominant position in the relevant market.
- (590) Furthermore, all other personal social networking services present on this market have a significantly lower share of active users, not comparable to that of Facebook. In addition, some of those players, as Google+, have also exited the market during the relevant period.
- (591) Moreover, the largest hybrid social media platforms, *i.e.* Instagram, cannot be considered to constrain Facebook, as both platforms belong to Meta.
- (592) Finally, in the EEA, none of the other platforms has a market share close to any of Meta's platforms in any of the years under consideration. At their highest market share values, both Snapchat and TikTok are well below the share of Facebook and Instagram individually and Meta's combined market share for Facebook and Instagram.
- (593) For clarity, the calculations above do not include the market shares of BeReal due its marginal presence on the relevant market. Even if BeReal could be considered a

⁵⁵² Commission's calculations based on replies to the Commission's RFIs to social media platforms of August 2019, March 2020, November 2021, March 2022 and June 2023, Snap's reply to Q F.1 of the Commission's RFI to Snap of July 2023, TikTok's reply to Q F.1 of the Commission's RFI to TikTok of July 2023, and Meta's replies to Commission's RFIs to Meta of June 2021, December 2021 and July 2023. EEA data includes the UK for the years 2017-2019 and excludes the UK for the years 2020-2023. 2023 market shares are based on January – June data only.

⁵⁵³ Commission's calculations based on replies to the Commission's RFIs to social media platforms of August 2019, March 2020, November 2021, March 2022 and June 2023, Snap's reply to Q F.1 of the Commission's RFI to Snap of July 2023, TikTok's reply to Q F.1 of the Commission's RFI to TikTok of July 2023, and Meta's replies to Commission's RFIs to Meta of June 2021, December 2021 and July 2023. EEA data includes the UK for the years 2017-2019, and excludes the UK for the years 2020-2023. 2023 market shares are based on January – June data only.

recent entrant (2020) in the market for personal social networking services including hybrid social media platforms, it would have a relatively low number of daily active users as compared to the size of the market [...].⁵⁵⁴

- (594) The Commission's finding that Meta's high market share on the EEA-wide market for personal social networking services including hybrid social media platforms since at least 2017 indicates that Meta has a dominant position on that market is not contradicted by Meta's arguments. According to Meta:
- (1) The Commission ascribes Facebook with a declining market share confirming that Facebook is subject to strong competitive constraints;⁵⁵⁵ the Commission fails to include many of Facebook's close competitors in the relevant market, including YouTube.⁵⁵⁶
 - (2) Time spent is the appropriate metric for assessing market shares in a market for user's attention characterised by multi-homing and an analysis of a broader set of players including different attention services on a "time spent" basis shows that Facebook's share of supply is low and declining. EEA users spent between [...] of their online time on Facebook in the period 2019-2022.⁵⁵⁷
 - (3) The Commission's approach to calculate market shares leads to double-counting of users who are active on both Facebook and Instagram.⁵⁵⁸ Market shares based on Meta's unique users show that, on a market that includes YouTube and other platforms⁵⁵⁹ (in addition to those included in the Commission's relevant market), Meta's MAU market share for unique users in the EEA was [...] % in 2019-2021⁵⁶⁰ and [...] % in the first months of 2023.⁵⁶¹
- (595) First, Meta's market shares on the market for personal social networking services including hybrid social media platforms, based on both DAU and MAU metric, fully corroborates Commission's conclusion that Meta holds a dominant position on that market at least since 2017.
- (596) In the first place, these market shares underestimate the market power of Meta given that the relevant market definition considered by the Commission includes hybrid social media platforms despite the fact that they impose less effective and less immediate competitive constraints on Facebook. This is illustrated by data regarding Facebook's market share on the market for personal social networking services

⁵⁵⁴ On the basis of the information and data on the file concerning the number of DAUs of other hybrid social media platforms in the EEA, the Commission established that in 2023 BeReal's market share on the EEA-wide market for personal social networking services including hybrid social network platforms was marginal [...]. Commission's calculations based on [...].

⁵⁵⁵ SO Response, paragraph 110 and Annex 4 to the SO Response, section 2.3.

⁵⁵⁶ SO Response, paragraphs 108 to 110 and Annex 4 to the SO Response, section 2.1., Comments on the LoF, paragraphs 102(d) and 103(d).

⁵⁵⁷ SO Response, paragraphs 111 to 114, Annex 4 to the SO Response, sections 2.2, 4.1 and 4.2., Comments on the LoF, paragraphs 102(b), 103(a), Annex 1 to the Comments on the LoF, section 3.1.

⁵⁵⁸ SO Response, paragraph 115, Comments on the LoF, paragraph 102(c).

⁵⁵⁹ Such as Twitter, Pinterest, LinkedIn, Reddit, Twitch, Tumblr and Vimeo.

⁵⁶⁰ SO Response, paragraphs 115 and 116 and Annex 4 to the SO Response, sections 2.4 and 4.3.

⁵⁶¹ Fourth Confidential Data Room Quantitative Report – 21.04.23 – Annex (User market shares – Unique & non-unique), Comments on the LoF, paragraph 103(c), Annex 1 to the Comments on the LoF, section 3.2.

(excluding hybrid social media platforms). This data shows that on such a market Facebook's market share was above [...] % throughout the period 2017-2021.⁵⁶²

- (597) Similarly, Meta's claim that the Commission failed to include many of the close competitors of Facebook in the relevant market is unfounded. As explained in section 4.3, personal social networking services do not belong to the same relevant market as other types of media platforms. In particular, as set out in section 4.3.7, YouTube, which is a video entertainment platform, does not belong to the same relevant market. Consequently, YouTube's market share was not taken into account when assessing Facebook's market share.
- (598) In the second place, the fact that Meta's market share declined over a period of several years does not give sufficient grounds to claim that Meta has been subject to strong competitive constraints. The Commission notes that the fluctuation in Meta's market share did not result from the decrease in the absolute number of Meta's users as, in fact, the number of Meta's DAUs and MAUs have increased every year in the period between 2017 and 2023. The Commission further underscores that during the entire period Meta has maintained the position of market leader with a market share amounting to at least [...] % while its competitors follow with a market share of less than [...] during most of the relevant period. At the same time the growth of its close competitors in that period was limited or stable.
- (599) Second, time spent is not the best metric for market shares in the market for personal social networking services including hybrid social media platforms as opposed to DAU and MAU metrics, which provide more informative insights into the reach of digital multi-sided platforms. This is because the user base indicates the potential impact of a social media platform on the market. As explained at recitals (611) to (619) below, social media platforms benefit from network effects, where the value of the platform increases the larger the number of users that join it. Platforms with the larger number of active users tend to attract more users (direct network effect), which makes a platform more attractive and valuable for users on the other side of the platform, as they can better reach their customers (indirect network effect).
- (600) Consequently, metrics that are based on the user base reflecting network effects provide a more accurate measure to assess the market position of personal social networks.
- (601) The metric of time spent, on the other hand, has limitations. Firstly, time spent on a personal social network does not necessarily indicate the quality of user engagement. Users are present on personal social networks mainly to stay in touch with their friends and family, which includes viewing content related to them. However, some content in user's newsfeed is prompted and might be of no interest to them. Thus, users may spend a significant amount of time on a personal social network without actively engaging with it or benefiting from it. For example, scrolling passively through content may inflate the time spent metrics without meaningful interactions on the platform. Secondly, different personal social networking services as well as hybrid social media platforms serve different purposes and use cases, which impacts users' behaviour on those platforms. Indeed, certain social media platforms, such as

⁵⁶² Commission's calculations based on replies to the Commission's RFIs to social media platforms of August 2019, March 2020, November 2021 and March 2022, and Meta's replies to Commission's RFIs to Meta of June 2021 (ID2017) and December 2021 (ID2273). EEA data includes the UK for the years 2017-2019, and excludes the UK for the years 2020-2021.

video streaming services, may naturally lend themselves to more time spent, while others are designed for quick interactions. Therefore, the use of time spent as a metric to assess market position of social media platforms may result into overlooking the unique characteristics and dynamics of specific social media platforms. Subsequently, comparing time spent across various social media platforms may not provide an accurate assessment of the intensity of the competitive process among them. Therefore, the metrics provided by Meta concerning time spent on Facebook do not provide an accurate proxy for assessing Meta's market power on the relevant market.

- (602) The Commission further underscores that Meta's calculations count in a range of different providers competing, according to Meta, with Facebook for user's time and attention (*e.g.*, YouTube, LinkedIn, X, Vimeo, Reddit, Pinterest and others). However, as explained at recitals (325) to (329) above, a market for user attention does not exist. Subsequently, these providers do not compete with Meta in the same relevant market for personal social networking services including hybrid social media platforms.
- (603) Finally, for the sake of completeness, the Commission has calculated Meta's share of time spent on the EEA-wide market for personal social networking services including hybrid social media platforms on the basis of the data available on file.⁵⁶³ On this basis, the Commission observes that Meta's market share based on total number of minutes spent by users is above [...] % in 2017-2023.⁵⁶⁴ Thus, even based on this metric Meta's market share indicates that it is by far the leading market player on the market for personal social networking services including hybrid social media platforms.
- (604) Third, contrary to Meta's claim, it is not appropriate to de-duplicate users of Facebook and Instagram to calculate market shares for the purpose of assessing dominance.
- (605) In the first place, the nature of this market with some users multi-homing among different platforms will always result in a duplication of users among different platforms. However, in each of the platforms, the user is performing different actions and may be also aiming at satisfying different needs. It thus makes sense to count the same user as many times as the number of platforms they use.
- (606) In the second place, as indicated at recital (603) above and in any event, calculating market shares based on time spent (which is a measure of exclusive usage of a platform and hence does not entail any "double counting") shows that Meta accounts for over [...] % of the total time spent by users on the market for personal social networking services including hybrid social media platforms throughout the relevant period.

⁵⁶³ Not all market participants record time spent data in the course of business. Therefore, the calculation lacks data from [...]. However, in light of these players' low number of users (relative to that of the other market players), the Commission considers that their omission does not result in a significant overestimation of Meta's market share.

⁵⁶⁴ Commission's calculations based on replies to the Commission's RFIs to social media platforms of August 2019, March 2020, November 2021, March 2022 and June 2023, Snap's reply to Q F.1 of the Commission's RFI to Snap of July 2023, TikTok's reply to Q F.1 of the Commission's RFI to TikTok of July 2023, and Meta's replies to Commission's RFIs to Meta of June 2021, December 2021 and July 2023. EEA data includes the UK for the years 2017-2019, and excludes the UK for the years 2020-2023. 2023 market shares are based on January – June data only.

(607) In the third place, even following the same analysis as Meta to calculate market shares discounting double-counting between Facebook and Instagram users, Meta's market shares would remain above [...] % in the period 2017–2022, and above [...] % in January–June 2023 on a market that includes personal social networking services and hybrid social media platforms.⁵⁶⁵

6.3.2. *Barriers to entry and expansion*

(608) The Commission finds that the EEA-wide market for personal social networking services including hybrid social media platforms is characterised by the existence of a number of barriers to entry and expansion.

(609) First, whereas starting a personal social network platform is theoretically inexpensive, scaling such a platform and establishing fully-fledged personal social networking services requires extremely large investments in terms of time and resources. The conclusion is similar for hybrid social media platforms.

(610) The majority of the respondents to the Commission's request for information to social media platforms consider that the investment required to develop at scale a competitive personal social networking platform as well as a hybrid social media platform constitutes a considerable barrier to entry. Similarly, launching a new personal social networking as well as a hybrid social media platform service would require a huge amount of time and resources.⁵⁶⁶ For example:

- (1) According to [...].⁵⁶⁷
- (2) According to [...].⁵⁶⁸
- (3) According to [...].⁵⁶⁹
- (4) According to [...].⁵⁷⁰ In addition, [...].⁵⁷¹
- (5) According to [...].⁵⁷²
- (6) According to [...].⁵⁷³

(611) Second, the existence of direct and indirect network effects on both sides of the two-sided platform formed by, on the one hand, the personal social networking services and, on the other hand, the online display advertising services creates an additional barrier to entry.

⁵⁶⁵ Commission's calculations based on replies to the Commission's RFIs to social media platforms of August 2019, March 2020, November 2021, March 2022 and June 2023, Snap's reply to Q F.1 of the Commission's RFI to Snap of July 2023, TikTok's reply to Q F.1 of the Commission's RFI to TikTok of July 2023, and Meta's replies to Commission's RFIs to Meta of June 2021, December 2021, July 2023 and August 2023. In this context, the Commission subtracted from the total number of Meta users (*i.e.* the sum of Facebook and Instagram users) one time the number of users that are present in both Facebook and Instagram in order to eliminate the double counting of those users. The resulting market shares still reflect double counting of users that use platforms of different providers (*e.g.* a user of Facebook that is also a user of Snap will be counted twice, once for each of the platforms). Replies to Q34 of the Commission's RFI to social media platforms of August 2019.

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[...].

[...].

[...].

[...].

[...].

[...].

[...].

- (612) As mentioned above, the Commission's investigation shows that the primary reason for users to access Facebook is to get in touch with family and friends, and this gives rise to strong direct network effects. Direct network effects for a personal social networking service means that the utility for users increases when there are more users using the platform, considering that they have more benefits from being on the platform if many of their family members and/or friends are also there. Users leaving the platform risk losing all their virtual contacts. In the case of hybrid social media platforms, this effect, although weaker, is also very relevant as users would still prefer to join a platform where they can follow a large number of other users.
- (613) In other words, in relation to direct network effects, there is widespread consensus among respondents to the Commission's market investigation that an extensive user base in personal social networking services considerably increases the attractiveness of the service to users, thereby creating self-reinforcing network effects.⁵⁷⁴ By way of examples:
- (1) According to [...] ⁵⁷⁵ and [...] ⁵⁷⁶
 - (2) According to [...] ⁵⁷⁷
 - (3) According to [...] ⁵⁷⁸
 - (4) According to [...], the main reason why users decide to use Facebook as a social network is simply that Facebook: [...] ⁵⁷⁹
 - (5) According to [...] ⁵⁸⁰
 - (6) According to [...] ⁵⁸¹ and [...] ⁵⁸²
 - (7) According to [...] ⁵⁸³
 - (8) According to [...] ⁵⁸⁴ and [...] ⁵⁸⁵
- (614) Therefore, the Commission finds that direct network effects can constitute a significant barrier to entry, as users with a social graph connected to an incumbent service are generally strongly disincentivised from switching to emerging platforms, which do not boast an equally extensive user base. For [...], the main reason why users decide to use Facebook as a social network is simply that Facebook [...] ⁵⁸⁶
- (615) Furthermore, there are also strong indirect network effects, which are typical of multi-sided platforms: the higher the number of users of a personal social networking service (or hybrid social media platform), the greater the likelihood that a given advertisement is matched to a user and converted into a sale. This, in turn, increases the demand for online display advertising services thus increasing the revenues the

⁵⁷⁴ Replies to Q35 of the Commission's RFI to social media platforms of August 2019.

⁵⁷⁵ [...].

⁵⁷⁶ [...].

⁵⁷⁷ [...].

⁵⁷⁸ [...].

⁵⁷⁹ [...].

⁵⁸⁰ [...].

⁵⁸¹ [...].

⁵⁸² [...].

⁵⁸³ [...].

⁵⁸⁴ [...].

⁵⁸⁵ [...].

⁵⁸⁶ [...].

personal social network or the hybrid social media platform generates with advertisements. The personal social network (or the hybrid social media platform) can then reinvest that additional revenue in seeking to attract new users to its services.

- (616) This results in Meta better performing than its competitors, which are not equally able to attract advertisers due to their lack of such a large user-base. Those competitors are unable to exert a significant competitive constraint on Meta, because (i) their less developed networks of users are unable to satisfy the needs of Facebook's users and, accordingly, (ii) they are unable to attract a significant number of advertisers. Entrants must be successful on both sides of the platform as a pure advertising free model is not viable in such an industry.⁵⁸⁷
- (617) Moreover, direct and indirect network effects mutually reinforce each other. This is because it is of crucial importance for an entrant to reach a critical mass which will enable it to attract new users and advertisers, which would then allow it to monetize the platform.
- (618) Several respondents to the Commission's request for information indicated that Facebook benefits from considerable self-reinforcing direct and indirect network effects. By way of example:
- (1) According to [...] ⁵⁸⁸ In addition: [...] ⁵⁸⁹ and [...] ⁵⁹⁰
 - (2) According to [...] ⁵⁹¹
 - (3) According to [...] ⁵⁹²
 - (4) According to [...] ⁵⁹³
 - (5) According to [...] ⁵⁹⁴
 - (6) According to [...] ⁵⁹⁵
 - (7) According to [...] ⁵⁹⁶
- (619) Some respondents also referred to the user base necessary to be able to compete effectively as a "critical mass". Meetup stated that in order to compete in the provision of personal social networking services: [...] ⁵⁹⁷ Similarly, [...] ⁵⁹⁸
- (620) Third, personal social networking services as well as hybrid social media platforms are largely data-driven. Facebook's access to extensive behavioural data of its users further constitutes an additional barrier to entry and expansion in the market. Based on its investigation, the Commission finds that, to compete viably, a personal social

⁵⁸⁷ The only advertising free platform is [...] whose user base is very small. All major social media platforms are monetised via advertising or hybrid models.

⁵⁸⁸ [...].

⁵⁸⁹ [...].

⁵⁹⁰ [...].

⁵⁹¹ [...].

⁵⁹² [...].

⁵⁹³ [...].

⁵⁹⁴ [...].

⁵⁹⁵ [...].

⁵⁹⁶ [...].

⁵⁹⁷ [...].

⁵⁹⁸ [...].

networking service provider (as well as a hybrid social media platform) needs a certain amount of data and very sophisticated data processing abilities in order to improve its own services and, therefore, its attractiveness to both users and advertisers. The greater the number of users and the more user engagement the platform is able to generate, the more data it can gather and the better will the social networking service provider be able to compete viably.

(621) Almost all of the respondents to the Commission's requests for information underscore that access to data constitutes a considerable barrier to entry.⁵⁹⁹ For example:

(1) According to [...].⁶⁰⁰

(2) According to [...].⁶⁰¹

(3) According to [...].⁶⁰²

(4) According to [...].⁶⁰³

(5) According to [...].⁶⁰⁴

(622) Moreover, Meta's access to data is comparatively greater than any rival, due not only to the scale of activity on its personal social network but also to the reach of its associated tools over the entire Internet.

(623) [...] in this regard indicated that [...].⁶⁰⁵

(624) In reference to Meta's self-reinforcing scale of access to data, [...] claimed to [...].⁶⁰⁶ A further, anonymous market participant claimed that its access to data is likely to be significantly inferior to that of Facebook and that this is due to both scale and design.⁶⁰⁷ It further explained that Facebook is able to harvest data from multiple third-party sources in a way that no other company in the social network space is able to do. In the anonymous party's view that is due in part to its market dominance, which gives it the ability to dictate data-sharing terms to its partners, and in part to its design decisions.⁶⁰⁸ In this context, [...] also stated that [...].⁶⁰⁹ [...] also explained that one of the challenges to compete in this market is [...].⁶¹⁰

(625) Similarly, [...] explained that the ability to collect user data by different platforms is limited as this data is non-public and personalised and users might not be willing to store it in different platforms: [...].⁶¹¹

(626) Finally, the existence of barriers to entry and expansion is supported by a number of additional factors.

⁵⁹⁹ Replies to Q8 of the Commission's RFI to social media platforms of March 2020 and Q36 of the Commission's RFI to social media platforms of August 2019.

⁶⁰⁰ [...].

⁶⁰¹ [...].

⁶⁰² [...].

⁶⁰³ [...].

⁶⁰⁴ [...].

⁶⁰⁵ [...].

⁶⁰⁶ [...].

⁶⁰⁷ [...].

⁶⁰⁸ [...].

⁶⁰⁹ [...].

⁶¹⁰ [...].

⁶¹¹ [...].

- (627) In the first place, since 2009⁶¹², there have been very few successful entrants in the EEA-wide markets for personal social networking services including hybrid social media platforms. For instance, Google+, which was launched by its parent company, Alphabet, in 2011, was discontinued in April 2019 despite being heavily funded and benefiting from Google's significant engineering resources. [...].⁶¹³
- (628) The failure of a new entrant in the market for personal social networking services including hybrid social media platforms, which enjoyed the financial and technological backing of Google, one of the wealthiest companies in the world, is indicative of the significant barriers to entry in this market and of entrenchment of Meta's dominance.
- (629) This is confirmed by several respondents to the Commission's request for information:
- (1) According to [...].⁶¹⁴
 - (2) According to [...].⁶¹⁵
 - (3) According to [...].⁶¹⁶
- (630) A number of other providers⁶¹⁷ have also attempted to launch competing personal social networking services. None of these companies have, however, been able to establish a significant market presence. Many have stopped providing personal social networking services and have exited the market as a result. According to [...].⁶¹⁸
- (631) In reference to [...].⁶¹⁹
- (632) In the second place, some respondents have also pointed to regulatory barriers to entry in the market for personal social networking services including hybrid social media platforms, referring in particular, at EEA level, to the need of ensuring compliance with the General Data Protection Regulation (GDPR) and the EU Directive on Copyright in the Digital Single Market⁶²⁰:
- (1) According to [...].⁶²¹ and [...].⁶²²
 - (2) According to [...].⁶²³
 - (3) According to [...].⁶²⁴ and [...].⁶²⁵
 - (4) According to [...].⁶²⁶

⁶¹² Starting from 2009, Facebook became increasingly popular in the EEA.

⁶¹³ [...].

⁶¹⁴ [...].

⁶¹⁵ [...].

⁶¹⁶ [...].

⁶¹⁷ Examples are Vine and iTunes Ping, respectively owned by Twitter and Apple.

⁶¹⁸ [...].

⁶¹⁹ [...].

⁶²⁰ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. OJ, L 130, 17.5.2019, page 92.

⁶²¹ [...].

⁶²² [...].

⁶²³ [...].

⁶²⁴ [...].

⁶²⁵ [...].

⁶²⁶ [...].

- (5) According to [...].⁶²⁷
- (633) According to [...], the EEA applies strict and enforced rules, which personal social networking services and hybrid social media platforms will have to abide by. The company stated that [...].⁶²⁸
- (634) In the third place, talent recruitment and retention represent a further barrier to entry. [...] stated that [...].⁶²⁹
- (635) In the fourth place, Meta's capital strength and consequent ability to acquire competitors and innovators creates a further barrier to entry and this is concretely shown by the acquisition of Instagram (2012) and WhatsApp (2014). [...] pointed out, Meta boasts a considerable capital strength, as: [...].⁶³⁰
- (636) Meta's M&A activities can involve companies offering complementary or competing services. By integrating these companies into their own ecosystem of services, Meta can create a comprehensive suite of offerings that provide experience to users that is difficult to match by its rivals. The integration and interoperability of different services make it more challenging for potential competitors to replicate or offer a comparable ecosystem efficiently.
- (637) The FTC's findings confirm this. In the FTC Complaint, it was found that Facebook engaged in anticompetitive acquisitions of Instagram and WhatsApp to neutralize competition and thus to protect its market position.⁶³¹ The FTC argued that, among others, the acquisitions allowed Meta to control multiple platforms that posed a competitive threat to its dominance. In addition, the acquisitions effectively removed potential competitors from the market, limiting users' choices and potentially stifling competition and consumer welfare. The FTC based its findings on a number of Meta internal documents and the analysis of data from third parties.
- (638) In the fifth place, Meta's practice of emulating and sometimes entirely copying successful features of competitors also constitutes a barrier to entry. In fact, Meta, as an incumbent, has abilities and incentives to emulate the features offered by new entrants, which can create barriers to entry and expansion. This is because by having access to a user base of unique size, Meta can quickly develop and launch features similar to those offered by new entrants, especially if those features are successful. Meta can also obtain feedback and data for improving and refining such features. This ability to test new features and Meta's capability to emulate innovative features offered by new entrants places these entrants at a competitive disadvantage. This is because new entrants may find it difficult to attract and retain users with the launch of innovative features, as those same features are also immediately offered in the network they already belong to, thus, making it not worth for users to incur the costs of switching to the service of new entrants.

⁶²⁷ [...].

⁶²⁸ [...].

⁶²⁹ [...].

⁶³⁰ [...].

⁶³¹ The FTC Complaint, Section A. *Facebook Has Engaged in Anticompetitive Acquisitions to Protect Its Dominant Position, Including the Acquisitions of Instagram and WhatsApp of the Complaint*, as of page 26.

- (639) This is confirmed by [...] that stated that part of Meta's success also stems, besides from acquiring innovative companies, from: [...] ⁶³² [...] also explained that [...]. ⁶³³
- (640) Furthermore, a strategy implemented by incumbents (such as Meta) to replicate features and functionalities to services offered by new market entrants that can result in creating further barriers to entry or expansion has been also recognized by other public bodies. In particular, in its *Digital platforms services inquiry* the ACCC explained that “[...] *strategic replication and changes to interoperability by incumbents may also increase the risks faced by new entrants by reducing the likelihood that they gain scale with their innovative offerings, and may also create strategic barriers to entry and expansion. In the case of Vine's entry, media observed that Instagram's introduction of 15-second clips to its platform was the 'beginning of the end' for Vine. As a result, new entrants may be unable to gain a foothold in a complementary service that would enable them to, in future, develop a service that is a close substitute to Facebook or Instagram. Further, incumbents may build up a reputation for quick imitation of successful features and thereby discourage potential entrants to develop new features.*” ⁶³⁴
- (641) The Commission's conclusion that the EEA-wide market for personal social networking services including hybrid social media platforms is characterised by the existence of a number of barriers to entry and expansion is not contradicted by Meta's arguments that: ⁶³⁵
- (1) Access to investment funds is not an insurmountable barrier, as access to capital to upscale a social media platform is predicated on the fact that a fast-moving market is prone to disruption and innovation. This is shown by the case of BeReal that managed to acquire significant funding in the recent years. Start-ups offering features for which there is user demand can acquire funds to expand their business. ⁶³⁶
 - (2) There have been examples of close competitors to Facebook that have grown remarkably in the recent year, notably: BeReal, TikTok, YouTube, Snapchat and others. ⁶³⁷
- (642) First, if it is true that BeReal was able to initially get access to significant funding, it can be seen as an exception. Besides, the example of BeReal, if something, shows that the simple access to significant investments does not in itself guarantee successful expansion. Indeed, even if, as Meta argues, BeReal has access to significant funding, as mentioned at recital (593) above, BeReal only has a marginal presence on the relevant market and [...]. [...] ⁶³⁸ In addition, [...]. ⁶³⁹

⁶³² [...].

⁶³³ [...].

⁶³⁴ ACCC (2023), *Digital platforms services inquiry – March 2023 interim report*, page 120, available at: <https://www.accc.gov.au/system/files/Digital%20platforms%20services%20inquiry%20-%20Interim%20report%206%20-%20Report%20on%20social%20media%20services0.pdf>, downloaded on 14 November 2023 (ID11740).

⁶³⁵ Meta further argues that its broader access to data, its M&A activities, the regulatory requirements in the EEA and its development of similar features do not constitute a barrier to entry or expansion (paragraphs 66 (a), (c), (d) and (e). However, it does not provide any concrete set of evidence supporting these.

⁶³⁶ SO Response, paragraph 66 (b).

⁶³⁷ SO Response, paragraphs 65 and 66, Comments on the LoF, paragraph 105(a).

⁶³⁸ [...].

- (643) Second, the instances of market entry in the space of social media platforms do not contradict the Commission's findings that the EEA-wide market for personal social networking services including hybrid social media platforms is characterised by the existence of a number of barriers to entry and expansion.
- (644) In the first place, the examples of entry on the relevant market specified by Meta also confirm the existence of barriers to entry or expansion. In particular, Google+, one of the close competitors to Facebook, failed despite access to significant resources. As explained by [...].⁶⁴⁰ Similarly, BeReal has a marginal presence on the market and [...].⁶⁴¹
- (645) In the second place, as described in section 6.3.1, on the EEA-wide market for personal social networking services including hybrid social media platforms, neither Snapchat nor TikTok have achieved a market share close to Meta's platforms in any of the years under consideration. At their highest market share values, both Snapchat and TikTok have been well below the share of Facebook and Instagram individually and Meta's combined market share for Facebook and Instagram. This confirms that even successful market entrants struggle to compete effectively with Facebook.
- (646) In the third place, as explained in section 4.3.7, YouTube is not a close competitor to Facebook and, as a video entertainment platform, it does not belong to the same relevant market as Meta. Given its long-standing market presence, YouTube cannot be considered a market entrant.

6.3.3. *Lack of countervailing buyer power*

- (647) The Commission concludes that the EEA-wide market for personal social networking services including hybrid social media platforms is characterised by a lack of countervailing buyer power on the user-facing side of the platform, *i.e.* as regards the end-consumers of such a service.
- (648) First, each user represents only a tiny fraction of the total user-base that Facebook is able to host. Facebook has more than more than 2.9 billion users around the world and more than [...] users in the EEA.⁶⁴² Consequently, individual users cannot exercise any countervailing buyer power *vis-à-vis* Facebook.
- (649) Second, as described in section 6.3.2 above, responses to the Commission's requests for information confirmed that users will not easily consider leaving a personal social network such as Facebook. Once they have built their network of family and friends, the construction of a new virtual identity is a time-consuming activity for users. Moreover, they may not encounter their previous connections on the personal social networking platform to which they have switched.
- (650) [...] also noted that [...].⁶⁴³ It further pointed out that [...].⁶⁴⁴
- (651) This was acknowledged by Meta itself in the context of launching Google+. The Committee on the Judiciary of the House of Representatives in the USA indicated that Meta recognized that high switching costs for users to join new social networking services insulated Facebook from competition, in particular, Google+:

⁶³⁹ [...].

⁶⁴⁰ [...].

⁶⁴¹ [...].

⁶⁴² Meta's reply to Q30 of the Commission's RFI to Meta of March 2022 (ID3245 / Annex: ID3249).

⁶⁴³ [...].

⁶⁴⁴ [...].

“the idea is that after you have invested hours and hours in your friend graph or interest graph or follower graph, you are less likely to leave for a new or different service that offers similar functionality.

[...] [p]eople who are big fans of G+ are having a hard time convincing their friends to participate because ... switching costs would be high due to friend density on Facebook.

*[...] people’s significant time investment on Facebook building their identity and connections on the platform increased the company’s “stickiness.”*⁶⁴⁵

- (652) Similarly, in their replies to the Commission’s request for information⁶⁴⁶, respondents indicated that it is not easy for the users to quit Facebook. As [...] remarked, in fact: [...].⁶⁴⁷
- (653) According to [...].⁶⁴⁸
- (654) Furthermore, [...] explained: [...].⁶⁴⁹
- (655) Finally, the impossibility to port data and the relevant social graph into other personal social networks including hybrid social media platforms reduces the ability of users to switch from Facebook. Switching to another personal social network including hybrid social media platforms would, in fact, require users to leave the platform where they had a strong network of family and friends. On the new platform, users must set up a new profile and reintroduce information collected in the previous platform. The time needed to build up a new virtual identity and a new network of family and friends disincentives users to switch to another personal social network. This is confirmed by [...] which stated that actually there exist two main barriers to customer switching: [...].⁶⁵⁰
- (656) The Commission’s conclusion that the EEA-wide market for personal social network services including hybrid social media platforms is characterised by a lack of countervailing buyer power on the part of users, who are the end-consumers of such a service, is not contradicted by Meta’s argument that users can easily switch between Facebook and other attention services and extensively do so, as the apps are easy to download, typically free of charge, no new appliances need to be acquired, and it is quick to set-up a new profile. In particular, according to Meta, it is not necessary to leave other platforms and it is easy for a user to replicate its engagement with a service, among others, by importing contacts or cross-posting.⁶⁵¹
- (657) Contrary to Meta’s allegations, it is not easy for users to switch between Facebook and competing personal social networks including hybrid social platforms.
- (658) In the first place, as explained at recitals (647) to (655) above, switching from Facebook may be difficult or unattractive for users, since they need to recreate their

⁶⁴⁵ Committee on the Judiciary of the House of Representatives, “Investigation of Competition in Digital Markets. Majority Staff Report and Recommendations. Part 1”, July 2022, page 127, available at: <https://www.govinfo.gov/content/pkg/CPRT-117HPRT47832/pdf/CPRT-117HPRT47832.pdf>, downloaded on 11 December 2023 (ID11994).

⁶⁴⁶ Replies to Q33 to Q37 of the Commission’s RFI to social media platforms of August 2019.

⁶⁴⁷ [...].

⁶⁴⁸ [...].

⁶⁴⁹ [...].

⁶⁵⁰ [...].

⁶⁵¹ SO response, paragraphs 77 and 78, Comments on the LoF, paragraphs 107 to 111.

network of connections. In addition, and particularly so for Facebook, users are further discouraged from switching, because Facebook offers a number of complementary functionalities. Indeed, given strong network effects, the significant time invested by users into building their network of connections and the uncertainty as to whether other users would be interested to also join the competing platform, users are likely to stick to Facebook, where they have already established their presence.

- (659) This is also confirmed by a number of the respondents to the Commission's request for information quoted at recitals (649) to (655) above, which Meta does not contest. The respondents underscored that users tend to prefer a social network where they can easily connect with a large group of their friends.
- (660) Furthermore, recital (655) above explains that it is not possible to port data from Facebook to rival platforms, or to port the relevant social graph into other personal social network services, including hybrid social media platforms. This affects users' ability to switch. Indeed, users store extensive and customized data in the Facebook platform (*e.g.*, about their interests, likes, followed pages, life events or their network), which build and enrich their experience. This data carries a long-term value for users and cannot be recreated in a fast and easy way. Consequently, given that this data cannot be easily ported users have limited incentives to switch to competing personal social networks.
- 6.3.4. *The other side of the platform, i.e. the national markets for online display advertising on social media platforms, does not exert any significant competitive constraints on Meta's dominance*
- (661) As explained above, personal social networks as well as hybrid social media platforms are multi-sided platforms on which both private users and advertisers are present. Meta competes for users on these two sides, namely in the market for personal social networking services including hybrid social media platforms and in the market for online display advertising on social media platforms.
- (662) Given the link between the two sides, where user demand on one side (*i.e.* by private users) affects the value of the platform to users on the other side (*i.e.* to advertisers), it is important to also consider the potential competitive constraints from the national markets for online display advertising on social media platforms on Meta's position in the EEA-wide market for personal social networking services including hybrid social media platforms. Should advertisers have sufficient alternatives to switch away from Meta on the markets for online display advertising on social media platforms, this would affect the value of the user side of Meta's platform and thus its position on the market for personal social networking (including hybrid social media platforms).
- (663) In this context, the Commission concludes that the constraints from the side of the platform competing on the national markets for online display advertising on social media platforms are not sufficient to change the conclusion that Meta is dominant in the EEA-wide market for personal social networking services including hybrid social media platforms.
- (664) This is because, as further assessed in section 6.4 below, Meta is also dominant in the former market, with very high market shares. On the market for online display advertising on social media platforms, Meta is an unavoidable trading partner for advertisers, who lack countervailing buyer power. Advertisers are thus unlikely to

switch to an alternative social media platform in case Meta exercises its market power *via-a-vis* the private users of Facebook.

6.3.5. *Meta's further arguments disputing its dominance on the market for personal social network services including hybrid social media platforms*

(665) The Commission's conclusion that Meta is dominant on the EEA-wide market for personal social networking services including hybrid social media platforms is not contradicted by Meta's claims stating that:

(1) Users extensively multi-home across different attention services.⁶⁵² The existence of multi-homing intensifies competition, among others, by lowering barriers to entry and expansion, and switching costs.⁶⁵³ Multi-homing shows how the Commission claim that users need to "leave" a platform in order to join a new one is unfounded.⁶⁵⁴

(2) Nearly all respondents to the Commission's request for information acknowledged that multi-homing is easy, as do other documents included in the Commission's file as well as third parties reports or data.⁶⁵⁵

(666) First, multi-homing between different attention services, to the extent it exists, cannot and does not meaningfully constrain Meta's behaviour. Contrary to Meta's allegation, use of other platforms does not evidence intensified competition on the relevant market.

(667) In the SO Response, Meta pointed out examples of multi-homing between a variety of different platforms, such as Amazon, Netflix, YouTube, Twitter, Pinterest, LinkedIn, TikTok or Pinterest.⁶⁵⁶

(668) In the first place, there can only be multi-homing in respect of services competing with Meta's services in the same relevant market. Services in different relevant markets satisfy different user needs. For example, Amazon, an online marketplace, is used to shop and sell online. Netflix, a streaming platform, allows its subscribers to stream entertainment content against a fee. Therefore, the fact that Facebook users also use those platforms does not demonstrate multi-homing. These examples only demonstrate that users of Meta's services use other services that satisfy their other needs not related with personal social networking.

(669) Other social media platforms mentioned by Meta also do not compete with Facebook in the market for personal social networking services including hybrid social media platforms. Its users use those platforms because they are catering to other needs. For example, compared to Facebook or Instagram, YouTube satisfy different user needs (see sections 4.3.4 to 4.3.8.). Consequently, the use of those other social media platforms cannot constrain Meta's behavior on the relevant market.⁶⁵⁷

⁶⁵² SO response, paragraphs 77 and 80, and Annex 1 of the SO Response, Comments on the LoF, paragraph 105(b).

⁶⁵³ SO response, paragraphs 80 and Annex 1 of the SO Response.

⁶⁵⁴ SO response, paragraphs 80 and Annex 1 of the SO Response, Comments on the LoF, paragraph 48(b).

⁶⁵⁵ SO response, paragraph 79.

⁶⁵⁶ SO response, paragraphs 79 and 80.

⁶⁵⁷ For completeness, hybrid social media platforms, such as [...], exert only weak competition constraints on the Facebook platform and they do not compete with it closely (see section 4.3.8). Nevertheless, the Commission included them in the market definition and consequently considered in the assessment of Meta's dominance on the relevant market.

- (670) Finally, despite its claim that overall multi-homing limits any market power Meta may have on the relevant market, Meta provides no evidence in that respect. Indeed, Meta only relies on the quotations from literature.⁶⁵⁸
- (671) Second, as to the statements from the respondents to the Commission's requests for information, the Commission observes the following.
- (672) In the first place, question 31 from the Commission's request for information to social media platforms of August 2019 concerned multi-homing of users of the broad category of "social networking services". However, that question did not address *personal* social networking services, which are offered by Facebook. Thus, given the formulation of that question, and, in particular, its broad scope, the Commission considers that the provided responses are not informative of the size or intensity of multi-homing on the market for personal social networking services including hybrid social media platforms.
- (673) Therefore, the responses indicated by Meta, which in its view confirm the existence of multi-homing⁶⁵⁹, concern the existence of users that use several platforms that are not part of the market for personal social networking services including hybrid social media platforms as defined in the present Decision, *i.e.* it does not constitute multi-homing among the relevant platforms:
- (1) [...] indicated that [...].⁶⁶⁰ (underlined by the Commission)
 - (2) [...] explained that [...].⁶⁶¹ (underlined by the Commission)
 - (3) [...] explained that [...].⁶⁶² (underlined by the Commission)
- (674) In the second place, some of the respondents mentioned by Meta in fact explained in their response that multi-homing by users is the result of the complementarity between the different platforms:
- (1) According to [...].⁶⁶³ (underlined by the Commission)
 - (2) According to [...].⁶⁶⁴ (underlined by the Commission)
 - (3) According to [...].⁶⁶⁵ and it detailed its response by stating that [...] even if some of them might [...].⁶⁶⁷ (underlined by the Commission)
- 6.3.6. *Conclusion on the EEA-wide market for personal social networking services including hybrid social media platforms*
- (675) In light of the above, the Commission concludes that Meta holds a dominant position in the EEA-wide market for personal social networking services including hybrid social media platforms at least since 2017 and until the date of this Decision.

⁶⁵⁸ SO Response, Annex 1, section 4, paragraph 16.

⁶⁵⁹ SO Response, footnote 117.

⁶⁶⁰ [...].

⁶⁶¹ [...].

⁶⁶² [...].

⁶⁶³ [...].

⁶⁶⁴ [...].

⁶⁶⁵ [...].

⁶⁶⁶ [...].

⁶⁶⁷ [...].

6.4. The national markets for online display advertising on social media platforms

- (676) The Commission concludes that since at least 2017 and until the present, Meta holds a dominant position in each national market for online display advertising on social media platforms in the EEA.
- (677) This conclusion is based on the following considerations:
- (1) The high market shares of Meta in those markets (section 6.4.1),
 - (2) Meta's status as an unavoidable trading partner (section 6.4.2),
 - (3) Meta's specific role in online display advertising services as a leading social network (section 6.4.3),
 - (4) Meta's Business Tools reinforce its position in online display advertising (section 6.4.4)
 - (5) The existence of barriers to entry and expansion (section 6.4.5),
 - (6) The lack of countervailing buyer power (section 6.4.6) and
 - (7) The fact that Meta does not experience any significant competitive constraints from the other side of the platform, i.e. the EEA-wide market for personal social networking services including hybrid social media platforms (section 6.4.7).

6.4.1. Market shares

- (678) The market data show that Meta is the largest player in the national markets for online display advertising on social media platforms, followed at a great distance by Google with its YouTube platform. The Commission has estimated the total value of national markets for online display advertising on social media platforms based on information on the gross revenues from the supply of such services by the main social media platforms:⁶⁶⁸ Meta's Facebook and Instagram,⁶⁶⁹ YouTube, LinkedIn, Snapchat, TikTok, X, Pinterest and Reddit.^{670,671}
- (679) Some of the market participants surveyed were unable to provide all the information requested by the Commission or to provide it in the format requested by the Commission. The Commission considers that these limitations, as described below,

⁶⁶⁸ The respondents were requested to provide country data based on the location of the users seeing the ads. Market shares based on the location of users reflect the choices advertisers have in the different national markets for the placement of online display ads in their national advertising campaigns. Replies to Commission's RFI to online advertising market participants of October 2021, Commission's RFI to social media companies of June 2023, Commission's RFI to Google of July 2023, Commission's RFI to TikTok of July 2023, Commission's RFI to Snap of July 2023.

⁶⁶⁹ Meta's consumer communication app WhatsApp does not display advertisements.

⁶⁷⁰ As identified in reports by other competition authorities, see *e.g.* Competition and Markets Authority (2020), *Online platforms and digital advertising*, page 117, available at <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study#final-report>, downloaded on 14 November 2022 (ID6557) or market research providers, see *e.g.* Statista (2020), *Social media usage in the European Union*, available at <https://www.statista.com/study/32424/social-media-usage-in-the-european-union-eu-statista-dossier/>, downloaded on 14 September 2022 (ID5367) as well as Statista reports on social media usage in Belgium (ID5374), Czechia (ID5373), Denmark (ID5368), Finland (ID5366), France (ID5361), Hungary (ID5376), Italy (ID5377), the Netherlands (ID5375), Norway (ID5378), Poland (ID5379), Spain (ID5365), Sweden (ID5369), Romania (ID5380).

⁶⁷¹ The Commission also included the revenues of Jappy and Xing, two small German platforms surveyed as part of the Commission's investigation into social networks.

do not have a material impact on the market share calculations and are not liable to change the finding that Meta holds a very significant market share on each national market for online display advertising on social media platforms in the EEA:

- (1) The revenue data that [...] could extract from its finance systems to respond to the Commission's request was only available for 2019-2021.⁶⁷² As such, [...] ⁶⁷³ [...].⁶⁷⁴
 - (2) [...] data for the period 2021-2023 includes only its social media platform [...] while [...] data for the period 2017-2020 includes all [...] owned and operated properties, [...]. [...] share on the national markets for online display advertising on social media platforms is thus overestimated for the years 2017-2020.⁶⁷⁵
 - (3) One respondent could not provide revenue data on the basis of user location, but only on the basis of advertiser location. This has the effect of overestimating its market share in certain Member States and underestimating them in others; however, in light of the relatively small value of this respondent's total advertising revenues, any such inaccuracy only has a limited impact, if any, on the overall results.
 - (4) One respondent could not provide data on its online display advertising revenues for 2017. As a proxy for this missing data, the Commission has used that respondent's advertising revenues in the closest available year, *i.e.* 2018. In light of its relatively small share of the market, as estimated for the years for which data was available, this approximation does not materially affect the outcome of the market share analysis.
 - (5) [...] data was not available for the period 2021-2023 and was estimated by the Commission by applying an average annual growth rate calculated on the basis of 2017-2020 data provided by the company.⁶⁷⁶
 - (6) Meta's data for the period 2021-2023 includes [...]. According to Meta, [...].⁶⁷⁷
- (680) Table 3 to Table 6 show Meta's market share on the national markets for online display advertising on social media platforms in the period 2017-2023 in the EEA (the Commission has no indication about major changes in these figures between 2023 and the date of the adoption of this Decision).⁶⁷⁸

⁶⁷² [...].

⁶⁷³ Some publishers sell advertising inventory on their online properties to advertisers directly. They are referred to as "owned and operated" (O&O) platforms or "walled gardens" and are thereby distinguished from publishers who sell their advertising inventory through third-party intermediaries. The latter form the "open display" part of the market. Most O&O platforms are providers of social media services, such as Facebook, Instagram, YouTube, LinkedIn, Snapchat, TikTok or X (formerly Twitter).

⁶⁷⁴ [...].

⁶⁷⁵ [...].

⁶⁷⁶ Given that based on previous data [...] was a very small player and there was no indication that in the analysed period that its growth dynamics changed, the Commission applied the described assumption in the absence of an answer from [...].

⁶⁷⁷ Annex Q15 of Meta's reply to the Commission's RFI to Meta of July 2023 (ID10803).

⁶⁷⁸ Due to lack of available data, for the purpose of this Decision, market shares will be provided only for national markets (and not following linguistic borders within the EEA). This is in line with the

Table 3: Market shares on the national markets for online display advertising on social media platforms, 2017-2018, in value⁶⁷⁹

[...]

Table 4: Market shares on the national markets for online display advertising on social media platforms, 2019-2020, in value⁶⁸⁰

[...]

Table 5: Market shares on the national markets for online display advertising on social media platforms, 2021 - 2022, in value⁶⁸¹

[...]

Table 6: Market shares on the national markets for online display advertising on social media platforms, 2023, in value⁶⁸²

[...]

- (681) Through its two social media platforms, Facebook and Instagram, Meta holds a market share of over [...] % throughout 2017-2023 in all Member States, and above [...] % in the majority of them. The next player, Google (with YouTube), has a significantly lower market share, of less than [...], in [...] Member States. The other social media platforms are much smaller in size, together accounting for up to [...] in [...] Member States. As explained in section 6.1, according to the case law, Meta's large market shares represent a clear indication that it holds a dominant position in the relevant markets.
- (682) The Commissions' conclusion that Meta's high market shares in the national markets for online display advertising on social media platforms in the EEA at least since 2017 are strong indications that Meta holds a dominant position on those markets is not contradicted by Meta's arguments. According to Meta, the Commission's definition of an online display advertising market on social media is too narrow and Meta would not be dominant on a wider market that would at least include online search advertising, but potentially even also other advertising formats. In such a wider market, Meta would only have low market shares and would be competing with numerous strong players, such as Google, Apple and Amazon.⁶⁸³
- (683) Meta's allegations that the Commission fails to include many of its competitors by defining a too narrow market is unfounded. As it is shown in section 4.4, the relevant

Commission's practice in its precedents on the geographic market definition for online advertising markets.

⁶⁷⁹ Commission's calculations based on replies to the Commission's RFI to online advertising market participants of October 2021.

⁶⁸⁰ Commission's calculations based on replies to the Commission's RFI to online advertising market participants of October 2021.

⁶⁸¹ Commission's calculations based on replies to the Commission's RFI to social media companies of June 2023, Meta's reply to the Commission's RFI to Meta of July 2023, Snap's reply to the Commission's RFI to Snap of July 2023, TikTok's reply to the Commission's RFI to TikTok of July 2023, Google's reply to the Commission's RFI to Google of June 2023.

⁶⁸² 2023 market shares are based on January-June 2023 data only. Commission's calculations based on replies to the Commission's RFI to social media companies of June 2023, Meta's reply to the Commission's RFI to Meta of July 2023, Snap's reply to the Commission's RFI to Snap of July 2023, TikTok's reply to the Commission's RFI to TikTok of July 2023, Google's reply to the Commission's RFI to Google of June 2023.

⁶⁸³ SO Response, paragraphs 170 to 173 and Annex 5 of the SO Response.

market where Meta competes does not include all online advertising and even less offline advertising. In a market including only the effective and immediate competitive constraints on Meta, its market share is above [...] % in all Member States (see Table 3 to Table 6).

6.4.2. *Meta's status as an unavoidable trading partner*

(684) The majority of the advertisers that responded to the Commission's requests for information stated that Meta is a must-have trading partner in the online advertising value chain.⁶⁸⁴ By way of example, some respondents indicated the following:

- (1) According to [...].⁶⁸⁵
- (2) According to a large advertiser that provided information on an anonymous basis: [...].⁶⁸⁶
- (3) According to [...].⁶⁸⁷
- (4) According to [...].⁶⁸⁸
- (5) According to [...].⁶⁸⁹
- (6) According to another Meta customer that provided information on an anonymous basis: [...].⁶⁹⁰

(685) For many respondents, Meta is a top leading/first provider of online display advertising services.⁶⁹¹ The majority of the respondents purchased online display advertising services from Meta in the last 5 years.⁶⁹²

(686) This view was also confirmed by media agencies' replies to the Commission's request for information indicating that at least Meta's inventory would almost always be recommended.⁶⁹³ The majority of media agencies that replied to the Commission's request for information indicated that the share of their advertising clients using Meta as advertising platform is between 60% and 100% and often even between 80% and 100%.⁶⁹⁴

(687) Responses to the Commission's requests for information explain the reason for Meta's status as unavoidable trading partner. Advertising on Facebook is often the only means to reach important segments of the advertiser's audience.

- (1) According to [...].⁶⁹⁵
- (2) According to [...].⁶⁹⁶

⁶⁸⁴ Replies to Q15/Q15.1 of the Commission's RFI to advertisers of March 2020 in which majority of the respondents confirmed Meta being must-have trading partner in the online advertising value chain.

⁶⁸⁵ [...].

⁶⁸⁶ [...].

⁶⁸⁷ [...].

⁶⁸⁸ [...].

⁶⁸⁹ [...].

⁶⁹⁰ [...].

⁶⁹¹ Some respondents ranked Meta as their first provider of online display advertising service: replies to Q19 of the Commission's RFI to advertisers of March 2020.

⁶⁹² Replies to Q16 of the Commission's RFI to advertisers of March 2020 in which practically all respondents confirmed purchasing advertising services from Meta in the last 5 years.

⁶⁹³ [...].

⁶⁹⁴ Replies to Q A.1 of the Commission's RFI to media agencies of September 2023.

⁶⁹⁵ [...].

- (3) According to [...].⁶⁹⁷
- (4) According to [...].⁶⁹⁸
- (5) According to [...].⁶⁹⁹
- (688) Meta's importance as a provider of advertising services was also stressed by OCAS providers:
- (1) According to [...].⁷⁰⁰
- (2) According to [...].⁷⁰¹
- (3) According to [...].⁷⁰²
- (4) According to [...].⁷⁰³
- (5) According to [...].⁷⁰⁴
- (6) According to [...].⁷⁰⁵
- (689) Meta's status as an unavoidable trading partner is also confirmed by the extent of the detrimental business consequences that advertisers would suffer should they not be able to advertise on Facebook.
- (1) According to [...].⁷⁰⁶
- (2) According to [...].⁷⁰⁷
- (3) According to [...].⁷⁰⁸
- (690) The view that Meta takes a leading role in online display advertising services on social media platforms is also supported by a study undertaken by researchers at Saïd Business School, University of Oxford, which found that advertising on Facebook has a positive impact on consumers' purchasing intent – not only directly, but also by rendering other marketing channels more effective. The study allows estimating the impact of a Facebook advertising boycott, such as the one undertaken in June 2020 by a large number of advertisers to protest against Facebook's measures against hate speech (which was perceived to be insufficient) and suggests that such a measure would have a significant impact on purchasers' motivation to buy from those brands.⁷⁰⁹

⁶⁹⁶ [...].

⁶⁹⁷ [...].

⁶⁹⁸ [...].

⁶⁹⁹ [...].

⁷⁰⁰ [...].

⁷⁰¹ [...].

⁷⁰² [...].

⁷⁰³ [...].

⁷⁰⁴ [...].

⁷⁰⁵ [...].

⁷⁰⁶ [...].

⁷⁰⁷ [...].

⁷⁰⁸ [...].

⁷⁰⁹ See "Facebook boycott has negative impact on marketing effectiveness for participating brands", Saïd Business School, University of Oxford available at <https://www.sbs.ox.ac.uk/news/facebook-boycott-has-negative-impact-marketing-effectiveness-participating-brands>, downloaded on 29 August 2022 (ID5348) : *"If retailers pull their advertising budget from Facebook and move it into other channels in their typical media mixes they can expect the overall ability of their ad campaigns to influence*

- (691) The Commission's conclusion that Meta is an unavoidable trading partner is not contradicted by Meta's arguments stating that:
- (1) The market is characterised by advertisers multi-homing and advertisers tend to be highly responsive to changes in quality as shown by the ATT event;⁷¹⁰ and
 - (2) TikTok is a strong alternative to Meta's advertising services.⁷¹¹
- (692) First, the Commission observes that part of the multi-homing argued by Meta relates to advertising services that are not part of the same relevant product market, namely offline advertising, online search advertising and online display advertising off-social media platforms and should thus not be seen as multi-homing in the market for online display advertising on social media platforms. Such multi-homing would therefore merely be a manifestation of the fact that those other channels are complements to display advertising on social media platforms. In addition, even if advertisers multi-home in several social media platforms, that does not mean that they do not need to advertise on Meta's platforms. Statements by several advertisers in fact confirm that advertising on Facebook is the only means to reach a large audience as well as to reach important segments of the advertiser's audience (see recitals (684) and (687) above).
- (693) This is not changed by the Meta's claim that advertisers are highly responsive to changes in quality pointing to the ATT event. As set out above in section 4.4.3.2, the magnitude of the ATT event was such that it cannot be used to infer the behaviour of users in the event of a small degradation of supply conditions.
- (694) Second, no social media platform has a market share close to Meta's platforms in the markets for online display advertising on social media platforms. As explained in section 6.4.1, the other social media platforms (which include TikTok) are much smaller in size, together accounting for up to [...] in most Member States.
- 6.4.3. *Meta's specific role in online display advertising services as a leading personal social network*
- (695) Meta's market power in the national markets for online display advertising on social media platforms is strengthened by the market leading position of its personal social network services and its access to a large volume and variety of data that is incomparable to that of other social media platforms. Due to the high number of Facebook users, Meta accumulates vast amounts of data from different sources: (i) data about users' activity on its own platforms (on-site data) and on third-party websites (off-site data)⁷¹², combined with (ii) data collected in the context of the network of agreements with business partners, including for advertising purposes (e.g. catalogue data). Those vast amounts of data in turn increase Meta's ability to target users efficiently, which is a key asset in online display advertising.

customers' purchase intentions or motivations to drop by an average of 8% and likelihood to consider their brand to drop by a substantial 25%. Auto manufacturers could expect their audience's purchase motivations to drop by 13% and the perceived saliency of their brand to drop by 6%." This study, despite being about the same event, is not the same as the one mentioned in recital (409).

⁷¹⁰ SO Response, paragraphs 174 and 176.

⁷¹¹ SO Response, paragraph 175.

⁷¹² On-site (also called first-party) data is data generated by Meta's users on Meta products and services (including Facebook, Instagram, WhatsApp and Facebook Messenger). These include users' posts, likes and comments, but also clicks on ads. Off-site (also called third-party) data consists of data provided by third parties or derived from third party-websites and apps.

- (696) As [...] explained [...].⁷¹³
- (697) As a result, online display advertising services offered by Meta allow for more accurate audience targeting and interaction with users than other social media platforms.⁷¹⁴
- (698) Several advertisers confirmed that Meta's incomparable access to vast amounts of data is a key element in their choice of Facebook for their online display advertisements.⁷¹⁵
- (1) According to [...].⁷¹⁶
 - (2) According to [...].⁷¹⁷
 - (3) According to [...].⁷¹⁸
 - (4) According to [...].⁷¹⁹
- (699) OCAS providers also underlined the special role of Facebook's advertising services for their business given its reach to a broad audience and its access to a large amount of data resulting in strong targeting capabilities:
- (1) According to [...].⁷²⁰
 - (2) According to [...].⁷²¹
 - (3) According to [...].⁷²²
- (700) Meta has not contested the Commission's conclusion that Meta's market power in the national markets for online display advertising on social media platforms is strengthened by the market leading position of its personal social networking services and its access to a large volume and variety of data that is incomparable to that of other social media platforms.
- 6.4.4. *Meta's Business Tools reinforce its position in online display advertising on social media platforms*
- (701) The use of Meta Business Tools (see recital (20)), including Meta Pixel⁷²³ for websites and Facebook software development kit (SDK) for apps, further contribute to Meta's dominant position on the market for online display advertising on social media platforms. While some other social media platforms have similar tools, the Meta Business Tools unfold their particular strength in combination with Meta's large user base. Both these tools allow advertisers to track users who have shown interest in their ads (for example, by clicking on an ad placed on Facebook resulting in a transfer to the online shops of the advertisers' websites) and retarget exactly

⁷¹³ [...].

⁷¹⁴ Replies to Q16.1.1 of the Commission's RFI to advertisers of March 2020.

⁷¹⁵ Replies to Q16.1.1 of the Commission's RFI to advertisers of March 2020 regarding the rationale behind the use of advertising services from Meta.

⁷¹⁶ [...].

⁷¹⁷ [...].

⁷¹⁸ [...].

⁷¹⁹ [...].

⁷²⁰ [...].

⁷²¹ [...].

⁷²² [...].

⁷²³ Previously known as Facebook Pixel.

those users again on Facebook depending on their actions taken on the advertisers' websites (the same applies to Instagram).

- (702) Although using Meta Pixel or Facebook SDK is not obligatory for advertisers, these services are very important for their business and, conversely, the impact on their business if they were not able to use them would be significant (see also section 7.3.5.1 below). The online display advertising services would become less valuable for advertisers since they could neither fully measure the effects of their ads nor use such information in order to re-target potentially interested customers. This effectively incites them to install these tools on their own websites and apps and consider them as an integral part of the advertising services provided by Meta. For example, [...] pointed out that [...].⁷²⁴
- (703) When asked about the importance of Meta Pixel for their businesses and the impact of not using this tool, the majority of the respondents to the Commission's request for information to apps and websites stated that they would not be able to see the performance of their ad campaigns, to optimise them accordingly and, in particular, to target the relevant audiences without Meta Pixel.⁷²⁵ Not using Meta Pixel would also cause an increase of the "cost per acquisition" (CPA)⁷²⁶ and affect their sales volumes. The respondents also emphasized that they would lack any capacity of assessing the return on investment if they could not use that tool:
- (1) According to [...].⁷²⁷
 - (2) According to [...].⁷²⁸
 - (3) According to [...].⁷²⁹
 - (4) According to [...].⁷³⁰
 - (5) According to [...].⁷³¹
- (704) The advertisers pointed out the loss of income without the use of the Meta Pixel and emphasized that some advertising activities would become less or not profitable for them if they were not able to use Meta Pixel. For instance, a customer stated that the Meta Pixel is a critical component of its company's advertising for online store activities. Through Meta Pixel, they are able to gain insight about users (*e.g.* their interests); retarget and engage their most loyal customers; and measure Facebook ad campaign conversions into sales (assessing their return on Facebook media investment). This effectively drives incremental sales to the business which they consider would not be gained through other means.⁷³²
- (705) Similarly, regarding Facebook SDK, the respondents to the Commission's request for information to apps and websites highlighted the detrimental effects on their businesses if they were not be able to use this tool.

⁷²⁴ [...].

⁷²⁵ Replies to Q12.2 of the Commission's RFI to apps and websites of November 2019.

⁷²⁶ Cost per acquisition (CPA) is an online advertising measurement and pricing model referring to a specified action, for example, a sale, click, or form submit.

⁷²⁷ [...].

⁷²⁸ [...].

⁷²⁹ [...].

⁷³⁰ [...].

⁷³¹ [...].

⁷³² [...].

- (1) According to [...].⁷³³
 - (2) According to [...].⁷³⁴
 - (3) According to [...].⁷³⁵
 - (4) According to [...].⁷³⁶
 - (5) According to [...].⁷³⁷
 - (6) According to [...].⁷³⁸
 - (7) According to [...].⁷³⁹
- (706) When it comes to Social plug-ins and Facebook Login tools (see recital (20)), although using these tools is not obligatory for advertisers, the majority of respondents to the request for information to OCAS providers confirmed they use them to facilitate both buyers' and sellers' access to their services via the buyers and sellers Facebook accounts.⁷⁴⁰ Thanks to Facebook's ubiquity, the registration and login process is much easier and faster which is the main advantage over similar services offered by other digital platforms.⁷⁴¹ While being asked about the impact on their business in case of lack of possibility to use these tools, the respondents stressed that it would mean the loss of logins and new accounts.⁷⁴² As highlighted by an anonymous party: [...].⁷⁴³
- (707) Therefore, Meta's Business Tools (in particular the Meta Pixel and SDK) are an essential part of Meta's advertising tools and have a significant impact on the advertising business by allowing Meta to collect more data and to make advertisers dependent on its services. This further strengthens Meta's market power on the national markets for online display advertising on social media platforms.
- (708) The Commission's conclusion that Meta's Business Tools reinforce its position in online display advertising on social media platforms is not contradicted by Meta's argument that other social media platforms offer similar business tools.
- (709) The relevance of Meta's Business Tools has to be seen in combination with its larger user base as compared to other platforms (which results in the tracking of a larger number of users) which allows advertisers to most effectively make use of those business tools.
- 6.4.5. *Barriers to entry and expansion*
- (710) The national markets for online display advertising on social media platforms are characterised by the existence of a number of barriers to entry and expansion.
- (711) In order to establish itself as a fully-fledged social media platform providing online display advertising inventory on its website or app and be able to compete with Meta,

⁷³³ [...].

⁷³⁴ [...].

⁷³⁵ [...].

⁷³⁶ [...].

⁷³⁷ [...].

⁷³⁸ [...].

⁷³⁹ [...].

⁷⁴⁰ Replies to Q50.2 of the Commission's RFI to OCAS providers of March 2020.

⁷⁴¹ Replies to Q50.4 of the Commission's RFI to OCAS providers of March 2020.

⁷⁴² In particular, [...] reads as follows: [...].

⁷⁴³ [...].

a potential entrant would have to undertake significant investments in a number of areas.

- (712) First, a potential entrant would have to invest significantly – in terms of capital and time - in the development of a social media platform (website or mobile app) where advertisers could display their advertisements to consumers. This means that in order to compete with Meta, new entrants have to develop a compelling social media platform that attracts a significant user base. To compete with Facebook, an entrant would first need to develop a particularly innovative product, while also offering the types of features to which users are accustomed.⁷⁴⁴ This requires significant investments in hiring skilled personnel (in particular product designers, content developers, software engineers and data scientists) and acquiring the technology, IP and infrastructure necessary to create and deliver a convincing user experience.⁷⁴⁵
- (713) By way of example, some respondents indicated the following:
- (1) According to [...].⁷⁴⁶
 - (2) According to [...].⁷⁴⁷
 - (3) According to [...].⁷⁴⁸
 - (4) According to [...].⁷⁴⁹
 - (5) According to [...].⁷⁵⁰
- (714) Second, any entrant needs to develop a sufficiently large user base (“critical mass”). Achieving a sufficiently large user base is particularly important for social media platforms, which are interactive environments where users come to create or contribute content or to interact with other users. Thus, the value of users joining a certain social media platform depends on how many other people are using it (direct network effects) and the failure to achieve critical mass will prevent an entrant from effectively competing with existing social media platforms. Attracting a sufficiently large user base is important not only for the viability of the platform *per se*, but also in order to compete effectively for advertisers: the larger the number of users of that platform, the better this allows advertisers to reach audiences for their campaigns and sell their services or products and hence the more valuable that platform is for them (indirect network effects).
- (715) Given the scale of Meta in terms of the number of users as compared to the other players in the market, this barrier would be particularly high on the national markets for online display advertising on social media platforms. By way of example, some respondents indicated the following:
- (1) According to [...].⁷⁵¹

⁷⁴⁴ Features commonly provided by social media platforms are user profiles or accounts, connecting with other users, content creation (in various formats) and sharing features, messaging, reactions (*e.g.* likes) and comments.

⁷⁴⁵ Replies to Q25 of the Commission’s RFI to social media platforms of March 2020.

⁷⁴⁶ [...].

⁷⁴⁷ [...].

⁷⁴⁸ [...].

⁷⁴⁹ [...].

⁷⁵⁰ [...].

⁷⁵¹ [...].

- (2) According to [...].⁷⁵²
 - (3) According to [...].⁷⁵³
 - (4) According to [...].⁷⁵⁴
 - (5) According to [...].⁷⁵⁵ and [...].⁷⁵⁶
 - (6) According to [...].⁷⁵⁷
- (716) Third, a potential entrant needs access to data, which is very important for advertisers to better target their audience. Access to higher volume and quality of data that is more granular allows for more precise targeting of audiences that are more specific. This barrier to entry is all the higher as, due to its scale and position as provider of the leading social media platforms Meta controls data of an incomparable volume and quality. What is more, advertisers are more reluctant to share their data with smaller competitors, such as a new entrant.
- (1) According to [...].⁷⁵⁸ In addition, [...].⁷⁵⁹
 - (2) According to [...].⁷⁶⁰
- (717) Fourth, there are regulatory barriers to entry in the market, in particular because of the need to comply with the General Data Protection Regulation, Directive on Copyright in the Digital Single Market and existing national laws.
- (1) According to [...].⁷⁶¹
 - (2) According to [...].⁷⁶²
 - (3) According to [...].⁷⁶³
 - (4) According to [...].⁷⁶⁴
- (718) The Commission's conclusion that national markets for online display advertising on social media platforms are characterised by the existence of a number of barriers to entry and expansion is not contradicted by Meta's arguments stating that these markets are instead characterised by new entrants, such as retail companies, streaming services, gaming platforms and ride hailing apps which according to Meta increasingly offer advertising services.⁷⁶⁵
- (719) First, as set out in section 4.4, the relevant product market is the market for online display advertising on social media platforms. The new entrants mentioned by Meta are not social media platforms and are therefore no evidence of entry into the relevant product market.

⁷⁵² [...].

⁷⁵³ [...].

⁷⁵⁴ [...].

⁷⁵⁵ [...].

⁷⁵⁶ [...].

⁷⁵⁷ [...].

⁷⁵⁸ [...].

⁷⁵⁹ [...].

⁷⁶⁰ [...].

⁷⁶¹ [...].

⁷⁶² [...].

⁷⁶³ [...].

⁷⁶⁴ [...].

⁷⁶⁵ SO Response, paragraph 134.

(720) Second, Meta has enjoyed consistently high market shares (of over [...]%) in all EEA Member States in the entire period under investigation. This shows that even new undertakings that entered and remained on the market have not been able to gain a sufficient foothold in the market to challenge Meta's market position (the only notable example of which is TikTok).

6.4.6. *Lack of countervailing buyer power*

(721) The national markets for online display advertising on social media platforms are characterised by a lack of countervailing buyer power on the part of advertisers.

(722) First, each advertiser represents only a small part of the total demand of online display advertising services on social media platforms in the EEA. In 2019, Meta published that it had more than 7 million active advertising clients worldwide.⁷⁶⁶ Each one of them only represents a small fraction of Meta's overall online display advertising revenues. In 2021, Meta's total online display advertising revenues in the EEA amounted to EUR [...] ⁷⁶⁷ and to EUR [...] worldwide⁷⁶⁸. According to Meta, the five largest advertisers in the EEA (including UK) spent over EUR [...] for advertisement on Meta in 2021 and worldwide around EUR [...].⁷⁶⁹ On this basis, even the very largest advertisers would therefore only represent [...] % of Meta's total online display advertising business in the EEA (and [...] % of its total online display advertising business worldwide).

(723) Second, respondents to the Commission's requests for information confirmed that most advertisers cannot materially negotiate with Meta when they enter into agreements for the provision of online display advertising services. They mostly have to accept the standard general terms and conditions. Respondents stated that negotiations with Meta were difficult or even impossible.⁷⁷⁰ In their replies, respondents confirm that Meta was regularly in a position to easily refuse any negotiations:

(1) According to [...].⁷⁷¹

(2) According to [...].⁷⁷²

(3) According to [...].⁷⁷³

(4) According to an anonymous party: [...].⁷⁷⁴

(724) According to [...].⁷⁷⁵ [...] Similar responses were given by OCAS providers who also use Meta's advertising services and who were asked a similar question. The

⁷⁶⁶ Insights To Go: Search for Insights from Facebook IQ_ Facebook IQ_Meta for Business page available at <https://www.facebook.com/iq/insights-to-go/6m-there-are-more-than-6-million-active-advertisers-on-facebook>, downloaded on 14 September 2022 (ID5351).

⁷⁶⁷ Annex 1 to Meta's reply to the Commission's RFI to Meta of October 2021 (ID2310).

⁷⁶⁸ Meta's reply to Q32 of the Commission's RFI to Meta of March 2022. According to Meta the worldwide revenues with online display advertising was [...] (ID3255).

⁷⁶⁹ Meta's reply to Q31 of the Commission's RFI to Meta of March 2022. Meta said that the total ad spend by the five largest advertisers in the EEA (including UK) in 2021 was [...] and worldwide in 2021 it was [...] (ID3494).

⁷⁷⁰ Replies to Q16.1.9 of the Commission's RFI to advertisers of March 2020 (partly in connection with Q16.1.8) A lack of possibilities to negotiate with Meta was confirmed by majority of the respondents.

⁷⁷¹ [...].

⁷⁷² [...].

⁷⁷³ [...].

⁷⁷⁴ [...].

majority of OCAS providers confirmed that they were not able to negotiate specific conditions with Meta. See section 7.3.5.1 and additional examples below:⁷⁷⁶

(1) According to [...].⁷⁷⁷

(2) According to [...].⁷⁷⁸

6.4.7. *The other side of the platform, namely the EEA-wide market for personal social networking services, does not exert any significant competitive constraint on Meta's dominance*

(725) As explained above, given the link between the two sides of Meta's platforms, it is important to also consider the potential competitive constraints from the EEA-wide market for personal social networking services on Meta's dominant position in each national market for online display advertising on social media platforms in the EEA.

(726) In this context, the Commission concludes that any constraints from the side where Facebook competes on the EEA-wide market for personal social networking services are not sufficient to change the conclusion that Meta is dominant in the national markets for online display advertising on social media platforms. The users of personal social networks generally do not have an interest in seeing many ads in their newsfeed and they would not switch to a different platform in case the amount of ads decreases. In addition, Meta is dominant in the market for personal social networking services, with very high market shares and very few alternatives available. Thus, any exertion of market power by Meta vis-a-vis advertisers would be unlikely to trigger any counter-reaction on the side where private users visit Facebook to such an extent that it could constrain such market power.

6.4.8. *Conclusion on national markets for online display advertising on social media platforms*

(727) In light of the above, the Commission concludes that Meta holds a dominant position in each national market for online display advertising on social media platforms within the EEA at least since 2017 and until the date of the present decision.

6.5. Conclusion on dominance

(728) In light of the analysis contained in the sections above, the Commission concludes that Meta holds a dominant position in the following relevant markets at least since 2017 and until the date of the present decision: (i) the EEA-wide market for personal social networking services including hybrid social media platforms and (ii) each national market for online display advertising on social media platforms within the EEA.

⁷⁷⁵ [...].

⁷⁷⁶ Replies to Q41, respectively Q49 of the Commission's RFI to OCAS providers of March 2020. The RFI to OCAS providers of March 2020 was sent out in two slightly different versions, which changed the numbering for the relevant (identical) question on negotiation possibilities: For some it was Q41, for others it was Q49.

⁷⁷⁷ [...]. The RFI to OCAS providers of March 2020 was sent out in two slightly different versions, which changed the numbering for the relevant (identical) question on negotiation possibilities: For some it was Q41, for others it was Q49.

⁷⁷⁸ [...]. The RFI to OCAS providers of March 2020 was sent out in two slightly different versions, which changed the numbering for the relevant (identical) question on negotiation possibilities: For some it was Q41, for others it was Q49.

7. THE ABUSES

7.1. Introduction

(729) In this Decision, the Commission concludes that Meta has infringed Article 102 TFEU by (i) tying Facebook Marketplace to Facebook (section 7.2), and (ii) imposing unfair trading conditions on competitors of Facebook Marketplace which use Meta's online display advertising services (section 7.3).

7.2. Tying of Facebook Marketplace with Facebook

7.2.1. Principles on tying under Article 102 TFEU

(730) The function of EU competition rules is to prevent competition from being distorted to the detriment of the public interest, individual undertakings and consumers, thereby ensuring the well-being of the European Union.⁷⁷⁹

(731) The concept of abuse is an objective one relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.⁷⁸⁰

(732) A system of undistorted competition can be guaranteed only if equality of opportunity is secured as between the various economic operators.⁷⁸¹

(733) Article 102 TFEU prohibits a dominant undertaking from eliminating or marginalising a competitor⁷⁸² and thereby strengthening its position by using methods other than those which come within the scope of competition on the merits.⁷⁸³

(734) Competition on the merits may, by definition, lead to the departure from the market or the marginalisation of competitors that are less efficient⁷⁸⁴ and so less attractive to consumers from the point of view of, among other things, price, choice, quality or innovation.⁷⁸⁵ However, a dominant undertaking has a special responsibility not to impair genuine, undistorted competition on the internal market through means that fall outside the scope of competition on the merits.⁷⁸⁶

⁷⁷⁹ Case C-52/09, *Konkurrensverket v TeliaSonera Sverige*, EU:C:2011:83, paragraph 22.

⁷⁸⁰ Case C-549/10 P *Tomra v Commission*, EU:C:2012:221, paragraph 17; Case C-457/10 P *AstraZeneca v Commission*, EU:C:2012:770, paragraph 74.

⁷⁸¹ Case C-280/08 P, *Deutsche Telecom v Commission*, EU:C:2010:603, paragraph 230; Case T-336/07, *Telefónica v Commission*, EU:T:2012:172, paragraph 204.

⁷⁸² See reference to the elimination and marginalisation of competitors in Case C-209/10, *Post Danmark*, EU:C:2012:172, paragraph 22.

⁷⁸³ Case C-62/86, *AKZO v Commission*, EU:C:1991:286, paragraph 70; Case C-202/07 P, *France Télécom v Commission*, EU:C:2009:214, paragraph 106; Case C-457/10 P, *AstraZeneca v Commission*, EU:C:2012:770, paragraph 75; Case C-377/20, *Servizio Elettrico Nazionale and Others v Autorità Garante della Concorrenza e del Mercato and Others*, EU:C:2022:379, paragraphs 75 and 76.

⁷⁸⁴ See also Case C-23/14, *Post Danmark II*, EU:C:2015:651 paragraph 60.

⁷⁸⁵ Case C-209/10, *Post Danmark*, EU:C:2012:172, paragraph 22.

⁷⁸⁶ Case C-413/14 P, *Intel Corporation v Commission*, EU:C:2017:632, paragraphs 134 to 135; Case C-322/81, *Nederlandsche Banden-Industrie-Michelin v Commission*, EU:C:1983:313, paragraph 57; Case C-209/10, *Post Danmark*, EU:C:2012:172, paragraph 23.

- (735) It follows from the nature of the obligations imposed by Article 102 TFEU that, in specific circumstances, an undertaking in a dominant position may be deprived of the right to adopt a course of conduct or take measures which are not in themselves abuses and which would be unobjectionable if adopted or taken by non-dominant undertakings.⁷⁸⁷
- (736) Article 102 TFEU lists a number of abusive practices. These are merely examples, not an exhaustive enumeration of conduct that may constitute an abuse of dominant position prohibited by Union competition law.⁷⁸⁸ The legal characterisation of an abusive practice does not depend on the name given to it, but on the substantive criteria used in that regard.⁷⁸⁹
- (737) Article 102 TFEU is designed to protect not only the immediate interests of individual competitors or consumers from direct harm through abusive practices but also to protect the structure of the market and thus competition as such, the distortion of which may cause indirect harm to consumers.⁷⁹⁰ Moreover, since the structure of competition on the market has already been weakened by the presence of the dominant undertaking, any further weakening of the structure of competition may constitute an abuse of a dominant position.⁷⁹¹ It follows that fixing an appreciability threshold for the purposes of determining whether there is an abuse of a dominant position is not justified.⁷⁹²
- (738) In order for the conduct of a dominant company to be considered abusive, it is not necessary to show that the practice in question has produced actual results. Thus, as regards exclusionary conduct, it is not necessary to prove that the conduct has actually achieved driving the dominant's company's competitors from the market concerned. The purpose of Article 102 TFEU is to penalise abuse by an undertaking of a dominant position within the internal market or in a substantial part of it, irrespective of whether such practice has proved successful.⁷⁹³

⁷⁸⁷ Case 322/81, *Nederlandsche Banden-Industrie Michelin v Commission*, EU:C:1983:313, paragraph 57; Case T-111/96, *ITT Promedia v Commission*, EU:T:1998:183, paragraph 139.

⁷⁸⁸ Case 6/72, *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 26; Case C-280/08 P, *Deutsche Telekom v Commission*, EU:C:2010:603, paragraph 173; Case C-52/09, *Konkurrensverket v TeliaSonera Sverige*, EU:C:2011:83, paragraph 26.

⁷⁸⁹ Case T-286/09, *Intel v Commission*, EU:T:2014:547, paragraph 219 and Case T-286/09 RENV, *Intel v Commission*, EU:T:2022:19, paragraph 96.

⁷⁹⁰ Case 6/72, *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 26; Case C-8/08, *T-Mobile Netherlands and Others*, EU:C:2009:343, paragraph 38; Case C-286/13 P, *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, paragraph 125. See in the same vein Case C-202/07 P, *France Télécom v Commission*, EU:C:2009:214, paragraph 105; Joined cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, *GlaxoSmithKline Services and Others v Commission and Others*, EU:C:2009:610, paragraph 63; Case C-52/09, *Konkurrensverket v TeliaSonera Sverige*, EU:C:2011:83, paragraph 24; Case T-336/07, *Telefónica v Commission*, EU:T:2012:172, paragraph 171.

⁷⁹¹ Case 85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 123; Case T-65/89, *BPB Industries and British Gypsum v Commission*, EU:T:1993:31, paragraph 95; Case T-83/91, *Tetra Pak v Commission*, EU:T:1994:246, paragraph 114; Joined Cases T-24/93 and others, *Compagnie Maritime Belge v Commission*, EU:T:1996:139, paragraph 106; Case C-23/14, *Post Danmark v Konkurrencerådet*, EU:C:2015:651, paragraph 72.

⁷⁹² Case C-23/14, *Post Danmark v Konkurrencerådet*, EU:C:2015:651, paragraph 73; Case C-525/16, *Meo-Serviços de Comunicações e Multimédia*, EU:C:2018:270, paragraph 29.

⁷⁹³ Case C-377/20, *Servizio Elettrico Nazionale and Others v Autorità Garante della Concorrenza e del Mercato and Others*, EU:C:2022:379, paragraph 53 and case C652/09, *Konkurrensverket v TeliaSonera Sverige*, EU:C:2011:83, paragraph 65.

- (739) Similarly, for the purpose of establishing an infringement of Article 102 TFEU, it is not required to demonstrate that any possible consequences of the elimination or restriction of competition actually manifested themselves, for example, in the form of less innovation or price increases that could only be explained by the lack of competition. It is accepted in that regard that the weakening of competition is highly likely to have such consequences.⁷⁹⁴
- (740) Customers should have the opportunity to benefit from whatever degree of competition is possible on the market and competitors should be able to compete on the merits for the entire market and not just for a part of it.⁷⁹⁵ An undertaking in a dominant position may not therefore justify abusive conduct in a certain segment of a market by the fact that its competitors remain free to compete in other segments.⁷⁹⁶ Also, it is not the role of the dominant undertaking to dictate how many viable competitors will be allowed to compete for demand.⁷⁹⁷
- (741) An abuse of a dominant position does not necessarily have to consist in the use of the economic power conferred by a dominant position.⁷⁹⁸ Moreover, Article 102 TFEU gives no explicit guidance as to the requirements relating to where on the common market the abuse took place.⁷⁹⁹ Article 102 TFEU may not only prohibit practices by an undertaking in a dominant position which tend to strengthen that position,⁸⁰⁰ but also the conduct of an undertaking with a dominant position in a given market that aims at extending or leveraging that position to a neighbouring but separate market, thereby distorting competition in such market.⁸⁰¹ Therefore, the fact that a dominant undertaking's abusive conduct has its adverse effects on a market distinct from the one where it has a dominant position does not preclude the application of Article 102 TFEU.⁸⁰² It is not necessary that the dominance, the abuse and the effects of the abuse be all in the same market.
- (742) The abusive tying of two products or services is a particular form of conduct covered by Article 102 TFEU, in particular Article 102(d) TFEU. Tying consists of a dominant undertaking making the sale of a specific product (the tying product) conditional upon the acquisition of another product (the tied product). It may have exclusionary effects on the tied market, the tying market or both at the same time. An undertaking which is dominant in one product market or more (market for the tying

⁷⁹⁴ Case T-612/17, *Google and Alphabet v European Commission*, EU:T:2021:763, paragraph 443.

⁷⁹⁵ Case C-549/10 P, *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraph 42.

⁷⁹⁶ Case T-286/09, *Intel v Commission*, EU:T:2014:547, paragraph 132.

⁷⁹⁷ Case C-549/10 P, *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraph 42; Case C-307/18, *Generics (UK)*, EU:C:2020:52, paragraph 161.

⁷⁹⁸ Case 6/72, *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 27; Case 85/76, *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 91; and Case T-321/05, *AstraZeneca v Commission*, EU:T:2010:266, paragraph 354.

⁷⁹⁹ Case T-83/91, *Tetra Pak v Commission*, EU:T:1994:246, paragraphs 114 to 116.

⁸⁰⁰ Case C-6/72, *Europemballage Corporation and Continental Can Company v Commission*, EU:C:1973:22, paragraph 26; Case C-85/76, *Hoffmann-La Roche & Co. v Commission*, EU:C:1979:36, paragraph 91; Case C-322/81, *NV Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 57.

⁸⁰¹ Case C-311/84, *Centre belge d'études de marché - Télémarketing (CBEM) v Compagnie luxembourgeoise de télédiffusion (CLT) and Information publicité Benelux (IPB)*, EU:C:1985:394, paragraph 27; Case C-333/94 P, *Tetra Pak v Commission*, EU:C:1996:436, paragraph 25; Case T-228/97, *Irish Sugar v Commission*, EU:T:1999:246, paragraph 166; Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 1344.

⁸⁰² Case C-333/94 P, *Tetra Pak v Commission*, EU:C:1996:436, paragraph 25; Case C-52/09, *Konkurrensverket v TeliaSonera Sverige*, EU:C:2011:83, paragraph 85.

product) can harm consumers through that practice by foreclosing the market for the other products that are part of the tie (market for the tied product) and, indirectly, the tying market.⁸⁰³

- (743) In order for tying to be liable to be caught by the prohibition under Article 102 TFEU, it should be established that:
- (1) the tying and tied products are two separate products;
 - (2) the undertaking concerned is dominant in the market for the tying product;
 - (3) the dominant undertaking does not give its customers or end users a choice to obtain the tying product without the tied product; and
 - (4) the tying is capable of having exclusionary effects.⁸⁰⁴
- (744) Regarding the first criterion, the distinctness of the two products concerned has to be assessed by reference to customer demand.⁸⁰⁵ This may be the case if an appreciable number of customers would purchase or would have purchased the tied product independently, that is without buying it with the tying product from the same supplier. Several factors may be considered in this assessment, including the nature and technical features of the products concerned, the facts observed on the market such as the presence of independent companies specialising in the manufacture and sale of the tied product,⁸⁰⁶ the history of the development of the products concerned and the commercial practice of the dominant undertaking.⁸⁰⁷
- (745) Complementary products can constitute separate products for the purposes of Article 102 TFEU, in particular Article 102(d) TFEU.⁸⁰⁸ This is because, for example, customers may wish to obtain complementary products from different sources.⁸⁰⁹
- (746) Moreover, the technical integration of one product into another does not mean that the two products are no longer separate for the purposes of Article 102 TFEU.⁸¹⁰ Equally, even when the tying of two products is consistent with commercial usage or when there is a natural link between the two products, such tying may nonetheless constitute an abuse unless it is objectively justified.⁸¹¹
- (747) Regarding the second criterion that the undertaking concerned is dominant in the market for the tying product, there is no additional requirement that the undertaking must also be dominant in the tied market.
- (748) Regarding the third criterion that the dominant undertaking does not give its customers or end users a choice to obtain the tying product without the tied product, a dominant undertaking can apply compulsion or coercion either directly to end users

⁸⁰³ Case T-604/18, *Google and Alphabet v Commission (Google Android)*, EU:T2022:541, paragraph 283.

⁸⁰⁴ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraphs 859, 862, 864, 867, 869, and 1144 to 1167.

⁸⁰⁵ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 917.

⁸⁰⁶ Case T-30/89, *Hilti v Commission*, EU:T:1991:70, paragraph 67; Case T-83/91, *Tetra Pak v Commission*, EU:T:1994:246, paragraphs 82 and 137; Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 927.

⁸⁰⁷ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 925.

⁸⁰⁸ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 921.

⁸⁰⁹ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 922.

⁸¹⁰ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 935.

⁸¹¹ Case C-333/94 P, *Tetra Pak v Commission*, EU:C:1996:436, paragraphs 36 to 37; Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 942.

or via its customers that pass on such coercion to end users. Such compulsion or coercion can be of a contractual nature, a technical nature, or both.⁸¹²

- (749) Coercion or compulsion can still exist where the party accepting the tied product is not charged a separate price for that product.⁸¹³
- (750) Equally, compulsion or coercion can still exist where the party accepting the tied product is not required to use it or is entitled to use the same product supplied by a competitor of the dominant undertaking.⁸¹⁴
- (751) Regarding the fourth criterion as to the effects of the tying, in *Microsoft* the General Court explained that while it is true that Article 102 TFEU as a whole does not contain any reference to the anti-competitive effect of bundling, the fact remains that, in principle, conduct will be regarded as abusive only if it is capable of restricting competition.⁸¹⁵
- (752) Tying may be capable of producing exclusionary effects in the tied market⁸¹⁶ or in both the tied market and the tying market.⁸¹⁷ Tying may in particular be capable of resulting in exclusionary effects in the tied market if the dominant undertaking leverages its dominance in the tying market into the tied market. This may be the case if the tying confers a significant competitive advantage to the tied product that is unrelated to the quality of the tied product, which is unlikely to be offset by competitors.⁸¹⁸
- (753) Article 102 TFEU does not require demonstration of actual anti-competitive effects. However, the case law of the Union Courts requires the Commission to establish that the tying of a specific product and a dominant product is capable to have an exclusionary effect. The depth of the analysis required to establish such capability depends on the specific circumstances of the case. In certain circumstances, it may be possible to conclude that, due to the specific characteristics of the markets and products at hand, the tying has potential to produce exclusionary effects and those effects can be presumed.⁸¹⁹ In other circumstances, a closer examination of actual market conditions may be warranted (such as the increased barriers to entry and expansion)⁸²⁰ confirming the capability of the tying to restrict competition. This is

⁸¹² Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 963.

⁸¹³ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraphs 967 to 969.

⁸¹⁴ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 970.

⁸¹⁵ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 867. See also Case T-203/01, *Michelin v Commission*, EU:T:2003:250, paragraphs 237 to 239.

⁸¹⁶ Case C-333/94 P, *Tetra Pak v Commission*, EU:C:1996:436, paragraph 25.

⁸¹⁷ Case T-604/18, *Google and Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraph 283.

⁸¹⁸ This is the case, for instance, when, due to the distribution through the tying product, the tied product achieves such a level of market penetration that competitors are unable to counterbalance it or match it with alternative means to reach customers or end users. See Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraphs 1036 to 1039; Commission decision of 18 July 2018 in case AT.40099 – *Google Android*, paragraph 805 and 811; Case T-604/18, *Google Android*, EU:T:2022:541, paragraphs 559 and 1087.

⁸¹⁹ This is notably the case in situations where the inability of competitors to enter or expand their presence in the tied market is likely to directly result from the tying conduct. See case T-30/89, *Hilti v Commission*, EU:T:1991:70, paragraphs 100 and 101; and case T-83/91, *Tetra Pak International v Commission*, EU:T:1994:246 in relation to the requirement by Tetra Pak that buyers of liquid packaging machines would also have to purchase cartons and maintenance services from it.

⁸²⁰ Case T-604/18, *Google and Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraphs 294 and 295.

typically the case when the tied product is available for free and it is easy to obtain alternatives to the tied product.⁸²¹

- (754) If the conditions set out at (743) above are met, the tying is in principle caught by the prohibition under Article 102 TFEU. It is nevertheless open to the dominant undertaking to provide justification for its conduct in order to escape such prohibition.⁸²²
- (755) The dominant undertaking may demonstrate, for that purpose, either that its conduct is objectively necessary or that the exclusionary effect produced may be counterbalanced, outweighed even, by advantages in terms of efficiency that also benefit consumers.⁸²³
- (756) In the latter regard, a dominant undertaking must demonstrate that four cumulative conditions are met:⁸²⁴
- (1) the efficiency gains likely to result from its conduct counteract any likely negative effects on competition;
 - (2) those gains have been, or are likely to be, brought about as a result of its conduct;
 - (3) its conduct is necessary for the achievement of those gains in efficiency; and
 - (4) its conduct does not eliminate effective competition, by removing all or most existing sources of actual or potential competition.

7.2.2. *Application to this case*

- (757) On the basis of its finding set out in sections 7.2.3 to 7.2.6, the Commission concludes that the tying of Facebook Marketplace with Facebook constitutes an abuse of Meta's dominant position in the EEA-wide market for personal social networking services including hybrid social media platforms. In the first place, as explained in section 7.2.3, Meta's tying conduct fulfils the legal test outlined in recital (743) above.⁸²⁵
- (758) In addition, as explained in section 7.2.4, Meta has not demonstrated that its conduct is objectively necessary or produces substantial efficiencies which outweigh any anti-competitive effects on consumers. In section 7.2.5, the Commission determines the duration of Meta's infringement. The Commission's conclusion in relation to Meta's tying conduct is set out in section 7.2.6.

⁸²¹ Case T-604/18, *Google and Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraphs 292 to 295.

⁸²² Case C-209/10, *Post Danmark v Konkurrencerådet*, EU:C:2012:172, paragraphs 40 to 42; Case C-23/14, *Post Danmark v Konkurrencerådet*, EU:C:2015:651, paragraphs 47 to 49; Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 688.

⁸²³ Case C-209/10, *Post Danmark v Konkurrencerådet*, EU:C:2012:172, paragraph 41.

⁸²⁴ Case C-209/10, *Post Danmark v Konkurrencerådet*, EU:C:2012:172, paragraph 42; Case C-23/14, *Post Danmark v Konkurrencerådet*, EU:C:2015:651, paragraph 49; and Case C-333/21, *European Superleague Company SL v Fédération internationale de football association (FIFA)*, EU:C:2023:1011, paragraph 204.

⁸²⁵ Therefore, such conduct is based on the use of means other than those which come within the scope of competition on the merits and is capable of producing exclusionary effects in the national markets for OCAS.

7.2.3. *Abusive nature of Meta's tie*

(759) The Commission concludes that the tying of Facebook Marketplace with Facebook constitutes an abuse of Meta's dominant position in the EEA-wide market for personal social networking services because: (i) Facebook Marketplace's OCAS and Facebook's personal social network service are distinct products (section 7.2.3.1); (ii) Meta is dominant in the EEA-wide market for personal social networking services (section 7.2.3.2); (iii) Meta does not give its end users a choice to obtain Facebook without Facebook Marketplace (section 7.2.3.3); and (iv) the tie of Facebook Marketplace with Facebook is capable of restricting competition (section 7.2.3.4).

7.2.3.1. Facebook's personal social network service and Facebook Marketplace's OCAS are separate products

(760) For the reasons set out below, the Commission concludes that online classified ads and personal social networking services are separate products. The evidence on the Commission's file indicates that there is separate customer demand for both products.

(761) This is apparent from the nature and technical features of Facebook and Facebook Marketplace. These services provide the following distinct functionalities to users:

- (1) Facebook enables users to stay in contact with people they know; and
- (2) Facebook Marketplace enables users to list and to review online advertisements in an easily searchable and comparable way, filtered by product/services categories.

(762) On the one hand, there are significant differences between Facebook's personal social network services and Facebook Marketplace's OCAS for users. While Facebook's personal social network services offer users the possibility to stay in contact and maintain personal relationships with people they know (see recital (115)), Facebook Marketplace is a platform which allows users to find goods they want to buy or list goods they want to sell (see recital (459)) without pursuing the purpose of maintaining relationships to friends. From an advertisers' perspective, online classified ads placed on Facebook Marketplace significantly differ from online display ads which are published by advertisers on Facebook mainly for the purpose of increasing brand awareness. Online classified ads, to the contrary, are placed on Facebook Marketplace for the immediate purchase and sale of goods (see section 4.5.2.3).

(763) On the other hand, Facebook Marketplace shares the same features of other standalone OCAS, such as sorting ads by categories, search and filter tools, communication channels and product presentation via a combination of text and pictures provided by the seller. These features are specifically designed to meet the demands of classified ads buyers and sellers and are not available on Facebook.

(764) Internal documents submitted by [...] accordingly show that [...] does not see any major differences in functional product performance between Facebook Marketplace and [...]. [...] regularly compares its performance to Facebook Marketplace across all product functions determining both buy and sell journeys.⁸²⁶

⁸²⁶ [...].

- (765) In particular, from a buyer's perspective, an [...] internal document⁸²⁷ shows that, on Facebook Marketplace, users can search for products, browse categories, sort and filter results, as they do through other standalone OCAS. Users can also get notified when new products become available that match search parameters. Through Facebook Marketplace, users can also contact the seller (via Facebook Messenger) to determine availability, when and how to get the item they want to purchase, as they do through other standalone OCAS. Through the chat offered via Facebook Messenger, buyers and sellers can coordinate, negotiate and organise any possible returns. Buyers and sellers on Facebook Marketplace can also rate each other and write reviews, as they do through other standalone OCAS.
- (766) Similarly, from a seller's perspective, [...] internal document shows that the process and journey that lead the user to sell its items is identical on Facebook Marketplace and on other standalone OCAS. Sellers on Facebook Marketplace need to present the item they want to sell, determine its condition, figure out what buyers want to know about it, prepare the item, gather photos of it, determine the value of similar items, determine the specifics and gather the relevant documents and accessories. As for any other standalone online classified ads service, sellers need to set the price, determine the timing of the sale, additional services to offer, how they will get the item to buyers and their willingness to negotiate or manage dissatisfied customers. These steps necessary for the users to sell their items are manual steps, *i.e.* sellers have to manually determine their terms by reviewing other offers of similar items as they do through other standalone online classified ads platforms. Moreover, as on any other standalone OCAS provider, on Facebook Marketplace, sellers can pay to increase the visibility of their listings.⁸²⁸
- (767) The existence of separate customer demand for Facebook and Facebook Marketplace is also evident from the facts observed on the market such as the presence of independent companies specialising in offering of the tied product.
- (768) OCAS and personal social networking services are usually offered separately. Indeed, no other providers of OCAS offer personal social networking services to users and there is no other personal social network that offers OCAS. On the contrary, there are numerous websites that specialize in providing OCAS, without being coupled with a personal social network. For instance, in 2019, Schibsted operated 27 online classified ads websites in the EEA, such as LeBonCoin in France, while not operating any personal social network.⁸²⁹
- (769) The fact that consumers use those standalone OCAS shows that they choose to obtain such OCAS separately from a personal social network. This confirms that those users recognise them as separate and independent services and speaks for the assessment of OCAS as a distinct product.⁸³⁰
- (770) The existence of separate customer demand for Facebook and Facebook Marketplace is also confirmed by the history of the development of those products and Meta' commercial practice.

⁸²⁷ [...].

⁸²⁸ [...].

⁸²⁹ [...].

⁸³⁰ For instance, [...] websites together had more than [...] unique visitors in total in December 2017.

- (771) Internal Meta documents [...] (see recitals (913) to (918) below). This is indicative of the fact that Meta itself considers that OCAS are a standalone product whose demand can be addressed with a separate service.
- (772) Indeed, Meta is the only company providing both personal social networking services and OCAS. [...] submitted [...].⁸³¹
- (773) In addition, the feedback from respondents to the Commission's requests for information confirms that there is a consumer demand for OCAS which is separate from the demand for personal networking services. All OCAS providers agreed that the purpose uses of personal social networks and OCAS are different OCAS.⁸³²
- (774) In this context, [...] argued that [...].⁸³³ It further explained that [...].⁸³⁴
- (775) [...] confirmed the existence of this separate consumer demand for OCAS. It explained the reasons underlying this demand as follows: [...].⁸³⁵ It further explained that [...].⁸³⁶
- (776) According to [...].⁸³⁷ It also explained that [...].⁸³⁸
- (777) [...] specified the buyer's and seller's perspective as regards the purpose of OCAS. It explained that [...].⁸³⁹
- (778) [...] explained that [...].⁸⁴⁰
- (779) The Commission's conclusion that personal social networking services and OCAS are separate products is not contradicted by Meta's arguments that:
- (1) Facebook Marketplace was developed in response to existing user activity on Facebook and it constitutes an iterative improvement on existing buy/sell functionalities of the personal social network, in particular buy/sell groups ("BSGs").⁸⁴¹ In Meta's view, the fact that Facebook Marketplace is not a distinct product from Facebook, but just one stage in its continuous investment in improving buy-sell activity on the platform, is also reflected in the fact that such activity has developed from BSGs to Facebook Marketplace, contrary to precedents such as *Microsoft* or *Google Android*, where the tied product was not "an existing aspect" of the tying product, and was not used by users for the same purpose.⁸⁴² Meta submitted that in *Microsoft*, the Court made clear that developments that amount to a "*normal and necessary step in the evolution of a product or service*" and that arise from a process of a "*constant improvement*" cannot give rise to the existence of separate products.⁸⁴³

⁸³¹ [...].

⁸³² Replies to Q14 of the Commission's RFI to OCAS providers of August 2019.

⁸³³ [...].

⁸³⁴ [...].

⁸³⁵ [...].

⁸³⁶ [...].

⁸³⁷ [...].

⁸³⁸ [...].

⁸³⁹ [...].

⁸⁴⁰ [...].

⁸⁴¹ SO Response, paragraphs 228 to 233 and Annex 7 of the SO Response, paragraphs 3.1.1 to 3.5.3.

⁸⁴² SO Response, paragraphs 250 and 256.

⁸⁴³ SO Response, paragraph 255.

- (2) Facebook Marketplace's content and user base has migrated from Facebook BSGs, [...].⁸⁴⁴
 - (3) Facebook Marketplace offers sharing and discovery of product/content functionalities which cannot be distinguished from the rest of Facebook.⁸⁴⁵ Meta submitted that user demand for Facebook and for other services in the social media sphere has evolved over time to include product discovery and buy/sell functionality, as indicated *inter alia* by the fact that other social media platforms (e.g. Twitter, TikTok, Snapchat, Pinterest, YouTube, WeChat, Douyin) offer such features to their users.⁸⁴⁶
 - (4) [...].⁸⁴⁷ In this context, Meta considered that the existence of standalone OCAS providers does not constitute evidence that there is separate demand for the services offered by Facebook Marketplace, on the one hand, and Facebook, on the other hand.
 - (5) According to Meta, the Commission should not rely on [...]. According to Meta, [...].⁸⁴⁸
- (780) First, the fact that Facebook Marketplace is regarded by Meta as an improvement over existing functionalities of Facebook does not preclude the finding of a distinct relevant product.
- (781) In the first place, the relevant matter to determine whether Facebook Marketplace and Facebook are distinct products is customer demand (see recital (744) above). As set out in section 4.3, the primary purpose of a personal social network, and what distinguishes it from other services, is that it enables users to build and maintain personal social relationships. As explained at recitals (773) to (778) above, the purpose of OCAS is different, as they enable users to list and to browse online advertisements for specific products or services, thus creating a separate demand for those services.
- (782) Whereas the BSGs that users can access on Facebook also enable buyers and sellers to connect to each other, they are not the core functionalities of Facebook. The Commission is not assessing whether BSGs in themselves constitute a distinct product from either Facebook or Facebook Marketplace, but whether there is distinct customer demand for personal social networking services, such as Facebook, and for OCAS such as Facebook Marketplace. In addition, Meta's claim that Facebook Marketplace is a mere evolution of pre-existing BSG groups is also contradicted by the fact that BSGs have continued to exist and [...].⁸⁴⁹ In any event, the Commission

⁸⁴⁴ SO Response, paragraphs 234 to 243.

⁸⁴⁵ SO Response, paragraphs 244 to 252.

⁸⁴⁶ SO Response, paragraph 245.

⁸⁴⁷ Annex 7 of the SO Response, paragraphs 3.4.3 to 3.4.7.

⁸⁴⁸ SO Response, paragraph 251

⁸⁴⁹ [...], but this is not conclusive evidence of a replacement effect caused by Facebook Marketplace, as this could merely be a natural reaction to the high number of BSGs already in existence. Indeed, the number of Facebook users who are members of BSGs in the EEA [...]. See Annex 7 of the SO Response, Figure 8, and Meta's reply to Q37 of the Commission's request for information to Meta of May 2020 (ID5271).

notes that there are differences between the features of BSGs and those of Facebook Marketplace.⁸⁵⁰

- (783) In the second place, as regards the history of the development of the products, in *Microsoft* the Court took into account the fact that the tied product, Windows Media Player, had been developed and marketed to work with third-party client PC operating systems in finding that the products were distinct. However, it does not follow from this that the negative is also true, *i.e.* that if a product is not developed or marketed independently from another product, this necessarily implies that the two products are not distinct. Furthermore, Meta is the only one that developed an OCAS in connection with a personal social network. All other OCAS providers developed their services independently from any personal social network. In addition, the internal document referenced at recital (779)(5) above shows that Meta did consider offering Facebook Marketplace as a standalone app. The choice of embedding it in Facebook was a strategic one, not one dictated by product development.
- (784) In the third place, in *Microsoft*, the Court expressly rejected the applicant's arguments that the Windows Media Player was an improvement of a functionality inherent to the Windows operating system as it found that the integration of the two products was not dictated by technical reasons, but rather by Microsoft's aim to make Windows Media Player more competitive compared to rivals.⁸⁵¹ As evidenced by the internal documents described in section 7.2.3.4.1.5, Meta's decision to integrate Facebook Marketplace into Facebook rather than to market it as a separate app is based not on technical considerations but on commercial ones, namely the distribution advantage provided by such integration.
- (785) Second, Meta incites Facebook users to cross-post their BSGs listings to Facebook Marketplace by various options and prompts to do so.⁸⁵² If anything, the fact that users cross-post items on BSG and Facebook Marketplace is therefore a manifestation of Meta's approach to tying its various services to take advantage of their existing user bases, not a proof that those services do not constitute separate products.
- (786) Third, Meta's claim that Facebook Marketplace primarily has sharing and product discovery functionalities, which cannot be distinguished from the rest of Facebook, is also unconvincing.
- (787) In the first place, "sharing" and "product discovery" are broad terms, the use of which obscures the fact that in practice Facebook Marketplace users seek to trade goods, just like on any other OCAS platform. This is evidenced by the nature of Facebook Marketplace's functionalities, as described at recitals (761) to (766) above, as well as Meta's own statements that "[c]ore to Marketplace's aim is to connect users with their local community [...] to identify items for sale / to sell to [...] C2C

⁸⁵⁰ In particular, Facebook Marketplace offers users the possibility to search and browse based on product category and other filters (such as price range, condition, or brand), the ability to create listings based on saved searches, the option to "boost" listings to make them more visible, and access to different audiences. See SO Response, paragraph 336 and Meta's reply to Q 1.1 of the Commission's request for information to Meta of May 2020 (ID5271).

⁸⁵¹ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraphs 935 to 937.

⁸⁵² Meta explained that when creating a new listing in the BSG listing composer, users are also offered the option to post the new listing to Facebook Marketplace. In addition, BSG members are presented with "in-feed units" in BSGs enabling them to post prior listings to Facebook Marketplace (and other BSGs). Meta's reply to Q 39 of the Commission's request for information to Meta of May 2020 (ID5485).

transactions have always been the core use case for Marketplace".⁸⁵³ It is also evidenced by what Meta highlights as the innovative and high-quality features of Facebook Marketplace, such as *"an intelligent and frictionless listing creation experience, a suggested listings feature based on a user's saved searches, and a meet-up plan feature for buyers and sellers"*⁸⁵⁴ and *"significant investments on a continuous basis to improve the quality of Marketplace [including] identifying and removing counterfeit listings"*,⁸⁵⁵ which are intended to enable the actual buying and selling of products by users.

- (788) In the second place, the fact that certain other social media platforms have started to offer certain elements of e-commerce does not preclude the definition of distinct relevant product markets or separate products. Furthermore, the examples cited by Meta concern relatively recent developments. Even if there were a trend suggesting consolidation between social media and e-commerce may occur in the future, this has not been the reality of the last seven years on the relevant markets since the conduct started (see section 7.2.5). As set out in the case law, the assessment of whether two products are separate needs to be carried out by reference to the *"factual and technical situation that existed at the time when, according to the Commission, the impugned conduct became harmful"*.⁸⁵⁶
- (789) Fourth, the fact that most Facebook Marketplace users do not end up buying a product or engaging with a seller, or that they spend more time reviewing listings than they spend actively engaged in a (potential) transaction, does not mean they are just *"casually browsing"* as part of their broader browsing activity on Facebook. While they may not be buying or actively engaging with every item they look at, it does not appear plausible that users just browse Facebook Marketplace without any purpose to potentially conclude a transaction or merely to discover new products, especially considering that the vast majority of listings concern second-hand goods rather than products that are new to the market. Indeed, it is normal for the prospective buyers of a product to inform themselves first before approaching a seller, or to find that the offer does not meet their needs, and thereby not approach any sellers. While this may result in what Meta considers to be a *"low volume of commerce-related"* actions, it does not mean that the users' engagement with Facebook Marketplace is not driven by an intention to make a purchase, which is distinct from the purposes and activities on personal social networks. In the same vein, when users post items for sale, against a specified price, it is clear they have the intention of selling them rather than of merely *"sharing content"* on Facebook Marketplace.
- (790) Fifth, Meta's claim that [...] ⁸⁵⁷ is also unconvincing. Meta has not put forward any evidence from a later date that would refute or call into question those early considerations. [...].

⁸⁵³ SO Response, paragraph 337 (a).

⁸⁵⁴ SO Response, paragraph 336.

⁸⁵⁵ SO Response, paragraph 338.

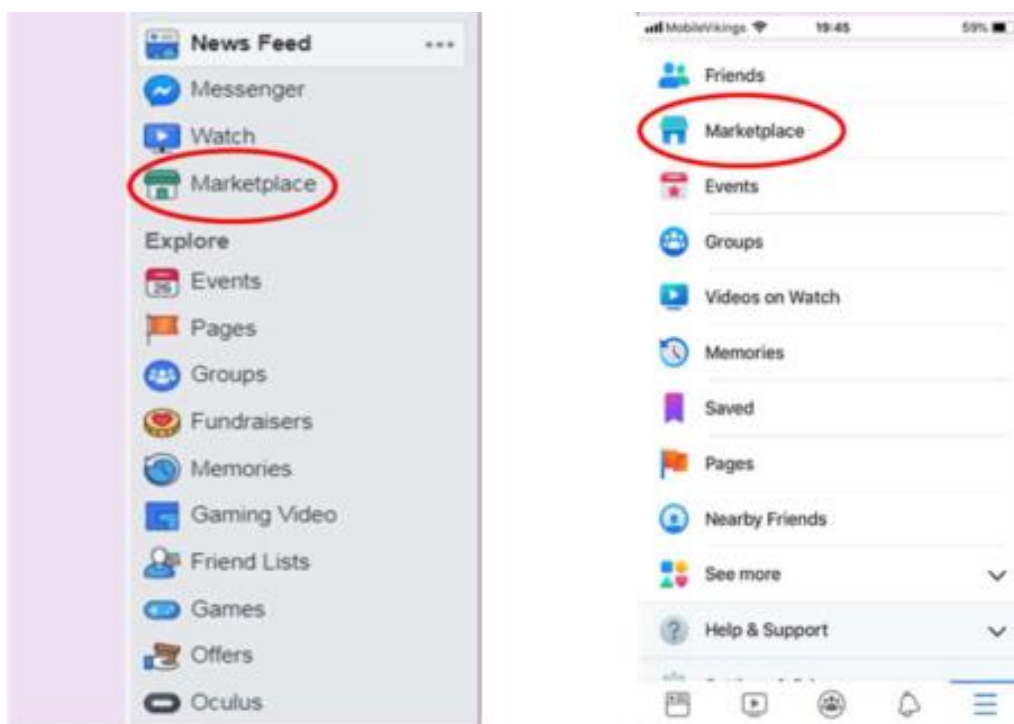
⁸⁵⁶ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraphs 913 and 914.

⁸⁵⁷ See documents discussed at recitals (912) to (917) below.

- 7.2.3.2. Meta is dominant in the EEA-wide market for personal social networking services including hybrid social media platforms.
- (791) As set out in section 6.3, the Commission concludes that Meta holds a dominant position in the EEA-wide market for personal social networking including hybrid social media platforms services since at least 2017.
- 7.2.3.3. Meta does not give its end users a choice to obtain Facebook without Facebook Marketplace
- (792) On the basis of the findings set out below, the Commission concludes that Meta does not give its end users a choice to obtain the tying product (Facebook) without the tied product (Facebook Marketplace).
- (793) Since its launch, Facebook Marketplace is integrated in Facebook, and it is not possible to access Facebook without Facebook Marketplace. In Meta’s own words, [...].⁸⁵⁸
- (794) Until 7 March 2024, date at which Meta, as a designated gatekeeper pursuant to the DMA, had to comply with its obligations under this regulation, users needed to be logged into their Facebook account to organise the sale or the purchase of an item within Facebook Marketplace. After 7 March 2024, following Meta’s designation as a gatekeeper pursuant to the DMA, to ensure compliance with the obligations under this regulation, such as the obligation laid down in its Article 5(8), Meta implemented compliance measures enabling users to access a logged-out, standalone version of Facebook Marketplace, independent of Facebook. Meta has removed the Facebook login screen gating the Facebook Marketplace experience on desktop and mobile web. However, the changes introduced after 7 March 2024 do not change the fact that it is still not possible to obtain Facebook without Facebook Marketplace.
- (795) Facebook Marketplace is displayed on the Facebook website and the mobile app as a separate line item (in the navigation menu and the app menu respectively (“menu item” or in internal documents of Meta: “bookmark”), as shown in the Figure 5 below. Clicking or tapping on the line opens Facebook Marketplace.

⁸⁵⁸ Meta’s reply to Q44 of the Commission’s RFI to Meta of March 2019 (ID196).

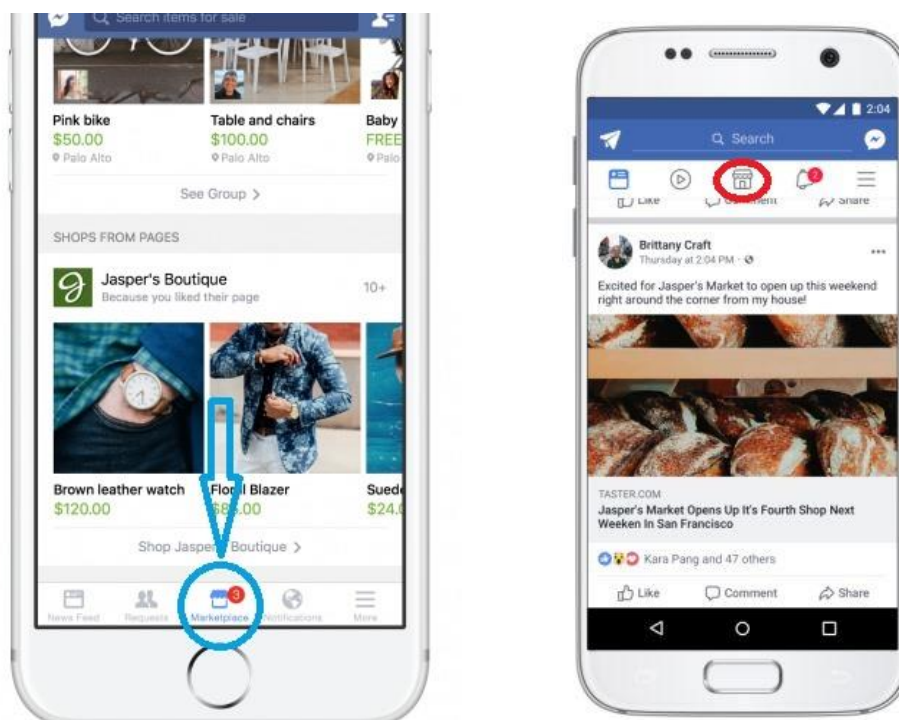
Figure 5: Access to Facebook Marketplace in the navigation menu on the Facebook website (left) and the Facebook mobile app (right)⁸⁵⁹



- (796) Facebook Marketplace may also appear as one of the shortcuts (called “Facebook Marketplace tab”) displayed in the Facebook mobile app’s and websites’ navigation bar. In this case, it is located at the bottom of the screen on devices using the iOS operating system and at the top of the screen on devices using the Android operating system.

⁸⁵⁹ Meta’s reply to Q4 of the Commission’s RFI to Meta of August 2019 (ID344) and Meta’s reply to Q18 (a)-(d) of the Commission’s RFI to Meta of July 2023 (ID11031).

Figure 6: Facebook Marketplace shortcut (Facebook Marketplace tab) using iOS (left) and Android (right) operating systems⁸⁶⁰

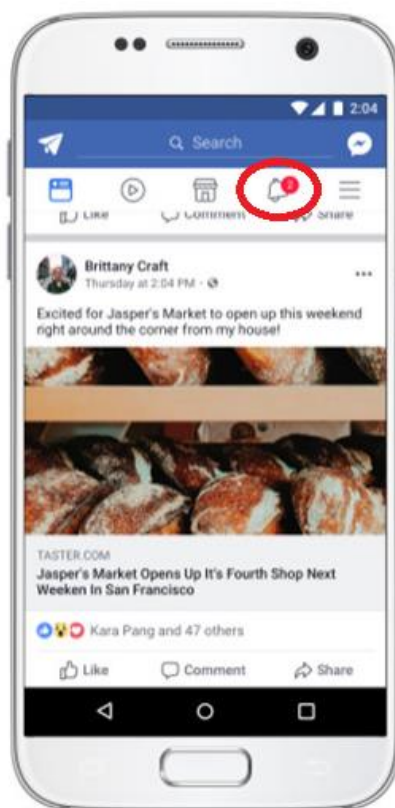


- (797) The icons displayed in users' navigation bars [...]. In addition to the icon bringing the user to Facebook's main News Feed, and to the notifications and menu, which are displayed to all users, the remaining two or three available positions in the navigation bar [...] can include the user's profile, friend requests, Facebook Marketplace, Groups or Watch.⁸⁶¹
- (798) Facebook Marketplace is also embedded in Facebook by other means in addition to the navigation menu and the tab. Those additional means include "Jewel Notifications" and "Showcase Units".
- (799) Jewel Notifications are displayed in the top space of Facebook. They consist of navigational tools used by Facebook to notify users of certain activities on Facebook which are of potential interest to them (e.g. a friend on Facebook "likes" the user's post, or a Group that the user is a member of publishes a new post).

⁸⁶⁰ Figure on the left downloaded from iPhoneTricks.org, "How to use Facebook Marketplace on iPhone and iPad", available at <https://www.iphonetricks.org/how-to-use-facebook-marketplace-on-iphone-and-ipad/>, downloaded on 18 May 2022 (ID5055) and figure on the right downloaded from Meta Newsroom, "Making Newsfeed an Easier Place to Connect and Navigate", available at <https://about.fb.com/news/2017/08/making-news-feed-an-easier-place-to-connect-and-navigate/>, downloaded on 10 February 2022 (frame added) (ID5052).

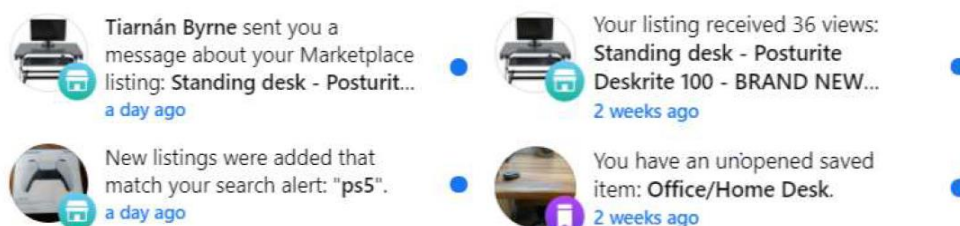
⁸⁶¹ Meta's reply to Q4 of the Commission's RFI to Meta of August 2019 (ID344) and Meta's reply to Q18 (a)-(d) of the Commission's RFI to Meta of July 2023 (ID11031).

Figure 7: Jewel Notification on Facebook app⁸⁶²



- (800) Facebook Marketplace can display Jewel Notifications to users of Facebook to draw their attention to Facebook Marketplace activity that is likely of relevance to them, for example, by informing the user about changes to a listing a user is following or that new Facebook Marketplace listings have been added that match their saved search. Meta also uses [...] to determine the display of Jewel Notifications, such as [...] (see also recital (852)).⁸⁶³ Users that have not yet used Facebook Marketplace might also receive Jewel Notifications related to it. Clicking or tapping on the Jewel Notification opens Facebook Marketplace.

Figure 8: Examples of Jewel Notifications relating to Facebook Marketplace⁸⁶⁴



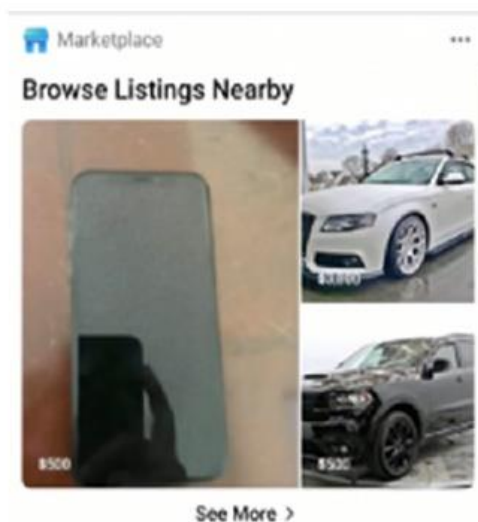
⁸⁶² Downloaded from Meta Newsroom, “*Making Newsfeed an Easier Place to Connect and Navigate*”, available at <https://about.fb.com/news/2017/08/making-news-feed-an-easier-place-to-connect-and-navigate/>, downloaded on 10 February 2022 (frame added) (ID5052).

⁸⁶³ Meta’s reply to Q23 of Commission’s RFI to Meta of July 2021 (ID6447).

⁸⁶⁴ Meta’s reply to Q23 of Commission’s RFI to Meta of July 2021 (ID6447).

- (801) Only Meta services – including Facebook Marketplace – can display Jewel Notifications. Business partners of Meta, in particular rival OCAS providers, cannot display notifications on Facebook.⁸⁶⁵
- (802) Showcase Units are tiles showing Facebook Marketplace content, which are inserted within the News Feed of users of Facebook. The listings displayed in a Showcase Unit are visible to the user without the user needing to scroll through them.⁸⁶⁶ Clicking or tapping on the Showcase Unit opens Facebook Marketplace.

Figure 9: Examples of a Showcase Unit⁸⁶⁷

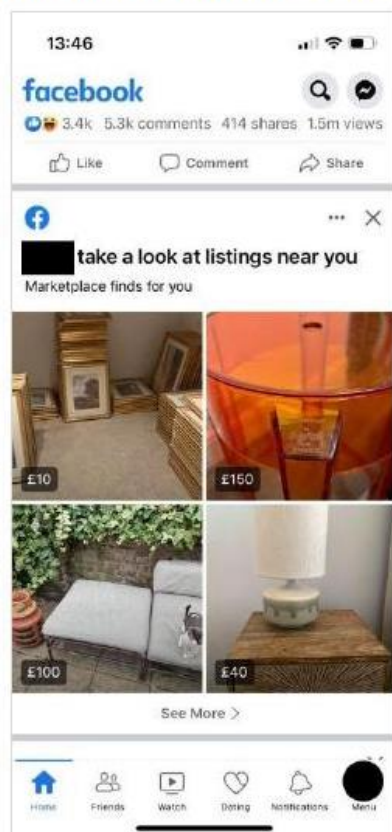


⁸⁶⁵ Meta's reply to Q23 of Commission's RFI to Meta of July 2021 (ID6447) and Meta's reply to Q18 (a)-(d) of the Commission's RFI to Meta of July 2023 (ID11031).

⁸⁶⁶ Meta's reply to Q3 of the Commission's RFI to Meta of May 2020 (ID5273).

⁸⁶⁷ Meta's reply to Q3 of the Commission's RFI to Meta of May 2020 (ID5273) and Meta's reply to Q18d) of the Commission's RFI to Meta of July 2023 (ID11031).

Showcase unit on the Facebook app



- (803) Even though Showcase Units have a format somehow similar to advertisement on Facebook, [...]. Only Facebook Marketplace can display Showcase Units. Business partners of Meta, in particular rival OCAS providers, cannot display Showcase Units.⁸⁶⁸
- (804) Finally, in April 2021, Meta introduced a “see all” icon allowing the access to a broader navigational menu in the top bar of the Facebook website. This menu displays a link to Facebook Marketplace per default. In addition, Meta introduced additional functionalities, which enable users to navigate to or back to Facebook Marketplace based on their specific user query or prior engagement on Facebook Marketplace.⁸⁶⁹
- (805) As of the date of this Decision, and despite the changes introduced by Meta in the context of the DMA (see recital (794)), there are no available technical solutions for users to carve out Facebook Marketplace from Facebook. Users of Facebook cannot freely choose not to have Facebook Marketplace embedded in their Facebook account. The result is that it is impossible to choose to take Facebook without Facebook Marketplace.⁸⁷⁰

⁸⁶⁸ Meta’s reply to Q3 of the Commission’s RFI to Meta of May 2020 (ID5273) and Meta’s reply to Q18 (a)-(d) of the Commission’s RFI to Meta of July 2023 (ID11031).

⁸⁶⁹ Meta’s reply to Q17 of the Commission’s RFI to Meta of July 2023 (ID11031).

⁸⁷⁰ Until 7 March 2024, it was also not possible for user to obtain Facebook Marketplace without Facebook. If anything, such a practice would have consisted in a form of tying of Facebook to Facebook Marketplace. Such conduct is not covered by this Decision.

- (806) Respondents to the Commission's requests for information confirm that Meta ties Facebook Marketplace to Facebook, emphasising that this is done very visibly.⁸⁷¹ By way of examples:
- (1) According to [...].⁸⁷²
 - (2) According to [...].⁸⁷³
- (807) It is not relevant in the analysis that Facebook Marketplace, as the tied product, is provided to consumers for free. The General Court ruled that *“it does not follow from either Article [102(d) TFEU] or the case law on bundling that consumers must necessarily pay a certain price for the tied product in order for it to be concluded that they are subject to supplementary obligations within the meaning of that provision.”*⁸⁷⁴
- (808) The Commission's conclusion that Meta does not give its end users a choice to obtain Facebook without Facebook Marketplace is not contradicted by Meta's claims that:
- (1) The Commission does not apply correctly the third limb of the tying test. According to Meta, the test requires to show that users are unable to obtain the tying product without the tied product whereas the Commission alleges the reverse.⁸⁷⁵
 - (2) Users have a choice whether or not to engage with Facebook Marketplace.⁸⁷⁶
 - (3) Users choose not to engage with Facebook Marketplace extensively in practice:
 - (a) On average only about [...] % of Facebook DAUs on any given day choose to engage with Facebook Marketplace.
 - (b) Facebook users in the EEA engaging with Facebook Marketplace spend on average only between [...] % of their time spent on Facebook on Facebook Marketplace which amounts to about [...] % of Facebook DAU in the EEA spending on average [...] of their daily time on Facebook on Facebook Marketplace.⁸⁷⁷
 - (c) Facebook Marketplace's use is below any established usage threshold. In particular, in the *Microsoft* case, it was established that the majority of users of Windows OS would have difficulties in downloading and/or using alternative media players, which was key for the assessment of ubiquity of Windows OS and Windows Media Player. The provided data on usage of Facebook Marketplace in a market characterised by multi-homing and switching, is in no way comparable.⁸⁷⁸
 - (4) User activity determines how visible Facebook Marketplace is within Facebook.⁸⁷⁹ Facebook provides its users with different options for customising

⁸⁷¹ Replies to Q6 of the Commission's RFI to OCAS providers of June 2019.

⁸⁷² [...].

⁸⁷³ [...].

⁸⁷⁴ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 969.

⁸⁷⁵ SO Response, paragraph 259.

⁸⁷⁶ SO Response, paragraphs 259 and 263, Comments on the LoF, paragraphs 209 and 211.

⁸⁷⁷ SO Response, paragraphs 263 and 264.

⁸⁷⁸ SO Response, paragraph 265.

⁸⁷⁹ SO Response, introductory heading to paragraph 284.

how they see and engage with Facebook Marketplace. Users can adjust their options to disable navigational tabs, Showcase Units and Jewel Notifications.⁸⁸⁰ They have sufficient knowledge or ready access to such knowledge to customize the navigational tools on Facebook.⁸⁸¹

- (809) First, contrary to Meta’s allegations, the Commission properly applies the third limb of the tying test by showing that Meta does not give its end users a choice to obtain the tying product (Facebook) without the tied product (Facebook Marketplace). The Commission however also notes that, until Meta applied the relevant DMA provision, users were also not able to obtain the tied product without the tying product. Whilst this is going beyond the requirements of the case law, this further demonstrates the strength of the connection imposed by Meta between the two products for (most of) the duration of Meta’s abusive conduct.
- (810) Second, contrary to Meta’s arguments, it is not relevant for the assessment of the third condition of the tying test whether users have a choice *to engage* with Facebook Marketplace.
- (811) The case law articulates the third limb of the tying test as a lack of choice to obtain from a dominant undertaking the tying product without the tied product. The condition in question relates solely to the possibility of obtaining the tying product without the tied product. It is not pertinent whether users can choose whether to use or engage with the tied product. As the General Court ruled, “*neither Article [102(d) TFEU] nor the case-law on bundling requires that consumers must be forced to use the tied product or prevented from using the same product supplied by a competitor of the dominant undertaking in order for the condition that the conclusion of contracts is made subject to acceptance of supplementary obligations to be capable of being regarded as satisfied.*”⁸⁸²
- (812) Third, Meta’s claim that Facebook Marketplace’s use is below any established usage threshold is not supported by the case law, which does not set any threshold for the purpose of establishing the third limb of the tying test. Moreover, the evidence on the Commission’s file contradicts Meta’s claim that users choose not to engage with Facebook Marketplace extensively in practice.
- (813) In the first place, the *Microsoft* judgment did not introduce a legal requirement for establishing any threshold to satisfy the third limb of the test for abusive tying. In particular, contrary to Meta’s allegations, when considering that the majority of users of Windows OS had difficulties in downloading and/or using alternative media players, the General Court was not requiring as part of the legal test that a majority of users would consequently use the tied product, but it was assessing the different question of whether user behaviour would offset Microsoft’s competitive advantage by downloading an alternative to the tied product.⁸⁸³ Thus, Meta’s claim that Facebook Marketplace’s use by Facebook users falls far “*below any established usage threshold*” is baseless.
- (814) In the second place, in any event, the numbers produced by Meta show that Meta users do engage with Facebook Marketplace. Meta indicated that [...] % of Facebook DAUs engage with Facebook Marketplace each day. Contrary to Meta’s allegation,

⁸⁸⁰ SO Response, paragraphs 284, 286 to 299, Comments on the LoF, paragraph 208.

⁸⁸¹ Comments on the LoF, paragraph 210.

⁸⁸² Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 970.

⁸⁸³ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraphs 1038, 1049 and 1050.

this reveals a considerable use of the tied product. Based on the assumption that data provided by Meta concerns the EEA, it demonstrates that in absolute terms about [...] Facebook users in the EEA⁸⁸⁴ engage with Facebook Marketplace on a daily basis, which is a substantial figure. Similarly, an average of [...] minutes spent per day on Facebook Marketplace (for each of those [...] users) is by no means small.

- (815) In the third place, this proportion of Facebook users engaging with Facebook Marketplace, as calculated by Meta, is likely to be significantly underestimated. Indeed, measuring the intensity of use of Facebook Marketplace by reference to DAUs, instead of MAUs, can convey a false impression concerning use of Facebook Marketplace by Facebook users. This is because users likely only engage with OCAS providers when they are looking to buy or sell a second-hand good. It cannot be reasonably expected to take place on a daily basis.
- (816) Other data provided by Meta, measured over a more relevant time period than a daily one, confirms that users of Facebook largely engage with Facebook Marketplace. Indeed, according to Meta: “[...]”.⁸⁸⁵ This implies that [...] % of Facebook’s MAU in the EEA, who were exposed to the Facebook Marketplace tab in Facebook in March 2023 engaged with Facebook Marketplace in that period. Meta claims that the [...] % figure “[...]”, and thus that *“this metric therefore includes users who will not have engaged in any meaningful transactional activity”*.⁸⁸⁶ In this respect the Commission notes that the fact that those users visited Facebook Marketplace for “[...]” (a metric on “engagement” which was chosen by Meta itself) does not mean that each of them visited Facebook Marketplace [...]. And in any event, irrespective of the amount of time they actually spent on Facebook Marketplace in that occasion, it does not change the fact that they did engage with Facebook Marketplace, as a result of the tab. Engaging with an OCAS does not necessarily mean that each and every visit will result in a transactional activity. For instance, users might not find the item they need at each instance, or they may wish to visit several times to compare and contrast offers. As Facebook Marketplace executives noted in an internal email “[...]”.⁸⁸⁷
- (817) Consistent with the finding above, in March 2023, the proportion of users of Facebook in the EEA who were Facebook Marketplace MAU was about [...] %.⁸⁸⁸ This shows that (i) the majority of Facebook users who are exposed to the Facebook Marketplace tab in Facebook in fact choose to engage with it, and (ii) in practice, a significant proportion of them do so on a regular basis (they are considered as MAUs of Facebook Marketplace).
- (818) Furthermore, Meta argued that due to multi-homing and switching, Facebook’s users would not have any difficulties to change to other OCAS providers, which is contrary to the *Microsoft* case, where it was established that the majority of users of Windows OS would have difficulties in downloading and/or using alternative media

⁸⁸⁴ This figure has been calculated based on the following data: (i) the average number of daily active users (DAUs) of Facebook, which amounted to [...] in 2022 (see recital (835) below) and (ii) the proportion of Facebook DAUs using Facebook Marketplace, which according to Meta amounts to [...] % (see recital (735)(3) above).

⁸⁸⁵ See SO Response, paragraph 286. In reply to the Commission’s request for information [...]. See also Comments on the LoF, paragraph 216.

⁸⁸⁶ Comments on the LoF, paragraph 216.

⁸⁸⁷ [...] (ID2122-4978).

⁸⁸⁸ See recital (860)(2) below. Commission’s calculations based on Meta’s reply to Q19 (ID10804) and Q21 (ID11025) of the Commission’s RFI to Meta of July 2023.

players⁸⁸⁹. However, this does not – as Meta seems to suggest – change the legal test as defined by the Court and applied by the Commission which is whether users have been given a choice to obtain Facebook, on a relevant market for which Meta is dominant, without Facebook Marketplace.⁸⁹⁰

- (819) Fourth, the fact that users of Facebook can customise visibility of, and engagement with, Facebook Marketplace does not change the fact that Facebook cannot be obtained without the tied product. As explained above, users of Facebook have no option to set up a Facebook account without Facebook Marketplace. Moreover, it is not correct that users can determine how visible Facebook Marketplace is within Facebook.
- (820) The presence of Facebook Marketplace as a menu item in the navigational menu of Facebook is predetermined by Meta and shown to each user, regardless of the user's activity. Despite a certain dependence on user activity, Meta also determines by default the visibility of the other entry points to Facebook Marketplace embedded in Facebook such as the Facebook Marketplace tab, Showcase Units and Jewel Notifications. It is Meta that decides how visible those are in the newsfeed of a Facebook user, based on data concerning that user's current activities or usage as well as predictions in this respect. User's current activities is not limited to the user's current activity on Facebook Marketplace, but it also includes information on the user's other activities related to shopping interests in general ([...]). Thus, users of Facebook do not actively participate in the process of determining the visibility of Facebook Marketplace. The vast majority of Facebook users continue to be exposed to various Facebook Marketplace entry points as a consequence of Meta's targeted offering.⁸⁹¹
- (821) It is true that, by way of menus that allow to change default options, users are able to reduce in some ways the visibility of Facebook Marketplace in Facebook. But those options are largely theoretical. As explained at recital (825) below, they require several complex actions to disable individually each way in which Facebook Marketplace is displayed, and some must be repeated on a regular basis.
- (822) In *Google Android* the General Court made a clear distinction between “*theoretical competition assumptions and the practical reality*” in the context of the competitive alternatives to the tied product. The General Court underlined that is necessary to take into account credibility and real impact of such alternatives, in particular, due to the existence of users *status quo* bias's arising from pre-installation⁸⁹² or measures having equivalent effects (*e.g.*, default settings⁸⁹³).

⁸⁸⁹ SO Response, paragraph 265.

⁸⁹⁰ See section 7.2.3.4.1.2, which discusses the following case-specific circumstances: the requirement to have a Facebook account to use Facebook Marketplace, the existence of four entry points embedded in Facebook service allowing to navigate to Facebook Marketplace, which are characterized by the persistence, the redundancy and are targeted.

⁸⁹¹ See for example the details about the display of the Facebook Marketplace tab to users of Facebook at recitals (796) to (797) above.

⁸⁹² Case T-604/18, *Google and Alphabet v Commission (Google Android)*, EU:T2022:541, paragraph 428, which reads as follows: “A distinction must be made in this respect between *theoretical competition assumptions and the practical reality*, where the competitive alternatives to which Google refers appear to have little credibility or real impact due to the ‘status quo bias’ arising from the MADA pre-installation conditions and the combined effects of those conditions with Google’s other contractual arrangements, including RSAs.”

⁸⁹³ Case T-604/18, *Google and Alphabet v Commission (Google Android)*, EU:T2022:541, paragraph 335.

- (823) The evidence in the file shows that, in reality, the options in question have no material impact on the visibility of Facebook Marketplace in Facebook.
- (824) In the first place, none of the options allows to entirely remove the Facebook Marketplace menu item from the Facebook's navigation menu. This menu item, contrary to the Facebook Marketplace tab, is therefore permanent.
- (825) In the second place, the options that are available to limit the visibility of the Facebook Marketplace tab, the Jewel Notifications and the Showcase Units are limited and complex. Users must be aware of their existence and need to have knowledge how to apply them. They need to actively engage with Facebook to change the default settings and need to spend their time to complete the process of deactivating/muting the entry points. For instance, disabling the Facebook Marketplace tab is possible only on the Facebook mobile app (but not the Facebook website). It requires to know that this option is available in the "Settings" on the Menu tab by using the navigation bar customisation field or that Facebook Marketplace tab can be hidden by pressing and holding the tab itself. Disabling is performed in six steps in the former case and in two steps in the latter case. Disabling the Facebook Marketplace tab on the Facebook app does not change its visibility on the Facebook website. As to the option to disable Jewel Notifications, similarly, it requires to know that this option is available in the "Settings" on the Menu tab by using the notifications bar customisation field. It is performed in six steps. In case of both Showcase Units and Jewel Notifications, users can choose to hide a received notification.
- (826) In the third place, even users that are aware of the possibility to change some of the default options have limited incentives to take the time to disable them one by one. Indeed, changing the default would not give those users access to another choice. The options to disable links to Facebook Marketplace can therefore be perceived by those users as resulting in having nothing instead of something. This further limits the incentives to change the default set up by Meta.
- (827) In the fourth place, while it is true that the Facebook Help Center contains information on how to customize the navigational tools on Facebook, this does not mean that users are aware of its availability or they are willing to spend time looking for it. It takes three steps to reach Help Center from a profile page of a user. From the level of Help Center, a user can introduce a search term that prompts different search results. To manage notifications, a user can type the search term "notifications" in the Help Center search field and then select "*Choose what you get notifications for on Facebook*" from the prompted results. This provides instructions how to customize received notifications. Similarly, to customize Tab, a user can type "navigation tab" in the Help Center search field and then select "*Personalize your navigation bar on Facebook*". This search result informs how to customize the navigation bar on the Facebook app. Finally, a user can type "*hide a post*" in the Help Center search field and then choose "*How do I hide a post that appears in my Facebook Feed?*" thread to learn how to hide a post from news feed.
- (828) In the fifth place, data provided by Meta confirms that, in reality, very few Facebook users use those options to reduce the visibility of Facebook Marketplace entry points:
- (1) Data provided by Meta shows that on 31 July 2023 only [...] % of the total number of Facebook MAUs in the EEA for which the Facebook Marketplace

tab was shown during July 2023 had removed the Facebook Marketplace tab from the list of tabs that are visible to them on Facebook.⁸⁹⁴

- (2) Data provided by Meta shows that in July 2023, Facebook users in the EEA chose to hide [...] Showcase Units concerning Facebook Marketplace, which represented only [...] % of all impressions of Showcase Units concerning Facebook Marketplace that were displayed to them in that period.⁸⁹⁵
- (3) Data provided by Meta shows that on 31 August 2023, only [...] % of the total number of Facebook MAU in the EEA that received Jewel Notifications concerning Facebook Marketplace in August 2023 set to opt out of such notifications.⁸⁹⁶

7.2.3.4. The tie of Facebook Marketplace to Facebook is capable of producing exclusionary effects

- (829) The Commission concludes that the tie of Facebook Marketplace to Facebook is capable of producing exclusionary effects on the national markets for OCAS because the ubiquity of Facebook combined with the importance of access to Facebook users for competition on the markets for OCAS affords Facebook Marketplace a significant competitive advantage in the tied market that cannot be matched by competitors (sections 7.2.3.4.1 and 7.2.3.4.2 below); the tie increases barriers to entry, deterring innovation (section 7.2.3.4.3 below); and the actual market evolution is consistent with the finding that the tying conduct is capable to produce exclusionary effects (section 7.2.3.4.5 below).
- (830) The Commission's conclusion is valid for both a broad market for OCAS, including both horizontal and vertical OCAS, as well as for the narrower market for horizontal OCAS. As regards the broad market, the capability to produce exclusionary effects is present in particular in the substantial segment for horizontal OCAS where Facebook Marketplace competes.⁸⁹⁷ In view of the competitive constraint exerted by horizontal OCAS on vertical OCAS, Meta's conduct affects competition at the level of the vertical OCAS providers as well.

7.2.3.4.1. The tie gives Facebook Marketplace a significant competitive advantage

- (831) The Commission concludes that the tying of Facebook Marketplace with Facebook gives Facebook Marketplace a significant competitive advantage. Through Facebook, Facebook Marketplace can easily attract a large number of users without

⁸⁹⁴ Meta's reply to Q27 of the Commission's RFI to Meta of July 2023 (ID11031). Meta explained that it was able to provide limited data on the number of Facebook users in the EEA who removed the Facebook Marketplace tab as follows: [...] (Meta's reply to Q27 of the Commission's RFI to Meta of July 2023 (ID11031)).

⁸⁹⁵ Meta's reply to Q28 of the Commission's RFI to Meta of July 2023 (ID11031). Meta explained that it was able to provide limited data on the number of Facebook users in the EEA who chose to hide prompted to them Showcase Units concerning Facebook Marketplace as follows: [...] (Meta's reply to Q28 of the Commission's RFI to Meta of July 2023 (ID11031)).

⁸⁹⁶ Meta's reply to Q29 of the Commission's RFI to Meta of July 2023 (ID11031). Meta explained that it was able to provide limited data on the number of Facebook users in the EEA who chose not to receive Jewel Notifications concerning Facebook Marketplace as follows: [...].

⁸⁹⁷ According to the non-confidential version of the quantitative report on Data Room 4 drafted by Meta's External Advisers (ID8540, ID8545), based on the replies received by the Commission from both horizontal and vertical OCAS, horizontal OCAS providers have a substantial market position in all Member States when including both horizontal and vertical OCAS platforms in the relevant market.

incurring any costs. This generates network effects by in turn growing also the number of sellers (which again increases the number of users).

- (832) This is because (i) Facebook is ubiquitous (section 7.2.3.4.1.1); (ii) Facebook Marketplace is tied to Facebook on a large scale (section 7.2.3.4.1.2); (iii) most of Facebook Marketplace's traffic comes from Facebook (section 7.2.3.4.1.3); (iv) traffic is key to gaining a critical mass on the market for OCAS (section 7.2.3.4.1.4) and (v) Meta itself considers that Facebook offers a significant distribution advantage (section 7.2.3.4.1.5).
- (833) In line with the principles enunciated above at section 7.2.1, when assessing the conduct at hand, the Commission has thus undertaken a further examination of actual market circumstances. In particular, the Commission has assessed the significance of the link between the tying product and the tied product (in particular, the ubiquity of Facebook and the share of customers in the tied market who also obtain the tying product, as well as the importance of Facebook's traffic for Facebook Marketplace). The Commission has also assessed the importance of traffic to gain a critical mass in the tied market, including the presence of network effects, economies of scope and scale, as well as the degree of user single/multi-homing in the tied market.

7.2.3.4.1.1. Facebook is ubiquitous

- (834) Facebook is a ubiquitous platform in the EEA. It is among the most used websites and applications in the world. Indeed, globally⁸⁹⁸ and in the EEA,⁸⁹⁹ the Facebook website is the third most visited among all websites. The Facebook app reached more than 5 billion downloads worldwide in 2019.⁹⁰⁰ Facebook had more than 2.9 billion MAU in the world in January 2022.⁹⁰¹ The use of the Facebook application is further incentivised by the fact that it is pre-installed on several Android devices.⁹⁰²
- (835) The ubiquitous presence of Facebook in the EEA is also evident when looking at its number of users. In 2022, in the EEA, Facebook had a total number of around [...] activated user accounts⁹⁰³ or [...] activated accounts *per capita*.⁹⁰⁴ A large part of these use Facebook on a frequent basis, spending a significant share of their time on it. The average number of MAUs⁹⁰⁵ in 2022 in the EEA was [...],⁹⁰⁶ which

⁸⁹⁸ Statista, “Most popular websites worldwide as of November 2021, by total visits”, available at <https://www.statista.com/statistics/1201880/most-visited-websites-worldwide/>, downloaded on 30 August 2022 (ID5017).

⁸⁹⁹ SimilarWeb, “Top websites ranking”, on the basis of the country-specific data available at <https://www.similarweb.com/top-websites/>, downloaded on 30 August 2022 (ID5019 to ID5040).

⁹⁰⁰ Android Rank, “List of Android Most Popular Google Play Apps”, available at <https://www.androidrank.org/android-most-popular-google-play-apps?category=SOCIAL&sort=4&price=all>, downloaded on 30 August 2022 (ID5018), and App Annie, “The Data Behind 10 Years of the iOS App Store”, available at <https://www.data.ai/en/insights/market-data/popular-ios-apps-time/#download>, downloaded on 17 June 2022 (ID5041).

⁹⁰¹ Statista, “Global social networks ranked by number of users”, available at <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>, downloaded on 30 August 2022 (ID5042).

⁹⁰² See in this regard e.g. Tech at Meta, available at <https://tech.fb.com/artificial-intelligence/2019/09/preinstall-partnerships/>, downloaded on 30 August 2022 (ID5056).

⁹⁰³ [...]. See Meta's reply to Q1 of the Commission's RFI to Meta of November 2023 (ID11990).

⁹⁰⁴ Meta's reply to Q1 of the Commission's RFI to Meta of November 2023 (ID11990).

⁹⁰⁵ [...]. See Meta's reply to Q5 of the Commission's RFI to Meta of July 2023 (ID10800).

⁹⁰⁶ Meta's reply to Q5 of the Commission's RFI to Meta of July 2023 (ID10800).

represents approximately [...] % of the total EEA population⁹⁰⁷ and [...] % of the EEA's internet active population.⁹⁰⁸ The average number of DAUs amounted to [...] in 2022, or [...] % of the number of people in the EEA who use the internet. The numbers of Facebook MAUs and DAUs further increased in 2023.⁹⁰⁹

- (836) In the period 2018 to 2023, the amount of time spent by an active user on Facebook was on average between [...] minutes per day.^{910,911} In the second quarter of 2023 (which is the latest period for which data is available to the Commission), [...] % of Facebook active users spent [...] minutes or more on the platform daily,⁹¹² and [...] % of Facebook active users spent more than [...] minutes per day.⁹¹³
- (837) Facebook is also used to a significant extent by users (and potential users) of OCAS websites. Data from web analytics provider SimilarWeb⁹¹⁴ shows that there is a significant overlap of visitors to the websites of the main OCAS platforms and visitors to the Facebook.com website. As depicted in Table 7 below, showing the overlap between visitors to the main horizontal OCAS providers and the clothing OCAS Vinted,⁹¹⁵ on the one hand, and visitors to Facebook.com, on the other hand, on average, in the period October 2020 – October 2023, a significant share of website visitors of OCASs in each Member State also visited, in the course of a given *month*, the Facebook.com website. In addition, Table 7 shows the share of OCAS competitors' website visitors who also visit the Facebook.com website on the same *day*. Albeit lower than the overlap at monthly level, the daily overlap shares are also significant for the majority of competitors.

⁹⁰⁷ Based on Eurostat data, see the “Population change – Demographic balance and crude rates at national level”, database available at: https://ec.europa.eu/eurostat/databrowser/view/demo_gind/default/table?lang=en, downloaded on 17 October 2023 (ID12065).

⁹⁰⁸ Based on Eurostat data, see the “Internet use by individuals” database, available at: <https://ec.europa.eu/eurostat/databrowser/view/tin00028/default/table?lang=en>, downloaded on 17 October 2023 (ID12064).

⁹⁰⁹ In the period January – June 2023 (which is the latest for which data is available to the Commission), Facebook had an average number of MAUs in the EEA of [...] million and an average number of DAUs of [...] million. See Meta's reply to Q5 of the Commission's RFI to Meta of July 2023 (ID10800).

⁹¹⁰ [...] minutes in 2017 and 2018, [...] minutes in 2019, [...] minutes in 2020, [...] minutes in 2021, [...] minutes in 2022 and [...] minutes in the period January – June 2023. Meta's replies to Q30 of Commission's RFI to Meta of March 2022 (ID3249) and Q5 of the Commission's RFI to Meta of July 2023 (ID10800).

⁹¹¹ [...]. See Meta's reply to Q5 of the Commission's RFI to Meta of July 2023 (ID10800).

⁹¹² Meta reported the median average time spent on Facebook per day by an average user on a quarterly basis for the period 2017 to June 2023. The median value ranged between [...] minutes in the period from Q1-2017 until Q2-2023. Meta's reply to Q2b of the Commission's RFI to Meta of November 2023 (ID11990).

⁹¹³ Meta reported the distribution of time spent on Facebook per day by an average user on a quarterly basis for the period 2017 to June 2023. The percentage of active users spending more than [...] minutes per day on Facebook ranged between [...] % and [...] % in the period from Q1-2017 until Q2-2023. Meta's reply to Q2a of the Commission's RFI to Meta of November 2023 (ID11990).

⁹¹⁴ SimilarWeb is a provider of web analytics services. Among others, it provides data on a variety of website traffic indicators, including data on the cross-usage of different websites.

⁹¹⁵ The competitors listed in Table 7 are those for which data on traffic was available (see section 7.2.3.4.4).

Table 7: Percentage of OCAS website visitors who also visit the Facebook.com website in the period October 2020 – October 2023 or November 2020 – November 2023 ⁹¹⁶

[...]

- (838) SimilarWeb data only concerns visits to the OCAS websites and Facebook websites, and thus the figures in Table 7 should be seen as a lower bound for the overlap between the main horizontal OCAS providers' website visitors in each Member State and the users of Facebook as some users are likely to have only used the Facebook app (and not the website) during a given month or day. Indeed, Facebook appears to be accessed via the app to a greater extent than via the website. According to data from Statista, as of January 2022, only 1.5% of users access Facebook exclusively on desktop, and 17% of users access it on both desktop and mobile devices.⁹¹⁷ This underestimation effect is more pronounced in the case of daily overlap figures, as indeed the probability of visiting the Facebook website is lower on a daily than on a monthly basis.
- (839) Facebook is also used to a significant extent by users (and potential users) of OCAS apps. Data from SensorTower⁹¹⁸ shows that there is a significant overlap of visitors to the apps of the main OCAS platforms and visitors to the Facebook app. As depicted in Table 8, showing the overlap between visitors to the apps of the main horizontal OCAS providers and of the clothing OCAS Vinted,⁹¹⁹ on the one hand, and Facebook app visitors, on the other hand, on average, in the period December 2020 – November 2023, a significant share of competitors' app visitors in each Member State also visited, in the course of a given *month*, the Facebook app. In addition, Table 8 shows the share of competitors' apps visitors who also visit the Facebook app on the same *day*. Albeit lower than the overlap at monthly level, the daily overlap shares are also significant for the majority of competitors.

Table 8: Percentage of OCAS app visitors who also visit the Facebook app in the period December 2020 – November 2023⁹²⁰

[...]

⁹¹⁶ Share of OCAS visitors also visiting Facebook.com in a month – data from SimilarWeb's Audience Overlap indicator, representing an average for the period October 2020 – October 2023 (or, for certain websites, November 2020 – November 2023), downloaded on 16 November, 28 November and 11 December 2023 (ID12208). The Audience Overlap indicates what percentage of a given website's visitors also visit another given website (ID12237). SimilarWeb's Audience Overlap data is only available for visits from desktop devices.

Share of OCAS visitors also visiting Facebook.com in a day – data from SimilarWeb's Audience Interests indicator, representing an average for the period October 2020 – October 2023 (or, for certain websites, November 2020 – November 2023), downloaded on 21 November and 11 December 2023 (ID12209). The Audience Interests indicates what percentage of a given website's visitors also visit another given website on the same day (ID12236). SimilarWeb's Audience Interest data is available for website visits from desktop and mobile devices.

⁹¹⁷ Statista, "Facebook access penetration 2022, by device", available at: <https://www.statista.com/statistics/377808/distribution-of-facebook-users-by-device/>, downloaded on 28 November 2023 (ID12063).

⁹¹⁸ SensorTower is a provider of analytics services. Among others, it provides data on a variety of apps traffic indicators, including data on the cross-usage of different apps.

⁹¹⁹ The competitors listed in Table 8 are those for which data on traffic was available (see section 7.2.3.4.4).

⁹²⁰ Data from SensorTower, representing an average of the annual values for the period December 2020 – November 2023, submitted on 28 December 2023 (ID12146). The data indicates what percentage of a given app's visitors also visit another given app in the same day/month.

- (840) SensorTower data only concerns visits to the OCAS and Facebook apps, and thus, as in the case of SimilarWeb, the figures in Table 8 should be seen as a lower bound for the overlap between the main horizontal OCAS providers' app visitors in each Member State and the users of Facebook (app and website), as at least some users are likely to have only used the Facebook website during a given month or day.
- (841) Facebook's significant reach among the target users of OCAS providers also drives the high importance that these providers attach to advertising on Facebook. As exemplified by the statements in recitals (688) and (689) above, Facebook's large user base and the opportunity it allows OCAS providers to reach their existing and potential customers are among the main reasons why Facebook is considered to be a superior (or indeed unavoidable) advertising channel by OCAS providers.⁹²¹
- (842) Meta has not contested that Facebook is ubiquitous but argued that the user overlap between Facebook users and users of OCAS services, discussed at recitals (836) to (841) above, does not demonstrate that the tie is capable of restricting traffic to OCAS providers, but rather shows that Facebook users continue to use other OCAS providers.⁹²²
- (843) This argument is unfounded. The overlap between Facebook users and users of other OCAS providers' services shows that, to a large extent, the tie promotes Facebook Marketplace precisely towards the users who are customers of OCAS. Meta interprets the overlap rather as evidence that Facebook users who have been exposed to Facebook Marketplace continue to use other OCAS providers, and hence Facebook Marketplace has not led to exclusionary effects impacting them. The Commission does not claim that Facebook Marketplace has become a monopoly over Facebook users, such that there would be no instances of multi-homing with other OCAS providers. However, that does not mean the tie is not capable of restricting competition in the markets for OCAS. As discussed in further detail in section 7.2.3.4.4, it is not necessary to have already actually produced exclusionary effects in order for a conduct to be characterised as anticompetitive. In any event, even in terms of actual effect, Meta's interpretation of the data can only lead to the conclusion that Facebook users who have been exposed to Facebook Marketplace continue to use other OCAS providers at least to some degree. It cannot identify whether this is frequent or occasional.

7.2.3.4.1.2. Meta ties Facebook Marketplace to Facebook on a large scale

- (844) From August 2017, when Facebook Marketplace was gradually rolled out in 16 Member States in the EEA,⁹²³ [...].⁹²⁴
- (845) By these means, Facebook Marketplace gained instant distribution to a large part of the population in those Member States, without incurring any advertisement or any other promotion costs.

⁹²¹ See, in particular, the statements by [...].

⁹²² Comments on the LoF, paragraphs 232 and 233.

⁹²³ Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain and Sweden, as well as in Switzerland, see press release of Meta at <https://about.fb.com/news/2017/08/marketplace-is-expanding-to-europe/>, downloaded on 30 August 2022 (ID5059). For the sake of completeness, the Commission notes that Facebook Marketplace was launched already in October 2016 in the UK, which at that time was a Member State of the European Union.

⁹²⁴ Meta's reply to Q5 of Commission's RFI to Meta of May 2020 (ID5271).

- (846) Subsequently, [...]. Instead [...].⁹²⁵
- (847) However, [...], the Facebook Marketplace tab remained displayed to a significant proportion of Facebook users. Indeed, in all Member States more than [...] have the Facebook Marketplace tab in their navigation bar, with that proportion increasing to [...] % in the most recent period for which data is available.⁹²⁶

Table 9: Proportion of MAU to whom the shortcut to Facebook Marketplace in the Facebook app navigation bar is displayed⁹²⁷

[...]

- (848) Facebook Marketplace is also available via a separate line in the navigation menu, displayed to all users (of the Facebook app and website).⁹²⁸
- (849) As explained in section 7.2.3.3, displaying Facebook Marketplace as a bookmark via a separate line in the navigation menu and as the tab (shortcut) in the navigation bar are not the only ways by which Facebook Marketplace is tied to Facebook. The other ways include predominantly Jewel Notifications and Showcase Units in the News Feed. Those other methods of tying are also used in large numbers.
- (850) A monthly active user of Facebook Marketplace⁹²⁹ received, on average, around [...] Jewel Notifications per month in the period November 2018 to February 2020, around [...] Jewel Notifications per month in the period June 2021 - February 2022. The number of Jewel Notifications per months dropped in the most recent period, where it was around [...] Jewel Notifications per month in the period July – August 2023.⁹³⁰

⁹²⁵ Around this time, Meta also made Facebook Marketplace accessible via a separate line item in its app menu (see in this regard recital (795) above). This is available to all users of Facebook. Furthermore, data provided by Meta shows that in August 2023 in all EEA Member States except two of them, Facebook Marketplace was also displayed in the menu of the Facebook Messenger app for at least 50% of Facebook Messenger MAUs (or more). Meta also explained that [...]. See: Annex Q21 in Meta's reply to Q21.c of the Commission's RFI to Meta of July 2023 (ID11025). Meta claims that the Facebook Marketplace line item in Messenger does not reflect user engagement with Facebook Marketplace, as it is relevant only if user engaged with Facebook Marketplace and started conversation as a buyer or a seller. Comments on the LoF, paragraphs 225 and 226.

⁹²⁶ [...]. See Meta's reply to Q21 of the Commission's RFI to Meta of July 2023 (ID11025). Data on the number of Facebook MAU to whom the shortcut to Facebook Marketplace in the app navigation bar was displayed between January and May 2022 was affected by a logging error and hence could not be reliably reported. See Meta's reply to Q26 of the Commission's RFI to Meta of March 2022 (ID3241).

⁹²⁷ Commission's calculations based on Meta's replies to Q4.2 of the Commission's RFI to Meta of December 2021 (ID2273), Q26 and Q29 of the Commission's RFI to Meta of March 2022 (ID3241 and ID3238) and Q21 of the Commission's RFI to Meta of July 2023 (ID11025).

⁹²⁸ The desktop version of Facebook Marketplace was launched in the first half of 2017 and hence all users of the Facebook website have Facebook Marketplace as a menu item since then. In the Facebook app, Facebook Marketplace was made available from the menu as of August 2018. (Meta's reply to Q5 of Commission's RFI to Meta of May 2020 (ID5271).

⁹²⁹ While not only Facebook Marketplace users can receive Jewel Notifications, the Facebook Marketplace MAU is the best available proxy for such analysis as Meta itself seems to recognize it in the SO Response, paragraph 286.

⁹³⁰ Commission's calculations based on Meta's reply to Q26.3 (number of Jewel Notifications displayed on Facebook) of the Commission's RFI to Meta of March 2022 (ID3241) and Meta's reply to Q19 (Facebook Marketplace MAU) of the Commission's RFI to Meta of July 2023 (ID10804). As data on the MAU of Facebook Marketplace was not available July – August 2023, the Commission used the average number MAU of Facebook Marketplace as calculated over the period for which this data was provided, namely March 2022 – June 2023.

- (851) A monthly active user of Facebook Marketplace⁹³¹ received, on average, around [...] Showcase Units per month in the period August 2021 to February 2022 and around [...] Showcase Units per month in the period July – August 2023.⁹³²
- (852) An internal Meta document outlines how Jewel Notifications [...].⁹³³
- (853) Raw figures on the numbers of users exposed to the tying methods underestimate the effect of the practice. Indeed, the effect of the tie between Facebook and Facebook Marketplace is magnified by (i) the persistence, (ii) the repetition and (iii) the targeting of its use.
- (854) First, as explained in recital (848), the tie is persistent. Facebook Marketplace is permanently displayed in the navigation menu of Facebook to all users of Facebook (app and website alike) as a separate line (bookmark). Furthermore, the Facebook Marketplace tab (shortcut) in the navigation bar of Facebook is persistently exposed to users having the Facebook Marketplace tab all along their usage of Facebook. Users cannot easily remove the tab and therefore generally remain exposed to it during the entire time they use Facebook, which is not limited to the time they look at their News Feed. As outlined above, this entails an exposure to the tied product not just once [...] for all active users of Facebook to which the tab is displayed [...]. Furthermore, through Tab Notifications⁹³⁴ Meta is able to create even more visibility for the Facebook Marketplace tab. An internal document noted that [...].⁹³⁵
- (855) Second, the different methods of tying are used simultaneously with the same user. Indeed, the same users can be exposed to the tab as well as to the other tools tying Facebook Marketplace to Facebook. In addition, some of the tying tools such as the Jewel Notifications or the Showcase Units are used repeatedly, so as to incite even more use of Facebook Marketplace.
- (856) Third, the tie is targeted. Indeed, as [...].
- (857) With regard to the Facebook Marketplace tab, there are [...] that are used, in combination with [...]. At least at present, these [...] include whether the user: [...].⁹³⁶
- (858) Meta has confirmed [...]. According to Meta, [...].⁹³⁷ As set out in recital (1124) below, ads-related data are [...] (see section 7.3 for an assessment of this practice under Article 102 TFEU).
- (859) This practically means that [...].⁹³⁸ On the other hand, [...]. In this regard, a Meta executive explained in an internal document that [...].⁹³⁹

⁹³¹ As for Jewel Notifications, while not only Facebook Marketplace users can receive Showcase Units, the Facebook Marketplace MAU is the best available proxy for such analysis.

⁹³² Commission's calculations based on Meta's reply to Q26.4 of the Commission's RFI to Meta of March 2022 (ID3241) and Meta's reply to Q21 of the Commission's RFI to Meta of July 2023 (ID11025). As data on the MAU of Facebook Marketplace was not available July – August 2023, the Commission used the average number MAU of Facebook Marketplace as calculated over the period for which this data was provided, namely March 2022 – June 2023.

⁹³³ [...] (ID1529-21061).

⁹³⁴ Tab Notifications are surfaced on the relevant tab/surface, *e.g.* on the Facebook Marketplace tab, as opposed to Jewel Notifications displayed on the Facebook notification tab (*i.e.* the bell icon at the top of the Facebook webpage and bottom of the app). See Meta's reply to Q23a of the Commission's RFI to Meta of July 2021 (ID6447).

⁹³⁵ [...] (ID2122-2612).

⁹³⁶ Meta's reply to Q10.2 of the Commission's RFI to Meta of March 2022 (ID3245).

⁹³⁷ Meta's reply to Q9, Q10.1 and Q10.2 of the Commission's RFI to Meta of March 2022 (ID3245).

- (860) The effectiveness of the tying methods described above is confirmed by data provided by Meta concerning the proportion of Facebook users who engage with Facebook Marketplace:
- (1) In March 2023, ca. [...] % of Facebook MAUs in the EEA who were [...] engaged with Facebook Marketplace;⁹⁴⁰ and
 - (2) In March 2023, the proportion of users of Facebook MAUs in the EEA who were Facebook Marketplace MAU was equal to ca. [...] %.⁹⁴¹
- (861) The effectiveness of the tying methods is not contradicted by Meta’s allegations that the Jewel Notifications and Showcase Units have a limited impact on the engagement with Facebook Marketplace of users of Facebook.
- (862) First, Meta states that, in January 2024, Facebook users “*ignore[d] [...] % of Facebook Marketplace [jewel] notifications they [were] presented with*”.⁹⁴² But this only serves to show the effectiveness of that tying method. Indeed, it implies that, conversely, users did click on [...] % of the Jewel Notifications they were presented with,⁹⁴³ which means that, taken alone, the Jewel Notifications brought, for instance, [...] visits to Facebook Marketplace per MAU of Facebook in the period from November 2018 to February 2020.⁹⁴⁴ Table 10 shows that, in the period for which Meta provided data, Jewel Notifications represented between [...] % and [...] % of Facebook Marketplace’s traffic, making them the [...] to Facebook Marketplace ([...]).
- (863) Second, Meta states that users have only engaged with Showcase Units for an average of [...] minutes and [...] second per month, which is [...] % of the time spent on Facebook by a DAU.⁹⁴⁵ This is inaccurate and misleading. In the first place, Meta calculated those [...] minutes and [...] seconds by multiplying the average number of Showcase Units seen by users in a month [...] by the average time users of Facebook scrolling their News Feed were spending in 2016 on a piece of content ([...] seconds on mobile and [...] seconds on desktop). This wrongly assumes that users interested in online shopping spend the same time on a Showcase Unit (with “shopping” content) than average users spend on an average piece of Facebook’s content. In the second place, Meta’s calculation merely counts the time spent by the user watching the Showcase Unit on the News Feed of Facebook, not the subsequent time spent by users on Facebook Marketplace when they engage with the Showcase Unit. This vastly underestimates the actual engagement with Facebook Marketplace of users who engage with the Showcase Units. In the third place, even if Meta’s calculations were correct (*quod non*), they would still mean that, via Showcase Units, users of Facebook are exposed every month to more than [...] minutes of promotion of

⁹³⁸ [...]. See Meta’s reply to Q10.2 of the Commission’s RFI to Meta of March 2022 (ID3245).
⁹³⁹ [...] (ID1499-65436).

⁹⁴⁰ Commission’s calculations based on Meta’s reply to Q1d of the Commission’s RFI to Meta of June 2023 (ID10081).

⁹⁴¹ Commission’s calculations based on Meta’s reply to Q19 (ID10804) and Q21 (ID11025) of the Commission’s RFI to Meta of July 2023.

⁹⁴² Comments on the LoF, paragraph 223 and footnote 377.

⁹⁴³ This figure appears to be even an underestimate, as contemporaneous Meta documents estimate the click-through rate on Jewel Notifications above [...] %. See recital (852) above.

⁹⁴⁴ Given that during this period Facebook MAU received on average [...] Jewel Notification per month.

⁹⁴⁵ Comments on the LoF, paragraph 219.

Facebook Marketplace, in addition to the exposure to Jewel Notifications and the persistent exposure to the Facebook Marketplace tab for the vast majority of users.

- (864) Table 10 shows that, in reality, many users of Facebook engage with Showcase Units. Showcase Units represented between [...] % and [...] % of Facebook Marketplace's traffic in the period covered by Meta's data, making them the [...] to Facebook Marketplace ([...]).

7.2.3.4.1.3. Most of Facebook Marketplace's traffic comes from Facebook

- (865) The inventory on Facebook Marketplace can be viewed without being logged in to Facebook and Facebook Marketplace listings appear in third-party search engine results.⁹⁴⁶ However, the vast majority of the traffic of Facebook Marketplace comes from Facebook.
- (866) This is confirmed by the traffic data provided by Meta, which shows that in the entire period on which Meta could provide data on the number of visits to Facebook Marketplace broken down by source, [...].⁹⁴⁷

Table 10: Origin of traffic of Facebook Marketplace^{948,949}

Date	Visits from clicks on the separate line item in the navigation menus of the Facebook website and app (%)	Visits from clicks on the shortcut displayed in the navigation bar of the Facebook website and app (%)	Visits from clicks on jewel notifications (%)	Visits from clicks on showcase units (%)	Visits from clicks on results from on-Facebook search and other on-Facebook sources (%)	Visits from clicks on ads or links displayed outside of Facebook (%)
May 2021						
Jun 2021						
Jul 2021						
Aug 2021						
Sep 2021						
Oct 2021						
Nov 2021						
Dec 2021						
Jan 2022						
Feb 2022						
Jul 2023						
Aug 2023						

- (867) Internal Meta documents confirm that [...].
- (868) In an internal document dated [...], a Meta executive states that [...],⁹⁵⁰ whereas another presentation indicates that the [...].⁹⁵¹ In another internal document, it is explained that [...].^{952,953}

⁹⁴⁶ However, in order to interact with Facebook Marketplace beyond simply viewing an item, users must be logged into their Facebook account. Meta's reply to Q44 of the Commission's RFI to Meta of March 2019 (ID196).

⁹⁴⁷ Meta states that the menu accounts for typically [...] of the total traffic to Facebook Marketplace (Comments on the LoF, paragraph 213) and in August 2023, traffic from Jewel Notifications to Facebook Marketplace decreased to less than [...] % (Comments on the LoF, paragraph 219). However, these metrics do not affect the conclusion that overall, [...].

⁹⁴⁸ Visits from clicks on the shortcut displayed in the navigation bar of the Facebook website and app refer to visits from clicks on the Facebook Marketplace tab. [...].

⁹⁴⁹ Commission's calculations based on Meta's replies to Q25 of the Commission's RFI to Meta of March 2022 (ID3251 and ID3490) and Q20 of the Commission's RFI to Meta of July 2023 (ID11030).

⁹⁵⁰ [...] (ID2122-2612).

- (869) The significance of Facebook is also demonstrated by the internal documents showing [...]. In an internal document, it is stated that [...]⁹⁵⁴ In another internal document of [...], it is stated that [...]⁹⁵⁵ Later yet, a document dating from the fourth quarter of 2019 notes that [...].⁹⁵⁶

Figure 10: [...]

[...]

- (870) Meta has not contested that most of Facebook Marketplace's traffic comes from Facebook.

7.2.3.4.1.4. Traffic is key to gaining a critical mass on the market for OCAS

- (871) Achieving an important volume of traffic is particularly important in the national markets for OCAS in light of the fact that OCAS are characterised by the existence of strong indirect network effects: the higher the number of buyers, the more valuable is the platform for sellers as the higher will be the likelihood of selling their products; and the higher the number of sellers and products offered, the more valuable the platform becomes for buyers as the likelihood that they are able to find the product they search for will be higher.
- (872) This has been confirmed by OCAS providers:
- (1) According to [...].⁹⁵⁷
 - (2) According to [...].⁹⁵⁸
 - (3) According to [...]: [...] ⁹⁵⁹ and [...] ⁹⁶⁰ [...] also explains that [...].⁹⁶¹
- (873) Meta's internal documents also [...].⁹⁶² A document titled [...], dated 27 September 2017, states: [...].⁹⁶³
- (874) Because of the presence of strong network effects and because a large share of buyers and sellers tend to use the services of a single OCAS provider, the national markets for OCAS are generally characterised by the presence of one large platform that captures the majority of users on both the buying and selling side, in particular as concerns the horizontal segment.
- (875) As explained by [...].⁹⁶⁴
- (876) This market structure is recognised in Meta internal documents, for instance:

⁹⁵¹ [...] (ID2122-13950).

⁹⁵² The News Feed is the part of Facebook where the tying tools, namely the tab, the Jewel Notifications and the Showcase Units are displayed.

⁹⁵³ [...] (ID2122-9994).

⁹⁵⁴ [...] (ID2122-4978).

⁹⁵⁵ [...] (ID2122-7931).

⁹⁵⁶ [...] (ID1494-433).

⁹⁵⁷ [...].

⁹⁵⁸ [...].

⁹⁵⁹ [...].

⁹⁶⁰ [...].

⁹⁶¹ [...].

⁹⁶² [...] (ID2122-5383).

⁹⁶³ [...] (ID1529-36126).

⁹⁶⁴ [...].

- (1) A Meta internal document titled [...], dated November 2017, indicates that [...].⁹⁶⁵

Figure 11: [...]

[...]

- (2) Another Meta internal document, titled [...], dated April 2019, indicates [...].⁹⁶⁶
- (877) As noted in Meta’s internal documents, [...]⁹⁶⁷; [...]⁹⁶⁸ and [...]⁹⁶⁹ For a second or third player to have a significant presence in the market, it typically needs to offer a differentiated service.^{970,971}
- (878) OCAS users’ tendency to single-home to buy or sell a good is also supported by evidence obtained from the market. In particular, [...]⁹⁷², [...]:
- (1) [...]⁹⁷³ [...]:

Table 11: [...]⁹⁷⁴

[...]

- (2) The results above are similar for buyers and for sellers, and for users that buy/sell with different frequencies. [...].⁹⁷⁵
- (3) [...].⁹⁷⁶
- (879) In submissions to the Commission and responses to requests for information by the Commission, OCAS providers expressed concerns that Facebook Marketplace can reap the benefit of the network effects through its tying strategy, thus achieving a critical mass enabling it to capture a substantial part of the market and, ultimately, to marginalise competitors.
- (1) According to [...].⁹⁷⁷
- (2) According to [...].⁹⁷⁸

⁹⁶⁵ [...] (ID2122-5445).
⁹⁶⁶ [...] (ID2122-1776).
⁹⁶⁷ [...] (ID1493-434).
⁹⁶⁸ [...] (ID8663).
⁹⁶⁹ [...] (ID391-11).
⁹⁷⁰ For instance, some OCAS providers differentiated themselves by focusing on an app-only service, or – in multilingual Member States – by offering services in a different language than competitors. [...].
⁹⁷¹ The presence of multiple players is more common in specialised categories such as vehicles or real estate, where there is more scope for platform differentiation. Furthermore, buyers and sellers may be more inclined to use multiple platforms at the same time when they are seeking to trade high-value products.
⁹⁷² [...].
⁹⁷³ Commission’s calculations based on [...] reply to Q1(b) and (c) of the Commission’s RFI to [...] of September 2023. [...] The list of 10 platforms differed per Member State but it included [...], Facebook Marketplace, the main horizontal OCAS platforms and OCAS or marketplaces specialised in second-hand fashion.
⁹⁷⁴ Commission’s calculations based on [...] reply to Q1(b) and (c) of the Commission’s RFI to [...] of September 2023, and in particular [...].
⁹⁷⁵ Commission’s calculations based on [...] reply to Q1(b) and (c) of the Commission’s RFI to [...] of September 2023, and in particular [...].
⁹⁷⁶ [...].
⁹⁷⁷ [...].

- (3) According to [...].⁹⁷⁹
- (880) The importance of Facebook to Facebook Marketplace as a source of traffic resulting from the tying strategy has been repeatedly acknowledged by the industry. In reply to the Commission's requests for information, multiple OCAS providers take the view that Facebook, given its ubiquity and a broad user base, would be an important distribution channel (and hence source of traffic) for their services if they could use it in the same way as Facebook Marketplace does. By way of examples, the respondents to the Commission's request for information stated the following:
- (1) According to [...].⁹⁸⁰
 - (2) According to [...].⁹⁸¹
 - (3) According to [...].⁹⁸²
 - (4) According to [...].⁹⁸³
- (881) Similarly, specialised articles noted that:
- (1) *"Arguably, one of the most appealing aspects of this service is the fact that it exposes sellers to the more than two billion users that Facebook currently has."*⁹⁸⁴
 - (2) *"Facebook has the money and the confidence to play the long game in its expansion into marketplace services. For now, its offering may be fairly basic – but Facebook's dominance as a social media publisher gives it a huge advantage, in terms both of trust and convenience. We'll be watching with interest to see what happens next."*⁹⁸⁵
 - (3) *"Marketplace had an instant advantage over longtime players in peer-to-peer sales, such as Craigslist. At the time, more than 1.5 billion people had a Facebook account, and they could instantly create listings that would be viewed by people in their areas."*⁹⁸⁶
- (882) The tie between Meta's personal social network and its OCAS also allows Facebook Marketplace to reach a massive user base without having to incur costs. Competitors, on the contrary, have to incur substantial investments to achieve such a volume of users, particularly so when entering several geographical markets. Indeed, respondents to the Commission's investigation indicated that the investment

⁹⁷⁸ [...].

⁹⁷⁹ [...].

⁹⁸⁰ [...].

⁹⁸¹ [...].

⁹⁸² [...].

⁹⁸³ [...].

⁹⁸⁴ EconoTimes, "Facebook Launches Marketplace Expansion To EU, Huge E-Commerce Investments", available at <https://www.econotimes.com/Facebook-Launches-Marketplace-Expansion-To-EU-Huge-E-Commerce-Investments-852687>, downloaded on 08 September 2022 (ID5396).

⁹⁸⁵ Roobykon Software Company Blog, "Facebook Marketplace Expansion", available at <https://static.roobykon.com/blog/posts/59-facebook-marketplace-expansion>, downloaded on 08 September 2022 (ID5395).

⁹⁸⁶ ProPublica, "Facebook Grew Marketplace to 1 Billion Users. Now Scammers Are Using It to Target People Around the World", available at <https://www.propublica.org/article/facebook-grew-marketplace-to-1-billion-users-now-scammers-are-using-it-to-target-people-around-the-world>, downloaded on 30 August 2022 (ID5051).

necessary to be undertaken in order to be able to gain a critical mass and thus effectively compete on a new market for OCAS is significant.

- (883) According to [...].⁹⁸⁷
- (884) [...] explained that [...].⁹⁸⁸
- (885) [...] submitted that [...].⁹⁸⁹ It further added that [...].⁹⁹⁰
- (886) A market participant explained that Facebook Marketplace has been able to achieve 800 million users in less than 3 years, which is a user base larger than all the main OCAS providers combined. It added that Meta relies on Facebook to promote Facebook Marketplace to users, without the need for any significant actual advertising or marketing which providers of OCAS typically need in order to reach scale and size.⁹⁹¹
- (887) [...] submitted that [...].⁹⁹² [...].⁹⁹³
- (888) Finally, according to [...].⁹⁹⁴
- (889) The Commission's conclusion that traffic is key to gaining a critical mass on the OCAS market, and that thereby Facebook Marketplace's tie to Facebook enables it to capture a substantial part of users and ultimately marginalise competitors is not contradicted by Meta's arguments stating that:
- (1) Buyers and sellers multi-home significantly on OCAS platforms.⁹⁹⁵ To support this, Meta provided evidence from two surveys covering Poland, France, Germany, Italy and Sweden whose results show that:
 - (a) [...].⁹⁹⁶
 - (b) [...].⁹⁹⁷
 - (c) [...].⁹⁹⁸
 - (d) [...].⁹⁹⁹
 - (2) [...]
 - (a) [...].¹⁰⁰⁰
 - (b) [...].¹⁰⁰¹
 - (c) [...].¹⁰⁰²

⁹⁸⁷ [...].

⁹⁸⁸ [...].

⁹⁸⁹ [...].

⁹⁹⁰ [...].

⁹⁹¹ [...].

⁹⁹² [...].

⁹⁹³ [...].

⁹⁹⁴ [...].

⁹⁹⁵ SO, Response, paragraphs 277 to 280 and 307.

⁹⁹⁶ Annex 7 of the SO Response, paragraphs 5.1.5 (a) and 5.2.9.

⁹⁹⁷ Annex 7 of the SO Response, paragraphs 5.1.5 (a) and 5.3.10.

⁹⁹⁸ Annex 7 of the SO Response, paragraphs 5.2.4 to 5.2.5. and 5.3.4 to 5.3.6.

⁹⁹⁹ Annex 7 of the SO Response, paragraphs 5.1.5 (c), 5.2.8 and 5.3.9.

¹⁰⁰⁰ Comments on the LoF, paragraph 199 (a).

¹⁰⁰¹ Comments on the LoF, paragraph 199 (b).

¹⁰⁰² Comments on the LoF, paragraph 199 (c).

- (d) [...].¹⁰⁰³
- (3) Public third-party surveys recognise the existence of multi-homing by buyers and sellers.¹⁰⁰⁴
- (4) Respondents to the Commission's requests for information recognise multi-homing by buyers and sellers¹⁰⁰⁵ and they have provided internal documents supporting its prevalence.¹⁰⁰⁶
- (5) The Commission misconstrued one of Meta's internal documents cited at paragraph (536) of the SO, [...].¹⁰⁰⁷
- (890) First, the surveys commissioned by Meta do not support the conclusion that multi-homing by OCAS users is widespread.
- (891) In the first place, for the purpose of analyzing the capability of the tie to foreclose competitors, the relevant measure of single-homing is whether users single-home or multi-home for a given item, rather than for their buying/selling activity as a whole. Indeed, indirect network effects arise from the number of items for sale on a given OCAS platform. If a given seller sells nine items on a single platform and one item on several platforms, then indirect network effects will be triggered mostly on the platform where the seller sold nine items, and only to a much more limited degree on the platform(s) where the seller sold one item.
- (892) Absent empirical data on the exact degree of single/multi-homing per item, a proxy can be to measure the degree to which users frequently single/multi-home for their buying/selling activity as a whole. Such a proxy is easier to capture in a user survey. Users who frequently single/multi-home constitute users who would, on average, single/multi-home for a large number of items as opposed to having bought mostly from one platform and having used another platform for one purchase, and therefore those only would be the ones that are relevant for the purpose of the analysis of the capability of the tie to foreclose competitors.
- (893) The surveys commissioned by Meta assessed [...], rather than their regular use thereof. Indeed, to assess the extent of multi-homing, the surveys simply asked respondents [...].¹⁰⁰⁸ Respondents were [...]. Thus, a user who regularly uses a single OCAS platform as a default, but who has exceptionally used an alternative service once in the previous two years, would be reported in Meta's surveys as using on average two sites to browse or sell items. As explained above, this gives limited relevant information as regards the capability of the tie to foreclose competitors.
- (894) This is further illustrated by the fact that the results of Meta's analysis count as multi-homing the use of multiple OCAS platforms irrespective of whether those platforms were used to browse or sell the same items (or category of items). This is apparent for instance in Figures 19 and 20 of the SO Response which purport to illustrate the extent of multi-homing by buyers and sellers in Poland. According to these figures, [...]. While respondents to the surveys may well have been using both these platforms in the last two years, it is clear that they could not have been using

¹⁰⁰³ Comments on the LoF, paragraph 201 (c) and (d), Annex 8 to Comments on the LoF, section 3.3.

¹⁰⁰⁴ SO Response, paragraph 188.

¹⁰⁰⁵ SO Response, paragraph 191, Comments on the LoF, paragraph 201.

¹⁰⁰⁶ Comments on the LoF, paragraph 200.

¹⁰⁰⁷ SO Response, paragraph 187 and footnote 418.

¹⁰⁰⁸ Respondents were asked "[...] and [...]. Annex 7 of the SO Response, Figures 38 to 45.

them to shop for the same items and hence that these two OCAS platforms do not impose a competitive constraint on each other. This issue is likely to also affect the multi-homing figures calculated for OCAS platforms in the same category: for instance, if a survey respondent in Poland has used OLX to look for household appliances and Facebook Marketplace to look for a car in the previous two years, this would be considered by Meta as multi-homing between the two platforms, while in reality the user may well be single homing in each of those instances.

- (895) Meta's surveys also included a question aimed at [...].¹⁰⁰⁹ However, also in this case, respondents were [...]. A user is counted as multi-homing with the same weight irrespective of whether that user multi-homed for 10%, 50% or 90% of their items. Even a user who would have only exceptionally browsed or listed an item for sale on more than one website would be counted as multi-homing.
- (896) In contrast, [...].
- (897) In the second place, as regards Meta's claim that [...], a part of this is a natural result of the fact that the survey sample consists of a lower number of Facebook Marketplace users than of users of the main competing platform in each Member State, so that the users common to Facebook Marketplace and the main competing platform will represent a higher proportion of the former than the latter.¹⁰¹⁰
- (898) What is more, to [...], this reflects the market dynamics described at recitals (871) to (876) above. OCAS users' likelihood to multi-home depends on the benefits of doing so, relative to the costs (time spent browsing or creating listings, possibly listing fees). The benefit of multi-homing depends on the number of additional users that can be reached by using one additional platform. That number is higher for the user of a small platform who decides to multi-home with a large platform, than the other way around. This is why, in particular in the case of horizontal platforms or platforms specialized in goods of a relatively low value, a large part of users tend to only use the services of the largest platform and smaller platforms (if they are not tied with a large personal social network and able to take advantage of its existing user base) need to differentiate themselves in order to attract users.
- (899) This is consistent with the results of Meta's surveys, [...].¹⁰¹¹ [...] (see section 7.2.3.4.5 for shares of supply on the national markets for OCAS).¹⁰¹² By contrast, in Sweden, [...],¹⁰¹³ [...].¹⁰¹⁴
- (900) This confirms that the more frequent multi-homing is not a characteristic of users of Facebook Marketplace, but rather a function of the relative size of an OCAS platform compared to its competitors. Contrary to Meta's argument, this does not mean that the tie is incapable of producing exclusionary effects. Indeed, as an OCAS platform grows (which, in the case of Facebook Marketplace, is largely due to the distribution advantage derived from the tie), users' incentives to multi-home decline. The distribution advantage afforded by the tie is therefore capable of making

¹⁰⁰⁹ Respondents were asked [...]. Meta's reply to Q1.n of the Commission's RFI to Meta of June 2023 (ID12416-7 to ID12416-12 and ID12416-69 to ID12416-74).

¹⁰¹⁰ For example, in Poland, [...]. Annex 7 of the SO Response, paragraph 5.2.4.

¹⁰¹¹ Annex 7 of the SO Response, Figures 13, 14, 18 and 19.

¹⁰¹² See Table 21 and Table 22 below.

¹⁰¹³ See Table 35 below.

¹⁰¹⁴ Annex 7 of the SO Response, Figures 13, 14, 18 and 19. [...].

Facebook Marketplace reach the point where it becomes users' default choice for most buying and selling decisions.

- (901) In the third place, the Commission notes that [...]. The Commission therefore considers that the number of platforms browsed by users calculated by Meta overestimates the number of OCAS platforms used when users regularly look to buy or sell specific products.
- (902) Second, Meta's criticisms of [...] do not diminish its evidentiary value. In the first place, [...].¹⁰¹⁵
- (903) In the second place, [...].
- (904) In the third place, contrary to Meta's calculations for multi-homing at the level of each platform, the Commission considers that it is more appropriate to assess the multi-homing rate at the level of the entire market rather than at the level of each individual platform, as the purpose of the analysis is not to assess the constraint stemming from multi-homing for each platform, but the overall propensity for single-/multi-homing in the OCAS market, which helps explain the market structure and dynamics.
- (905) In the fourth place, Meta's analysis of [...] regarding multi-homing of Facebook Marketplace users is consistent with the Commission's findings set out above.
- (906) Firstly, as explained in recital (900) above the higher multi-homing rate of Facebook Marketplace users is a natural result of the fact that [...]. This is also one of the reasons why, as explained in recital (903), it is not appropriate to assess multi-homing at an individual company level.
- (907) Secondly, a detailed analysis of the data provided by Meta shows that the extent to which regular users of Facebook Marketplace regularly multi-home differs across the surveyed countries. Indeed, in two countries the proportion of regular Facebook Marketplace users using services of other OCAS providers was below [...]%, in three countries above [...]%, in four countries above [...]% and in one country above [...]%.¹⁰¹⁶ These significant differences can be explained by the market dynamics described at recitals (871) to (876) and (898), where the incentive to multi-home depends on the market structure and the expected benefits.
- (908) Thirdly, as to Meta's reference to a high level of multi-homing among all services' user bases and in particular Facebook Marketplace users its analysis relates to use of other services "*at some point*". However, use of other services is indeterminate in terms of its frequency, *i.e.*, it could relate to a single occasion of looking for one specific item on different OCAS platforms. As such this part of Meta's analysis of [...] cannot reliably support Meta's argument concerning the intensity of multi-homing in the surveyed Member States.
- (909) Third, the public third-party survey results quoted by Meta do not concern multi-homing across OCAS platforms, but rather the use of multiple e-commerce platforms in general (sometimes even alongside physical stores):
- (1) The Commission paper referenced at paragraph 188a) of the SO Response merely states that "[t]hroughout the online e-commerce domain, multi-homing on platforms is considered to be relatively low among sellers and businesses

¹⁰¹⁵ Comments on the LoF, paragraph 175 (c).

¹⁰¹⁶ Annex 8 to Comments on the LoF, section 3.3., Figure 7.

and medium to high among buyers and consumers.”¹⁰¹⁷ It does not refer to OCAS or C2C platforms specifically but the entire e-commerce space (therefore including B2C platforms and goods of various types and values), and it does not provide or reference any specific data on the extent of multi-homing among buyers. However, the paper notes that there is a difference between multi-homing understood in terms of awareness of multiple platforms, and multi-homing at the level of specific usage decisions: “the end users (buyers, renters, consumers, app users) tend to multi-home in the sense of having installed (or at least being aware of) about more than one platform that is useful for the tasks they want to implement. For example, most buyers access several platforms for buying goods, services, liaising with friends, consuming social media, booking hotels or short-term accommodation. Nevertheless, when it comes to doing specific tasks (such as buying groceries, ordering food from local restaurants, ordering a car ride, checking weather) user preferences tend to become ‘sticky’, i.e. one platform becomes the main choice most of the time due to habit, convenience, speed, familiarity, network of friends, etc.”¹⁰¹⁸

- (2) Similarly, the [...] referenced at paragraph 188b) of the SO Response appears to cover primarily B2C platforms, and indeed adopts a broad definition of multi-homing as the use of multiple channels (e.g. physical stores in addition to online marketplaces) “when purchasing products from the same product category.”¹⁰¹⁹
 - (3) Likewise, the findings of the Channel Advisor survey referenced at paragraph 188c) of the SO Response concern the use of e-commerce platforms other than OCAS, including “massive players such as Amazon, Alibaba and eBay”.¹⁰²⁰
- (910) Fourth, while the majority of respondents to the Commission’s request for information indeed indicated that buyers and sellers multi-home among OCAS providers, this does not address the question whether such multi-homing is frequent or occasional. The Commission does not contest that buyers and sellers may use several OCAS platforms in order to look for or list certain goods at least from time to time. Rather, the Commission’s point is that on an item-by-item basis, they generally rather single-home (see recitals (874) to (878) above). This also applies with respect to OCAS providers’ documents cited by Meta,¹⁰²¹ with the exception of those related to vehicles and real estate.¹⁰²² [...],¹⁰²³ [...].

¹⁰¹⁷ European Commission, Directorate-General for Communications Networks, Content and Technology, Barcevičius, E., Caturianas, D., Leming, A. (2021). “Multi-homing : obstacles, opportunities, facilitating factors: analytical paper 7”, page 27. Publications Office, available at <https://data.europa.eu/doi/10.2759/220253> (ID13018).

¹⁰¹⁸ European Commission, Directorate-General for Communications Networks, Content and Technology, Barcevičius, E., Caturianas, D., Leming, A. (2021). “Multi-homing : obstacles, opportunities, facilitating factors: analytical paper 7”, page 8. Publications Office, available at <https://data.europa.eu/doi/10.2759/220253> (ID13018).

¹⁰¹⁹ SO Response, paragraph 188 (b) and footnote 420.

¹⁰²⁰ Channel Advisor (2022). Online Consumer Behaviour Global Report, pages 3 – 4. available at: <https://go.channeladvisor.com/rs/485-FSD-368/images/Global-Consumer-Survey-Report-2022-WP.pdf>. (ID13019).

¹⁰²¹ Comments on the LoF, paragraph 201.

¹⁰²² See footnote 971 above: multi-homing is more widespread when it comes to valuable, low-frequency transactions in cars and real estate.

¹⁰²³ [...] cited in Comments on the LoF, paragraph 201 (e).

(911) Fifth, the Commission has not misconstrued the documents cited at recital (877) above. In the first place, the statement [...] is the heading of slide 17 of the document and represents a direct and untruncated quote thereof. In the second place, the figures on slide 17 (which indicates that [...] is below [...] % and [...] have been calculated taking into account not only [...], but also [...], as is made clear on the slide.¹⁰²⁴ Those figures are therefore irrelevant to assess network effects on OCAS platforms, and more generally the capability of the tie to foreclose OCAS providers. As a matter of fact, the following slide of the document provides further details on [...], which confirms this Decision's findings.¹⁰²⁵

7.2.3.4.1.5. Meta's internal documents show that [...]

(912) Meta is best placed to know about the benefit that Facebook Marketplace obtains from being tied to the Facebook personal social network. The analysis of Meta's internal documents leaves no doubt about the fact that [...].

(913) A Meta executive involved in the development of Facebook Marketplace summarised the business rationale of the tie before the launch of Facebook Marketplace: [...] ¹⁰²⁶ As explained in recital (835) above, in Europe like in the US, Facebook has even higher reach of the population attention. Indeed, Facebook reaches [...] the EEA population.

(914) Another internal document confirms Meta's assessment that the distribution resulting from the tie would be [...].¹⁰²⁷

(915) Meta was not technically obliged to tie Facebook Marketplace to Facebook. [...].¹⁰²⁸ It is noteworthy that, later on, Meta did not content itself with the distribution advantage of embedding Facebook Marketplace within Facebook. Especially when [...], it also leveraged Facebook notifications to further increase the level of engagement of the tab (see recitals (798) to (803) above).

(916) A Meta executive explains how the tab, through its visibility, would help Facebook Marketplace acquire traffic: [...] ¹⁰²⁹ This would in turn help it grow: [...].¹⁰³⁰

(917) As another document states, [...].¹⁰³¹

(918) Meta's internal documents produced after the launch of Facebook Marketplace confirm [...]. For instance, one such document states [...].¹⁰³²

(919) The Commission's conclusion that Meta is well aware of the distribution advantage that the tie confers upon Facebook Marketplace is also not contradicted by Meta's arguments according to which:

¹⁰²⁴ [...]. See [...] (ID391-11).

¹⁰²⁵ *E.g.* [...] Although the results detailed on slide 18 relate to [...], they are nevertheless relevant for a correct interpretation of those on slide 17 and, therefore, of Meta's arguments in paragraph 187 of the SO Response. See [...] (ID391-11).

¹⁰²⁶ [...] (ID1495-156).

¹⁰²⁷ [...] (ID1495-45).

¹⁰²⁸ [...] (ID1495-10).

¹⁰²⁹ [...] (ID1495-7).

¹⁰³⁰ [...] (ID1495-132).

¹⁰³¹ [...] (ID1495-137).

¹⁰³² [...] (ID1529-95332).

- (1) The internal documents cited above are highly speculative and hypothetical in nature, only reflecting internal brainstorming that predates the launch of Facebook Marketplace; and
 - (2) The internal documents show that any “advantage” that would allegedly be enjoyed by Facebook Marketplace is in any event modest and simply reflects the migration of existing buy and sell activity from other parts of Facebook, or they are taken out of context, misconstrued or simply not related to Facebook Marketplace.¹⁰³³
- (920) First, while naturally a company’s internal documents may also include statements, ideas or proposals that are not well-developed or that never materialise, it cannot simply be assumed that this is the case here for the simple reason that the documents in question pre-date the launch of Facebook Marketplace. The period before a product is brought to the market is the time when its foundations are laid out, and when strategic assessments and choices are made that are relevant to understanding the motivations underlying the company’s business practices. An idea expressed in an early document could be dismissed as merely hypothetical and hence irrelevant if there is evidence refuting it or indeed if the idea has not been acted upon. However, Meta has not put forward any concrete evidence from a later date that would refute or call into question those allegedly speculative considerations, and indeed Meta ultimately chose to integrate Facebook Marketplace into Facebook rather than launch it as a standalone service.
- (921) Furthermore, the importance of the tie, and in particular of the tab, has been confirmed in internal documents prepared well after the launch of Facebook Marketplace, as illustrated by the document quoted at recital (918) above. Similarly, a document dated July 2018 stresses the importance of the tab for Facebook Marketplace distribution: [...].¹⁰³⁴ This demonstrates that the distribution advantage afforded by the tab was not only recognised in the early days of Facebook Marketplace’s development but indeed confirmed once the product was on the market.
- (922) Second, Meta has not substantiated its claim that the documents show that any advantage to Facebook Marketplace would be modest and would simply reflect the migration of existing buy-sell activity on Facebook. Far from being qualified as “modest”, [...].¹⁰³⁵ Furthermore, Meta did not substantiate its assertion about the internal documents being taken out of context, misconstrued or not related to Facebook Marketplace.
- 7.2.3.4.2. The significant competitive advantage cannot be offset by competitors
- (923) For the reasons outlined below, the Commission concludes that the competitive advantage resulting from tying Facebook Marketplace to Facebook cannot be offset by rival OCAS providers.
- (924) To begin with, Meta’s competitors do not have an automatic access to the large user base of Facebook and in particular cannot use any of the captive tools that Meta is using to promote Facebook Marketplace in Facebook. They do not have any means

¹⁰³³ SO Response, paragraph 349.

¹⁰³⁴ [...] (ID1529-19067).

¹⁰³⁵ [...] (ID1495-10).

to appear on a separate line item in the menu, on a tab, in Jewel Notifications, or in Showcase Units on the News Feed, even against payment.

- (925) Neither do competitors have unfettered access to the user base of any other comparable personal social network, since no OCAS provider is integrated like Facebook Marketplace and even could not team up with a social media platform comparable to Facebook since Meta is with its social media platforms by far the largest player in that market (see recital (768) above) at present and setting up an integrated service would be extremely difficult. As set out in section 6.3.2, there are high barriers to entering the market for personal social networks. These relate not only to the significant costs of developing a large-scale service like that of Facebook, to the limited availability of qualified personnel and to regulatory barriers, but primarily to the strong direct and indirect network effects at play and the vast access to data which Facebook, as the largest player in this market, enjoys and which make it unfeasible for any entrant to achieve a market position that is comparable to that of Facebook.
- (926) This lack of access to a personal social platform that would allow OCAS to achieve a large scale at no or low cost, as Facebook Marketplace was able to do, together with the fact that a large share of buyers and sellers tend to use the services of a single provider (see section 7.2.3.4.1.4) is capable of make it more difficult for competitors to match Facebook Marketplace's competitive advantage.
- (927) The Commission has nevertheless examined whether competitors can resort to alternative distribution channels for their services which could match the promotion opportunity that the tying provides to Facebook Marketplace. Therefore, the Commission has analysed the effectiveness of the most significant alternative distribution channels available to all OCAS providers to promote their services, in particular advertising on Facebook (see section 7.2.3.4.2.1), advertising on other online advertising platforms (see section 7.2.3.4.2.2) and by means of other distribution channels (see section 7.2.3.4.2.3).

7.2.3.4.2.1. Competitors cannot match Facebook Marketplace's competitive advantage by advertising on Facebook

- (928) A first potential alternative means of distribution for OCAS providers is online display advertising on Facebook itself. Such advertising could in theory be a substitute to the distribution advantage of Facebook Marketplace, as it could potentially also benefit from the ubiquity of Meta's platform.
- (929) However, the evidence in the Commission's file shows that advertising on Facebook cannot match the distribution advantage given by the tie to Facebook Marketplace.
- (930) First, this is a natural consequence of the fact that the online display ads that are available to competitors¹⁰³⁶ have a smaller reach than the tying modes from which Facebook Marketplace benefits. A display ad is shown to a limited number of Facebook users at any given point in time, and a Facebook user is exposed to a limited number of ads during his/her presence on the platform. By contrast, the

¹⁰³⁶ OCAS providers can also be present on Facebook by creating a Facebook user profile or a Facebook Page (similar to a user profile for businesses or public figures). However, the reach of such Facebook presence is in principle limited to those users who have chosen to "like" or "follow" the respective profile or Facebook Page, and, unlike in the case of ads, it is not under the direct control of OCAS providers.

Facebook Marketplace tab is displayed to [...] for the entire time they use the Facebook app, and, on the desktop version, the line item in the menu is visible to all users for the entire duration of their presence on the News Feed page (see recital (854) above). Further, there is a limit to the number of ads any Marketplace competitor can place on Facebook as OCAS providers have to compete for online display advertising slots – not only between themselves but also with all other advertisers on Facebook. They can therefore only be displayed on a fraction of existing advertising slots, substantially affecting their reach.

- (931) Indeed, the traffic obtained by rivals through advertising on Facebook is small compared to the traffic obtained by Facebook Marketplace from the different tying modes. For instance, in 2022 and the first half of 2023, the traffic obtained by all OCAS providers that replied to the Commission's request for information following a click on a Facebook's advertisement corresponded on aggregate to less than [...] of the traffic Facebook Marketplace obtained from all the tying modes combined. (calculated based on the number of visits). Even considering all the traffic obtained by these competitors from Facebook, that is to say, traffic originating from advertising as well as traffic originating from clicks on user or Facebook Page posts or messages, this does not exceed [...] of the traffic Facebook Marketplace obtained from Facebook in 2022 and the first half of 2023.¹⁰³⁷
- (932) Second, unlike Facebook Marketplace, which can benefit from the separate line item in the menu, the tab, Jewel Notifications or Showcase Units for free, rival OCAS providers have to pay for online display advertising on Facebook – costs which restrict the extent to which they can make use of such advertising services. This puts limits to the effectiveness of Facebook ads as a distribution channel for competitors, in particular, since it implies that clicks on those online display advertisements must generate a minimal average return on investment.
- (933) [...] explained that [...].¹⁰³⁸
- (934) Several OCAS providers¹⁰³⁹ mentioned increasing costs as a limiting factor of their marketing strategy. [...] explained [...].¹⁰⁴⁰
- (935) [...] also explained that [...].¹⁰⁴¹

¹⁰³⁷ Commission's calculation based on Meta's reply to Q19.b of the Commission's RFI to Meta of July 2023 (ID10804) and replies to QD.2 of the Commission's RFI to OCAS providers of July 2023. The Commission's calculation considers the 16 Member States (Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Ireland, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Spain and Sweden) on which the Commission has received data from at least one of the main horizontal platforms in the Member State. The calculation covers 64 OCAS platforms in the 16 countries. Given that Meta only provided complete data on sources of visits to Facebook Marketplace for January and February 2022, and for July and August 2023, the Commission estimated the traffic to Facebook Marketplace on the basis of a) data on total number of visits to Facebook Marketplace, provided for the period March 2022 - June 2023 in reply to Q19.b of the RFI of July 2023. The Commission understands that [...]. This figure therefore represents a lower bound for the total number of times Facebook Marketplace is accessed by users. For the year 2022, for which Meta could only provide data for the period March – December, the Commission assumed a number of visits in January and February equal to the average monthly number of visits for the rest of the year; b) data on the proportion of Facebook Marketplace visits originating from within Facebook. As set out in Table 10, this proportion ranges between [...] % and [...] % in the period for which data was available. The Commission assumed a proportion of [...] % for the entire period relevant period (January 2022 – June 2023).

¹⁰³⁸ [...].

¹⁰³⁹ See e.g. [...].

¹⁰⁴⁰ [...].

- (936) Third, Meta itself can crowd out the amount of online display advertising on its own platform that is available to rival OCAS. Indeed, Meta also participates in the auction for online display advertising [...] ¹⁰⁴² [...].
- (937) [...] ¹⁰⁴³ [...] ¹⁰⁴⁴ [...] ¹⁰⁴⁵
- (938) Furthermore, Meta purchases [...] through the Ads Manager interface to advertise its own products and services (such as Facebook Marketplace), [...] ¹⁰⁴⁶
- (939) Fourth, whilst Facebook Marketplace nominally participates in a bidding auction [...].
- (940) [...] ¹⁰⁴⁷ [...].
- (941) This is also well illustrated by internal documents. [...] ¹⁰⁴⁸
- (942) Another internal document, dating from November 2021, shows that [...] ¹⁰⁴⁹
- (943) An earlier internal e-mail exchange within Meta, dating from 2018, also spells out [...] ¹⁰⁵⁰ This means that to compensate for the traffic that Facebook Marketplace obtains from Facebook through QPs alone, an OCAS would have to become one of the largest advertisers on Facebook. As explained above, such QPs represent merely [...] % of the traffic that Facebook Marketplace obtains by the ways by which it is tied to Facebook. To fully compensate for the benefit of the tie, a rival would therefore have to advertise on Facebook tens of times more than even the largest advertisers on Facebook.
- (944) The abovementioned internal documents illustrate that Facebook Marketplace can benefit from using online display advertisements on its own platform (in addition to all the tying tools) on conditions that would not be economically sustainable for rivals, and hence the latter cannot compensate for their disadvantage by increasing their advertising on Facebook.
- 7.2.3.4.2.2. Competitors cannot match Facebook Marketplace's competitive advantage by advertising on other online advertising platforms
- (945) OCAS providers could also use other online advertising platforms to distribute their services. These include online display advertising on websites and apps other than Facebook and online search advertising. However, the availability of these channels is not sufficient in order for competitors to match the distribution advantage Facebook Marketplace enjoys through the tie for the following reasons.
- (946) First, the limitations set out in recital (930) above as regards display ads on Facebook apply to other advertising channels as well, as online ads (be they search ads or display ads on other platforms than Facebook) do not have the same persistence as the tie from which Facebook Marketplace benefits (see recital (854) above). This is

¹⁰⁴¹ [...].

¹⁰⁴² [...]. See Meta's reply to Q2 of the Commission's RFI to Meta of May 2020 (ID5273).

¹⁰⁴³ Meta's reply to Q2 of the Commission's RFI to Meta of May 2020 (ID5273).

¹⁰⁴⁴ Meta's reply to Q13 of the Commission's RFI to Meta of July 2021 (ID2073).

¹⁰⁴⁵ Meta's reply to Q2 of the Commission's RFI to Meta of August 2019 (ID354).

¹⁰⁴⁶ Meta's reply to Q41 of the Commission's RFI to Meta of May 2020 (ID5271).

¹⁰⁴⁷ Meta's reply to Q4 of the Commission's RFI to Meta of May 2020 (ID5273) and to Q17 of the Commission's RFI to Meta of July 2021 (ID2073).

¹⁰⁴⁸ [...] (ID2122-1938).

¹⁰⁴⁹ [...] (ID2122-7058).

¹⁰⁵⁰ [...] (ID2246-1527).

reflected in the fact that competitors' traffic from such ads is limited compared to that obtained by Facebook Marketplace from the tie. Amongst the alternative advertising channels, Google online search advertising is the most important platform available to OCAS providers,¹⁰⁵¹ which can have access to it on the same third-party terms as Facebook Marketplace. However, in 2022 and the first half of 2023, the traffic that all OCAS providers that replied to the Commission's request for information obtained following a click on an online search advertisement corresponded on aggregate to not more than [...] of the traffic Facebook Marketplace obtained from Facebook.¹⁰⁵² obtained from Facebook (calculated on the basis of number of visits).¹⁰⁵³

- (947) Even taking into account all alternative online advertising platforms, the traffic obtained by rivals through other online advertising platforms is small compared to the traffic obtained by Facebook Marketplace from Facebook. Based on data submitted by OCAS providers in 16 EU Member States, in 2022 and the first half of 2023, the traffic OCAS providers obtained following a click on an online search or display advertisement from a source other than Facebook corresponded to approximately [...] of the traffic Facebook Marketplace obtained from Facebook in the Member States considered.¹⁰⁵⁴
- (948) Second, the cost limitations of OCAS providers regarding their marketing budget applies to all other online advertising channels, including the Google search advertising channel. Whilst distribution of Facebook Marketplace through the tie comes at virtually no cost for Meta, evidence on the file shows that the average cost per click of Google online search ads for OCAS providers varies between EUR 0.02 and EUR 7.43 in the different Member States.¹⁰⁵⁵

¹⁰⁵¹ Visits from search ads account for around [...] of the competitors' ad traffic from platforms other than Facebook. This considers the traffic from OCAS providers that submitted data, representing 44 OCAS platforms across the 27 EU Member States. Commission's calculation based on Annex B to replies to Q1 of the Commission's RFI to OCAS providers of January 2022.

¹⁰⁵² Commission's calculation based on Meta's reply to Q19.b of the Commission's RFI to Meta of July 2023 (ID10804) and replies to QD.2 of the Commission's RFI to OCAS providers of July 2023. The Commission's calculation considers the 16 Member States (Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Ireland, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Spain and Sweden) on which the Commission has received data from at least one of the main horizontal platforms in the country. The calculation covers 64 OCAS platforms in the 16 countries. See footnote 1037 above for details on the calculation methodology.

¹⁰⁵³ Commission's calculation based on Meta's reply to Q19.b of the Commission's RFI to Meta of July 2023 (ID10804) and replies to QD.2 of the Commission's RFI to OCAS providers of July 2023. The Commission's calculation considers the 16 Member States (Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Ireland, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Spain and Sweden) on which the Commission has received data from at least one of the main horizontal platforms in the country. The calculation covers 64 OCAS platforms in the 16 countries. See footnote 1037 above for details on the calculation methodology.

¹⁰⁵⁴ Commission's calculation based on Meta's reply to Q19.b of the Commission's RFI to Meta of July 2023 (ID10804) and replies to QD.2 of the Commission's RFI to OCAS providers of July 2023. The Commission's calculation considers the 16 Member States (Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Ireland, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Spain and Sweden) on which the Commission has received data from at least one of the main horizontal platforms in the country. The calculation covers 64 OCAS platforms in the 16 countries. See footnote 1037 above for details on the calculation methodology.

¹⁰⁵⁵ Replies to Q2.1 of the Commission's RFI to OCAS providers of January 2022.

- (949) Finally, other online advertising channels may not perform as well as Facebook’s online display advertising services in specific environments, such as mobile. A competitor explained that [...].¹⁰⁵⁶

7.2.3.4.2.3. Competitors cannot match Facebook Marketplace’s competitive advantage by means of other distribution channels

- (950) Other distribution channels, such as direct traffic and traffic from Google’s natural search,¹⁰⁵⁷ and to a lesser extent other non-paid channels of distribution such as marketing campaigns via e-mail, are in a large part dependent on the previous channels, *i.e.* on continuous purchase of advertising services from Facebook or other platforms. In the absence of these investments, they would just rely on past brand recognition and could thus fade out with time.
- (951) Due to those characteristics, such channels are inherently less effective to promote a service. They can be useful to maintain an existing customer base, potentially acquired from effective promotion channels, but less to reach new customers.
- (952) Indeed, part of the direct traffic to any platform stems from incumbency, for instance because of the brand recognition acquired in the past, or as a function of the fact that Google’s natural search index contains more links to websites that have been around for a longer period.
- (953) For this reason, those distribution channels have a limited relevance to offset the competitive advantage that Facebook Marketplace obtains from being tied to the ubiquitous Facebook. In contrast, Facebook Marketplace enjoys instant traffic through its tie to Facebook, without the need to heavily invest in online or offline marketing campaigns. Meta itself considers its marketing spend to promote Facebook Marketplace in the EEA “[...]”.¹⁰⁵⁸ In particular, Meta’s offline marketing strategy in the EEA only consists of “[...]”.¹⁰⁵⁹ By contrast, OCAS providers spend a significant proportion of their marketing budget on offline promotion, in order to obtain the brand awareness that can generate traffic later on.¹⁰⁶⁰
- (954) Data gathered through the Commission’s investigation about this less effective distribution channel shows that while less than [...] % of the traffic of Facebook Marketplace stems from direct traffic and natural search,¹⁰⁶¹ this proportion is significantly higher for competitors, namely around [...] for direct traffic and [...] for natural search (*e.g.* on Google) in 2022 and 2023.¹⁰⁶²
- (955) It is true that part of that traffic can also be influenced, over the longer run, by marketing investments, either branding online advertising or offline advertising

¹⁰⁵⁶ [...].

¹⁰⁵⁷ Some of the traffic from Google’s natural search, known as “navigational search” traffic, is more akin to direct traffic. Navigational search traffic is when the user types the name of the company in the Google search bar as opposed to in the URL bar of the browser. Google then returns the link to the company’s website in its search results, for the user to click on it and navigate to that site.

¹⁰⁵⁸ Meta’s reply to Q2 of the Commission’s RFI to Meta of August 2019 (ID354).

¹⁰⁵⁹ Meta’s reply to Q2 of the Commission’s RFI to Meta of August 2019 (ID354).

¹⁰⁶⁰ Replies to Q1 of the Commission’s RFI to OCAS providers of January 2022.

¹⁰⁶¹ Commission’s calculation based on Annex Q25 to Meta’s reply to Q25 of the Commission’s RFI to Meta of March 2022 (ID3251) and (ID3490) and Meta’s reply to Q20 of the Commission’s RFI to Meta of July 2023 (ID11030).

¹⁰⁶² Commission’s calculation based on replies to QD.1 of the Commission’s RFI to OCAS providers of July 2023. This considers the traffic from all OCAS providers that submitted data, representing 66 OCAS platforms in 24 EEA Member States.

campaigns. But this strategy is particularly costly. Indeed, to stay “top of mind” with customers, OCAS providers need sustained investments in a repeated manner. Due to the national nature of advertising markets, those costs must be incurred in all national markets they have entered.

(956) [...] explained that [...].¹⁰⁶³

(957) Meta itself acknowledges the high investment necessary to maintain brand awareness and states in an internal document that [...].¹⁰⁶⁴

(958) Data in the file confirm the high cost incurred by OCAS providers competing with Facebook Marketplace in this respect. The Commission compared the cost of acquisition of users through such indirect marketing expenses incurred by Facebook Marketplace and its main horizontal rivals in 14 Member States,¹⁰⁶⁵ by comparing the expenses of Meta (for Facebook Marketplace) and rival OCAS providers per visit. While the costs per visit vary between OCAS providers and across time, in 2019 and 2020 all main competitors of Facebook Marketplace spent, on average, [...].¹⁰⁶⁶ In 2022 and in the first half of 2023, Meta indicated that globally it spent around EUR [...] in marketing for Facebook Marketplace outside of Facebook. While Meta could not provide data showing the opportunity cost of placing ads for Facebook Marketplace on Facebook for the period 2021 – 2023, it indicated that it believes such costs to represent [...].¹⁰⁶⁷ By contrast, most OCAS providers have marketing budgets in the range of several hundred thousand EUR at the level of a single country.¹⁰⁶⁸

7.2.3.4.2.4. Meta’s arguments on whether rival OCAS providers can offset the competitive advantage resulting from the tying of Facebook Marketplace and Facebook are unfounded

(959) The Commission’s conclusion that the competitive advantage resulting from the tying of Facebook Marketplace and Facebook cannot be offset by rival OCAS providers is not contradicted by Meta’s arguments stating that:

(1) Facebook is only one of multiple means through which OCAS providers can reach users, and one that is not significant, given that OCAS providers primarily rely on organic traffic and not on traffic from Facebook.¹⁰⁶⁹ According to Meta:

(1) Data submitted by OCAS providers shows that between 2017 and 2021, Facebook accounted, on average, for less than [...] of OCAS providers’ traffic in the EEA. The majority of OCAS providers’ traffic is a result of

¹⁰⁶³ [...].

¹⁰⁶⁴ [...] (ID1530-14058).

¹⁰⁶⁵ Austria, Belgium, Bulgaria, Finland, France, Germany, Hungary, Italy, Netherlands, Norway, Poland, Portugal, Romania and Spain.

¹⁰⁶⁶ Commission’s calculation based on Annexes A and C to replies to Q1 of the Commission’s RFI to OCAS providers of January 2022, Meta’s reply to Q17.f of the Commission’s RFI to Meta of July 2021 (ID2073), and Annex Q36 to Meta’s reply to Q36 of the Commission’s RFI to Meta of May 2020 (ID5271).

¹⁰⁶⁷ The Commission notes that Meta continues to promote Facebook Marketplace through Showcase Units, [...]. See Meta’s reply to Q21 of the Commission’s RFI to Meta of July 2023 (ID11025).

¹⁰⁶⁸ Commission’s calculation based on replies to QD.1 of the Commission’s RFI to OCAS providers of July 2023. This considers the traffic from all OCAS providers that submitted data, representing 66 OCAS platforms in 24 EEA Member States.

¹⁰⁶⁹ SO Response, paragraph 350 (a).

direct access [...] and organic search queries [...].¹⁰⁷⁰ These results are consistent with traffic analyses based on other sources.¹⁰⁷¹

- (2) The majority of OCAS providers covered by the Commission's market investigation spend less than [...] of their advertising budgets on Facebook, and some providers do not allocate any of their advertising budget to Facebook. By contrast, offline advertising channels or online search advertising attract a significantly higher share of OCAS providers' advertising budget. This is because those other advertising channels are likely to be more sophisticated or more effective.¹⁰⁷²
- (2) The fact that other channels are significantly used in this case is in contrast with the circumstances of the *Microsoft* and *Google Android* cases, where the operating systems were a principal gateway for users to access competitors of the tied product which is not the case for Facebook.¹⁰⁷³
- (3) Ads for Facebook Marketplace ([...]) compete with other ads in Meta's ad auction and hence do not enjoy better conditions, and overall, Meta does not have an incentive to "crowd out" advertising from OCAS providers given that it relies on advertising to monetise its services.¹⁰⁷⁴
- (4) The conclusion that Meta's costs for promoting Facebook Marketplace via [...] are insignificant compared to the marketing costs of OCAS providers ignores the benefit that OCAS providers derive from on-platform promotion functionalities developed by Meta, and the cost to Meta of utilising advertising space in this way.¹⁰⁷⁵
- (960) First, the fact that Facebook accounts for a relatively limited share of visits to OCAS providers' websites and apps does not imply that Facebook Marketplace has not enjoyed a competitive distribution advantage that cannot be offset.
- (961) In the first place, the relevant matter is not to determine the relative effectiveness of the different sources of traffic to OCAS competing with Facebook Marketplace, but to determine the relative effectiveness of the different sources of traffic accessible to those rivals compared to the source of traffic accessible only to Facebook Marketplace through the tying. Such tying sources of traffic are the menu line item, the Facebook Marketplace tab, Jewel Notifications and Showcase Units. For the reasons outlined above in section 7.2.3.4.1.3 and recitals (882), (886) and (887) above, those provide Facebook Marketplace a source of traffic which is massive and cheap. Rivals have no access to those (or comparable) sources of traffic.
- (962) In the second place, as Meta points out, the largest share of traffic to OCAS providers' websites comes from direct traffic (meaning users navigating directly to the OCAS provider's website or app), followed by organic search traffic (meaning users reaching the OCAS provider by clicking on the results to a query entered in a

¹⁰⁷⁰ SO Response, paragraphs 26 to 269 and Annex 7 of the SO Response, paragraphs 4.2.3 to 4.2.6.

¹⁰⁷¹ SO Response, paragraphs 270 to 273 and Annex 7 of the SO Response, paragraphs 4.2.9 to 4.2.10.

¹⁰⁷² SO Response, paragraphs 274 to 276 and Annex 7 of the SO Response, paragraphs 4.3.1 and 4.3.2.

¹⁰⁷³ SO Response, paragraphs 226, 281 to 283 and 365.

¹⁰⁷⁴ SO Response, paragraph 350 (b). Comments on the LoF, paragraph 236.

¹⁰⁷⁵ SO Response, paragraph 350 (c). Comments on the LoF, paragraph 236.

search engine – mostly Google’s).¹⁰⁷⁶ As mentioned above, in recitals (950) to (953), the question is whether such direct traffic is an effective means to offset the distribution advantage enjoyed by Facebook Marketplace in terms of traffic from the tie. Such direct and organic search traffic does not come for free. It is sustained through continuous marketing efforts. This is why even OCAS providers with an established presence on the market need to invest significant amounts in marketing efforts each year.¹⁰⁷⁷ The Decision assesses in recital (942) above the marketing costs incurred by rivals to acquire traffic, compared to those of Facebook Marketplace.¹⁰⁷⁸ The mere examination of the magnitude of direct and organic search traffic to rivals can therefore not establish that those are effective means to compensate the very effective (and also very large) traffic the Facebook Marketplace obtains from the tying sources of traffic.

- (963) In the third place, despite the fact that traffic from Facebook’s ads accounts for a small share of their traffic (for the reasons explained in section 7.2.3.4.2.1), OCAS providers, like other advertisers, consider Facebook to be an unavoidable provider of advertising services (see sections 6.4.2 and 6.4.3, in particular recitals (688) and (699) above).
- (964) In the fourth place, Meta’s representation of the importance for the market of traffic from Facebook is misleading, as it is based on the mere examination of rival OCAS providers, namely the part of the market which can only be present on a very limited subset of the real estate of Facebook (the advertising real estate which they can purchase, whereas Facebook Marketplace can be present not only on the advertising real estate, but also in the menu line item, the Facebook Marketplace tab, the Jewel Notifications). When appropriately taking into account all market participants (including Facebook Marketplace), Facebook does account for a significant share of traffic to OCAS. As depicted in Table 12, in the period 2019–2023, Facebook accounted as the origin for between [...] of all OCAS traffic in the EEA.

¹⁰⁷⁶ A part of organic search traffic comes from search queries where the OCAS platform’s brand name is used as search term (indicating that the user intends to reach that specific platform but may be unsure of the website’s exact domain name) and is therefore akin to direct traffic.

¹⁰⁷⁷ Brand awareness achieved through online display ads can also contribute to the effectiveness of search ads (see section 4.4.3 for a discussion of the complementarity between online display ads and online search ads) and, by extension, to traffic obtained from organic search queries that do not include the platform’s name (and hence are not just a form of direct traffic), as users are more likely to click on a search result linking to a webpage of which they have heard before.

¹⁰⁷⁸ Meta also incurs in significant marketing costs but for its personal social network Facebook. Facebook Marketplace benefits from those efforts as an externality of the fact that Facebook is the most known personal social network in the EEA. The costs of promoting Facebook Marketplace are thus much smaller.

Table 12: Origin of visits to OCAS providers (Facebook Marketplace and competitors)^{1079,1080}

[...]

- (965) In the fifth place, as explained in section 4.4, advertising channels complement each other,¹⁰⁸¹ and advertisers use social media platforms alongside other advertising channels in their marketing campaigns. Thus, the fact that OCAS providers distribute their advertising budget among multiple advertising channels does not mean that other channels are more sophisticated or more effective than advertising on Facebook (see section 7.2.3.4.2.2).
- (966) Furthermore, the question of whether other advertising channels are marginally more or less effective than Facebook in terms of advertising is not decisive to determining whether competitors can offset the competitive advantage that Facebook Marketplace obtains from the tie. This is because the tie consists of Facebook Marketplace being permanently visible on several Facebook's entry points, which cannot be replicated by competing OCAS providers by using other advertising channels, including Facebook. Consequently, the effectiveness of Facebook as an advertising channel compared to other platforms is not the correct proxy for assessing the ability to offset the distribution advantage by rival OCAS providers. As explained in recitals (795) to (804) above the tie is implemented by way of the menu line item, the tab, the Jewel Notifications and the Showcase Units. The Facebook Marketplace tab, in particular,

¹⁰⁷⁹ Visits from Facebook includes visits to Facebook Marketplace (from Facebook entry points) and visits to other OCAS providers. Direct traffic represents visits from users navigating directly to the OCAS providers' website or app. Facebook Marketplace visits from outside Facebook (which, as the Commission understands, consist primarily of visits from natural search results and search advertising) have been considered as visits from natural search results for the purposes of the calculation in Table 12. Given that Meta only provided complete data on sources of visits to Facebook Marketplace for January and February 2022 (in reply to Q25 of the RFI of March 2022), and for July and August 2023 (in reply to Q20 of the RFI of July 2023), the Commission estimated the traffic to Facebook Marketplace on the basis of a) data on total number of visits to Facebook Marketplace, provided for the period December 2018 - June 2021, in reply to Q1.4 of the RFI of June 2021, and for the period March 2022 - June 2023 in reply to Q19.b of the RFI of July 2023. The Commission understands that "*a visit session is defined as a set of pages viewed by the same unique visitor within a time of no more than 30 minutes between each page view*". If the user visits Facebook Marketplace multiple times within a 30-minute time frame, potentially by means of different entry points, this would be recorded as a single visit. This figure therefore represents a lower bound for the total number of times Facebook Marketplace is accessed by users. For the years 2021 and 2022, for which only partial data was available, the Commission assumed a number of visits in the missing months equal to the average monthly number of visits for the rest of the year; b) data on the proportion of Facebook Marketplace visits originating from within Facebook. As set out in Table 10, this proportion ranges between [...] in the period for which data was available. The Commission assumed a proportion of [...] for the entire period relevant period (January 2019 - June 2023).

¹⁰⁸⁰ Commission's calculations based on Meta's replies to Q1.4 of the RFI to Meta of June 2021, Q25 of the RFI to Meta of March 2022, Q19.b and Q20 of the RFI to Meta of July 2023, and OCAS providers' replies to Annex B of the Commission's RFI to OCAS providers of March 2020, Annex B of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex B) of the Commission's RFI to OCAS providers of January 2022 and Q D.2 of the RFI of July 2023. The Commission's calculation considers the Member States on which the Commission has received data from at least one of the main horizontal platforms in the country. These Member States are Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, Germany, Ireland, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Spain and Sweden for the year 2022 and January-June 2023, and Austria, Belgium, Bulgaria, Croatia, Denmark, Germany, Italy, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Spain, Slovenia and Sweden, for the years 2019-2021.

¹⁰⁸¹ See recitals (373), (374), (413) and (434) above.

is so effective, that, according to Meta's internal documents, it represents almost [...] % of all traffic to Facebook Marketplace: [...].¹⁰⁸² (see recital (921) above). Furthermore, as described at recitals (867), (921) and (974) above, even a reduction in the display rate (let alone an elimination) of the tab would result in a loss of traffic that would require a prohibitive amount of spending on Facebook ads to compensate. Indeed, to compensate for the absence of the tab, Facebook Marketplace would have to occupy a significant number of advertising inventory on Facebook that would crowd out other ads and therefore result in significant costs for Meta. In any event, other advertising channels are costly, and OCAS providers would face similar limitations in trying to offset Facebook Marketplace's competitive advantage by advertising on other channels as they would in trying to offset it by advertising on Facebook itself.

- (967) Second, in the first place, whilst it is true that, in the *Microsoft* case, the Windows operating system (the tying product) constituted the principal gateway for users to access Windows Media Player (the tied product), the Court did not include such circumstance as one of the legal requirements for the finding of a tying abuse. And indeed, doing so would have *de facto* turned the analysis of tying conduct into an analysis akin to that of a refusal to supply an essential facility, even though that latter type of practices constitutes a different category of abuse, subject to a different legal test. Instead, in *Microsoft* and *Google Android* alike, the Court reiterated the four-limb test for tying, which does not include the criterion that the tying product constitutes the principal gateway to the tied product.
- (968) In the second place, the circumstances of the *Google Android* case do not match those alleged by Meta. Indeed, in the case of the tying of Google search to Google Play, the tying product (Google Play) did not constitute the principal gateway to the tied product (Google Search). Google Search obtained traffic from several other sources, including the Windows operating system on desktop devices and the iOS operating system on Apple iPhones and iPads.
- (969) In the third place, the legal assessment of the tie needs to be undertaken in light of the particular circumstances of the case. In *Microsoft*, the fact that interaction with the Windows OS was technically required for competing media players to be able to reach customers was a material fact specific to that case. Its importance lies in the fact that Windows Media Player was pre-installed on PCs equipped with Windows OS, which were not available without it, thereby making Windows Media Player as ubiquitous as Windows. Those case-specific facts do not however equal to a legal requirement applicable in other tying cases.
- (970) In this Decision, the Commission identified above the specific circumstances that render the tie capable of resulting in exclusionary effects, *i.e.* the ubiquity of Facebook among the internet users in the EEA at large, including among users and potential users of OCAS platforms (see section 7.2.3.4.1.1), the fact that tying happens at large scale (see section 7.2.3.4.1.2), the importance of traffic for OCAS providers (see section 7.2.3.4.1.4) and the fact that most of Facebook Marketplace's traffic comes from Facebook (see section 7.2.3.4.1.3). Thus, even if Facebook is not technically a gateway for rival OCAS providers, Facebook (and along with it, Facebook Marketplace) is ubiquitous among their users and is the main source of traffic for Facebook Marketplace. Rivals are not able to match the audience that

¹⁰⁸² [...] (ID1529-19067).

Facebook secures for Facebook Marketplace, and they have no possibility to use Facebook to prompt or incentivise users to choose their services in the same way Meta does. The tie grants Facebook Marketplace a ubiquity that competitors cannot offset and thereby introduces a distortion of competition in the markets for OCAS.

- (971) In conclusion, contrary to Meta's allegations, the case law does not establish a systematic requirement that the tying product needs to amount to the principal gateway for customers to access products competing with the tied product.
- (972) Third, Facebook Marketplace enjoys better conditions than competitors when advertising on Facebook [...]. Indeed, as explained in recitals (937) to (943) above, [...], as it would be for any other advertiser. Instead, [...].
- (973) By way of illustration, the document described at recital (943) above [...]. This would not be a feasible endeavour for a company active in online classified ads.
- (974) A Meta internal document titled [...] dated 7 June 2018, discussing [...] ¹⁰⁸³ [...] ¹⁰⁸⁴ [...]. ¹⁰⁸⁵ It should be noted that this is the amount required to compensate not for the absence of the tab, but only for a reduction in its display rate. This clearly shows that, even for Meta, trying to compensate for even just a part of the tab's distribution advantage through Facebook's ads would be prohibitive, ¹⁰⁸⁶ [...].
- (975) As to Meta's claim that it does not have an incentive to crowd out rival OCAS providers because it relies on advertising, it is based on the flawed assumption that crowding out rival OCAS providers would only have a negative impact (on advertising revenue) and no positive impact whatsoever. However, Facebook Marketplace would benefit from rival OCAS providers having less visibility and thus it would get more traffic. Meta has not presented any analysis to explain that the loss of ad revenue from crowding out OCAS providers would outweigh the benefits for Facebook Marketplace in terms of traffic. Moreover, Facebook could still monetise the advertising space it would not sell to crowded out rival OCAS providers to alternative advertising customers.
- (976) Fourth, Meta's argument that the benefits to OCAS providers should be taken into account is not pertinent to the comparison between Facebook Marketplace and other OCAS providers in this context. There is no reason to consider that – other things being equal – the benefit of an ad on Facebook is different for Facebook Marketplace compared to its competitors. So, in terms of the benefits derived from placing an ad on Facebook, Facebook Marketplace and its competitors are equal. However, they are not equal as regards costs. As explained at recitals (937) to (943) above, [...]. As a result, the cost of the same to rival OCAS providers is [...] that to Facebook Marketplace.

7.2.3.4.3. Meta's conduct increases barriers to entry and expansion, deterring innovation and harming buyers and sellers

- (977) By being embedded in such a heavily used service as Facebook, Facebook Marketplace benefits from a high degree of visibility, which is key in getting buyers and sellers to use the platform. This is in particular the case given the ubiquity of

¹⁰⁸³ [...]. Meta's reply to Q60.5 of the Commission's RFI to Meta of May 2020 (ID5271).

¹⁰⁸⁴ [...]. Meta's reply to Q37 of the Commission's RFI to Meta of July 2021 (ID6447).

¹⁰⁸⁵ [...] (ID1529-20381).

¹⁰⁸⁶ The revenue of Facebook Marketplace in 2018 was on the order of USD [...] (estimated in March 2018 to amount to USD [...] for the year 2018). See [...] (ID1499-59187).

Facebook which is also reflected in fact that users of OCAS platforms are also users of Facebook (see section 7.2.3.4.1.1) and because a large share of buyers and sellers tend to use the services of a single provider (section 7.2.3.4.1.4).

- (978) This enabled Facebook Marketplace to almost simultaneously and successfully enter 27 markets for OCAS of the various Member States and, in each of them, to build a critical mass of users without incurring the significant investments in marketing, quality and innovation that are generally necessary to solve the entry problem in a market characterised by network effects. As discussed in section 7.2.3.4.1.4, rival OCAS providers indicated that such large-scale entry would not be possible for them due to the significant investment it would require. Nevertheless, given the tie with Facebook, Facebook Marketplace was not only able to simultaneously enter to the various markets for OCAS in the EEA but to gain and grow a significant user base very quickly mostly coming from Facebook (see section 7.2.3.4.1.3).
- (979) For instance, [...] - observed that Facebook Marketplace's expansion in the EEA was unprecedented compared to other OCAS providers without incurring the significant investments in marketing, quality and innovation that are generally necessary to enable such entry:
- (1) [...].¹⁰⁸⁷
 - (2) [...].¹⁰⁸⁸
- (980) Further, the continuous exposure helps Facebook Marketplace maintain and further grow traffic by getting users' attention to an extent that cannot be matched by competitors (as described in section 7.2.3.4.2).
- (981) The tie to Facebook has therefore allowed Facebook Marketplace to rapidly rise to occupying one of the top positions in the markets for OCAS in the EEA, which results in higher barriers to entry and expansion in those markets as it is capable of making it harder for competing providers to attract and retain buyers and sellers. This possibility to enter was unique to Facebook Marketplace due to the tie and it resulted in higher barriers for other potential entrants who are not able to replicate the advantage of the tie.
- (982) This is because in order to effectively compete in the markets for OCAS, providers need to achieve enough scale and network effects. In fact, because of the importance of network effects, the markets for OCAS generally have scope for a limited number of players. The typical market structure comprises one (or, in some cases, two) main horizontal platform(s) competing with a few significantly smaller competitors.¹⁰⁸⁹ As explained by some of the main OCAS providers, [...].¹⁰⁹⁰ [...].¹⁰⁹¹
- (983) Once a platform achieves a critical mass of buyers and sellers, new users have stronger incentives to join that platform rather than its smaller rivals, as they are more likely to find there parties with whom to transact: [...].¹⁰⁹²
- (984) Over time, this dynamic is likely to lead to the market exit or marginalisation of smaller rivals, in particular horizontal OCAS. The actual market evolution on the

¹⁰⁸⁷ [...].

¹⁰⁸⁸ [...].

¹⁰⁸⁹ See OCAS providers' replies to Q1 of the Commission's RFI to OCAS providers of January 2022 [...].

¹⁰⁹⁰ [...].

¹⁰⁹¹ [...].

¹⁰⁹² [...].

various Member States (see section 7.2.3.4.4 below) is consistent with this dynamic, and feedback received in the Commission's market investigation illustrates this point.

- (985) For instance, [...] explained that [...].¹⁰⁹³ According to [...]¹⁰⁹⁴ [...].¹⁰⁹⁵
- (986) [...] similarly stated that [...].¹⁰⁹⁶
- (987) [...] submitted that [...].¹⁰⁹⁷ [...].¹⁰⁹⁸
- (988) [...] explained that [...].¹⁰⁹⁹ [...].¹¹⁰⁰
- (989) Also, the main OCAS providers observed that the tie of Facebook Marketplace to Facebook negatively impacted their platforms making it harder to attract and retain users despite incurred investments and thereby to stay in the market or to grow there.
- (990) [...] pointed out that [...].¹¹⁰¹
- (991) [...] further explained that [...]:
- (1) [...].¹¹⁰²
 - (2) [...].¹¹⁰³
 - (3) [...].¹¹⁰⁴
- (992) Similarly, [...] indicated that Facebook Marketplace's market entry [...]:
[...].¹¹⁰⁵
- (993) [...] also underscored that, contrary to Facebook Marketplace, [...]:
- (1) [...].¹¹⁰⁶
 - (2) [...].¹¹⁰⁷
- (994) Thus, by making it harder for competing providers to gain traffic and, thereby, to obtain the respective revenues and data needed to improve their services, Meta's conduct reduces the incentives of competing providers to invest in developing innovative features, such as innovation in algorithm and user experience design. According to [...].¹¹⁰⁸
- (995) Finally, Meta's conduct may also harm, directly or indirectly, buyers and sellers who, as a result of Meta's interference with the normal competitive process, may see less choice of OCAS providers available.

¹⁰⁹³ [...].

¹⁰⁹⁴ [...].

¹⁰⁹⁵ [...].

¹⁰⁹⁶ [...].

¹⁰⁹⁷ [...].

¹⁰⁹⁸ [...].

¹⁰⁹⁹ [...].

¹¹⁰⁰ [...].

¹¹⁰¹ [...].

¹¹⁰² [...].

¹¹⁰³ [...].

¹¹⁰⁴ [...].

¹¹⁰⁵ [...].

¹¹⁰⁶ [...].

¹¹⁰⁷ [...].

¹¹⁰⁸ [...].

- (996) The Commission's conclusion that Meta's conduct increases barriers to entry, deterring innovation and harming buyers and sellers is not contradicted by Meta's arguments that:
- (1) There has been successful and continued new entry and expansion in the market since Facebook Marketplace entered.¹¹⁰⁹ The case of Vinted is particularly relevant, since:
 - (a) Although it was launched as a platform specialised in second-hand clothing, Vinted has expanded its offering and nowadays facilitates the buying and selling of items in product categories that make up the bulk of horizontal OCAS providers' listings, so it competes directly with Facebook Marketplace and other horizontal platforms.¹¹¹⁰
 - (b) It has experienced high growth in terms of revenue and user numbers and it is growing faster than Facebook Marketplace. The fact that Vinted was not profitable until 2023 is not relevant, since it chose to chase high growth and investors' support shows that they expected high profitability in the future.¹¹¹¹ In 2023, Vinted delivered profit of EUR 17.8 million and a 61% year-on-year revenue growth.¹¹¹²
 - (c) As such, Vinted's expansion shows that Facebook Marketplace has not increased barriers to entry. The Commission should take into account Vinted's performance, as well as its views on the market and on the evolution of Facebook Marketplace, which Vinted does not ascribe to anticompetitive behaviour.¹¹¹³
 - (2) The statements from [...] about the impact of Facebook Marketplace on the market are self-interested and inconsistent with their financial performance, as evidenced by the growth in their revenues and profitability.¹¹¹⁴
 - (3) Facebook Marketplace has grown not without having to incur in costs but by having invested in innovative features, as evidenced by the following:
 - (1) Meta has continuously invested and innovated (both in Facebook Marketplace, as well as in BSGs and other precursors) to facilitate users' product discovery and buy/sell activity on Facebook.¹¹¹⁵
 - (2) Facebook Marketplace provides users with innovative features and greater security and choice.¹¹¹⁶
 - (4) Facebook Marketplace contributed to increasing competition in the national markets for online classified ads services:

¹¹⁰⁹ SO Response, paragraphs 195, 323 and 324.

¹¹¹⁰ Comments on the LoF, paragraph 175 (c) and Annex 5 to Comments on the LoF, paragraphs 25 to 53.

¹¹¹¹ SO Response, paragraph 323, Comments on the LoF, paragraphs 173 and 175 (b), and Annex 5 to Comments on the LoF, paragraphs 6 to 18.

¹¹¹² Final Comments on the LoF, paragraph 175 (b) and Annex 5 to Comments on the LoF, paragraphs 1 (a) and 4 (a).

¹¹¹³ Comments on the LoF, paragraph 176 (a) and Annex 5 to Comments on the LoF, paragraphs 19 to 22.

¹¹¹⁴ Comments on the LoF, paragraphs 177 to 182.

¹¹¹⁵ SO Response, paragraph 234.

¹¹¹⁶ SO Response, paragraphs 336 to 338.

- (1) Facebook Marketplace has contributed towards downward pricing pressure on OCAS providers, making certain OCAS providers drop charging private users for the listing of items.¹¹¹⁷
 - (2) Facebook Marketplace has stirred other players to invest in innovation.¹¹¹⁸
 - (3) Facebook Marketplace has grown the overall OCAS market.¹¹¹⁹
- (997) First, it is not true that there has been successful and continued new entry and expansion in the market since Facebook Marketplace entered. In the first place, the responses to the requests for information cited by Meta that mention entry of OCAS providers in the market appear to primarily refer to entry by platforms specialised in vehicles and real estate, some of which have meanwhile exited the market.¹¹²⁰ Of the examples of entry in the EEA cited by Meta, only two were of horizontal platforms.¹¹²¹ One of these platforms, LetGo, had been launched by OLX in several EEA Member States in the period 2015 – 2018, but it eventually exited all of them [...].¹¹²² Thus, contrary to Meta’s claim, it cannot be said that entry in the years since the launch of Facebook Marketplace has been “*significant, continued and successful*”. While launching an OCAS platform may nominally be easy, achieving the critical mass of users to actually make the platform sustainable in the market is challenging (see also recitals (871) to (875) above).
- (998) As to Meta’s reference to the case of Vinted, whilst it is true the Vinted has experienced a substantial growth in traffic in the recent years, it can in no way be represented as evidence that sustainable entry in the market is easy, in particular as regards horizontal OCAS. In the first place, Vinted launched first in Lithuania in 2008 – 2009, and then, within the EEA, it expanded to 15 other Member States over the course of the last 15 years.¹¹²³ Vinted’s growth therefore took over a decade, and Vinted really only took off when trading second-hand fashion started growing, as a result of the covid and inflation crises. Furthermore, although its offering includes other product categories (e.g. “beauty products”, “home accessories”), and while it can be considered a closer competitor to horizontal OCAS providers than platforms specialised in vehicles or real estate (see also recital (1028) below), Vinted remains a platform specialised in second-hand clothing, as evidenced by its statements in its Annual Report,¹¹²⁴ and on the Vinted website.¹¹²⁵
- (999) In the second place, until 2023 (or 15 years after entry), Vinted remained a loss-making company, and its (negative) profit margin had even significantly decreased between 2020 and 2021.^{1126,1127} Contrary to Meta’s claim, Vinted’s lack of profitability for a prolonged period (i.e., until 2023, when it generated net profit for

¹¹¹⁷ SO Response, paragraph 340.

¹¹¹⁸ SO Response, paragraph 341.

¹¹¹⁹ SO Response, paragraph 342.

¹¹²⁰ In particular, [...].

¹¹²¹ [...], an OCAS platform launched in Greece in 2017, [...] and [...].

¹¹²² [...].

¹¹²³ [...].

¹¹²⁴ [...].

¹¹²⁵ [...].

¹¹²⁶ Annex 7 of the SO Response, Figure 21, and Meta’s reply to Q1.o the Commission’s RFI to Meta of June 2023 (ID8757-134).

¹¹²⁷ Annex to Meta’s reply to Q1.o to the Commission’s RFI to Meta of June 2023 (ID8757-134).

the first time) is not an irrelevant aspect but rather proof of the significant resources required to overcome the higher barriers to entry and particularly expansion in the OCAS market. Vinted needs to invest significant amounts of money to maintain user awareness: as acknowledged by Meta, Vinted spends a large share of its revenues (ranging from nearly 40% to nearly 80% in the period 2017-2022) on marketing.¹¹²⁸ This stands in stark contrast to Facebook Marketplace, which has entered 27 EEA Member States in a single year, with limited such investment. For instance, Facebook Marketplace's marketing costs in 2020 (the last year for which data is available¹¹²⁹ and its third year of market presence in the EEA) accounted for around [...] % of its revenue in the EEA.¹¹³⁰ The fact that Vinted was profitable in 2023 does not contradict this assessment and the comparison with Facebook Marketplace business evolution is still in high contrast.

- (1000) In the third place, the Commission has taken into account Vinted in its assessment of the market evolution (see recitals (1028) and (1029) below), as well as all the information provided by Vinted in the context of the investigation, including its views on the market. Vinted's performance does not alter the Commission's conclusion that Facebook Marketplace through the tying has increased barriers to entry. While Vinted managed to grow, this does not show that the advantages which Facebook Marketplace has experienced due to the tie would be irrelevant or could be easily matched by all other (potential) competitors.
- (1001) Second, Meta's allegations that the statements from [...] are self-interested are not supported by any evidence. To the contrary, as shown in section 7.2.3.4.1.5, Meta's internal documents show that [...]. In addition, these statements were provided in the response to the Commission's request for information based on Article 18(2) of Regulation 1/2003. Thus, [...] were informed by the Commission that producing incorrect or misleading information in response to such a request is subject to fines based on Article 23(1), point (a) of Regulation 1/2003.
- (1002) Third, and in the first place, the Commission does not dispute that Meta incurred costs related to development of Facebook Marketplace. However, as described at recitals (955) to (950) above, attracting a critical mass of users, which is necessary for the viability of any OCAS platform (see section 7.2.3.4.1.4), requires large marketing expenditure. Unlike its rivals, Facebook Marketplace was able to attract such a large user mass with only very limited marketing costs.
- (1003) In the second place, many of the innovative features identified by Meta in its SO Response, such as the messaging functionality, lack of listing fees, saving searches, the ability to "block" a user or report messages to Meta, as well as Meta's actions to identify and remove counterfeit listings, appear to be features offered by many other OCAS platforms.¹¹³¹ As regards the ability to access certain information about a buyer/seller based on their Facebook profile,¹¹³² it is not clear that this is a feature

¹¹²⁸ Annex 5 to the Comments on the LoF, paragraph 11.

¹¹²⁹ Meta's marketing expenses for Facebook Marketplace [...]. Meta's reply to Q23 and Q24 of the Commission's RFI to Meta of July 2023 (ID11031).

¹¹³⁰ Commission's calculation based on Meta's replies to Q17.f of the Commission's RFI to Meta of July 2021 (ID2051), Q34 of the Commission's RFI to Meta of March 2022 (ID3495) and Q24 of the Commission's RFI to Meta of July 2023 (ID11031).

¹¹³¹ See for instance [...].

¹¹³² SO Response, paragraph 337 (b).

valued by consumers, as it is dependent on the disclosure of personal data to unknown users.¹¹³³

- (1004) In the third place, as shown in recital (1031) below, Facebook Marketplace does not necessarily provide more security and quality to users.
- (1005) Fourth, with regard to Meta's arguments about its contribution to increasing competition in the markets for online classified add services such considerations only have legal relevance in the context of an efficiency defence. Meta's arguments are assessed in section 7.2.4 below.
- 7.2.3.4.4. Meta's argument that the Commission is required to show the existence of actual effects of the tie of Facebook Marketplace to Facebook is unfounded
- (1006) Meta alleged that the case law requires the Commission to prove the existence of actual and observable effects on competition especially in circumstances where the relevant conduct has been ongoing for multiple years.¹¹³⁴
- (1007) This argument is incorrect.
- (1008) Indeed, based on the established case law, "[...] *in order to establish whether such a practice is abusive, that practice must have an anti-competitive effect on the market, but the effect does not necessarily have to be concrete, and it is sufficient to demonstrate that there is an anti-competitive effect which may potentially exclude competitors who are at least as efficient as the dominant undertaking.*"¹¹³⁵
- (1009) In its recent *SEN* judgement, while it noted that "*where the conduct has been in place for a sufficient period of time, the market performance of the dominant undertaking and its competitors may provide evidence of the exclusionary effect of the practice in question*", the Court of Justice reiterated that "*the characterisation of a practice of a dominant undertaking as abusive does not mean that it is necessary to show that the result of a practice of such an undertaking [...] has been achieved and, accordingly, to prove an actual exclusionary effect on the market.*"¹¹³⁶ It is sufficient that the conduct in question produces, at least potentially, an anti-competitive effect, in light of the available evidence, which may include actual market developments.¹¹³⁷

¹¹³³ The feeling of trust derived from being able to access certain information about users may also be exploited by fraudsters to the opposite effect. See recital (1033) below.

¹¹³⁴ SO Response, paragraphs 301 to 303, Comments on the LoF, paragraphs 169 to 171.

¹¹³⁵ Case C-52/09, *TeliaSonera Sverige*, EU:C:2011:83, paragraph 64. See also: Case T-219/99, *British Airways v Commission*, EU:T:2003:343, paragraph 293; and case T-301/04, *Clearstream Banking and Clearstream International v Commission*, EU:T:2009:317, paragraph 144.

¹¹³⁶ Case C-377/20, *Servizio Elettrico Nazionale and Others (SEN)*, EU:C:2022:379, paragraphs 53 and 54. Similarly, in Case C-680/20, *Unilever Italia*, EU:C:2023:33 at paragraph 41 the Court of Justice reminded that "[...] a competition authority may find that there has been an infringement of Article 102 TFEU by establishing that, during the period in which the conduct in question was implemented, that conduct had, in the circumstances of the case, the ability to restrict competition on the merits, despite its lack of effect."

¹¹³⁷ In this regard see also Case C-377/20, *Servizio Elettrico Nazionale and Others (SEN)*, EU:C:2022:379, paragraphs 54 to 56 "[...] the opposite situation that a certain course of conduct has not produced actual anti-competitive effects cannot rule out the possibility that that conduct was in fact capable of doing so when it was implemented, even if a long period of time has passed since that conduct took place. Such absence of effect could stem from other causes and be due to, inter alia, changes that occurred on the relevant market since that conduct began or to the fact that the undertaking in a dominant position was unable to complete the strategy underpinning that conduct. Therefore, the evidence produced by an undertaking in a dominant position attesting to the lack of actual exclusionary effects cannot be regarded as sufficient of itself to preclude the application of Article 102 TFEU. By

- (1010) The General Court has also explained that the Commission is not “*required to demonstrate that possible consequences of the elimination or restriction of competition actually manifested themselves, for example in the form of less innovation or price increases that could only be explained by the lack of competition. It is accepted in that regard that the weakening of competition is highly likely to have such consequence.*”¹¹³⁸
- (1011) With regard specifically to tying, contrary to Meta’s claims, neither *Microsoft* nor *Google Android* introduce a systematic requirement for the Commission to demonstrate that tying conducts such as the one under review in this Decision have produced actual exclusionary effects.
- (1012) In the first place, in *Microsoft* users could and to a certain extent obtained the tied product separately from the tied product. By stating that there were “*good reasons not to assume without further analysis that tying Windows Media Player constitutes conduct which by its very nature is liable to foreclose competition.*”¹¹³⁹ the General Court endorsed the Commission undertaking the further analysis of the effects of the tying practice.¹¹⁴⁰
- (1013) In the second place, similarly, in *Google Android* the General Court did not set a requirement for the Commission to demonstrate the existence of actual exclusionary effects in tying cases. The General Court held that, in certain cases, it might be necessary to undertake a further analysis in order to find that the tying of a specific product and a dominant product is capable to have an exclusionary effect. Such further analysis needs to take into account actual market developments (such as the increased barriers to entry and expansion) confirming the capability of the tying to restrict competition.¹¹⁴¹ This analysis is therefore still based on the capability to restrict competition, not on actual effects. The General Court observed that the Commission conducted such further analysis of all circumstances of the case in section 11.3.4.2. of its decision, by explaining and providing examples how Google’s tying conduct helped to maintain and strengthen Google’s dominant position on the relevant markets, increased barriers to entry, deterred innovation and was capable of harming consumers.¹¹⁴²

contrast, that fact may constitute evidence that the conduct in question was not capable of producing the alleged exclusionary effects. That evidence must, however, be supplemented, by the undertaking concerned, by items of evidence intended to show that that absence of actual effects was indeed the consequence of the fact that that conduct was unable to produce such effects.”

¹¹³⁸ Case T-612/17, *Google and Alphabet v European Commission*, EU:T:2021:763, paragraph 443.

¹¹³⁹ Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 857.

¹¹⁴⁰ Having revised “further analysis” of the tie conducted by the Commission the General Court states that: “*The Commission therefore had ground to state, [...] that there was a reasonable likelihood that tying Windows and Windows Media Player would lead to a lessening of competition so that the maintenance of an effective competition structure would not be ensured in the foreseeable future.*” Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 1089.

¹¹⁴¹ Case T-604/18, *Google and Alphabet v Commission (Google Android)*, EU:T2022:541, paragraphs 294 and 295.

¹¹⁴² Case T-604/18, *Google and Alphabet v Commission (Google Android)*, EU:T2022:541, paragraphs 291, 293, 295 and 296. In particular, at paragraph 291 the General Court states that “[...] it is apparent in the present case that, under the guise of applying a test formulated by reference to paragraph 867 of the judgment of 17 September 2007, *Microsoft v Commission* [...], as the ‘capacity to restrict competition’, the Commission was also careful to set out specifically in the contested decision the various factors which, in its view, made it possible to establish that the alleged exclusionary effects were real, in accordance with paragraph 868 of that judgment.”

- (1014) In section 7.2.3.4.3 of this Decision, the Commission also conducts such further analysis of the mechanism through which the tie is capable of restricting competition in the national markets for OCAS and of its effects on the barriers to entry in these markets, innovation and, ultimately, consumers, taking into account actual market developments and conditions. Specifically, the Commission shows that Facebook is widely used by a large share of the EEA population, including by users (and potential users) of OCAS (see also section 7.2.3.4.1.1.). The significant exposure thereby granted to Facebook Marketplace through the tie enabled it to successfully enter 27 markets for OCAS of the various Member States and, in each of them, to build a critical mass of users without incurring the significant investments in marketing, quality and innovation that are generally necessary to solve the entry problem in a market characterised by network effects (see also section 7.2.3.4.1.4). In light of the tendency to single-home of a significant share of users (section 7.2.3.4.1.4), this significant distribution advantage that Facebook Marketplace enjoys, and which cannot be offset by competitors (see section 7.2.3.4.2), is capable to make it harder for the latter to gain traffic and, thereby, to obtain the respective revenues and data needed to improve their services. Meta's conduct furthermore reduces the incentives of competing providers to invest in developing innovative features, and may ultimately harm, directly or indirectly, users of OCAS.
- (1015) Even though this is not required by the case law, and it goes even beyond the “further analysis” acknowledged by the General Court in *Google Android*, the Decision also shows that the actual evolution of the market is consistent with the conclusion of the tie's capability to produce exclusionary effects. This is presented in section 7.2.3.4.5 below, which shows that Facebook Marketplace has achieved a significant market position and evolved more favourably than its largest competitors in most Member States.
- (1016) In the third place, the Commission also showed further specific circumstances to this case, namely that Facebook Marketplace is dependent on the tie with Facebook as most of Facebook Marketplace's traffic comes from the Facebook platform (section 7.2.3.4.1.3) and that Meta's rationale for tying Facebook Marketplace to the Facebook was the intention to make it enjoy a substantial distribution advantage unparalleled by competitors (section 7.2.3.4.1.5).
- 7.2.3.4.5. Actual market evolution is consistent with the tying conduct being capable to produce exclusionary effects
- (1017) In the absence of information about the number of transactions facilitated by OCAS providers,¹¹⁴³ the Commission has analysed the evolution of Facebook Marketplace relative to that of its competitors by reference to two measures of traffic or usage by (potential) buyers and by sellers: the number of unique visitors¹¹⁴⁴ and the number of sellers¹¹⁴⁵ using the online classified ads service per month, respectively.

¹¹⁴³ As indicated in section 4.5, transactions are typically concluded offline and therefore they are not visible to the OCAS provider.

¹¹⁴⁴ This is defined as the number of distinct individuals (typically identified by means of cookies, IP address, etc.) visiting the website or app during a given time period. A unique visitor is counted only once, irrespective of the number of visits made during that period. The unique visitor metric may overestimate the real number of people visiting the service if e.g. some individuals use both a desktop device and a mobile device to access the same website, and there are no means to de-duplicate them.

¹¹⁴⁵ This is defined as the number of (unique) users who post one or more classified ads on the online classified ads website or app during a given time period.

- (1018) First, the Commission has calculated the shares of traffic of Facebook Marketplace and its competitors on the market segment of horizontal OCAS in each Member State. The analysis focuses on the horizontal OCAS segment as the effects of the tie are most likely to impact Facebook Marketplace's closest competitors.¹¹⁴⁶ The results, subject to data availability limitations,¹¹⁴⁷ are presented in Table 13 to Table 35 below¹¹⁴⁸. The Commission notes that Facebook Marketplace's share in terms of (potential) buyers is likely to be underestimated, as it relies on a somewhat different measure than that of other OCAS providers.¹¹⁴⁹

¹¹⁴⁶ Specifically with regard to Facebook Marketplace, the fact that listings in the product categories "vehicles" and "real estate", which are typically also offered on specialised platforms, constitute only around [...] % of listings on Facebook Marketplace in the EEA, suggests that Facebook Marketplace is primarily active in [...] category of products. In particular, "vehicles" and "real estate" listings constitute [...] % of the average number of new daily listings in the EEA, in the period between December 2016 (or the earliest date available) and February 2022, and [...] % of the number of total listings displayed on Facebook Marketplace in the EEA, in the period from May 2020 to February 2022. Commission's calculations based on Meta's reply to Q23 of the Commission's RFI to Meta of March 2022 (ID3247).

¹¹⁴⁷ The Commission sought to obtain data from the main horizontal OCAS providers in each Member State. However, certain providers were unable to provide the data requested (and are therefore not included in the shares calculation) or could only provide a part of it. Where data from one (among several) provider was not available in a certain year in the relevant period (2017-2023), this is indicated in the shares tables as "n.a.". Where a given provider is not active in a given Member State in a certain year, this is indicated in the shares tables as "-". In some cases, data from certain providers covered less than 12 months in a year, either because of availability constraints, or because the provider in question was only active in the market for a part of the year. Where data was only available for a part of the year (while the provider was present in the market for the entire year), the Commission adopted the following approach: if the data available covered at least 3 months (in a year), the Commission extrapolated it to the full year (by taking the monthly average of the months for which data was available and multiplying it by 12 to obtain the yearly figure). If the data consisted of less than 3 months, the respective provider was dropped from the traffic share calculations for the year in question, as the Commission considers that extrapolating to the full year data available for less the 3 months would be unreliable. By contrast, where a provider entered or exited the market during a given year (including Facebook Marketplace in 2017) and so it was not active in the market for the duration of the entire year, the data was not scaled to the entire year (thus the traffic shares reflect only the months when the provider was active).

¹¹⁴⁸ For the remaining the EEA Member States where Facebook Marketplace is active (*i.e.* Czechia, Luxembourg, Latvia, Malta and Slovakia), no shares are presented because no other horizontal competitor submitted data regarding the number of unique visitors and sellers.

¹¹⁴⁹ The two closest comparable variables provided by Meta and its competitors to track the number of individual users visiting their sites are MAU (for Facebook Marketplace) and unique visitors (for competitors). They both aim to measure the number of individuals who visit the platform in a given period (here, a month). Active users are defined as the number of distinct individuals visiting a website or app and they are typically identified by means of login details. Unique visitors, which are also defined as the number of distinct individuals visiting a website or app, are typically identified by means of cookies, IP address, *etc.* As such, the unique visitor metric may overestimate the real number of people visiting the service if for example some people use both a desktop device and a mobile device to access the same website, and there are no means to de-duplicate them. As many OCAS providers do not require their users to create an account and sign into their website or app, the unique visitors variable overestimates how many people browse their websites/apps. For Meta, because Facebook Marketplace is tied to the personal social network, almost all users use the service while logged in, therefore this overestimation problem is not present.

Table 13: Shares for Facebook Marketplace and horizontal competitors in Austria¹¹⁵⁰

[...]

Table 14: Shares for Facebook Marketplace and horizontal competitors in Belgium¹¹⁵¹

[...]

Table 15: Shares for Facebook Marketplace and horizontal competitors in Bulgaria¹¹⁵²

[...]

Table 16: Shares for Facebook Marketplace and horizontal competitors in Croatia¹¹⁵³

[...]

Table 17: Shares for Facebook Marketplace and horizontal competitors in Cyprus¹¹⁵⁴

[...]

Table 18: Shares for Facebook Marketplace and horizontal competitors in Denmark¹¹⁵⁵

[...]

¹¹⁵⁰ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Annex A of the Commission's RFI to OCAS providers of May 2021 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁵¹ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁵² Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, OLX's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Alo's replies to Q27 (Annex A) of the Commission's RFI to OCAS providers of March 2020, Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Rezon's replies to Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁵³ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Styria Media's replies to Q27 (Annex A) of the Commission's RFI to OCAS providers of March 2020, Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁵⁴ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Bazaraki's reply to replies to Q27 (Annex A) of the Commission's RFI to OCAS providers of March 2020.

¹¹⁵⁵ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and to Q D.1 of the Commission's RFI to OCAS providers of July 2023.

Table 19: Shares for Facebook Marketplace and horizontal competitors in Estonia¹¹⁵⁶

[...]

Table 20: Shares for Facebook Marketplace and horizontal competitors in Finland¹¹⁵⁷

[...]

Table 21: Shares for Facebook Marketplace and horizontal competitors in France¹¹⁵⁸

[...]

Table 22: Shares for Facebook Marketplace and horizontal competitors in Germany¹¹⁵⁹

[...]

Table 23: Shares for Facebook Marketplace and horizontal competitors in Greece¹¹⁶⁰

[...]

Table 24: Shares for Facebook Marketplace and horizontal competitors in Hungary¹¹⁶¹

[...]

Table 25: Shares for Facebook Marketplace and horizontal competitors in Ireland¹¹⁶²

[...]

¹¹⁵⁶ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Baltic Classified Group's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁵⁷ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁵⁸ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁵⁹ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁶⁰ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Xe.gr's reply to Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁶¹ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's reply to Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022.

¹¹⁶² Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

Table 26: Shares for Facebook Marketplace and horizontal competitors in Italy¹¹⁶³

[...]

Table 27: Shares for Facebook Marketplace and horizontal competitors in Lithuania¹¹⁶⁴

[...]

Table 28: Shares for Facebook Marketplace and horizontal competitors in the Netherlands¹¹⁶⁵

[...]

Table 29: Shares for Facebook Marketplace and horizontal competitors in Norway¹¹⁶⁶**Table 30: Shares for Facebook Marketplace and horizontal competitors in Poland¹¹⁶⁷**

[...]

Table 31: Shares for Facebook Marketplace and horizontal competitors in Portugal¹¹⁶⁸

[...]

¹¹⁶³ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Wallapop's reply to Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁶⁴ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Baltic Classified Group's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁶⁵ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁶⁶ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁶⁷ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, OLX's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Allegro's replies to Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁶⁸ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, OLX's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Wallapop's reply to Q D.1 of the Commission's RFI to OCAS providers of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022.

Table 32: Shares for Facebook Marketplace and horizontal competitors in Romania¹¹⁶⁹

[...]

Table 33: Shares for Facebook Marketplace and horizontal competitors in Slovenia¹¹⁷⁰

[...]

Table 34: Shares for Facebook Marketplace and horizontal competitors in Spain¹¹⁷¹

[...]

Table 35: Shares for Facebook Marketplace and horizontal competitors in Sweden¹¹⁷²

[...]

(1019) Table 13 to Table 35 above show that Facebook Marketplace has attained a significant position in the horizontal OCAS segment over the period 2017-2023, and typically soon after entry. In [...] Member States for which data was available, Facebook Marketplace achieved, since its launch, a share of supply above [...] % in at least a part of the relevant period, either in terms of unique visitors or in terms of sellers (or both).¹¹⁷³ Based on the number of sellers, Facebook Marketplace had a share of supply in excess of [...] % in nine Member States, having thus overtaken the incumbent horizontal OCAS suppliers in [...]. Based on the number of unique visitors, Facebook Marketplace's share of supply exceeded [...] % in four Member States ([...]). Also in Member States where its market share remained below [...] %, Facebook Marketplace had a favourable evolution compared to its competitors. As depicted in Table 36 below, in Member States where its share remained below [...] %, Facebook Marketplace grew faster than its largest competitor in [...]. In [...], it grew faster than its second competitor (see Table 38).

¹¹⁶⁹ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, OLX's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁷⁰ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Styria Media's replies to Q27 (Annex A) of the Commission's RFI to OCAS providers of March 2020, Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁷¹ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Wallapop's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁷² Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Citygate's reply to Annex A of the Commission's RFI to OCAS providers of May 2021, Tradera's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁷³ These Member States are [...].

- (1020) To analyse Facebook Marketplace's growth in and across different national markets, the Commission has also calculated ratio indicators where a given usage metrics for Facebook Marketplace (*e.g.* number of sellers, number of unique visitors) is divided by the same metric for the main rival in that market. A traffic ratio is a relative measure, *i.e.* describes, relatively speaking, how big Facebook Marketplace is compared to a rival OCAS provider for a given metric. For example, a ratio of 50% means that on a given metric, Facebook Marketplace is half the size of the competitor in question. A ratio of 100% means that Facebook Marketplace is on par with a competitor on the metric in question and any ratio bigger than 100% indicates that Facebook Marketplace is bigger than its competitor for the metric in question.
- (1021) On the sellers' side, Table 36 shows that, already in the first quarter after entry, Facebook Marketplace had already [...] of the number of sellers of its largest OCAS rival in [...] Member States.¹¹⁷⁴ In [...], Facebook Marketplace even [...].

Table 36: Yearly average ratio of sellers on Facebook Marketplace compared to its largest OCAS rival^{1175, 1176,1177}

[...]

- (1022) On the (potential) buyers' side, Table 37 shows that, already in its first quarter after entry,¹¹⁷⁸ in [...] out of 20 EEA Member States,¹¹⁷⁹ Facebook Marketplace had a number of unique visitors equating on average between [...] of the number of unique visitors of its largest OCAS rival. In three of those EEA Member States, namely [...], the number of unique visitors of Facebook Marketplace was already [...] of its largest rival in the first quarter after entry.

¹¹⁷⁴ These Member States are [...]. The Commission was only able to gather information about 16 EEA Member States in relation to this indicator in 2017.

¹¹⁷⁵ The largest OCAS rival is defined as the OCAS provider (apart from Facebook Marketplace) with the highest number of sellers in each Member State at the start of the analysis.

¹¹⁷⁶ Note that reflecting Facebook Marketplace's phased rollout throughout the EEA, the months for which data is first reliably available differ between Member States. The ratios for the period between 2017 and 2021 are calculated accordingly, starting in each Member State with the first fully reported month after Facebook Marketplace rollout for which data is available for both Facebook Marketplace and the relevant competitor. As such, the months taken into account to calculate yearly ratios differ based on the Facebook Marketplace rollout schedule for each Member State as well as data availability.

¹¹⁷⁷ Commission's calculations based on replies to Q23 (Annex A) of the Commission's RFI to OCAS providers of March 2020, to Annex A of the Commission's RFI to OCAS providers of May 2021, to Q1 (Annex A) of the Commission's RFI to OCAS providers in January 2022 and to Q D.1 of the Commission's RFI to OCAS providers of July 2023, as well as Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023.

¹¹⁷⁸ Facebook Marketplace was rolled out in Q3 and Q4 of 2017 in most EEA Member States.

¹¹⁷⁹ These Member States are: [...]. The Commission was only able to gather information about 20 EEA Member States in relation to this indicator in 2017.

Table 37: Yearly average ratio of unique visitors on Facebook Marketplace compared to its largest OCAS rival in each Member State^{1180, 1181,1182}

[...]

- (1023) Looking at the evolution of these ratio indicators, it can be observed that over time, Facebook Marketplace's position relative to its OCAS rivals improved significantly in most EEA Member States.
- (1024) With respect to sellers, in the majority of the 21 EEA Member States for which the Commission received data, the ratio has increased over time, meaning that Facebook Marketplace's number of sellers evolved more favourably than its largest OCAS rival. [...] ([...]), [...] ([...]), [...].
- (1025) As regards unique visitors, in the majority of the 22 EEA Member States for which the Commission received data, the unique visitor ratio has increased between 2018 (Facebook Marketplace's first full year on the market) and 2023 (or the last year for which data was available), meaning that Facebook Marketplace number of unique visitors evolved more favourably than that of its largest OCAS rival. By 2022, [...].
- (1026) Table 38 and Table 39 show traffic ratios in terms of sellers and unique visitors, respectively, compared to the second largest OCAS rival.¹¹⁸³ In most of the Member States for which data was available, the traffic ratio between [...],¹¹⁸⁴ [...].¹¹⁸⁵ [...] (see Table 39), [...] (see Table 38).

Table 38: Yearly average ratio of sellers on Facebook Marketplace compared to second largest OCAS rival¹¹⁸⁶

[...]

¹¹⁸⁰ The largest OCAS rival is defined as the OCAS provider (apart from Facebook Marketplace) with the highest number of unique visitors in each Member State at the start of the analysis.

¹¹⁸¹ Note that reflecting Facebook Marketplace's phased rollout throughout the EEA, the months for which data is first reliably available differ between Member States. The ratios for the period between 2017 and 2021 are calculated accordingly, starting in each Member State with the first fully reported month after Facebook Marketplace rollout for which data is available for both Facebook Marketplace and the relevant competitor. As such, the months taken into account to calculate yearly ratios differ based on the Facebook Marketplace rollout schedule for each Member State as well as data availability.

¹¹⁸² Commission's calculations based on replies to Q23 (Annex A) of the Commission's RFI to OCAS providers of March 2020, to Annex A of the Commission's RFI to OCAS providers of May 2021, to Q1 (Annex A) of the Commission's RFI to OCAS providers in January 2022 and to Q D.1 of the Commission's RFI to OCAS providers of July 2023, as well as Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023.

¹¹⁸³ The second largest competitor is defined as the OCAS provider (apart from Facebook Marketplace) with the second highest number of unique visitors in each Member State at the start of the analysis.

¹¹⁸⁴ In [...] in terms of sellers. In [...] in terms of unique visitors.

¹¹⁸⁵ All Member States except (i) [...] in terms of sellers, (ii) [...] in terms of unique visitors.

¹¹⁸⁶ Commission's calculations based on replies to Q23 (Annex A) of the Commission's RFI to OCAS providers of March 2020, to Annex A of the Commission's RFI to OCAS providers of May 2021, to Q1 (Annex A) of the Commission's RFI to OCAS providers in January 2022 and to Q D.1 of the Commission's RFI to OCAS providers of July 2023, as well as Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023.

Table 39: Yearly average ratio of unique visitors on Facebook Marketplace compared to second largest OCAS rival¹¹⁸⁷

[...]

- (1027) These market developments show that Facebook Marketplace was not only successful in a large number of markets simultaneously, shortly after entry and over a considerable period of time – which alone is considered unfeasible by rival OCAS providers, at least absent large resources to spend on marketing (see section 7.2.3.4.1.4), but it was also considerably more successful than a large number of its rivals.
- (1028) The Commission has also calculated shares of Facebook Marketplace and its competitors on the national market segments that include horizontal OCAS as well as OCAS specialised in clothing or second-hand fashion. The replies to the Commission’s request for information to OCAS providers provide some indications that clothing platforms may be closer competitors to horizontal OCAS than other specialised platforms.¹¹⁸⁸ This analysis allows taking into account the evolution of second-hand fashion platform Vinted, which Meta has compared to Facebook Marketplace in that it has expanded relatively fast in the EEA in recent years. The Commission has calculated shares by reference to the number of unique visitors and the number of sellers using the online classified ads service per month, as explained under recital (1018) above. The results, subject to data availability limitations,^{1189,1190} are presented in Table 40 to Table 56.¹¹⁹¹

Table 40: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Austria¹¹⁹²

[...]

- ¹¹⁸⁷ Commission’s calculations based on replies to Q23 (Annex A) of the Commission’s RFI to OCAS providers of March 2020, to Annex A of the Commission’s RFI to OCAS providers of May 2021, to Q1 (Annex A) of the Commission’s RFI to OCAS providers in January 2022 and to Q D.1 of the Commission’s RFI to OCAS providers of July 2023, as well as Meta’s replies to Q36 of the Commission’s RFI to Meta of May 2020, Q23 of the Commission’s RFI to Meta of March 2022 and Q19 of the Commission’s RFI to Meta of July 2023.
- ¹¹⁸⁸ Replies to Q B.1 of the Commission’s RFI to OCAS providers of July 2023.
- ¹¹⁸⁹ In addition to the providers listed in Table 40 to Table 56, the Commission also received data from second-hand fashion platform [...].
- ¹¹⁹⁰ Where data from one (among several) provider was not available in a certain year in the relevant period (2017-2023), this is indicated in the shares tables as “n.a.”. Where a given provider is not active in a given Member State in a certain year, this is indicated in the shares tables as “-”. See also footnote 1147 above.
- ¹¹⁹¹ Table 40 to Table 56 comprise only the EEA Member States where Vinted or another clothing OCAS is active and has a non-negligible presence. For the remaining EEA Member States where Facebook Marketplace is active (but Vinted is not) (i.e., Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Croatia, Ireland, Norway and Slovenia), Table 13 to Table 35 above are the relevant ones for the segment including horizontal competitors and clothing specialised competitors. For Latvia and Malta, no shares are presented because no other horizontal and clothing specialised competitors submitted data regarding the number of unique visitors and sellers.
- ¹¹⁹² Commission’s calculations based on Meta’s replies to Q36 of the Commission’s RFI to Meta of May 2020, Q23 of the Commission’s RFI to Meta of March 2022 and Q19 of the Commission’s RFI to Meta of July 2023, Schibsted and AdeVinta’s replies to Annex A of the Commission’s RFI to OCAS providers of May 2021 and Q D.1 of the Commission’s RFI to OCAS providers of July 2023, Vinted’s replies to Annex A of the Commission’s RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission’s RFI to OCAS providers of January 2022, and Q D.1 of the Commission’s RFI to OCAS providers of July 2023.

Table 41: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Belgium¹¹⁹³

[...]

Table 42: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Czechia¹¹⁹⁴

[...]

Table 43: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in France¹¹⁹⁵

[...]

Table 44: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Germany¹¹⁹⁶

[...]

Table 45: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Hungary¹¹⁹⁷

[...]

¹¹⁹³ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinata's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁹⁴ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁹⁵ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinata's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁹⁶ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinata's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁹⁷ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinata's replies to Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

Table 46: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Ireland¹¹⁹⁸

[...]

Table 47: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Italy¹¹⁹⁹

[...]

Table 48: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Lithuania¹²⁰⁰

[...]

Table 49: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Luxembourg¹²⁰¹

[...]

Table 50: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in the Netherlands¹²⁰²

[...]

¹¹⁹⁸ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Depop's reply to Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹¹⁹⁹ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Wallapop's reply to Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹²⁰⁰ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Baltic Classified Group's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹²⁰¹ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹²⁰² Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

Table 51: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Poland¹²⁰³

[...]

Table 52: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Portugal¹²⁰⁴

[...]

Table 53: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Romania¹²⁰⁵

[...]

Table 54: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Slovakia¹²⁰⁶

[...]

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- ¹²⁰³ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, OLX's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Allegro's replies to Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.
- ¹²⁰⁴ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, OLX's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Wallapop's reply to Q D.1 of the Commission's RFI to OCAS providers of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.
- ¹²⁰⁵ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, OLX's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.
- ¹²⁰⁶ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

Table 55: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Spain¹²⁰⁷

[...]

Table 56: Shares for Facebook Marketplace, horizontal competitors and OCAS specialised in clothing or second-hand fashion in Sweden¹²⁰⁸

[...]

- (1029) Table 40 to Table 56 show that, also on a market segment that includes OCAS specialised in clothing or second-hand fashion alongside horizontal OCAS, Facebook Marketplace achieved a significant market position since its launch, at the expense of one or more of its rivals. In [...] Member States ([...]), Facebook Marketplace had a share of supply above [...] % in at least a part of the relevant period. Its share was bigger or in the same range as Vinted's, in terms of sellers and/or unique visitors, in [...] Member States where Vinted is active ([...]).
- (1030) The actual market evolution described above is consistent with the distribution advantage derived from the tie between Facebook and Facebook Marketplace and with the capability of such distribution advantage of restricting competition. It is unlikely to be explained by any quality advantage of Facebook Marketplace *vis-a-vis* its main OCAS rivals. The Commission considers that this achievement is not based on its own merits but results from the use by Meta of the advantage derived from its dominant position on the market for personal social networking services including hybrid social media platforms.
- (1031) In fact, Meta internal documents [...]. For instance, a Meta internal document produced after the end of 2018 states that [...].¹²⁰⁹ Another internal document, dated 2019 Q4, indicates that, [...].¹²¹⁰

Figure 12: [...]

[...]

- (1032) [...]. According to data from the Royal Bank of Scotland, Facebook Marketplace was the most reported site for scams in 2021.¹²¹¹ A 2021 investigation by the non-

¹²⁰⁷ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Wallapop's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹²⁰⁸ Commission's calculations based on Meta's replies to Q36 of the Commission's RFI to Meta of May 2020, Q23 of the Commission's RFI to Meta of March 2022 and Q19 of the Commission's RFI to Meta of July 2023, Schibsted and Adevinta's reply to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Citygate's reply to Annex A of the Commission's RFI to OCAS providers of May 2021, Tradera's replies to Q1 (Annex A) of the Commission's RFI of January 2022 and Q D.1 of the Commission's RFI to OCAS providers of July 2023, Vinted's replies to Annex A of the Commission's RFI to OCAS providers of May 2021, Q1 (Annex A) of the Commission's RFI to OCAS providers of January 2022, and Q D.1 of the Commission's RFI to OCAS providers of July 2023.

¹²⁰⁹ [...] (ID346).

¹²¹⁰ [...] (ID1494-433).

profit newsroom ProPublica linked the extent of the problems on Facebook Marketplace to lagging behind competitors when it comes to safeguards: *“Marketplace entered the internet classified game years after other companies put in place tools to combat scams and the sale of stolen goods. Yet Facebook, experts and former employees told ProPublica, has failed to create comparable safeguards despite the company’s considerable financial resources and expertise in policing online activity”*.¹²¹²

- (1033) Many of these scams weaponise Facebook Marketplace’s unique selling point over its competitors. On its website, Meta markets the option to *“see what real people in your own community are selling [...] [, to] see their public Facebook profile, mutual friends and seller ratings”* as a layer of trust and transparency, through which *“you can feel confident in your purchase.”*¹²¹³ Yet, *“[h]acked or faked Facebook accounts are one of the biggest issues plaguing Marketplace, according to experts, internal documents and a ProPublica review of hundreds of dubious profiles. Such accounts may give a false sense of security to users, who believe them to be genuine.”*¹²¹⁴ As such, users’ trust may be misguided by the very feature supposed to increase confidence in sales interactions.
- (1034) According to Trustpilot (a consumer review website founded in Denmark in 2007 which hosts reviews of businesses worldwide),¹²¹⁵ Facebook Marketplace’s Trustpilot score is 1.2¹²¹⁶ on a scale of 0 to 5. Unlike Facebook Marketplace, some of the OCAS providers which have stagnated or lost traffic since Facebook Marketplace entered have very high Trustpilot scores, indicating favourable reviews by a large number of people: for example, the French OCAS platform LeBonCoin has a Trustpilot score of 4.4,¹²¹⁷ similar to Milanuncios and Subito, horizontal OCAS platforms in Spain and Italy, which are rated at a score of 4.3.^{1218,1219} With a score of

¹²¹¹ This assessment is based on the number of scams reported to the Royal Bank of Scotland from 1 September to 22 November 2021, Scottish Financial News, *“RBS exposes top websites exploited by scammers”*, available at <https://www.scottishfinancialnews.com/articles/rbs-exposes-top-websites-exploited-by-scammers>, downloaded on 30 August 2022 (ID5063).

¹²¹² ProPublica, *“Facebook Grew Marketplace to 1 Billion Users. Now Scammers Are Using It to Target People Around the World”*, available at <https://www.propublica.org/article/facebook-grew-marketplace-to-1-billion-users-now-scammers-are-using-it-to-target-people-around-the-world>, downloaded on 30 August 2022 (ID5051).

¹²¹³ Facebook Marketplace, *“Buying Things on Marketplace”*, available at <https://www.facebook.com/marketplace/learn-more/buying/>, downloaded on 30 August 2022 (ID5058).

¹²¹⁴ ProPublica, *“Facebook Grew Marketplace to 1 Billion Users. Now Scammers Are Using It to Target People Around the World”*, available at <https://www.propublica.org/article/facebook-grew-marketplace-to-1-billion-users-now-scammers-are-using-it-to-target-people-around-the-world>, downloaded on 30 August 2022 (ID5051).

¹²¹⁵ Trustpilot webpage, available at <https://www.trustpilot.com/>, downloaded on 30 August 2022 (ID5045).

¹²¹⁶ Reviews for Marketplace are defined as reviews for Facebook on Trustpilot filtered for those which mention Marketplace, available at <https://www.trustpilot.com/review/www.facebook.com?page=6&search=marketplace>, downloaded on 19 September 2022 (ID5426).

¹²¹⁷ Reviews on Trustpilot for Leboncoin, available at <https://fr.trustpilot.com/review/www.leboncoin.fr>, downloaded on 30 August 2022 (ID5057).

¹²¹⁸ Reviews on Trustpilot for Milanuncios, available at <https://es.trustpilot.com/review/www.milanuncios.com>, downloaded on 30 August 2022 (ID5054).

¹²¹⁹ Reviews on Trustpilot for Subito, available at <https://it.trustpilot.com/review/www.subito.it>, downloaded on 30 August 2022 (ID5049).

4.2 and 3.8 respectively,^{1220,1221} the Danish OCAS provider Guloggratis also display scores more than three times the size of Facebook Marketplace's.

(1035) The Commission's conclusion that the actual evolution of the market is consistent with the distribution advantage from the tie being capable of producing exclusionary effects is also not contradicted by Meta's arguments stating that:

- (1) Facebook Marketplace has not suddenly acquired a large volume of traffic from scratch, but its content and user base has migrated from existing BSGs, as evidenced *inter alia* by the fact that [...].¹²²²
- (2) Facebook Marketplace's growth has not come at the expense of competitors and OCAS providers are thriving as demonstrated by the following:
 - (a) The main players in the OCAS market have enjoyed a stable or improved financial performance since Facebook Marketplace was launched, as evidenced by their revenues, EBITDA margins and statements in their annual reports,¹²²³ and as recognised in industry reports.¹²²⁴
 - (b) Traffic to the majority of OCAS providers' websites, as measured by the number of unique visitors and number of sellers has increased between 2017 and 2022,¹²²⁵ and that, in the eight largest EEA Member States, Facebook Marketplace's share remains lower than that of the largest OCAS providers.¹²²⁶
- (3) Facebook [...], as evidenced by a Kantar survey commissioned by Meta.¹²²⁷ Meta submits that a similar picture emerges from its internal documents,¹²²⁸ from surveys carried out by other competition authorities¹²²⁹ and from the internal documents of other OCAS providers, [...].¹²³⁰ In the particular case of [...], according to Meta it shows that across the EEA Member States surveyed other OCAS providers have more widespread usage than Facebook Marketplace, [...].¹²³¹
- (4) The growth of Facebook Marketplace has been in line with, and not at the expense of, that of the rest of market, as suggested by the fact that the number of new daily listings, sellers and unique visitors has grown at a similar rate for the market for OCAS with and without Facebook Marketplace.¹²³²

¹²²⁰ Reviews on Trustpilot for Guloggratis, available at <https://dk.trustpilot.com/review/www.guloggratis.dk>, downloaded on 30 August 2022 (ID5050).

¹²²¹ Reviews on Trustpilot for Gumtree, available at <https://uk.trustpilot.com/review/gumtree.com>, downloaded on 30 August 2022 (ID5046).

¹²²² SO Response, paragraphs 234 to 239. Comments on the LoF, paragraph 189 to 192.

¹²²³ SO Response, paragraphs 309 to 312 and Annex 7 of the SO Response, paragraphs 62.1 to 6.2.7 and Annex C.

¹²²⁴ SO Response, paragraph 330.

¹²²⁵ Annex 7 of the SO Response, paragraphs 6.3.3 to 6.3.20.

¹²²⁶ SO Response, paragraph 313, 356 to 358 and Annex 7 of the SO Response, paragraphs 6.4.3 to 6.4.7.

¹²²⁷ SO Response, paragraphs 314 to 316 and Annex 7 of the SO Response, paragraphs 6.4.8 to 6.4.11.

¹²²⁸ SO Response, paragraphs 317 and 318.

¹²²⁹ SO Response, paragraph 319.

¹²³⁰ SO Response, paragraphs 320 to 322 and Comments on the LoF, paragraph 201 (a), Annex 8 to Comments on the LoF, section 3.1.

¹²³¹ Comments on the LoF, paragraph 201 (b), Annex 8 to Comments on the LoF, section 3.2.

¹²³² SO Response, paragraphs 325 and 326 and Annex 7 of the SO Response, paragraphs 7.4.1 to 7.5.2.

- (5) The number of sellers and number of unique visitors are not meaningful metrics for assessing demand dynamics, the market shares calculated by the Commission are unfit for purpose since they do not include specialised players, and traffic ratios are misleading because they do not account for changes in the identity of the largest provider over time and for seasonal volatility, and the use of wide ranges can mask decreases in traffic ratios, or conversely, can overstate small increases.¹²³³
- (6) The findings that Facebook Marketplace is a low quality product are inaccurate as (i) they rely on a selective reading of Meta's internal documents, while other internal documents recognise an improvement in quality over time, as normal for a developing product; and (ii) the external sources relied on, such as TrustPilot reviews, a Scottish Financial News article and ProPublica report, are unreliable, suggest that quality issues apply in equal measure to Facebook Marketplace's competitors, or are focused on countries outside the EEA.¹²³⁴
- (1036) First, the fact that a significant part of Facebook Marketplace listings had initially been posted in BSGs does not negate the fact that Facebook Marketplace achieved substantial traffic very fast upon its launch. In addition, as Meta prompts users of BSGs on Facebook to add those posts on Facebook Marketplace by cross-posting, a number of those cross-listings are if anything more a manifestation of yet another means by which Facebook Marketplace leverages the market power of Facebook. In addition, Facebook Marketplace is not a replacement or transformation of BSGs. This is evidenced by the fact that the two services continue to co-exist and to develop alongside each other. Even if a large part of Facebook Marketplace listings was initially imported from BSGs, this still leaves a significant number of listings that were made directly to Facebook Marketplace.¹²³⁵ Furthermore, in January 2018, within [...] of its launch in [...] EEA Member States, Facebook Marketplace already had over [...] active users in these Member States.¹²³⁶ Although the number of active users¹²³⁷ is influenced by the number of postings, active users cannot be automatically imported from BSGs. These users had to undertake a specific action to visit Facebook Marketplace.
- (1037) Second, in the first place, according to the case law, a conduct is liable to be caught by Article 102 TFEU if it is capable of restricting competition. It is not necessary for the conduct to have produced actual exclusionary effects, such as reflected in a decline in competitors' traffic or revenue, let alone, in the case of tying, for the tied product having already achieved a market leader position, in order for the conduct to be characterised as abusive (see recitals (1007) to (1014) above).¹²³⁸ The restrictive

¹²³³ SO Response, paragraphs 356 to 360. Comments on the LoF, paragraphs 184 to 187.

¹²³⁴ SO Response, paragraphs 361 and 362.

¹²³⁵ The earliest data available on the number of cross-posts between BSGs and Facebook Marketplace dates from January 2018. In January 2018, there were approximately [...] new listings on Facebook Marketplace in the EEA that had *not* been cross-posted from BSGs, and in the entire year 2018, there were approximately [...] such direct Facebook Marketplace listings. Meta's reply to Q1.n ("Section 3 analysis") of the Commission's RFI to Meta of June 2023 (ID8757-200).

¹²³⁶ Meta's reply to Q36.1 of the Commission's RFI to Meta of May 2020 (ID1493-39).

¹²³⁷ [...]. Meta's reply to Q36.1 of the Commission's RFI to Meta of May 2020 (ID1493-39).

¹²³⁸ Meta also argued that the strong market position of certain OCAS providers has been acknowledged by other competition authorities in the context of antitrust or merger investigations into the sector (SO Response, paragraphs 327 to 329). However, the fact that other OCAS providers are investigated by competition authorities does not have a bearing on the present case in particular given that the

effects of the conduct include any hindrance to actual or potential competitors' ability to exercise a competitive constraint on the dominant undertaking, such as reducing the ability to gain revenues or traffic, or a slower growth than under competitive conditions.^{1239 1240}

- (1038) For instance, in *Google Shopping*, the General Court expressly rejected an argument that a practice cannot be exclusionary unless it leads to a decrease in the traffic of competitors: *“even if the Commission had not demonstrated a decrease in traffic to competing comparison shopping services, that first set of arguments would have to be rejected because it is not in any event capable of demonstrating that part of the traffic which Google’s comparison shopping service was able to gain by being more visible on its general results pages than competing comparison shopping services would not have been able to go to those competing services in the absence of the practices at issue; in other words, because those arguments are not capable of demonstrating that that increase was not at the expense of those comparison shopping services, whose traffic could have increased in the absence of the practices at issue, even though it was not decreasing.”*¹²⁴¹ In *Google Android*, the General Court found that the Commission had been right, in its examination of the effects of the impugned conduct, to conclude that the conduct had a restrictive effect by making it harder for competitors *“to gain search queries and the revenues and data needed to improve their services.”*¹²⁴²
- (1039) In the second place, there are multiple Member States where an absolute decline in the traffic of competitors has actually occurred,¹²⁴³ as well as Member States where Facebook Marketplace has a higher share of supply than its largest OCAS competitor.¹²⁴⁴ However, as set out above, that is not to say that the tie is less capable of restricting competition in Member States where that has not happened at the date of this Decision. Information from OCAS providers indicates that the actual development of the market, including the impact of the tie, depends on the strength of the incumbent’s brand. For instance, one OCAS provider explains that [...].¹²⁴⁵

Commission is not arguing that the practice resulted in the creation of a dominant position for Meta in the markets for OCAS.

¹²³⁹ For clarity, the Commission is not arguing that the tie created dominance, nor is it required to do so. The test for tying does not require that the tied product becomes dominant.

¹²⁴⁰ See also Case T-219/99 P, *British Airways v Commission*, EU:T:2003:343, paragraphs 297 and 298 stating that: *“[...] where an undertaking in a dominant position actually puts into operation a practice generating the effect of ousting its competitors, the fact that the hoped-for result is not achieved is not sufficient to prevent a finding of abuse of a dominant position within the meaning of Article 82 EC. Moreover, the growth in the market shares of some of BA’s airline competitors, which was modest in absolute value having regard to the small size of their original market shares, does not mean that BA’s practices had no effect. In the absence of those practices, it may legitimately be considered that the market shares of those competitors would have been able to grow more significantly [...]”*.

¹²⁴¹ Case T-612/17 *Google Shopping*, EU:T:2021:763, paragraph 406.

¹²⁴² Case T-604/18, *Google and Alphabet v Commission (Google Android)*, EU:T2022:541, paragraph 294.

¹²⁴³ See Meta’s calculations of the change in the absolute volume of traffic for the largest OCAS providers, correcting for alleged seasonality in the Commission’s equivalent calculations: the absolute number of unique visitors for the largest OCAS provider decreased over time in [...] Member States; the absolute number of sellers for the largest OCAS provider decreased in [...] Member States. See Fourth Non-Confidential Data Room Report, page 21 (ID8550).

¹²⁴⁴ Facebook Marketplace has a higher share of supply in terms of sellers in [...] Member States for which the Commission received data [...], and in four Member States in terms of unique visitors [...]. See Table 13 to Table 35 above.

¹²⁴⁵ [...].

Similarly, a contemporaneous internal document of [...] observes that Facebook Marketplace grew more in markets with less mature incumbents, although it is also growing in mature markets.

Figure 13: [...] internal document on incumbent OCAS vs. Facebook Marketplace position¹²⁴⁶

[...]

- (1040) Thus, even if the tying conduct has the same capability to produce exclusionary effects in all national market for OCAS, in markets where the incumbent's brand is stronger, the magnitude of the actual exclusionary effects is likely to be lower than in markets where the existing players' brands are less established and therefore the actual effects might take longer to manifest. However, it cannot be that because some competitors have better capacity than others to withstand the actual impact of anticompetitive conduct, that a conduct by a dominant company should not be deemed to be capable of producing exclusionary effects in that particular Member State.
- (1041) Third, similarly to the above, it is not necessary for Facebook Marketplace to rank first in terms of awareness for the tying conduct to be found capable of restricting competition. The mechanism of the tie precisely ensures that Facebook Marketplace can benefit from traffic induced by the massive advantage provided by the ubiquity of Facebook even without needing to invest in ensuring that users are aware of its existence. Indeed, whilst competitors have to actively trigger the users' awareness to obtain traffic, Facebook Marketplace can count on users being automatically, persistently and repeatedly exposed to Facebook Marketplace during the substantial amount of time which they spend daily on Facebook. If anything, the fact that Facebook Marketplace achieved a substantial amount of traffic despite having more limited user awareness further shows the capability of the tie.
- (1042) Furthermore, even if users' spontaneous awareness of Facebook Marketplace is lower than its competitors, this level has been achieved primarily as a result of the tie, rather than through significant marketing investments like in the case of competitors.¹²⁴⁷
- (1043) As regards [...], the same applies, it is not required by case law that Facebook Marketplace is chosen most frequently by users, whether or not used regularly, or that it becomes "most used" or "favorite" OCAS provider *vis-à-vis* other OCAS providers in the market for the tie to be able of restricting competition. Furthermore, as depicted by the analysis of [...] provided by Meta, [...].¹²⁴⁸ [...].^{1249 1250}
- (1044) Fourth, in the majority of Member States considered in Meta's analysis of market growth with and without Facebook Marketplace, [...].¹²⁵¹ Nevertheless, as set out above, the fact that competitors continue to grow does not imply that the conduct under investigation is not capable of restricting competition. This is in particular in a

¹²⁴⁶ [...].

¹²⁴⁷ See recital (950) above for a comparison of the marketing spend of Facebook Marketplace and its main competitors.

¹²⁴⁸ Annex 8 to Comments on the LoF, section 3.2., Figure 1.

¹²⁴⁹ Annex 8 to Comments on the LoF, section 3.2., Figure 2.

¹²⁵⁰ For clarity, as specified in recital, Meta's reference to this data is focused on [...].

¹²⁵¹ In terms of unique visitors, [...]. In terms of sellers, [...]. Fourth Non-Confidential Data Room Report, Annex (OCAS market size – Unique visitors) and Annex (OCAS market size – Sellers).

market which, as Meta acknowledges, has been growing overall and is expected to continue doing so, *inter alia*, due to the transition to a circular economy, in which the consumption of second-hand items plays a role.¹²⁵²

- (1045) Fifth, as regards Meta's claim that the number of unique visitors and number of sellers are not meaningful metrics for assessing demand dynamics, in the first place, Meta itself uses the number of active users¹²⁵³ in assessing the performance of Facebook Marketplace, as illustrated for instance by the internal documents cited at recitals (942) and (974) above. In the second place, when asked which metrics are considered most relevant for assessing the market position of OCAS providers, respondents to the Commission's request for information indicated unique visitors and sellers among the most relevant.¹²⁵⁴ In the third place, in utilising these two metrics, the Commission also took into account data availability constraints, with the aim of including as many OCAS providers in its analysis as possible. Because of the nature of the markets for OCAS (where transactions often occur offline or off-platform, so neither the number nor the value of transactions facilitated by the platform are easily observable), providers differ in the types of metrics tracked in their business, yet some metrics, such as time spent (which Meta considers to be a more appropriate way to measure user demand), are not (reliably) recorded by all providers.
- (1046) As regards Meta's argument that shares of supply should include specialised players (other than those in the second-hand clothing segment), horizontal OCAS providers take the view that their closest competitors are other horizontal platforms, and, to a limited extent, platforms specialised in clothing (as explained at recital (1018) above), while platforms specialised in vehicles and real estate are more distant competitors. Indeed, [...] quoted by Meta¹²⁵⁵ [...].¹²⁵⁶
- (1047) As regards Meta's criticisms of the traffic ratio indicators, these are unfounded. In the first place, they are intended to compare Facebook Marketplace with largest competitor (as determined at the time of Facebook Marketplace's entry). Indeed, they are meant to assess the evolution of the two relatively to each other over time. Changing the identity of the comparator mid-period, to account for the fact that it has been overtaken by third competitor, would render such a comparison devoid of any meaning. In any case, to the extent that such changes have occurred, this is reflected in the share of supply analysis which includes all relevant competitors to Facebook Marketplace. In the second place, to the extent that any seasonal volatility in traffic to OCAS exists (such that, for instance, users are more likely to engage in buying and selling at the end of the year than in the summer season), it is not clear why this should affect Facebook Marketplace and its competitors differently, so as to have an significant impact on the ratio between them. In any case, subject to data availability constraints, the traffic ratios are calculated on the basis of full years of data (and for 2023, the first six months), and it is only for 2017 that they are based on data from a shorter period (as of Facebook Marketplace's launch). In the third place, the width of the ranges employed reflects the need to protect data providers' confidential information. Nevertheless, the fluctuations within the same range are small and there

¹²⁵² SO Response, paragraph 323 (c).

¹²⁵³ Unique visitors and active users are very similar in nature. See footnote 1149 above.

¹²⁵⁴ Replies to Q5 of the Commission's RFI to OCAS providers of June 2009.

¹²⁵⁵ Comments on the LoF, paragraph 187 (a) (ii).

¹²⁵⁶ [...].

are only three Member States (for each of unique visitors and sellers) where, despite the ratio appearing in the same range in 2017 and in 2023, the precise value of the ratio to the first competitor was smaller in 2023 than in 2017.

- (1048) Sixth, the Commission is not arguing that Facebook Marketplace is a low-quality product in absolute terms or relative to all its competitors in every EEA Member State. Such a conclusion could only be based on an exhaustive quality assessment of Facebook Marketplace, which would be outside the scope of this investigation. The Commission's finding, made on the basis of the evidence described at recitals (1031) to (1034) above and that submitted by Meta in its SO Response, is that Facebook Marketplace has not displayed a strong quality advantage over its competitors, of a kind that would be able to explain its unprecedented performance in the market. The Commission is not disputing the fact that other incipient OCAS services may struggle with quality problems initially, that the quality of, or user satisfaction with, Facebook Marketplace may have improved over time, or that there are other OCAS providers in the market that also get low user satisfaction scores. However, these elements suggest, at best, that Facebook Marketplace does not have a strong advantage compared to other entrants or incumbent OCAS providers in terms of quality of user satisfaction, and hence this cannot be the reason that explains its unique feat of having successfully and simultaneously entered the market in multiple Member States, with minimal marketing investments.

7.2.4. *No objective justification*

- (1049) Meta argued that the launch of Facebook Marketplace was pro-competitive and contributed to increasing competition in the markets for online classified add services as it forced competitors to decrease prices and brought increased innovation, thus resulting in the overall growth of those markets.¹²⁵⁷
- (1050) As set out above (see recitals (755) and (756)), the dominant undertaking may demonstrate either that its conduct is objectively necessary or that the exclusionary effect produced may be counterbalanced, outweighed even, by advantages in terms of efficiency that also benefit consumers.¹²⁵⁸ For this, a dominant undertaking must demonstrate that four cumulative conditions are met:¹²⁵⁹
- (1) The efficiency gains likely to result from its conduct counteract any likely negative effects on competition;
 - (2) Those gains have been, or are likely to be, brought about as a result of its conduct;
 - (3) Its conduct is necessary for the achievement of those gains in efficiency; and
 - (4) Its conduct does not eliminate effective competition, by removing all or most existing sources of actual or potential competition.
- (1051) First, Meta does not demonstrate that the tie of Facebook Marketplace to Facebook is objectively necessary or produces substantial efficiencies which outweigh any anti-

¹²⁵⁷ SO Response, paragraphs 333 to 342.

¹²⁵⁸ Case C-209/10, *Post Danmark v Konkurrencerådet*, EU:C:2012:172, paragraph 41.

¹²⁵⁹ Case C-209/10, *Post Danmark v Konkurrencerådet*, EU:C:2012:172, paragraph 42; Case C-23/14, *Post Danmark v Konkurrencerådet*, EU:C:2015:651, paragraph 49; and Case C-333/21, *European Superleague Company SL v Fédération internationale de football association (FIFA)*, EU:C:2023:1011, paragraph 204.

competitive effects on consumers. Instead, Meta only claims that the launch of Facebook Marketplace may have brought advantages to the markets for OCAS.

- (1052) However, the Commission's concerns do not relate to the launch of Facebook Marketplace as such, which, in itself, can be pro-competitive, but with the tying of Facebook Marketplace to Facebook. Meta does not demonstrate how this anticompetitive conduct could be necessary to produce efficiencies.
- (1053) Second, some of the alleged benefits listed by Meta do not even seem to be associated to the launch of Facebook Marketplace.
- (1054) In the first place, even before the launch of Facebook Marketplace, the majority of OCAS providers were not charging listing fees to private users, but were monetising their services by charging for premium features, listing fees for professional users and the sale of advertising inventory to third parties.¹²⁶⁰ Thus, to the extent that competition from Facebook Marketplace led to a decrease in the price of competitors, this was limited to a few platforms. Furthermore, a change in the business model does not necessarily imply an improvement in the supply conditions for consumers. For instance, when OCAS providers compensate the loss of listing fee revenue by increasing their sales of advertising inventory, users may be confronted with an increased advertising load, and thus a decrease in the quality of service. Furthermore, advertising does not come for free, and someone has to pay in the end the costs of advertising as those are likely to be passed on to customers that buy the advertised products.
- (1055) In the second place, there is no evidence that the increase in R&D expenditure of the OCAS providers identified by Meta is attributable to increased competition from Facebook Marketplace, or that such expenditure would have been lower in the absence of Facebook Marketplace. Indeed, data from the annual reports of Adevinta, Axel Springer, eBay, Schibsted and Vinted shows that these players' R&D expenditures had also increased in the period preceding the launch of Facebook Marketplace, and in some cases, R&D expenditure had increased more in the period before 2018.¹²⁶¹
- (1056) In the third place, Meta has not produced any evidence that it has contributed to overall market growth by bringing new customers into the market. As discussed at recital (1043) above, the markets for OCAS have been growing in the context of the expansion of e-commerce and the transition to a circular economy.
- (1057) In light of the above, the Commission concludes that Meta does not demonstrate any objective justification for the tie between Facebook Marketplace to Facebook.

7.2.5. *Duration of the infringement*

- (1058) The Commission concludes that the start date of the infringement consisting of the tying of Facebook Marketplace to Facebook is:

¹²⁶⁰ Replies to Commission's RFI to OCAS providers of June 2019. [...].

¹²⁶¹ See, in particular, the evolution of R&D expenditure of Axel Springer (which increased by 75% from 2015 and 2016, and then grew at a more moderate pace until the end of the analysed period) and Schibsted (which decreased between 2018 and 2021). Meta's reply to Q1.c ("R&D expenditure analysis.xls") of the Commission's RFI to Meta of June 2023.

- (1) 14 August 2017 in Austria, Belgium, Czechia, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain and Sweden;
 - (2) 8 November 2017 in Bulgaria, Croatia, Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Romania, Slovenia;
 - (3) 27 November 2017 in Poland; and
 - (4) 19 March 2018 in Slovakia.¹²⁶²
- (1059) This is because (i) the Commission concludes that Meta is dominant in the EEA-wide market for personal social networking services including hybrid social media platforms at least since the start of 2017; and (ii) Facebook Marketplace has been tied to Facebook since the respective launching dates of Facebook Marketplace in each relevant Member State.
- (1060) In the framework of the DMA compliance report, Meta, as a designated gatekeeper pursuant to the DMA, has indicated a number of measures it took in order to comply with its obligations under the DMA, such as the obligation laid down in its Article 5(8), (see recitals (26) and (794) above). These measures do not change the fact that it is still not possible to obtain Facebook without Facebook Marketplace. The Commission therefore considers that the infringement is ongoing.
- 7.2.6. *Conclusion on tying of Facebook Marketplace with Facebook*
- (1061) It follows from the Commission's findings in sections 7.2.3 to 7.2.5 that, since the date of the launching of Facebook Marketplace in each relevant Member State, Meta's tying of Facebook Marketplace with Facebook fulfils the conditions of unlawful tying within the meaning of the case law of the Union Courts.
- (1062) The elements relied on by the Commission to reach that conclusion demonstrate that Meta's conduct is based on the use of means other than those which come within the scope of competition on the merits. In particular, the Commission considers that (i) Facebook Marketplace's and Facebook's personal social network service are distinct products (section 7.2.3.1); (ii) Meta is dominant in the EEA-wide market for personal social networking services (section 7.2.3.2); (iii) Meta does not give its end users a choice to obtain Facebook without Facebook Marketplace (section 7.2.3.3); and (iv) the tie of Facebook Marketplace with Facebook is capable of restricting competition (section 7.2.3.4).
- (1063) The Commission's conclusion is valid for both a broad market for OCAS, including both horizontal and vertical OCAS, as well as for the narrower market for horizontal OCAS. As regards the broad market, the capability to produce exclusionary effects is present in particular in the substantial segment for horizontal OCAS where Facebook Marketplace competes. In view of the competitive constraint exerted by horizontal OCAS on vertical OCAS, Meta's conduct affects competition at the level of the vertical OCAS providers as well.

¹²⁶² Meta informed the Commission that it had launched Facebook Marketplace also in Iceland and Liechtenstein for the first time on 27 August 2024 in reply to Q1 of the Commission's RFI to Meta of August 2024 regarding revenue and turnover data. The findings of the Decision do not cover these countries.

(1064) Furthermore, Meta did not demonstrate that the tying of Facebook Marketplace with Facebook is objectively justified or produces substantial efficiencies which outweigh any anti-competitive effects on consumers.

(1065) Based on these considerations, the Commission concludes that Meta's tying conduct constitutes an abuse of dominant position within the meaning of Article 102 TFEU.

7.3. Imposition of unfair trading conditions on OCAS providers which compete against Facebook Marketplace

7.3.1. Principles on the imposition of unfair trading conditions under Article 102 TFEU

(1066) Article 102 TFEU prohibits as incompatible with the internal market any abuse of a dominant position insofar as it may affect trade between Member States.

(1067) A dominant undertaking has a special responsibility not only not to distort competition¹²⁶³, but also not to exploit its customers¹²⁶⁴. Indeed, that special responsibility “*is not limited solely to conduct likely to reinforce dominance of the undertaking concerned or reduce the level of competition on the market, since Article 86 of the Treaty concerns not only practices which hinder effective competition but also those which [...] may cause damage to consumers directly*”.¹²⁶⁵

(1068) Under Article 102(a) TFEU, the direct or indirect imposition by an undertaking in a dominant position of unfair trading conditions constitutes an abuse of that position.

(1069) Although the case law on the concept of unfair trading conditions is rather limited to date, it can provide some useful indications on the relevant criteria. In particular, in a preliminary ruling involving contractual clauses between an association managing copyright and its members, the Court of Justice qualified trading conditions imposed by a dominant undertaking as unfair where they involve obligations that are not absolutely necessary¹²⁶⁶ for the attainment of that undertaking's legitimate objectives and which thus encroach unfairly upon third parties' economic freedom, bearing in mind their effects.¹²⁶⁷

(1070) The Court specified that trading conditions can be regarded as unfair either in relation to trading partners or to end customers.¹²⁶⁸

(1071) For the purposes of this case, it can be inferred from the above-mentioned case law (see recitals (1069) - (1070)) that, in essence, to be qualified as unfair under Article 102(a) TFEU and thus abusive, trading conditions must be imposed by a dominant undertaking on its trading partners and be (i) unfavourable or detrimental to the interests of that undertaking's trading partners or of third parties, and (ii) not necessary for the achievement of a legitimate objective, or in any event not proportionate for that purpose in that they go beyond what is strictly necessary.

(1072) The conclusion about the legal test for the application of Article 102(a) TFEU is not contradicted by Meta's arguments stating that further elements need to be taken into account, namely:

¹²⁶³ C-322/81 *Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 57.

¹²⁶⁴ T-191/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraphs 1123 to 1125.

¹²⁶⁵ T-191/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 1124.

¹²⁶⁶ 127-73 *BRT v SABAM*, EU:C:1974:25, paragraphs 9 to 11.

¹²⁶⁷ See Case 127-73 *BRT v SABAM*, EU:C:1974:25, paragraphs 11 and 15. See also, to this effect, Case 247/86 *Alsattel v Novasam*, EU:1988:469, paragraph 10.

¹²⁶⁸ See to that effect Case 66/86, *Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs*, EU:C:1989:140, paragraph 42.

- (1) the finding of an exploitative abuse under Article 102(a) TFEU requires the existence of a legal or *de facto* monopoly;¹²⁶⁹
 - (2) in cases where the allegedly abusive conduct occurs in a different market from the market in which the undertaking holds a monopoly position the Commission must demonstrate “special circumstances” that justify the finding of an unfair trading conditions abuse;¹²⁷⁰
 - (3) the trading conditions in question must stem from and can only be applied because of the monopoly position (“causality”);¹²⁷¹
 - (4) trading conditions may only be considered as unfair if they “*play no role in delivering a beneficial service*”;¹²⁷² and
 - (5) the trading conditions must have actual anti-competitive effects.¹²⁷³ Those may not be purely hypothetical, which requires that the abusive practice must have been implemented.¹²⁷⁴
- (1073) First, regarding Meta’s claims that the legal test for unfair trading conditions requires a monopolistic market position, the Commission notes the following.
- (1074) In the first place, Article 102 TFEU applies to dominant companies, not only to monopolies. This includes the abuse under Article 102(a) TFEU by the imposition of unfair trading conditions. The TFEU itself does not impose any specific higher burden with respect to dominance for Article 102(a) TFEU. The requirement of a dominant position is in the first part of Article 102 TFEU, with each sub-letter (including (a)) having the same relationship with it. The fact, as reported by Meta, that in a number of past cases on unfair trading conditions the abuse was found with respect to companies which were not only dominant, but even (quasi) monopolist, does not mean that establishing a monopoly is a legal requirement to find an abuse in the form of imposing unfair trading conditions pursuant to Article 102(a) TFEU. In none of these cases did the Court state that the (quasi) monopolist position was a general condition for the application of Article 102(a) TFEU. Moreover, it is not completely clear what would be the difference between a “normal” dominant position and a position of “quasi-monopoly”, that Meta considers would be relevant for the application of Article 102(a) TFEU.
- (1075) This is also not contradicted by the Commission’s decision in the case *Apple – App Store Practices (music streaming)*¹²⁷⁵, as Meta argues in its Comments on the LoF.¹²⁷⁶ The quoted excerpts from that Decision¹²⁷⁷ do not confirm, as Meta insinuates, that an infringement of Article 102(a) TFEU can only be found where the

¹²⁶⁹ SO Response, paragraphs 381 to 385.

¹²⁷⁰ SO Response, paragraphs 386 to 388.

¹²⁷¹ SO Response, paragraphs 412 to 442.

¹²⁷² SO Response, paragraphs 389 to 393.

¹²⁷³ SO Response, paragraphs 448 to 455, as well as 483.

¹²⁷⁴ Comments on the LoF, paragraphs 261 to 263.

¹²⁷⁵ Commission Decision of 4 March 2024 in case AT.40437 *Apple – App Store Practices (music streaming)*

¹²⁷⁶ Comments on the LoF, footnote 400.

¹²⁷⁷ In its Comments on the LoF, footnote 400, Meta refers to three quotes from the Commission’s decision on Apple which can be found in the following recitals: “*only gateway*” in recital 560, “*no competition from third parties*” in recital 563 and “*fully depend*” in recital 564 of Commission Decision of 4 March 2024 in case AT.40437 *Apple – App Store Practices (music streaming)*.

undertaking is a monopoly, but contain mere descriptions of Apple's market position in the distribution of music streaming apps.

- (1076) In the second place, Meta's argument is expressly contradicted by two rulings of the Court:
- (a) In *Alsatel*, the European Court found in a preliminary ruling that certain terms may be considered as “*unfair trading conditions prohibited as abusive practices by Article 86 of the TFEU if all the conditions for the application of that provision are met.*”¹²⁷⁸ The Court then specified those conditions for Article 86 of the TFEU, indicating that the second condition was a “dominant position” defined “*as a position of economic strength enjoyed by an undertaking which enables it to hinder the maintenance of effective competition on the relevant market by allowing it to behave to an appreciable extent independently of its competitors and customers.*”¹²⁷⁹ Despite the fact that the exercise of the monopoly for telephone installations had been in part delegated to Alsatel, the judgment does not specify the existence of a monopoly as a condition for an abuse under Article 102(a) TFEU.
 - (b) In *United Brands*, a case of excessive pricing which is also a type of abuse falling under Article 102(a) TFEU, the company had a market share of between 40% and 45%.¹²⁸⁰ It was therefore far from being a monopoly. Taking this and further factors into account (number and size of other competitors, their lack of success in increasing their market share, barriers to entry), the Court confirmed the existence of a dominant position¹²⁸¹ and did not require the existence of a monopoly for finding an infringement of Article 102(a) TFEU (at the time Article 86(a) EEC).
- (1077) Second, regarding Meta's claim that, in view of *Tetra Pak II*, the Commission would need to show “special circumstances” where the abusive conduct occurs in a different market from the market in which the undertaking holds a monopoly position, the Commission notes the following.
- (1078) In the first place, the Commission found in the *Tetra Pak II* decision a dominant position on the aseptic market for packaging machines/cartons but left open the existence of dominance on the non-aseptic market for packaging machines/cartons.¹²⁸² It then found that several of Tetra Pak's terms and conditions were unfair towards customers on both markets due to the close associative links between the two markets. The Court upheld the Commission's finding indicating that the “*application of Article 86 [now Article 102 TFEU] to conduct found on the associated, non-dominated, market and having effects on that associated market can only be justified by special circumstances*”¹²⁸³ which indeed existed in the Court's view in that case due to the “*close associative links*” between the two markets.¹²⁸⁴

¹²⁷⁸ Case C-247/86 *Alsatel v Novasam*, EU:1988:469, paragraph 10.

¹²⁷⁹ Case C-247/86 *Alsatel v Novasam*, EU:1988:469, paragraph 12. In that, the Court made reference to the case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 30.

¹²⁸⁰ Case 27/76, *United Brands Company and United Brands Continentaal BV v Commission of the European Communities*, ECLI:EU:C:1978:22, paragraph 108.

¹²⁸¹ Case 27/76, *United Brands Company and United Brands Continentaal BV v Commission of the European Communities*, ECLI:EU:C:1978:22, paragraph 129.

¹²⁸² Commission Decision of 24 July 1991 in case IV/31.043 - *Tetra Pak II*, paragraph 104.

¹²⁸³ Case C-333/94 P, *Tetra Pak v Commission*, ECLI:EU:C:1996:436, paragraph 21.

¹²⁸⁴ Case C-333/94 P, *Tetra Pak v Commission*, ECLI:EU:C:1996:436, paragraphs 30 and 31.

The need to show special circumstances was therefore not the consequence of the type of conduct under consideration (exploitative as opposed to exclusionary), but instead the consequence of the lack of finding of dominance on one of the two markets under consideration. In other terms, the specificity of that case was that (part of) the abusive conduct itself took place on a non-dominated market.

- (1079) The situation in this case is not comparable to the situation in *Tetra Pak II*. Unlike in *Tetra Pak II*, the abuse in this case does take place on the *same* market where dominance is found. Meta imposes trading conditions on its advertising clients on the national markets for online display advertising on social media platforms where it is also considered to be dominant (see above section 6.4). The Commission does not claim that the abuse relates to companies that are not customers of Meta on the national markets for online display advertising on social media platforms and that are instead customers on a different market where Meta is not dominant.
- (1080) In the second place, the fact that the exploited advertising clients are at the same time also active on the markets for OCAS in competition with Facebook Marketplace and are harmed in their competitiveness on this market, does not change the fact that the abusive conduct takes place in the dominated market. The harm created by the unfair trading conditions is specific to this group of advertising customers (*i.e.* customers in the dominated market) since it results from the fact that they are also active on the markets for OCAS. The Commission does not conclude that Meta has imposed unfair trading conditions on its competitors on the markets for OCAS, in which Facebook Marketplace is not found to be dominant.
- (1081) All the terms and conditions described below (see section 7.3.4) apply to all advertising clients on the markets for online display advertising on social media platforms, where Meta is dominant, and are considered as unfair towards a specific group of those advertising clients on the same markets because of the specific harm suffered by this specific group of customers. Accordingly, unlike in *Tetra Pak II*, the Commission does not have to show any “special circumstances” in this case.
- (1082) Third, regarding Meta’s claim that a number of companies which offer online display advertising on social media platforms have, in Meta’s view, similar terms and conditions with respect to data use vis-à-vis their advertising customers as well as the claim that the legal test for unfair trading conditions requires that those unfair trading conditions must stem from, and can only be applied because of, the dominant position of a company, a claim which is based on the cases *Deutsche Telekom*¹²⁸⁵ and *United Brands*¹²⁸⁶, the Commission notes the following:
- (1083) In the first place, Article 102(a) TFEU expressly refers to the direct or indirect “imposition” of unfair trading conditions without requiring a specific causal link between the dominance and the content of those unfair trading conditions.
- (1084) As set out in the Commission’s decision on *Apple*¹²⁸⁷, which contrary to Meta’s claim¹²⁸⁸ does not stipulate the need to show such a causal link, it is precisely the position of economic strength which follows from a dominant position, and which

¹²⁸⁵ Case C-152/19 P, *Deutsche Telekom AG v Commission*, ECLI:EU:C:2021:238.

¹²⁸⁶ Case 27/76, *United Brands Company and United Brands Continental BV v Commission of the European Communities*, ECLI:EU:C:1978:22.

¹²⁸⁷ Commission Decision of 4 March 2024 in case AT.40437 *Apple – App Store Practices (music streaming)*, recital 538.

¹²⁸⁸ Comments on the LoF, footnote 400.

makes the dominant undertaking an unavoidable trading partner, that enables that undertaking to impose trading conditions on its trading partners. This ability to impose conditions constitutes the specific link between the dominant position and the conduct in question, irrespectively of whether other non-dominant undertakings may use similar trading conditions. Such imposition is closely linked to the dominant position, which prevents that customers could easily switch away in case they disagree with the condition, as they can do in the case of non-dominant companies. It is therefore not necessary to show that other non-dominant companies could not define at all a similar condition, but only that the dominant company has imposed the trading condition on its customers who cannot – due to the company’s dominance – easily switch to a different supplier. Furthermore, if other non-dominant companies use a similar condition this may simply represent an alignment of their conduct to that of the dominant firm.

- (1085) In the second place, the Court has rejected the need to show causality and has instead pointed to the special responsibility of dominant companies not to adopt an abusive conduct, even if that same conduct is also applied by other, non-dominant, companies. In *Europemballage and Continental Can*, the Court explicitly rejected the requirement of a causal link between the dominant position and the abuse, noting that: “*the question of the link of causality raised by the applicants which in their opinion has to [...] exist between the dominant position and its abuse, is of no consequence, for the strengthening of the position of an undertaking may be an abuse and prohibited under Article 86 of the Treaty, regardless of the means and procedure by which it is achieved, if it has the effects mentioned above.*”¹²⁸⁹
- (1086) This goes in line with the Court’s finding that undertakings in a dominant position have “*a special responsibility*” and are deprived of the right to adopt a course of conduct or take measures which would otherwise not constitute abuses.¹²⁹⁰ In *Michelin*, the Court highlighted that special responsibility by stating: “*A finding that an undertaking has a dominant position is not in itself a recrimination but simply means that, irrespective of the reasons for which it has such a dominant position, the undertaking concerned has a special responsibility not to allow its conduct to impair genuine undistorted competition in the common market.*”¹²⁹¹
- (1087) Also in *Atlantic Container Line a.o.*, the Court observed that dominant undertakings have such special responsibility which is not restricted to specific types of abuses: “*conduct cannot cease to be abusive merely because it is the standard practice in a particular sector; to hold otherwise would deprive Article 86 of the Treaty of any effect. Dominant undertakings within the meaning of Article 86 of the Treaty have a special responsibility not to allow their conduct to impair genuine undistorted competition on the relevant market [...]. Contrary to the submission of the applicant in Case T-213/98, that responsibility is not limited solely to conduct likely to reinforce the dominance of the undertaking concerned or reduce the level of competition on the market, since Article 86 of the Treaty concerns not only practices*

¹²⁸⁹ Case 6-72 *Europemballage and Continental Can*, EU:C:1975:50, paragraph 27.

¹²⁹⁰ Case T-111/96 *ITT Promedia v Commission*, EU:T:1998:183, paragraph 139; Case T-301/04 *Clearstream Banking AG and Clearstream International SA v Commission*, EU:T:2009:317, paragraph 133.

¹²⁹¹ Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 57.

which hinder effective competition but also those which, as in this case, may cause damage to consumers directly.”¹²⁹²

- (1088) In the third place, in earlier unfair trading conditions cases it was not considered as a requirement to verify whether other, non-dominant, companies used similar conditions. In *BRT v SABAM*, the Court of Justice considered that the “imposition” criterion was met because the dominant copyright management association required its members to assign to it copyrights under certain conditions,¹²⁹³ irrespectively of whether similar requirements were also requested by other non-dominant associations. In *Tournier*, another preliminary ruling relating to a copyright management society, the Court of Justice expressly underlined the optional nature of a comparison with the conduct of other market players, noting (emphasis added) “that a comparison with the situation in other Member States may provide useful indications regarding the possible abuse of a dominant position by a national copyright-management society”, without such comparison being required.¹²⁹⁴ The Court of Justice even explicitly stated that there may be “other criteria not mentioned in the questions submitted by the national court which might serve to establish the unfairness of the rate of royalty.”¹²⁹⁵ In *AAMS*, the General Court found that certain conditions imposed in distribution agreements by a monopolist on a number of cigarette manufacturers constituted an exploitation of the monopolist’s dominant position without assessing whether there was a causal link between the dominant position and the imposition of the exploitative conditions.¹²⁹⁶
- (1089) In the fourth place, the aforementioned assessment is not affected by the judgments in *Deutsche Telekom* and *United Brands*. When stating its view about a requirement of causality, Meta made reference in particular to two quotes from those judgments:
- (1) *Deutsche Telekom*: “In accordance with the Court’s settled case-law, the concept of ‘abuse of a dominant position’, within the meaning of Article 102 TFEU, is an objective concept relating to the conduct of a dominant undertaking which, on a market where the degree of competition is already weakened precisely because of the presence of the undertaking concerned, through recourse to methods different from those governing normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition (judgment of 30 January 2020, *Generics (UK) and Others*, C-307/18, EU:C:2020:52, paragraph 148 and the case-law cited).”¹²⁹⁷
 - (2) *United Brands*: “It is advisable therefore to ascertain whether the dominant undertaking has made use of the opportunities arising out of its dominant

¹²⁹² Case T-191/98 *Atlantic Container Line and Others v Commission*, EU:T:2003:245, paragraph 1124. Even though the Court speaks about “consumers” this does not exclude commercial trading partners. The case was about the Atlantic Container Lines’ offer of cargo services (see paragraph 13 of the judgment). The “consumers” were therefore companies.

¹²⁹³ Case 127-73 *BRT v SABAM*, EU:C:1974:25, paragraphs 7 to 12.

¹²⁹⁴ Case 395/87 *Tournier*, EU:C:1989:319, paragraph 43.

¹²⁹⁵ Case 395/87 *Tournier*, EU:C:1989:319, paragraph 44.

¹²⁹⁶ Case T-139/98 *AAMS*, EU:T:2001:272, paragraph 79, concerning Commission decision of 17 June 1998 on the case IV/36.010 - *Amministrazione Autonoma dei Monopoli di Stato*, paragraph 34.

¹²⁹⁷ Case C-152/19 P, *Deutsche Telekom AG v Commission*, ECLI:EU:C:2021:238, paragraph 41.

position in such a way as to reap trading benefits which it would not have reaped if there had been normal and sufficiently effective competition."¹²⁹⁸

- (1090) The quotes indicated by Meta do not show that the abuse under Article 102 TFEU cannot be found unless there is a causal link between the dominant position and the conduct. The quotes demonstrate that abusive forms of conduct, which are only available to a dominant firm due to its dominant position, are clearly covered by Article 102 TFEU. This does not exclude, however, that also other forms of conduct which could equally be applied by non-dominant companies may under certain circumstances fall under Article 102 TFEU, if applied by the dominant company.
- (1091) The excerpt from *Deutsche Telekom* quoted by Meta does not confirm a requirement of causality. This case was about a refusal to supply. The excerpt quoted by Meta refers to the judgment in *Generics (UK) and Others*¹²⁹⁹ which in turn refers to *Hoffmann-La Roche*¹³⁰⁰, which is the origin of the quote. In that case, the Court, prior to the text quoted by Meta, observed: “*For the purpose of rejecting the finding that there has been an abuse of a dominant position the interpretation suggested by the applicant that an abuse implies that the use of the economic power bestowed by a dominant position is the means whereby the abuse has been brought about cannot be accepted.*”¹³⁰¹ This statement negates a requirement of causality.
- (1092) This is not different for cases caught by Article 102(a), as shown by *United Brands*. First of all, the quote from *United Brands* signals only that it would be “*advisable*” to ascertain whether the dominant company reaped trading benefits which it would not have reaped if there had been normal and sufficiently effective competition in order to determine whether a price is excessive. It thereby refers to the fact that in order to show the excessiveness of a price, a comparison with a benchmark derived from the situation under competitive conditions may be used. However, in that case the Court indicated that also other methods may be valid to establish unfair pricing¹³⁰² and emphasised that a price may also be unfair “*in itself*” instead of just “*when compared to competing products*”.¹³⁰³ The quote used by Meta therefore shows that, in cases where a company reaped benefits which would not have been possible under competitive conditions, the price can be considered as excessive. It, however, does not show that generally in exploitative cases such causality has to be demonstrated.
- (1093) It can therefore be concluded that the quotes from the cases *Deutsche Telekom* and *United Brands* referred to by Meta do not confirm any requirement to show causality between the dominant position and the conduct. To the contrary, the case law provides evidence that causality is not a requirement for the finding of abuse under Article 102 TFEU.

¹²⁹⁸ Case 27/76, *United Brands Company and United Brands Continentaal BV v Commission*. ECLI:EU:C:1978:22, paragraph 249. Meta also quotes paragraph 65 which, however, seems to rather address dominance than the question of causality: “*The dominant position referred to in this Article relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.*”

¹²⁹⁹ Case C-307/18 *Generics (UK) and Others*, EU:C:2020:52, paragraph 148.

¹³⁰⁰ Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 91.

¹³⁰¹ Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 91.

¹³⁰² For example, Case 27/76 *United Brands v Commission*, paragraph 253: “*other ways may be devised - and economic theorists have not failed to think up several - of selecting the rules for determining whether the price of a product is unfair.*”

¹³⁰³ Case 27/76 *United Brands v Commission*, paragraphs 251 and 252.

- (1094) Fourth, regarding Meta’s claim that trading conditions may only be considered as unfair where it is clear that the terms in question do not enable the delivery of a beneficial service, the Commission notes the following.
- (1095) The Commission agrees that trading conditions defined by a dominant company which are necessary (and proportionate) for the dominant company to provide its services on the market would not fall under Article 102(a) TFEU. This assessment is provided in the chapter on necessity (see section 7.3.5.3.1 below).
- (1096) However, any legal requirement that trading conditions can only be considered as unfair if they “*play no role in delivering a beneficial service*” and if they are “*manifestly exploitative, i.e. applied for no purpose other than to bind trading partners to the maximum extent and/or are otherwise clearly disconnected from the delivery of a beneficial service*” has to be rejected.
- (1097) The Commission notes that in order to support its view, Meta quotes the case *BRT v SABAM* where the Court of Justice found that the relevant conditions undermined members’ “*freedom to dispose*”¹³⁰⁴ of their works. It moreover refers to the decision in *Tetra Pak II*, where the Commission itself found that the clauses in question were “*intended to bind the customer [...] to the maximum extent possible*”¹³⁰⁵.
- (1098) However, the fact that the Court and the Commission assessed certain trading conditions in this way does not mean only trading conditions that undermine the freedom of trading partners to dispose of their work or are intended to bind the customers to the maximum extent possible should be considered as unfair. These statements only demonstrate that the trading conditions in those cases went clearly beyond what would have been considered as fair.
- (1099) Should the test that Meta appears to be proposing be accepted, this would mean that any terms and conditions would be compliant with Article 102(a) TFEU as soon as they (marginally) contribute to a beneficial service, irrespective of the presence of harm on customers or competitors.
- (1100) Whether the trading conditions under assessment are objectively justified and therefore do not constitute an abuse even if they could be considered as unfair is part of the assessment of an objective justification. Whether the trading conditions under assessment play a role in delivering a beneficial service, which is important enough to outweigh the harm created by them, forms part of the assessment of efficiencies. Both these aspects are analysed in the relevant section on objective justification or efficiencies (see below, section 7.3.6). However, there is no element in the case law suggesting that an abuse can only be established when the trading conditions are manifestly unfair, applied for no purpose other than to bind trading partners to the maximum extent and/or otherwise clearly disconnected from the delivery of a beneficial service, as Meta suggests.
- (1101) Fifth, regarding Meta’s claim that the Commission is legally required to demonstrate that Meta’s terms and conditions have caused actual effects on competition, the Commission notes the following.
- (1102) In the first place, Meta’s position that the Commission should have shown restrictive effects on competition when applying Article 102(a) TFEU is not supported by the

¹³⁰⁴ Case 127-73 *BRT v SABAM*, ECLI:EU:C:1974:25, paragraph 11.

¹³⁰⁵ Commission Decision of 24 July 1991 in case IV/31.043 - *Tetra Pak II*, paragraph 106.

case law. Article 102 TFEU covers both practices which may cause harm to customers or consumers directly and those which are detrimental to them through their impact on an effective competition structure.¹³⁰⁶ To find an infringement of Article 102(a) TFEU, it is sufficient to show that the practice at issue is capable of harming customers directly and there is no need to show that the abusive conduct is in addition capable of having an impact on effective competition.

- (1103) Moreover, pursuant to Article 102(a) TFEU, an abuse may, in particular, consist in “*directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions*”. This means that Article 102(a) TFEU relates to the overall category of unfair trading conditions, with the two subcategories (i) unfair prices and (ii) unfair trading conditions other than prices. As confirmed by the Court in *Ahmed Saeed*, trading conditions can be regarded as unfair in relation to trading partners or to end customers.¹³⁰⁷ In order to be characterised as abusive, unfair prices or unfair trading conditions affecting consumers or customers directly do not require the demonstration of restrictive effects on competition. It is sufficient to show that the unfair trading conditions are capable of harming the trading partners or other third parties including consumers because they are exposed in their commercial dealings to harmful terms and conditions (or prices) imposed by the dominant company.
- (1104) In the second place, in none of the cases quoted by Meta, did the Court require the demonstration of effects on competition, let alone actual (as opposed to potential) effects, as part of the legal test in unfair trading conditions¹³⁰⁸. To the contrary:
- (1) In *BRT v SABAM*¹³⁰⁹, the Court mentions “effects” in relation to certain trading conditions and specifies that it has to be established “*whether and to what extent they affect the interests of authors or third parties concerned*”¹³¹⁰, thereby clearly not making reference to effects on competition, but mainly to effects on trading partners.
 - (2) In *DSD/Der Grüne Punkt*¹³¹¹, the Commission had set out effects on DSD’s customers as well as effects on competition. The fact that the Court upheld that decision merely means that the Commission can set out effects on both, not that it has to¹³¹².
 - (3) In the case *AAMS*¹³¹³, the Court referred to effects on the competitiveness of the affected firms which points to effects on trading partners.

¹³⁰⁶ Case 6-72 *Europemballage and Continental Can v Commission* [1973] ECR 215, paragraph 26.

¹³⁰⁷ Case 66/86, *Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs*, EU:C:1989:140, paragraph 42.

¹³⁰⁸ SO Response, paragraph 445. The case *Superleague* quoted in this respect by Meta in the Comments on the LoF, paragraphs 256 to 258, refers explicitly to “exclusionary effects”, see case C-333/21, *European Superleague Company (Superleague)*, ECLI:EU:C:2023:1011, paragraph 130.

¹³⁰⁹ Case 127/73, *BRT v SABAM*, ECLI:EU:C:1974:25.

¹³¹⁰ Case 127/73, *BRT v SABAM*, ECLI:EU:C:1974:25, paragraphs 8, 13 and 14.

¹³¹¹ Case C-387/07 P, *Der Grüne Punkt*, EU:C:2009:456.

¹³¹² Indeed, it is not excluded that an abuse prohibited by Article 102(a) TFEU can also contain exclusionary elements. In COMP D3/34493, *DSD*, decision of 20 April 2001, the Commission found an exploitative abuse pursuant to Article 102(a) but also held that the system made it more difficult for competitors of DSD systems to enter the market (see the summary of the Commission decision in Case C-387/07 P, *Der Grüne Punkt*, EU:C:2009:456, paragraph 32).

¹³¹³ Case T-139/98 *AAMS v Commission*, EU:T:2001:272.

- (4) In the cases *Ahmed Saeed*¹³¹⁴ or *Tetra Pak II*¹³¹⁵, the Court does not define effects on competition as part of the unfair trading conditions test.¹³¹⁶
- (1105) In the third place, and regarding the need to show actual restrictive effects on competition, the Commission is under no such general obligation to prove the existence of an abuse. Most recently, in the case *Google Shopping*, an exclusionary case, the General Court held that “*the Commission was not required to identify actual exclusionary effects on the grounds that Google was allegedly not dominant on the national markets for comparison shopping services, that its conduct was part of improvements in its services for the benefit of consumers and online sellers and that that conduct had lasted for many years. Such a requirement of the Commission would be contrary to the principle, confirmed by the Courts of the European Union, that the categorisation of a practice as abuse within the meaning of Article 102 TFEU cannot be altered because the practice at issue has ultimately not achieved the desired result*”.¹³¹⁷ This was confirmed by the Court of Justice which fully upheld the Commission’s decision in that case.¹³¹⁸
- (1106) The same applies to abuses under Article 102(a) TFEU relating to the capability of causing direct harm to customers. In order to find that the unfair trading conditions imposed by the dominant company are capable of causing harm to customers, it is not required that the ads-related data obtained by Meta under those trading conditions are actually used. Their imposition by way of inclusion in the contracts with the customers suffices for a finding of abuse under Article 102(a) TFEU.
- (1107) This follows from the case law on unfair trading conditions. As set out in recital 104 of the decision *Tetra Pak II*, the Commission considered, among others, two clauses in Tetra Pak’s standard contracts for the sale of its packaging machines as unfair and abusive: Tetra Pak had reserved the right to inspect the wording which the buyer of the machine would use on its cartons and the right to carry out inspections at the production site of the buyer without prior notice. For none of these two clauses, did the Commission examine whether Tetra Pak had in the past effectively made use of those rights (see recitals 121 and 122 of the Commission decision on *Tetra Pak II*). This issue was not raised in the subsequent court proceedings.
- (1108) The actual enforcement of the terms and conditions (or rights reserved by the dominant company for itself) is therefore not necessary – instead, it is their imposition in the contractual relation between the dominant firm and its customers that is decisive for the applicability of Article 102(a) TFEU. Otherwise, the terms

¹³¹⁴ Case 66/86, *Ahmed Saeed Flugreisen and Others v Zentrale zur Bekämpfung unlauteren Wettbewerbs*, EU:C:1989:140.

¹³¹⁵ Case T-83/91, *Tetra Pak v Commission*, EU:T:1994:246 and Case C-333/94 P, *Tetra Pak v Commission*, EU:C:1996:436.

¹³¹⁶ In *Ahmed Saeed*, the Court did not rule out that Article 102 TFEU could apply to the specific situation of bilateral/multilateral tariff agreements between internationally cooperating air carriers (taking into account the specific regulations in that sector) if imposed by one dominant air carrier. The consideration of elimination of price competition related therefore to the very specific case of a price fixing agreement imposed on competitors, which does not allow concluding that under Article 102(a) TFEU effects on competition generally would have to be shown. In the case *Tetra Pak II*, the Court dealt with the question whether a conduct by a dominant company having effects on a different (not dominated) market may be considered as abusive. The Court did not state that effects on competition have to be shown under Article 102(a) TFEU.

¹³¹⁷ Case T-612/17 *Google Shopping*, EU:T:2021:763, paragraph 442.

¹³¹⁸ Case C-48/22 P *Google Shopping*, EU:C:2024:726.

and conditions would not fall under Article 102(a) TFEU, even if they were unfair and by themselves capable to cause harm, unless the dominant company actually applied those terms. Also a right which the dominant undertaking derives from unfair trading conditions it imposes can be harmful to customers since it may – as in the current case – increase their business risks. Moreover, the mere fact that certain unfair terms and conditions have not been enforced in the past cannot render them “fair” since the dominant firm can at any moment decide to enforce them.

- (1109) This is not contradicted by the argument Meta raises, referring to *BEH*,¹³¹⁹ that effects may not be purely hypothetical in that they might occur only under circumstances which did not prevail at the time of the abuse and that this requires that the abusive practice was implemented.¹³²⁰ First, the case under review in *BEH* related to a refusal to supply and therefore referred to effects on competition. Second, in any event, in the present case, the abusive practice consists in the inclusion in the agreements between Meta and OCAS providers of unfair trading conditions. Those agreements do exist, and they do include the conditions in question. They were not merely hypothetical - and therefore the abusive practice has been implemented.
- (1110) It can be concluded that actual use of the ads-related data obtained under the unfair trading conditions is not required under Article 102(a) TFEU. Consequently, the Commission does not need to demonstrate actual use of the ads-related data obtained under the trading conditions.¹³²¹ Demonstrating that the terms and conditions are capable of causing harm to customers is therefore sufficient. Meta does not fully object to this since it indicates in the SO Response, that the Commission was legally required to show “*at a minimum*” that Meta’s terms and conditions have actually been *capable* of causing effects.¹³²²
- (1111) In the fourth place, Meta’s claim that the opinion of AG Mayras¹³²³ could not support the Commission’s position that no effects on competition have to be shown in cases under Article 102(a) TFEU based on the fact that this view was later rejected by the Court of Justice, is unfounded.
- (1112) The Court of Justice did not indicate in *General Motors Continental* that the Commission should have shown anti-competitive effects under Article 102(a) TFEU, but it merely found that the prices which the Commission had considered as excessive under Article 102(a) TFEU were, due to certain later refunds, in fact lower than what the Commission had assumed and that the criticized conduct by which at first higher prices were asked only occurred due to specific exceptional circumstances.¹³²⁴ The question whether anticompetitive effects would have to be shown was therefore not covered by the Court of Justice.
- (1113) In the fifth place, Meta’s claim that there should be an appreciability threshold, since *Post Danmark II*¹³²⁵ is only relevant where the effects of an abuse occur in the same

¹³¹⁹ Case T-136/19, *Bulgarian Energy Holding and Others v Commission*, EU:T:2023:669.

¹³²⁰ Comments on the LoF, paragraphs 260 to 263.

¹³²¹ While taking the view that actual use of ads related data by Meta does not form part of the legal test, the Commission has nevertheless set out the evidence which shows that Meta has in fact made use of the ads related data in the past (see section 7.3.5.4).

¹³²² SO Response, paragraph 443.

¹³²³ See opinion of Advocate General Mayras in Case 26/75, *General Motors Continental v Commission*, EU:C:1975:141.

¹³²⁴ Case 26-75, *General Motors Continental v Commission*, ECLI:EU:C:1975:141, paragraphs 19 to 22.

¹³²⁵ Case C-23/14 *Post Danmark II*, EU:C:2015:651, paragraph 73.

market where dominance is found.¹³²⁶ *Post Danmark II* relates to a retroactive rebate scheme that is not comparable to the present case and does not state that an appreciability threshold would apply to cases where the effects occur outside the dominated market. In any case, the Commission shows appreciable harm caused by Meta's T&C on Data Use (see section 7.3.5.2.2).

7.3.2. *Application to this case*

- (1114) The Commission concludes that Meta's terms and conditions allowing for the use of data derived from or provided by OCAS providers when using Meta's online display advertising services to the benefit of Facebook Marketplace are unfair trading conditions and therefore constitute an abuse of Meta's dominant position in each national market for online display advertising services on social media platforms in the EEA. The terms and conditions are unfair specifically to OCAS providers as advertising clients of Meta since their ads-related data is of special value to Meta considering that its use can provide particular benefits to Meta and Facebook Marketplace and may in turn cause harm to OCAS providers (see also recitals (1225) to (1227)).
- (1115) In the following sections, the Commission demonstrates that:
- (1) Meta collects several categories of data derived from or provided by the users of its online display advertising services, including data derived from or provided by rival OCAS providers in the context of their purchase of Meta's online display advertising services, that are of potential use for Facebook Marketplace (section 7.3.3);
 - (2) Meta's terms and conditions put no restrictions on the use by Meta of data derived from or provided by OCAS providers, which is particularly valuable to Meta, to the benefit of Facebook Marketplace in competition with OCAS providers (section 7.3.4);
 - (3) Meta's terms and conditions are abusive, as they are unilaterally imposed by Meta on OCAS providers and unfair, which means that they are detrimental to their interests, in particular, they are capable of harming OCAS providers. Moreover, Meta's terms and conditions are not necessary nor proportionate for the achievement of a legitimate objective (section 7.3.5); and
 - (4) Meta has not demonstrated that its conduct is objectively justified or produces substantial efficiencies (section 7.3.6).
- (1116) Section 7.3.7 sets out the Commission's conclusion on the duration of the abuse.
- (1117) Meta claims that the Commission's case is in reality an exclusionary abuse, and that the conduct should have been assessed under the conditions applicable for the finding of such exclusionary abuses. This claim must be dismissed as it is based on a misunderstanding of the case brought by the Commission.
- (1118) In the first place, the Commission's theory of harm in the present case relates to the imposition of unfair trading conditions under Article 102(a) TFEU (see section 7.3.1). As noted above at recital (1071), the criteria for establishing an abuse under Article 102(a) TFEU are for the Commission to demonstrate that the trading conditions in question are (i) unfavourable or detrimental to the interests of that

¹³²⁶ SO Response, paragraph 483.

undertaking's trading partners or of third parties, and (ii) not necessary for the achievement of a legitimate objective, or in any event, not proportionate for that purpose in that they go beyond what is strictly necessary.

- (1119) This means that the Commission must demonstrate that the conduct is unfavourable or detrimental to the interest of customers, in that they are capable of causing harm to those customers. In this particular case, the Commission's case is that the trading conditions applied by Meta are capable to cause harm to certain customers who use Meta's advertising services.
- (1120) The fact that these customers who suffer the detriment of Meta's conduct are OCAS providers that also compete with Meta in the market for OCAS services does not change the criteria which the Commission must apply to establish that Meta's trading terms are unfair, constituting an abuse pursuant to Article 102(a) TFEU.
- (1121) While such harm may, in addition, hamper OCAS providers' ability to compete on the market for OCAS services, and ultimately even foreclose those OCAS providers from that market, this does not turn the abuse identified by the Commission in this case into an exclusionary abuse. It follows that the Commission does not need to demonstrate that the conduct is capable to produce exclusionary effects. Instead, in the present case, it is sufficient to demonstrate that the trading conditions imposed by Meta on its advertising customers are capable to cause harm to OCAS providers. This, together with the finding that Meta's trading conditions are not necessary for the achievement of a legitimate objective, or in any event, not proportionate for that purpose, is sufficient for a finding of an infringement by Meta under Article 102(a) TFEU.
- (1122) In the present case, Meta receives valuable data (see (1225) to (1227)) from OCAS providers which it can use to their detriment. The harm suffered by OCAS providers relates, first, to the absence of compensation for Meta's capability to use their ads-related data to increase Meta's own competitiveness on the OCAS markets. Meta's collection and possibility to use such ads-related data may lead the OCAS providers to reduce their advertising activity on Meta's platform to a suboptimal level, thus translating in a worsening of the quality of online display ads services (see also recitals (1180) to (1183) as well as (1237) to (1239)). Second, the OCAS providers suffer a competitive disadvantage as regards their activity in the markets for online classified ads services.
- (1123) Finally, requiring that in such cases only an exclusionary theory of harm may apply would deprive customers of a dominant company of any protection under Article 102(a) TFEU against the direct harm they suffer from the imposition of unfair trading conditions, merely on the ground that they are at the same time competitors in an adjacent market.

7.3.3. *Meta collects ads-related data about OCAS providers that are of potential use for Facebook Marketplace*

- (1124) For the purposes of this Decision, all data Meta receives or derives from advertisers (including OCAS providers) in the context of its provision of online display advertising services on social media platforms are defined as **"ads-related data"**.
- (1125) This term includes in particular the following specific categories of data: (i) impression data, (ii) ad click data, (iii) product catalogue data and (iv) event data. All such data types cover also their respective related metadata. While Meta derives ad click data and impression data from advertisers' ads, it receives product catalogue

data and event data directly from advertisers. Impression data and ad click data are generally called “on-site data” since these signals¹³²⁷ are collected on Meta’s social media platforms (also referred to as “Meta’s platforms”). Product catalogue data and event data are generally referred to as “off-site data” since those signals are collected from third parties and third party-websites or apps. Each of these four categories of ads-related data is described below:

- (1) **Impression data:** Impression data relates to the ads shown to and viewed by users on Facebook or other Meta platforms such as Facebook Messenger and Instagram. They measure how often a given ad is on screen for a specific target audience.¹³²⁸ [...] ¹³²⁹ Meta can identify which ads exactly are shown to which users of its platforms. Such data is therefore collected by Meta itself.
- (2) **Ad click data:** Ad click data relates to ads displayed by Meta, which users of Meta’s platforms did not only see, but which they also clicked on. Ad click data includes the number of clicks an ad on a Meta platform received from users. Meta may also identify which users exactly clicked on which ads. It can also aggregate and combine such data in whichever form it wishes (e.g. by allocating the ad clicks to a category of users).
- (3) **Product catalogue data:** Meta explains that “A *catalog* is a container that holds information about all the items you want to promote on Facebook and Instagram. You can use your catalog to run ads that display your items, sell from a shop and more.”¹³³⁰ As set out in the Product Catalogue Terms¹³³¹ [...] ¹³³², [...] ¹³³³ Advertisers provide their product catalogue data to Meta in order to allow in particular a placement of so-called “dynamic ads” (later re-named to “Advantage+ catalog ads”) on Meta’s advertising space. By this, it is possible to use a function offered by Meta, which automatically displays ads for a large number of products to the respective right audiences.¹³³⁴

¹³²⁷ In Meta’s internal terminology, data points, in particular behavioural data points, are referred to as ‘signals’, [...] (ID2122-10640).

¹³²⁸ “An impression is counted as the number of times an instance of an ad is on screen for the first time. (Example: if an ad is on screen and someone scrolls down, and then scrolls back up the same ad, that counts as one impression. If an ad is on screen for someone two different times in a day, that counts as two impressions)” – Meta website “Meta Business Help Center – Impressions” available at <https://www.facebook.com/business/help/675615482516035>, downloaded on 8 November 2022 (ID6688).

¹³²⁹ [...]. Meta’s reply to Q16.8 of the Commission’s RFI to Meta of August 2019 and to Q76 of the Commission’s RFI to Meta of November 2019 (ID354 and ID4148).

¹³³⁰ Meta website “Create a catalog in Commerce Manager”, available at <https://www.facebook.com/business/help/1275400645914358?id=725943027795860>, downloaded on 10 November 2022 (ID6512).

¹³³¹ Product Catalogue Terms, available at https://m.facebook.com/legal/product_catalog_terms/, downloaded on 13 September 2022 (ID5415).

¹³³² [...].

¹³³³ [...].

¹³³⁴ Meta indicates on its website Meta Business Help Center – About Meta Advantage+ catalog ads: “Meta Advantage+ catalog ads (formerly known as dynamic ads) use machine learning to scale your ads when you have a broad range or large volume of products. Advantage+ catalog ads automatically deliver relevant services or offerings to people based on their interests, intent and actions. This solution removes the burden of creating individual ads for each and every item you sell. Instead of setting up 1,000 ad sets manually, you can create a catalog with all your products and services. Then you can create one campaign that drives sales on your website or app using personalized, user-level recommendations for everything in your catalog.”, available at

- (4) **Event data:** Event data is data, which Meta collects about its users when they visit advertisers', or any other third parties' websites or apps that use Meta's Business Tools, such as the Meta Pixel or SDK for Meta ad products on Facebook, Messenger, Instagram or WhatsApp (see sections 2.1.5 and 6.4.4). The data, which Meta collects, consists mainly of so-called "events" which are partly pre-defined within the business tools but can also be customized. Examples for such events are instances where the user clicks on a certain product in the advertiser's online shop or places a product into the cart. More generally, events can cover also instances where a user views a certain page of the third party's website, signs up for a newsletter or downloads an app, etc. Apart from those explicit events, event data can also cover implicit events, [...].¹³³⁵ Meta seems to refer to event data also as Online Behavioural Advertising ("OBA") data.
- (1126) The above list of categories of data is not exhaustive. There may be other types of ads-related data, which Meta receives or derives from OCAS providers in the context of online display advertising services on social media platforms provided by Meta to those companies.
- (1127) Ads-related data can be used by Meta to the benefit of Facebook Marketplace for three broad objectives (see section 7.3.5.2.1): (i) overall strategic advantages, (ii) improving and optimizing Facebook Marketplace and (iii) targeting customers for the purpose of promoting Facebook Marketplace, including by soliciting other OCAS providers' customers.
- (1128) The Commission understands that Meta differentiates between [...] ¹³³⁶ [...].¹³³⁷
- (1129) Meta has not contested the findings of this section.
- 7.3.4. Meta's terms and conditions*
- (1130) Meta's terms and conditions relevant for the purposes of this Decision consist of [...] (hereinafter, also "T&C on Data Use", see section 7.3.4.1); [...]. The Commission concludes that Meta's T&C on Data Use do not provide for any significant restrictions for Meta on the use of ads-related data derived from or provided by OCAS providers to the benefit of Facebook Marketplace. [...].
- 7.3.4.1. Meta's T&C on Data Use*
- (1131) The Commission concludes that Meta's T&C on Data Use provide Meta with the possibility to use (i) ads-related data to the benefit of Facebook Marketplace within Facebook Marketplace, and (ii) ads-related data to promote Facebook Marketplace within the Meta platforms, including among others the main ones Facebook and Instagram.
- (1132) Meta has different terms and conditions defining its business relations with users, advertisers and app developers. As explained at recital (1130) above, the terms relevant for the purposes of this Decision are those applicable to advertisers, including OCAS providers.

<https://www.facebook.com/business/help/397103717129942?id=1913105122334058>, downloaded on 10 November 2022 (ID6513).

¹³³⁵ Meta's reply to Q68 of the Commission's RFI to Meta of November 2019 (ID5720).

¹³³⁶ "Ranking" mainly refers to the list of products shown to each individual user when opening Facebook Marketplace. This list differs for each user reflecting the particular interests of the user.

¹³³⁷ Meta's reply to Q14 of the Commission's RFI to Meta of May 2020 (ID5633).

- (1133) Those terms and conditions confer on Meta the following rights and are set out in the following documents¹³³⁸:
- (1) The right to use ads-related data, more specifically for the improvement of Meta products as indicated in the **Terms of Service**.
 - (2) The right to use ads-related data for the improvement of Meta products, as indicated in the **Privacy Policy** or **Data Policy**.
 - (3) The right to access or use Meta products for any commercial or business purpose, as indicated in the **Commercial Terms**.
 - (4) The right to use product catalogue data for the targeting of ads and in order to optimize Meta's systems, as indicated in the **Product Catalogue Terms**.
 - (5) The right to use event data also for the improvement of Meta products as indicated in the **Business Tool Terms**.
 - (6) Until 31 August 2021, the right to analyse a developer's app, website, content, and data for any purpose, "including commercial", as indicated in the **Platform Policy**.

7.3.4.1.1. The Terms of Service

- (1134) The Terms of Service apply to all users of Meta's services (which also include advertisers).^{1339,1340} They "govern interactions with Facebook [now Meta], including [end] users, advertisers, partners, publishers, etc. In addition, all third parties (including advertisers and developers) that use Facebook features and services must sign up as Facebook users and are also subject to the Data Policy (formerly the 'Privacy Policy' or 'Data Use Policy')"^{1341,1342}
- (1135) In application of the Terms of Service (point 3.2.), all users give Meta "permission to use" several types of information, including information about actions that the users

¹³³⁸ Also the Self-serve Advertising Terms are in principle of relevance. The Self-serve Advertising Terms apply to the use of Meta's services for the creation, submission and delivery of advertising. They set out "The following terms ("Self-Serve Advertising Terms" or "Self-Serve Ad Terms") apply to your use of Facebook Products (such as the self-service advertising interfaces and APIs) for creation, submission and/or delivery of any advertising or other commercial or sponsored activity or content (collectively, "Self-Serve Ad Interfaces") and any order you place through the Self-Serve Ad Interfaces ("Order"). You can target your desired audience by buying ads to be delivered on Facebook, Messenger, Instagram, our publisher network or any place where we serve ads."

¹³³⁹ Meta's reply to Q16 of the Commission's RFI to Meta of August 2019 (ID354).

¹³⁴⁰ Terms of Service, available at <https://www.facebook.com/terms.php>, downloaded on 29 August 2022 (ID5410). The Terms of Service set out: "These Terms govern your use of Facebook, Messenger and the other products, features, apps, services, technologies and software that we offer (the Meta Products of Products), except where we expressly state that separate terms (and not these) apply." The further link "What are the Meta Products?", clarifies that "Meta Products" cover a number of services including Facebook, Facebook Messenger, Instagram, Meta Audience Network as well as any other features and services, except for some, which have their own separate privacy policies and terms of service, such as Workplace, Free Basics, Messenger Kids and Oculus Products when using an Oculus account. "What are the Meta Products?", available at https://www.facebook.com/help/1561485474074139/?helpref=uf_share, downloaded on 29 August 2022 (ID5407).

¹³⁴¹ Meta's reply to Q16 of the Commission's RFI to Meta of August 2019 (ID354).

¹³⁴² The Terms of Service would be mainly addressed to the end users of Meta's products. However, other terms and conditions, which are addressed to businesses, such as the Commercial Terms, also make reference to the Terms of Service (see section 7.3.4.1.3)).

“have taken [...] next to or in connection with ads”.¹³⁴³ Since there is no limitation to this “permission to use”, it does not set any particular restriction for the use of such data to the benefit of Facebook Marketplace.

- (1136) The Terms of Service (point 3.3.) also give Meta a similar unrestricted right to use content that is covered by intellectual property rights, if shared, posted or uploaded, on Meta’s platforms, which would on this basis include content created by advertisers.¹³⁴⁴
- (1137) Furthermore, with regard to the improvement of products, point 1, which is about “Research ways to make our services better”, allows “analysing the data we have about our users”. The Commission understands that this implies that the Terms of Service cover also ads-related data, which may on this basis therefore be used by Meta to improve Meta’s services, including Facebook Marketplace.¹³⁴⁵ In addition, the Terms of Service make reference to Meta’s Privacy Policy / Data Policy which explains further the use of data for the purposes of developing and improving the Meta services, including Facebook Marketplace (see section 7.3.4.1.2 below).

7.3.4.1.2. The Privacy Policy / Data Policy

- (1138) The Privacy Policy (previously: Data Policy)¹³⁴⁶ of Meta indicates that “Facebook’s [now Meta’s] *Data Policy (formerly the ‘Data Use Policy’)* provides users with detailed information regarding the data users may choose to share with Facebook [now Meta], the purposes for which Facebook [now Meta] may use such data and the circumstances under which Facebook [now Meta] may share such data with third parties”. The Privacy Policy is addressed to all Meta users.¹³⁴⁷ As shown by the fact that Meta makes reference to that policy in the terms and conditions addressed to businesses, including advertisers, that policy is also relevant for advertisers (as for example in the Platform Policy, see recital (1155) below).
- (1139) The Privacy Policy that replaced the Data Policy mentions under “What information do we collect?” among others: “Content that you create [...] Messages you send and receive [...] Metadata about content and messages [...] Types of content you view or interact with [...] Apps and features you use, and what actions you take in them [...] Purchases or other transactions you make [...] The time, frequency and duration of your activities on our products [...]”.

¹³⁴³ The Terms of Service set out at 3.2: “You give us permission to use your name and profile picture and information about actions that you have taken on Facebook next to or in connection with ads, offers and other sponsored content that we display across our Products (...)”

¹³⁴⁴ The Terms of Services set out at point 3.3: “1. [...] when you share, post or upload content that is covered by intellectual property rights on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free and worldwide licence to host, use, distribute, modify, run, copy, publicly perform or display, translate and create derivative works of your content”.

¹³⁴⁵ The Terms of Service set out at point 1 that “We engage in research to develop, test and improve our Products. This includes analysing the data we have about our users and understanding how people use our Products for example by conducting surveys and testing and troubleshooting new features.”

¹³⁴⁶ Privacy Policy, available at <https://mbasic.facebook.com/privacy/policy/printable/>, downloaded on 14 September 2022 (ID5406). The Privacy Policy became effective on 26 July 2022. Until then, the Data Policy was applicable. Data Policy, available at <https://m.facebook.com/privacy/policy/version/20220104/> downloaded on 14 September 2022 (ID5357).

¹³⁴⁷ The Privacy Policy refers to “Meta Products” covering among others Facebook and Instagram (see footnote 1340).

- (1140) A similar provision exists as well in the previous Data Policy. In the section on *“Things you and others do and provide – Your usage”* of the Data Policy, Meta gave itself the right to collect data resulting from any user engagement with features of the platforms, without any limitation. In this respect, the Data Policy sets out: *“Your usage. We collect information about how you use our Products, such as the types of content that you view or engage with, the features you use, the actions you take, the people or accounts you interact with and the time, frequency and duration of your activities.”*
- (1141) The Commission understands this covers in particular ads-related data, which includes data about users’ engagements with ads. Event data and product catalogue data appear to be specifically covered by the section *“Information from partners”*.¹³⁴⁸ Under *“How do we use this information?”*, Meta sets out that it may use the information it has in different ways, including for the improvement of its products.¹³⁴⁹
- (1142) In the case the user accepts the conditions under which the Facebook Marketplace service is provided, Meta, according to the Data Policy, will collect ads-related data and use it for the improvement of its products, including Facebook Marketplace. This Decision does not take a position on the compliance of such practices with the applicable data protection rules.¹³⁵⁰
- (1143) Further terms and conditions govern specifically the business relations with advertisers and app developers, which will be set out in the following.

7.3.4.1.3. Commercial Terms

- (1144) The Commercial Terms¹³⁵¹ apply to any party who accesses or uses Meta Products¹³⁵² for any commercial or business purpose (and therefore needs to comply with these Commercial Terms), including advertising, operating an app on the Meta platform, using Meta’s measurement services, managing a group or a page for a business, or selling goods or services, including on Facebook Marketplace.¹³⁵³ The Commercial Terms (Section 1) grant a license to Meta to content that is covered by

¹³⁴⁸ In particular, the Data Policy indicates: *“Advertisers, app developers and publishers can send us information through Meta Business Tools that they use, including our social plug-ins (such as the Like button), Facebook Login, our APIs and SDKs or the Meta pixel. These partners provide information about your activities off of our Products – including information about your device, websites you visit, purchases you make, the ads you see and how you use their services – whether or not you have an account or are logged in to our Products.”* Similar provisions exist in the Privacy Policy under *“Information from partners, vendors and third parties”*, such as the following excerpt: *“Here are some examples of information that we receive about you: Your device information; Websites that you visit and cookie data, such as through Social plugins or the Meta pixel; Apps you use; Games you play; Purchases and transactions you make; The ads you see and how you interact with them; How you use our Partners’ products and services, online or in person.”*

¹³⁴⁹ The Data Policy sets out: *“We use the information we have to develop, test and improve our Products, including by conducting surveys and research, and testing and troubleshooting new products and features.”* The Privacy Policy indicates: *“We use information we have to provide and improve our products.”*

¹³⁵⁰ This Decision also does not take a position on whether any of Meta’s terms and conditions were imposed on end users.

¹³⁵¹ Commercial Terms, available at https://www.facebook.com/legal/commercial_terms, downloaded on 29 August 2022 (ID5413).

¹³⁵² For the definition of „Meta Products”, see footnote 1340.

¹³⁵³ Meta’s reply to Q16 of the Commission’s RFI to Meta of August 2019 (ID354).

intellectual property rights that third parties share, post or upload on or in connection with Meta's services.¹³⁵⁴

- (1145) Under the Commercial Terms, business users give Meta far-reaching permissions regarding content that is covered by intellectual property rights which allows Meta to use such content. It is uncertain whether in the case of ads the "use" would cover also the use of the data relating to that ad. In any case, the Commercial Terms do not define any limitation for Meta in its use of ads-related data with respect to Facebook Marketplace.

7.3.4.1.4. The Product Catalogue Terms

- (1146) Advertisers that use Meta's Catalogue feature to upload their inventory on Meta Platforms have to agree to its Product Catalogue Terms.
- (1147) Meta states in its Product Catalogue Terms (point 1) that it may use product catalogue data for the targeting of ads and in order to optimize its systems. The Product Catalogue Terms do not foresee any limitations on Meta's use of product catalogue data and, in particular, they do not exclude such use in business areas where Meta competes with advertisers, such as Facebook Marketplace.¹³⁵⁵

7.3.4.1.5. The Business Tool Terms

- (1148) The Business Tool Terms¹³⁵⁶ govern third parties' (including advertisers') use of Meta Business Tools¹³⁵⁷ and particularly (i) the provision of personal data about third parties' customers and users to Meta via those business tools; and (ii) the use of this data by Meta. They cover the "Business Tool data" which includes (i) contact information (information that personally identifies individuals, such as names, e-mail addresses, phone numbers, etc. which is normally hashed prior to transmission to Meta) and (ii) event data¹³⁵⁸ (other information third parties may share about their

¹³⁵⁴ In particular, they set out "1. Licences: As described in "The permissions you give us" section in our Terms, you grant us a licence to content that is covered by intellectual property rights (e.g. photos or videos) that you share, post or upload on or in connection with our Meta Products. For any access or use of the Meta Products, that licence applies to content that you or someone on your behalf (such as your agency that places an ad for you or your service provider that manages your Page content for you) makes available on or in connection with any Meta Product." The Terms of Service (or "Terms") to which the excerpt above makes reference were described already above (see section 7.3.4.1.1). The cross-reference from the Commercial Terms to the Terms of Service seems to imply that the Terms of Service are also addressed to advertisers, even though the wording of the Terms of Service rather appears to apply to users of the social network than to advertisers.

¹³⁵⁵ In the Product Catalogue Terms, Meta sets out at point 1: "Facebook may modify and use the content that you upload to, share with or otherwise provide to Facebook in connection with the product catalogue feature to create, modify and run advertisements on your behalf and provide related measurement services. Product catalogue content will also enable us to better target ads and to optimise our systems. [...]". Product Catalogue Terms, available at https://m.facebook.com/legal/product_catalog_terms/, downloaded on 13 September 2022 (ID5415).

¹³⁵⁶ Business Tool Terms, available at <https://www.facebook.com/legal/terms/businessstools>, downloaded on 14 September 2022 (ID5414); they were later updated in order to reflect the change in the company name from Facebook to Meta.

¹³⁵⁷ "The Meta Business Tools", available at <https://www.facebook.com/help/331509497253087>, downloaded on 13 September 2022 (ID5409).

¹³⁵⁸ "Event Data" is defined at point 1.a.ii of the Business Tool Terms as follows: "'Event Data' is other information that you share about people and the actions that they take on your websites and apps or in your shops, such as visits to your sites, installations of your apps, and purchases of your products. While Event Data does include information collected and transferred when people access a website or app with Facebook Login or Social Plugins (e.g. the Like button), it does not include information

customers and the actions they take on their websites and apps or in their stores, such as visits to sites, installations of apps and purchases).¹³⁵⁹

- (1149) The Business Tool Terms specify a number of uses Meta can make of that data, including to improve the experience for people who use Meta's products (point 2(a)v.2).¹³⁶⁰ Event data may, therefore, be used by Meta to improve Meta's products, which includes Facebook Marketplace.
- (1150) In its Business Tool Terms, Meta defines certain limitations¹³⁶¹ in its use of event data for ad targeting (i.e. the definition of a targeted audience) and the delivery optimisation of ads¹³⁶² (i.e. the process of selecting the exact users among the target group who ultimately receive the ad). At point 2.a.v.1,¹³⁶³ Meta sets out that in connection with ad targeting and delivery optimisation, it will:
- (1) *“(i) use your Event Data for delivery optimisation only after aggregating such Event Data with other data collected from other advertisers or otherwise collected on Facebook Products”* (in the following “first event data clause”) –

created when an individual interacts with our platform via Facebook Login, Social Plugins, or otherwise (e.g. by logging in, or liking or sharing an article or song). Information created when an individual interacts with our platform via Facebook Login, Social Plugins, or otherwise is governed by the Platform Terms.” The last sentence appears to indicate that the Facebook Login used by users to access Facebook and the like buttons used by a user on Facebook is regulated in the Platform Terms which are dealt with further below (see section 7.3.4.1.6 below)

¹³⁵⁹ The Business Tool Terms explain (under the heading “Background: Ad products and other business tools”): *“When you use the Facebook Business Tools to send us or otherwise enable the collection of Business Tool Data (as defined in Section 1 below), these terms govern the use of that data. [...] We may receive Business Tool Data as a result of your use of Facebook ad products, in connection with advertising, matching, measurement and analytics. Those ad products include, but are not limited to, Facebook pixel, Conversions API (formerly known as server-side API), Facebook SDK for App Events, offline conversions, App Events API and offline events API. We also receive Business Tools Data in the form of impression data sent by Facebook social plugins (for example, the Like and Share buttons) and Facebook Login, and data from certain APIs such as Messenger customer match via the Send API. Facebook may also offer pilot, test, alpha or beta programmes from time to time, through which you may provide business tool data.”*

¹³⁶⁰ In particular, *“To improve the experience for people who use Facebook Company Products, we may also use Event Data to promote safety and security on and off the Facebook Company Products, for research and development purposes and to maintain the integrity of and to improve the Facebook Company Products.”*, see point 2(a)v.2 of the Business Tool Terms. The term “Facebook Company Products” was later changed to “Meta Company Products” and covers among others Facebook and Instagram.

¹³⁶¹ It is worth noting that under the Customer Lists Custom Audiences Terms (also “Custom Audience Terms”), which apply to advertisers who use Meta's Custom Audience feature, or target ads using any audience created from the Custom Audience feature, Meta appears to provide far-reaching protections for (hashed) customer lists submitted by advertisers to Meta for the purpose of the creation of custom audiences by restricting its possibilities of use *“to provide services to you”*. As a result, the customer lists which are provided to Meta for custom audiences are not part of the ads related data. However, this protection only relates to custom audiences submitted by advertisers to Meta (not to website custom audiences which result from the advertisers' use of Meta Business Tools and the actions users take on the advertisers' websites). Custom Audience Terms, available at <https://www.facebook.com/legal/terms/customaudience>, downloaded 14 September 2022 (ID5306).

¹³⁶² [...]. Meta's reply to Q13 and Q16 of the Commission's RFI to Meta of July 2021.

¹³⁶³ In particular, Meta indicates in its Business Tool Terms: *“1. You may provide Event Data to improve ad targeting and delivery optimisation of your ad campaigns. We may correlate that Event Data to people who use Facebook Company Products to support the objectives of your ad campaign, improve the effectiveness of ad-delivery models and determine the relevance of ads to people. We may use Event Data to personalise the features and content (including ads and recommendations) that we show people on and off our Facebook Company Products.”*

this refers to the delivery of ads placed on Meta’s platforms via Meta’s ad models and the Meta Ads Manager. Meta commits that any advertiser’s event data would only be used for such delivery optimization after aggregating the advertiser’s event data with other data. [...].¹³⁶⁴

- (2) (ii) *not allow other advertisers or third parties to target advertising solely on the basis of your Event Data*” (in the following “second event data clause”) Meta explains that “[...]”¹³⁶⁵ [...]”¹³⁶⁶

(1151) While the first event data clause relates to delivery optimization, the second event data clause deals specifically with targeting.

(1152) However, while the provisions mentioned above provide certain protections, none of them include any protection regarding the use of Business Tool Data / event data by Meta to the benefit of Facebook Marketplace. Meta’s own advertisement activities for its own products, in particular Facebook Marketplace, are not mentioned and cannot be considered as being covered for the following reasons:

- (1) In general, the Business Tool Terms set out rules governing Meta’s relation to all advertisers using Meta Business Tools. Meta characterises itself as the provider of those Business Tools and the recipient of event data, as the introductory sentence to “Background” shows: “*We may receive Business Tool Data as a result of your use of Facebook ad products.*” The terms “advertisers” or “other advertisers” therefore cover Meta’s advertising clients, but not Meta as an advertiser for Facebook Marketplace. It also cannot be considered that the term “third party” would include Meta itself.
- (2) With respect to the first event data clause: Considering that the Business Tool Terms address all advertisers, the first event data clause can only relate to delivery optimization, which affects all advertisers. Insofar as Facebook Marketplace uses the same tools as the other advertisers (mainly the Meta Ad Manager), the same rule should apply also to Facebook Marketplace. Without any explicit mentioning, it can, however, not be deduced from this clause that it would also cover ads for Facebook Marketplace delivered via tools other than the generally available advertising tools and only available to Meta, such as Quick Promotions or Jewel Notifications.¹³⁶⁷
- (3) The second event data clause by which Meta commits not to “*allow other advertisers or third parties to target advertising solely on the basis of your Event Data*” equally does not include Meta or, in particular, Facebook Marketplace as an advertiser since it defines the provision for “*other advertisers or third parties*”. Meta is on this basis therefore not prevented from defining specific target audiences for Facebook Marketplace which are based solely on the basis of a competitor’s event data.

(1153) Therefore, while Meta defines certain protections against disclosure and conquering via event data among advertisers, Meta’s Business Tool Terms do not restrict the

¹³⁶⁴ Meta’s reply to Q45 of the Commission’s RFI to Meta of August 2019 (ID344).

¹³⁶⁵ Meta’s reply to Q25a of the Commission’s RFI to Meta of July 2021 (ID6447).

¹³⁶⁶ Meta’s reply to Q25a of the Commission’s RFI to Meta of July 2021 (ID6447).

¹³⁶⁷ [...]. Meta’s reply to Q1c of the Commission’s RFI to Meta of August 2022 (ID5298).

[...]. Meta’s reply to Q1b of the Commission’s RFI to Meta of August 2022 (ID5298).

[...].

disclosure of Business Tool Data to Facebook Marketplace and the use of event data in favour of Facebook Marketplace.

7.3.4.1.6. The Platform Policy / the Platform Terms

(1154) The Platform Terms were introduced on 31 August 2020. Together with the Developer Policies they replaced the Facebook Platform Policy which was applicable until then. The Platform Policy, respectively the Platform Terms and the Developer Policies, with which all developers need to comply, define the business relation between Meta and developers who make use of Meta's Platform.¹³⁶⁸ Those terms typically also apply to OCAS providers providing their services via websites and apps and using Meta's Business Tools for websites and apps.

7.3.4.1.6.1. The Platform Policy

(1155) The Platform Policy¹³⁶⁹ defined far-reaching rights for Meta. It set out at point 7 under the title "*Things you should know*": "1. We can analyze your app, website, content, and data for any purpose, including commercial. 2. We can monitor or collect data related to your use of SDKs. We will use information we receive from you or in connection with your Platform integration in accordance with our Data Policy."

(1156) Due to the broad scope including "*your app, website, content, and data*", this provision covers also ads-related data. The Platform Policy did not contain any specific limitation on the data use by Meta regarding those developers who are competitors to any Meta business, such as Facebook Marketplace. This provision therefore allowed Meta to use also data derived from or provided by competitors relating to their use of Meta's advertising services for "*any purpose, including commercial*", i.e. also for Facebook Marketplace.¹³⁷⁰

7.3.4.1.6.2. The Platform Terms and Developer Policies

(1157) With the Platform Terms, developers give Meta a wide-reaching licence regarding their data, content and their apps.¹³⁷¹ Meta may use any information, data, and other content made available by the developer to Meta, which could therefore include event and product catalogue data insofar as a developer makes such data available to

¹³⁶⁸ The subsequent Platform Terms define the Platform as "*the set of APIs, SDKs, tools, plugins, code, technology, content, and services that enables others, including app developers and website operators, to develop functionality, retrieve data from Facebook and any other Facebook Products, or provide data to us*". Platform Terms, available at https://developers.facebook.com/terms/dfc_platform_terms/, downloaded on 13 September 2022 (ID5408).

¹³⁶⁹ Platform Policy, available at <https://developers.facebook.com/docs/development/terms-and-policies/legacy-facebook-platform-policy/>, downloaded on 13 September 2022 (ID5399).

¹³⁷⁰ Point 7.1 of the Platform Policy: "*You give us all rights necessary to use any API, SDK, or other technology you provide us to enable your app or bot to work, including the right to incorporate information you provide to us into other parts of Facebook, and the right to attribute the source of information using your name or logos.*" – This could have allowed Meta to incorporate information derived from or provided by OCAS also into Facebook Marketplace.

¹³⁷¹ Point 2.b.i. of the Platform Policy: "*You grant us a non-exclusive, transferable, sublicensable, royalty-free, worldwide license to: host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of any information, data, and other content made available by you or on your behalf (including by your Service Providers or through your App) in connection with Platform (collectively, "Your Content") for any business purpose in connection with operating, providing, or improving Platform or any other Meta Product.*"

Meta. Meta has also the right to use a developer's app among others for the improvement of the Platform.¹³⁷²

- (1158) The Developer Policies¹³⁷³ include a section on “*Things you should know*” as the previous Platform Policies. However, they no longer list the provisions mentioned above (see recital (1155) above).
- (1159) Neither the Platform Policy nor the Platform Terms and Developer Policies contain any restriction for Meta's use of data with respect to Facebook Marketplace or generally for Meta group companies/businesses which compete with Meta's advertisers.

7.3.4.1.7. Conclusion on Meta's T&C on Data Use

- (1160) None of Meta's T&C on Data Use includes any relevant limitations on Meta's use of the ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace. The only limitations foreseen, namely those in the Business Tool Terms, are of very little importance and do not apply to Meta itself (including Facebook Marketplace) when acting as advertiser.¹³⁷⁴
- (1161) Some of Meta's T&C on Data Use contain provisions by which Meta commits not to disclose to third-parties data it receives or derives from other third parties (e.g. Business Tool Terms, Custom Audience Terms).¹³⁷⁵ However, none of Meta's T&C on the Data Use prevents Meta from disclosing or using data derived from or provided by OCAS providers for the benefit of Facebook Marketplace.
- (1162) Starting from 7 March 2024, Meta has to comply with Article 6(2) of the DMA, which prevents gatekeepers from using non-public data from their business users in competition against them. Meta sets out in its DMA compliance report that it introduced the following measures:
- (1) technical safeguards and controls designed to prevent and confirm that Meta does not use non-public business user data in competition with its business users;
 - (2) expansion and formalisation of its internal pre-launch product review process to include a mandatory assessment of whether the product or feature launch or changes which involve the use of new data or the use of data in a different way is compliant with Meta's obligations under Article 6(2);
 - (3) training for all relevant personnel designed to ensure that they understand and comply with the requirements of Article 6(2); and

¹³⁷² Point 2.b.ii. of the Platform Policy: “*You grant us a non-exclusive, transferable, sublicensable, royalty-free, worldwide license to: host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your App for any business purpose in connection with operating, providing, or improving Platform.*”

¹³⁷³ Developer Policies, available at <https://developers.facebook.com/devpolicy/>, downloaded on 27 September 2024 (ID13119).

¹³⁷⁴ An exception are also the Custom Audience terms which provide that Meta may not use an advertiser's Custom Audience(s) except to provide services to this advertiser. This protection only relates to custom audiences submitted by advertisers to Meta (not to website custom audiences, which result from the advertisers' use of Meta Business Tools and the actions users take on the advertisers' websites).

¹³⁷⁵ Business Tool Terms (e.g. points 1.b. and 1.c.) and the Custom Audience Terms (e.g. point 4 and 5). The Product Catalogue Terms do not include any provision on confidentiality or non-disclosure.

- (4) updating of the Code of Conduct to make clear that Meta's employees will not use non-public advertising data to develop products in competition with Meta's advertisers.¹³⁷⁶
- (1163) Those measures relate to data that is shared and generated by Meta's advertisers for the purposes of advertising, including through Ads Manager, Meta Business Suite, and Meta Business Tools services as well as other types of data generated or provided by a business user which competes with one or more of Meta's products and features.¹³⁷⁷
- (1164) Meta has to some extent modified some of its T&C on Data Use in the course of time. However, neither in the framework of the DMA nor otherwise has Meta indicated to the Commission that its T&C on Data Use have introduced a restriction on Meta's possibilities to use ads-related data to the benefit of Facebook Marketplace. The Commission therefore considers that Meta's T&C on Data Use are still in force and still do not contain any such restrictions.
- 7.3.4.2. [...]
- (1165) [...] regarding its online display advertising services and business tools.¹³⁷⁸ [...].¹³⁷⁹
- (1166) [...].¹³⁸⁰
- (1167) [...].
- (1168) [...] ¹³⁸¹ [...].
- (1169) [...].
- (a) [...] ¹³⁸² [...],
- (b) [...] and
- (c) [...] ¹³⁸³
- [...].
- (1170) [...].
- (1171) [...] ¹³⁸⁴
- (1172) [...].

¹³⁷⁶ Meta's compliance with the Digital Markets Act, Non-confidential public summary of Meta's compliance report, 6 March 2024, available for download at <https://digital-markets-act-cases.ec.europa.eu/reports/compliance-reports> (ID13022).

¹³⁷⁷ Meta's compliance with the Digital Markets Act, Non-confidential public summary of Meta's compliance report, 6 March 2024, available for download at <https://digital-markets-act-cases.ec.europa.eu/reports/compliance-reports> (ID13022).

¹³⁷⁸ [...].

¹³⁷⁹ [...].

¹³⁸⁰ [...].

¹³⁸¹ [...] (ID354 / Annex: ID391).

¹³⁸² [...].

¹³⁸³ [...].

¹³⁸⁴ [...] (ID6447).

7.3.4.3. Conclusion on Meta's terms and conditions

(1173) As set out in section 7.3.4.1.7, Meta's T&C on Data Use do not foresee any relevant restriction on Meta's possibility to use ads-related data derived from or provided by OCAS providers to the benefit of Facebook Marketplace.

(1174) [...].

(1175) [...].

(1176) Meta has not contested the Commission's description of Meta's terms and conditions (section 7.3.4.1) and of the [...] (section 7.3.4.2).

7.3.5. *Abusive nature of Meta's terms and conditions allowing for Meta's use of ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace*

(1177) The Commission concludes that the T&C on Data Use providing unrestricted possibilities for Meta to make use of ads-related data for the benefit of Facebook Marketplace constitute an abuse under Article 102(a) TFEU because:

- (1) The T&C on Data Use have been unilaterally imposed by Meta on OCAS providers (see section 7.3.5.1);
- (2) The T&C on Data Use are unfair based on the following:
 - (a) Meta's possibility under the T&C on Data Use to use ads-related data derived from or provided by OCAS providers without any significant limitations for the benefit of Facebook Marketplace is detrimental to the interests of OCAS providers (section 7.3.5.2); and
 - (b) The lack of restrictions on the use of ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace in the T&C on the Data Use is not necessary for the achievement of a legitimate objective and can accordingly also not be considered as proportionate for that purpose (section 7.3.5.3).

(1178) Although it would not be necessary to demonstrate that Meta made actual use of the ads-related data to the benefit of Facebook Marketplace to reach the conclusion that the lack of restrictions in the T&C on Data Use constitutes unfair terms and conditions in breach of Article 102(a) TFEU, there is however evidence that Meta availed itself of the flexibility granted by the T&C on Data Use in several instances (section 7.3.5.4), which further underlines the benefit for Meta of its T&C on Data Use.

7.3.5.1. The T&C on Data Use allowing for the unrestricted use of ads-related data for the benefit of Facebook Marketplace are unilaterally imposed by Meta on OCAS providers

(1179) As explained in section 6.4, Meta has a dominant position on each national market for online display advertising on social media platforms in the EEA. Similarly to other advertisers, also some OCAS providers consider Meta as a must-have for online display advertising services. Also, the national markets for online display advertising on social media platforms in the EEA are characterised by a lack of countervailing buyer power on the part of advertisers.

(1180) Regarding the must-have nature of Meta's advertising services and the importance of having access to the associated business tools used to collect data, the Commission

notes that although advertisers are not obliged to use the Meta Pixel or any other business tool when using the online display advertising services of Meta, without the Meta Pixel or the SDK, they will not be able to measure the effectiveness of their ads listed on Meta's platforms (by monitoring the users' subsequent actions, such as online purchases) and they will not be able to retarget users with ads based on those actions. While it is therefore possible to use Meta's online display advertising services without the Meta Pixel or the SDK, to do so may significantly decrease the value of the online display advertising services.

- (1181) This has been confirmed by the following results of the Commission's market investigation.
- (1182) The majority of OCAS providers that replied to the Commission's request for information indicated that they used or had used Meta Pixel in the last 5 years.¹³⁸⁵ Similarly, the majority of media agencies that replied to the Commission's request for information indicated that at least 60% of their advertising clients who used Meta's advertising services also used Meta Pixel (for websites) in 2022.¹³⁸⁶
- (1183) Both the majority of OCAS providers¹³⁸⁷ and media agencies¹³⁸⁸ that replied to the Commission's request for information indicated that the use of Meta Pixel is very important for the use of Meta's advertising services. This was also confirmed for Meta SDK: approximately half of OCAS providers¹³⁸⁹ and the majority of media agencies¹³⁹⁰ that replied to the Commission's request for information indicated that the use of Meta SDK is either very or somewhat important for the use of Meta's advertising services.
- (1184) It is thus not surprising that the majority of the respondents to the Commission's requests for information to OCAS providers indicated that they were not able to negotiate better terms with Meta.¹³⁹¹ All OCAS providers are subject to Meta's general terms and conditions, including the T&C on Data Use. Meta therefore applied a "take-it-or-leave it" approach which shows a significant imbalance between Meta and its advertisement clients.
- (1185) Several OCAS providers indicated that the T&C on Data Use, are unilaterally imposed by Meta:
- (1) According to [...].¹³⁹²
 - (2) According to [...].¹³⁹³
 - (3) According to [...].¹³⁹⁴. [...].¹³⁹⁵

¹³⁸⁵ Replies to Q.C.1 of the Commission's RFI to OCAS providers of September 2023, as well as replies to Q.C.2 of the Commission's RFI to [...] of September 2023.

¹³⁸⁶ Replies to Q.B.4 of the Commission's RFI to media agencies of September 2023.

¹³⁸⁷ Replies to Q.C.2 of the Commission's RFI to OCAS providers of September 2023, as well as replies to Q.C.2 of the Commission's RFI to [...] of September 2023.

¹³⁸⁸ Replies to Q.B.2 of the Commission's RFI to media agencies of September 2023.

¹³⁸⁹ Replies to Q.C.5 of the Commission's RFI to OCAS providers of September 2023, as well as replies to Q.C.5 of the Commission's RFI to [...] of September 2023.

¹³⁹⁰ Replies to Q.B.5 of the Commission's RFI to media agencies of September 2023.

¹³⁹¹ Replies to Q49 of the Commission's RFI to OCAS providers of March 2020.

¹³⁹² [...]

¹³⁹³ [...]

¹³⁹⁴ [...]

¹³⁹⁵ [...]

- (4) According to [...] ¹³⁹⁶ [...] ¹³⁹⁷
- (1186) Other OCAS providers replied that they were not able to enter into an agreement with Meta in order to ensure, for example, a better protection of their data or indicated that they operate under Meta's standard T&C on Data Use. ¹³⁹⁸
- (1187) [...] ¹³⁹⁹
- (1188) [...] ¹⁴⁰⁰
- (1189) The conclusion that the T&C on Data Use allowing for the unrestricted use of ads-related data for the benefit of Facebook Marketplace are unilaterally imposed by Meta on OCAS providers is also not contradicted by Meta's arguments that:
- (1) It has not imposed abusively its T&C on Data Use since there is no causality between Meta's market position and its T&C on Data Use considering that other non-dominant advertising platforms use similar provisions in their terms and conditions. ¹⁴⁰¹
 - (2) Apple's introduction of ATT in April 2021 has diminished the value of Meta's Business Tools. ¹⁴⁰²
- (1190) First, and as already shown above (see section 7.3.1), causality does not form part of the legal test for Article 102(a) TFEU.
- (1191) The question of causality is moreover unrelated to the question whether Meta has *imposed* its T&C on Data Use on its advertising clients, in particular OCAS providers. Rather, the imposition is related to whether Meta's partners could negotiate different terms and conditions, which they could not. Meta argues that it did not impose its T&C on Data Use because OCAS providers do not receive much traffic via Facebook and are therefore not dependent on Facebook as an advertising platform.
- (1192) However, as explained in section 6.4.2, OCAS providers are dependent on Meta as an advertising platform and have to accept Meta's general terms and conditions given that they cannot avoid purchasing Meta's service of online display advertising on social media platforms. Those terms and conditions are therefore indeed imposed – the only other option being not to contract with Meta at all for this service [...], see recital (1186)). In addition, in any event, the amount of traffic directly received from Meta's advertising platforms is not representative of the importance of the platform for advertisers. Advertising in general does not aim only at immediate consumer reactions. Online advertising, in particular, does not only seek to provoke immediate clicks on the displayed ads. It is also used to a large extent to increase brand awareness. A higher brand awareness should also lead to visits on the advertisers' websites and to purchases, but subsequently, not necessarily as immediate clicks on the ads (see also recitals (368) to (374) above). Meta's dominance in the national markets for online display advertising on social media platforms was shown above (see section 6.4), which reflects advertisers' dependency on Meta and Meta's

¹³⁹⁶ [...]

¹³⁹⁷ [...]

¹³⁹⁸ [...]

¹³⁹⁹ [...]

¹⁴⁰⁰ See section 7.3.4.2, in particular recital (1166).

¹⁴⁰¹ SO Response, paragraphs 412 to 442 and Comments on the LoF, paragraph 240 (b).

¹⁴⁰² SO Response, paragraphs 139 to 143 and Comments on the LoF, paragraph 250.

resulting capability to impose its T&C on Data Use on its advertising clients. Actual traffic resulting from ads on Facebook is not a relevant element in this analysis.

- (1193) Similarly, the fact that other non-dominant advertising platforms use similar provisions in their terms and conditions is not relevant for the present purposes, because, if even true, it would not change the conclusion that the T&C on Data Use are unilaterally imposed by Meta on OCAS providers.
- (1194) Second, as regards Apple's introduction of ATT, as set out above (see recital (1180) above), Meta's advertising services can in principle also be used without its business tools but this would render the advertising less effective. The fact that Apple's ATT policy (see section 4.4.3.2), might have lowered the amount and quality of the data Meta can gather in iOS devices via its business tools does not change the finding that it is dominant in the national markets for online display advertising on social media platforms and that it has imposed its T&C on Data Use on its advertising clients. The market share data does not show substantive changes in Meta's market share on the national markets for online display advertising on social media platforms following the introduction of Apple's ATT in April 2021. Meta has not provided any evidence of negotiations with advertising clients about its terms and conditions following Apple's introduction of ATT.
- 7.3.5.2. The lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the T&C on Data Use is detrimental to the interests of OCAS providers
- (1195) The Commission finds that the T&C on Data Use allowing Meta to use ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace are detrimental to the interests of OCAS providers. This is because they provide substantial benefits to Facebook Marketplace (see section 7.3.5.2.1), which translate into harm for OCAS providers (see section 7.3.5.2.2).
- (1196) Meta raised the claim that its T&C on Data Use are in fact beneficial to OCAS providers and other advertisers since any use of ads-related data by Meta to the benefit of Facebook Marketplace would improve not only Facebook Marketplace, but also Facebook as an advertising platform for OCAS providers and other advertisers.¹⁴⁰³ With the latter, Meta effectively raised an efficiency argument which is dealt with below in section 7.3.6.
- 7.3.5.2.1. The lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the T&C on Data Use provide substantial benefits to Facebook Marketplace
- (1197) The lack of restrictions on the use of ads-related data in the T&C on Data Use provide substantial benefits to Facebook Marketplace (for which Meta does not compensate OCAS providers). These benefits include: the possibility that Meta uses the ads-related data (i) to better promote Facebook Marketplace, notably through targeting and soliciting of potential buyers and sellers, (ii) for the improvement and optimization of Facebook Marketplace, which results in making Facebook Marketplace more competitive, and (iii) for overall strategic advantages.

¹⁴⁰³ SO Response, paragraphs 394 to 411.

7.3.5.2.1.1. The possibility to solicit buyers and sellers on the basis of the ads-related data

(1198) Ads-related data can be used by Facebook Marketplace with a view to “soliciting” buyers (corresponding to “conquesting” in Meta’s Business Tools Terms when referred to advertisers). “Soliciting” refers to the targeting of exactly those users who show an interest in a competitor’s product, in view of the fact that they might as well be interested in a similar product offered on Facebook Marketplace. This may also apply to sellers, if Facebook Marketplace can, on the basis of ads-related data, identify the sellers on competing OCAS platforms and deduce further information on them, such as their volume of sales. Solicitation can also occur if Meta uses ads-related data from competing OCAS providers in order to select the users to whom the targeted Facebook Marketplace tab is shown.

(1199) The different types of ads-related data allow to a differing extent the solicitation of buyers or sellers. More specifically:

- (1) **Impression data:** The knowledge by Facebook Marketplace about the exact audience that effectively received an ad about a specific product by its competitors gives Facebook Marketplace information not only about its competitors’ marketing strategy, but also about users who might be most promising potential customers also for similar products offered on Facebook Marketplace. Facebook Marketplace would then have the possibility to adapt its marketing strategy accordingly and to target specifically those users who are of interest for its competitors and thereby solicit potential buyers.

Internal documents¹⁴⁰⁴ explain, [...].

- (2) **Ad click data:** Knowing the ad-click data derived from its competitors’ use of Meta’s advertising services gives Facebook Marketplace information in real time about users who currently show a concrete interest in buying a product promoted by one of its competitors. This information can be of particular importance because it captures users at the end of the so-called “marketing funnel”¹⁴⁰⁵, *i.e.* users who are not just generally interested in certain products, but those who are likely to have a concrete intention to buy at this point in time. Knowing those users, *i.e.* potential buyers, and being able to address exactly those with own ads therefore gives an advantage to Facebook Marketplace, since other OCAS providers do not have access to similar information about Facebook Marketplace or any other market participant.

An internal document of 2018 [...].¹⁴⁰⁶

In addition, ad clicks may be based on event data. When advertisers use Meta Pixel or SDK, they may – based on the users’ actions on their websites (*e.g.* placement of a product into the cart without having concluded the purchase) –

¹⁴⁰⁴ This problem is stated in an internal document: “[...], Internal e-mail exchange of October 2018, Subject: [...] (ID2122-10902). Another internal document indicates “[...] (ID2122-11588).

¹⁴⁰⁵ The “marketing funnel” or “sales funnel” is a marketing concept which describes a customer’s journey from becoming aware of a product until the actual purchase. Advertisement measures may therefore principally aim at increasing the (potential) customers’ awareness about a brand, which might not lead to immediate purchases but may do so later (brand awareness) or at triggering an actual purchase (direct response). See also recitals (367) and (445).

¹⁴⁰⁶ [...] (ID2122-13864).

retarget those users with ads on Meta's platforms. [...] in the following internal e-mail of 1 November 2017: [...].¹⁴⁰⁷

- (3) **Product catalogue data:** As set out above (see recital (1125)(3) above), product catalogue data may include data elements which identify an OCAS provider's seller. An example would be the description of the product included in an ad placed by an OCAS provider, where such a description would contain unique information on the seller of the product (e.g. a website name or URL). This information allows addressing such sellers directly with the aim of soliciting them. Catalogue data can therefore be used by Meta to target ads better as well as to optimise Meta's systems overall.¹⁴⁰⁸
- (4) **Event data:** Similar to ad click data, event data can give a detailed insight into the intent by a user to buy certain products or, more generally, to interact with certain suppliers. Having this information about users' actions on competitors' websites can give a particular advantage to Facebook Marketplace which can tailor its strategies to address exactly those customers having taken certain actions on competitors' websites and even target those with own ads. An internal document [...].¹⁴⁰⁹

7.3.5.2.1.2. The possibility to improve/optimize Facebook Marketplace on the basis of the ads-related data

- (1200) A further advantage for Facebook Marketplace results from the possibility to improve/optimize Facebook Marketplace on the basis of ads-related data derived from or provided by OCAS providers by using such data in Facebook Marketplace's models. This advantage equally covers all ads-related data types indicated above (see recital (1199) above).
- (1201) [...].
- (1202) Marketplace models are therefore used in order to improve the aggregation of listings from multiple sellers for display to buyers on Facebook Marketplace. The ranking of products and services shown on Facebook Marketplace differs for each individual user. It is organised on the basis of Marketplace models optimized for each user in order to reflect the user's interests.
- (1203) Using the ads-related data for Marketplace models allows Meta to take into account any interests which a specific user has expressed for the products of other OCAS providers in its ranking of products on Facebook Marketplace. Without this possibility, Facebook Marketplace could only show listings to users which reflect their earlier searches on Facebook Marketplace and general interests. However, Meta would not have been able to adapt its ranking in order to reflect interests, which users have shown through impression data, ad click data, product catalogue data or event data related to competitors' advertisement activity on Meta's platforms.
- (1204) For **impression data and ad click data**, an internal document most likely of 2018 [...].¹⁴¹⁰

¹⁴⁰⁷ [...] (ID1499-13667).

¹⁴⁰⁸ An internal e-mail exchange of April 2018 [...] (ID2122-9798).

¹⁴⁰⁹ [...] (ID4320-30727).

¹⁴¹⁰ [...] (ID2122-13864).

- (1205) Similar considerations apply to **event data**. As a Facebook Marketplace's competitor explains: [...].¹⁴¹¹
- (1206) **Product catalogue data** can be used for learning purposes, notably to know what products rivals consider more relevant to include in their catalogue, including any description, which would help improve Facebook Marketplace. Meta itself considers that [...].¹⁴¹² [...] an internal e-mail from 2016 [...].¹⁴¹³ In this respect, there are certain machine learning models that may utilise catalogue information from third parties to optimise Facebook Marketplace. [...].¹⁴¹⁴
- (1207) More generally, ads-related data may also allow Meta to better extract information on consumer purchasing intent, which is a key business capability of any OCAS provider. As such, ads-related data derived from or provided by OCAS providers may help to improve many of Meta's commercial analytics capabilities, which in turn help to optimise Facebook Marketplace. [...].¹⁴¹⁵ As such, by virtue of its access to ads-related data derived from or provided by competitors, Meta compels OCAS providers to contribute to improving the products they are competing with.

7.3.5.2.1.3. Overall strategic advantages

- (1208) In addition to the specific benefits set out in the previous sections, access to ads-related data derived from or provided by OCAS providers (individually and aggregated) provides Facebook Marketplace with a significant strategic advantage. This is because access to ads-related data derived from or provided by OCAS providers gives Meta knowledge of the strengths and weaknesses of other OCAS providers as well as users' purchasing behaviour. It thereby enables Meta to reduce risks and strategic uncertainties associated with its investments in the markets for OCAS in various Member States as well as to target markets where other OCAS providers are weaker.
- (1209) This is confirmed by the following responses to the Commission's market investigation.
- (1210) For instance, [...] stated that [...].^{1416,1417}
- (1211) Similarly, [...] stated that [...].¹⁴¹⁸

7.3.5.2.1.4. Overall impact on Facebook Marketplace of the lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the T&C on Data Use

- (1212) Due to the absence of any limitation regarding Meta's use of the ads-related data in Meta's T&C on Data Use, Meta can maintain a maximum of freedom regarding the use of the ads-related data. Based on its T&C on Data Use, it has the possibility to use any ads-related data also for the benefit of the Facebook Marketplace business, even where such data is derived from or provided by OCAS providers.
- (1213) Meta therefore has the possibility to decide at any point in time to make use of the ads-related data to the benefit of Facebook Marketplace in competition against other

¹⁴¹¹ [...].

¹⁴¹² [...] (ID2122-9924).

¹⁴¹³ [...] (ID2246-339).

¹⁴¹⁴ [...]. Meta's reply to Q16 of the Commission's RFI to Meta of August 2019 (ID354).

¹⁴¹⁵ [...] (ID2246-339).

¹⁴¹⁶ [...].

¹⁴¹⁷ [...].

¹⁴¹⁸ [...].

OCAS providers, for example by soliciting other OCAS providers' customers or by using the ads-related data for the optimization of Facebook Marketplace. This provides a significant advantage to Facebook Marketplace, in particular against the background that it is the only OCAS provider which – via Meta's dominance in the provision of online display advertising on social media - has access to such sensitive and non-public information about other OCAS providers. In this way, Facebook Marketplace can benefit from market intelligence not accessible to others. Moreover, its OCAS competitors are not able to detect the use of the ads-related data, or at least not quickly and with sufficient certainty. They could only potentially observe that their ads do not lead to the expected conversions in the form of purchases. This might result from similar competing ads that Facebook Marketplace could send to those users who have clicked on other OCAS providers' ads by using the relevant ad click data. However, this does not mean that competitors can easily detect the use of ads-related data since the reason for a lack of subsequent purchases could never be allocated with certainty to any solicitation by Facebook Marketplace or its better ranking on the basis of a use of ads-related data. Facebook Marketplace can thereby profit from the use of such data in competition against other OCAS providers without facing any negative consequences.

- (1214) The analysis in this section is not contradicted by Meta's arguments claiming that:
- (1) The use of ads-related data would not provide any unfair advantage to Meta since advertisers, including OCAS providers, also use other advertising platforms as well as own websites which gather similar data;¹⁴¹⁹ and
 - (2) Such use of the data would not have any meaningful impact since there is according to Meta no "one-to-one" correlation between any given data signal inputted into a machine-learning model and a certain outcome.¹⁴²⁰
- (1215) First, other advertising platforms which might also gather data about their advertising clients are not dominant in the national markets for online display advertising on social media platforms. In addition, they are not competing with their advertising clients on the OCAS market. Consequently, the data gathered is less valuable to those advertising platforms and their clients can be less concerned by the use of their data by them, as it would result in no or limited commercial harm.
- (1216) In addition, users' engagement with OCAS providers' own websites can certainly give information to them about those (potential) clients. However, Meta gathers ads-related data about the users who engage with ads from other OCAS providers. This is information which is not available to OCAS providers since they can only observe users' engagement with their own websites, but not with websites of their competitors.
- (1217) Second, it is not necessary for a data signal to have a deterministic, one-to-one influence on the output of a process (including a machine learning model) for that signal to influence the result of the model. If the data signal increases the probability that the machine learning model provides an accurate answer, it is sufficient to make that signal useful.

¹⁴¹⁹ SO Response, paragraphs 481 to 482.

¹⁴²⁰ SO Response, paragraph 484.

7.3.5.2.2. The lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the T&C on Data Use translates into harm for OCAS providers

- (1218) In general, sharing ads-related data with Meta is not necessarily detrimental to advertisers. In the context of the advertising service, ads-related data can be used by Meta in an effective manner to improve the service provided by the platform to the advertiser. Ads-related data can be used for instance to enable tracing a users' purchasing journey after the user clicks on an ad and therefore to provide efficient reporting to the advertiser on the rate of conversion of its ads, *i.e.* the rate of clicks which results in sales.
- (1219) However, there is no similar benefit that OCAS providers can derive from Meta's possibility to use their ads-related data for the benefit of Facebook Marketplace (thus outside the context of the OCAS providers' online display advertising relationship with Meta). Meta's T&C on Data Use provide for no compensation to be given to OCAS providers in return for such use, be it explicitly or implicitly, in money or in kind.
- (1220) To the contrary, the possibility for Meta to use ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace harms those advertising clients because such data may be used by Facebook Marketplace to its advantage when competing against the OCAS providers (section 7.3.5.2.2.2). This is particularly problematic, because ads-related data are sensitive business data, not publicly available and not available to other OCAS providers (section 7.3.5.2.2.1). The harm also becomes evident from the fact that [...] (section 7.3.5.2.2.3) and that Meta in turn defines more far-reaching safeguards where it itself makes available data to third parties than in the opposite case where it derives or receives data from third parties (here OCAS providers) (section 7.3.5.2.2.4).

7.3.5.2.2.1. Ads-related data constitute sensitive business information

- (1221) Information can be considered as confidential or sensitive if it represents business secrets or other confidential information. Insofar as disclosure of information about an undertaking's business activity could result in a serious harm to the same undertaking, such information constitutes "business secrets".¹⁴²¹
- (1222) The ads-related data in essence provides knowledge to Meta about users who are interested in a competitor's product and therefore could be interested also in a corresponding Facebook Marketplace product. This interest is reflected in impression data, ad click data, product catalogue data and event data, which become available to Facebook Marketplace following the use of Meta's advertisement services by other OCAS providers.
- (1223) None of these types of data are publicly or otherwise available to (or can be easily obtained by) other OCAS providers than Facebook Marketplace.¹⁴²²

¹⁴²¹ The category 'other confidential information' includes information other than business secrets, which may also be considered as confidential, insofar as its disclosure would significantly harm a person or undertaking – Commission's Notice on Access to File, paragraph 18.

¹⁴²² Only product catalogue data are to some extent public since they consist of the product listings, which advertisers offer to their customers. However, they also involve non-public data, such as the description of a product included in an ad, where such a description would contain unique information on the seller of the product (*e.g.* a website name or Uniform Resource Locator ("URL"), which is a structured name

- (1224) Ads-related data results from the advertising activity of an OCAS provider on Meta's platforms and constitutes either on-site or off-site data (see recitals (19) to (20) above). The fact that some data is collected on Meta's platforms where the advertisement is placed, and that only Meta has access to the full scope of those ads-related data, does not speak against this information being a business secret of the respective advertisers, *i.e.* OCAS providers. This results mainly from the fact that the disclosure of this information to Facebook Marketplace can cause serious harm to those advertisers, as will be set out below.
- (1225) Ads-related data from OCAS providers is very valuable to Meta. The harm suffered by OCAS providers relates to the absence of compensation for the possibility which Meta reserves to itself, namely to use their ads-related data to increase its competitiveness on the markets for OCAS in the EEA (see also recital (1219)). This entails a worsening of the quality of online display ads services (see also recital (1180)), due to the risks of sharing ads-related data with Meta that incentivizes OCAS providers to reduce their advertising activity on Meta's platform to a suboptimal level.
- (1226) Furthermore, when using ads-related data derived from or provided by OCAS providers in the context of their use of Meta's online display advertising services for the benefit of Facebook Marketplace, Meta does not promote that advertiser's products, but only its own. However, when entering into a contract with Meta, advertisers expect to receive online display advertising services for which they pay. They do not expect that Meta collects data from their online display ads in order to promote its own business in an adjacent market (here the national markets for OCAS in the EEA) and compete against them on this basis (see also recital (1273)).
- (1227) As set out above (see recital (1225)), Meta receives valuable data from OCAS providers which it can use to the benefit of Facebook Marketplace on the OCAS markets in the EEA (see section 7.3.5.2.1). This creates harm to OCAS providers as will be further detailed below (see the whole of section 7.3.5.2.2 and in particular 7.3.5.2.2.2).
- 7.3.5.2.2.2. The disclosure to Facebook Marketplace and the use of the ads-related data for the benefit of Facebook Marketplace in competition against other OCAS providers may cause serious harm to the latter
- (1228) Disclosure of the ads-related data to Facebook Marketplace which is a competitor of the advertiser whose advertising activity is at the origin of such data can provide a significant disadvantage to the advertiser. It involves, in particular, the detailed knowledge about the company's advertisement activities including users' reactions as well as users' actions on the competitors' services in real-time.

that refers for example to a unique address that indicates the location of a web page. To some extent, also the ads-related data, which Meta derives from the advertising activity (impression data, ad click data) may be available to the respective advertiser who uses Meta's advertisement services. Meta provides to those advertisers using its business tools, such as Meta Pixel, so-called campaign reports, which are supposed to inform the advertisers about the effectiveness of their advertisement campaigns. The ads-related data is then partly provided to the respective advertiser – however, mostly in aggregated form and only for the past, whereas Meta has access to the ads-related data in raw format and in real-time. Moreover, those reports would only make the data available to the respective advertiser, but not to the public or the other OCAS competitors.

- (1229) All benefits, which the T&C on Data Use provide to Facebook Marketplace as set out above (see section 7.3.5.2.1), translate into harm to OCAS providers since they give Facebook Marketplace a competitive advantage in the markets for OCAS in the EEA. The disadvantages for OCAS providers mainly come from the possibility that Meta may use the ads-related data for solicitation or for the optimization of Facebook Marketplace, as well as from overall strategic advantages resulting from access to such data, as set out in section 7.3.5.2.1 above.
- (1230) First, the T&C on Data Use do not restrict Meta's ability to use ads-related data for the solicitation of OCAS' buyers and sellers for the benefit of Facebook Marketplace. Facebook Marketplace can use the data to target exactly those users who show an interest in a competitor's product or identify the sellers on competing OCAS platforms. This allows Meta to access relevant information of its competitors' buyers and sellers that, without the use of ads-related data, it would not have access to. On the basis of its access to those sensitive business data, Meta can attract buyers and sellers more easily to Facebook Marketplace. This can divert those buyers and sellers away from other OCAS services.
- (1231) Second, the T&C on Data Use do not restrict Meta's ability to use ads-related data for the optimization of Facebook Marketplace. Facebook Marketplace can therefore customise the ranking of products shown to each user on the basis of ads-related data derived from or provided by other OCAS providers. This allows Meta to provide to each individual user a ranking of products on Facebook Marketplace which appears better adapted to the user's interests by taking into account information obtained from OCAS providers by means of these T&C on Data Use. Facebook Marketplace therefore can appear more relevant to users than other OCAS providers, which cannot rely on such data. This is particularly relevant in the first times where a user is visiting Facebook Marketplace, as Facebook Marketplace can already rely on information on the user's behaviour as regards online classified ads, whereas, in the same situation, other OCAS providers would have to rely on generic information on global market trends. This also can divert those users away from other OCAS services.
- (1232) Third, the T&C on Data Use do not restrict Meta's ability to use ads-related data for any strategic purposes. Meta can, for example, use ads-related data in order to learn about other OCAS providers' strengths and weaknesses (for example in certain segments or with respect to certain customer groups) and it can use such information in order to better position Facebook Marketplace on this basis in competition against them. This creates harm to other OCAS providers since Facebook Marketplace can divert those users away from those OCAS providers on the basis of ads-related data derived from or provided by the OCAS providers themselves.
- (1233) In addition, in order to show that the T&C on Data Use are unfair trading conditions, it is not necessary to show that Meta actually availed itself of the possibility offered by the T&C on Data Use to use the ads-related data of other OCAS for the benefit of Facebook Marketplace (even though section 7.3.5.4 below demonstrates that Meta availed itself of the flexibility granted by the T&C on Data Use in several instances). It is sufficient that the T&C on Data Use provide Meta with the possibility to decide unilaterally whether and when to use the data in that manner. The harm resulting from unfair trading conditions does not depend on the actual use in the past or present, but results from Meta's ability to use the ads-related data for the benefit of Facebook Marketplace in the future which was made possible by its T&C on Data Use.

- (1234) On the basis of its T&C on Data Use which define no restrictions for Meta's use of ads-related data derived from or provided by OCAS for the benefit of Facebook Marketplace, Meta can decide at any time to make use of the ads-related data. This creates a business risk for OCAS providers (with no returns associated).
- (1235) This is confirmed by several OCAS providers:
- (1) According to [...].¹⁴²³ In line with its internal analysis, [...] submitted to the Commission a formal complaint where it explained: ¹⁴²⁴
 - (2) According to [...].¹⁴²⁵
 - (3) According to [...].¹⁴²⁶ And it further explains: [...].¹⁴²⁷
- (1236) For a finding of harm for OCAS providers it is sufficient to establish that Meta, in its role as a service provider to OCAS, gains insights into their business and clients, which it is not prevented from using in its role as their competitor on the OCAS markets. Competitors should not have such insights about each other's business. Knowing that Meta can, whenever it wishes, solicit their sellers or buyers by making use of ads-related data derived from or provided by them can weaken OCAS providers' possibilities and incentives to aggressively compete against Facebook Marketplace. Indeed, OCAS providers may fear retaliatory measures or a targeted reaction from Meta in case Facebook Marketplace's position in the OCAS markets is affected by a too intense competitive pressure from their part. Meta's trading conditions therefore restrict its competitors' ability to compete against Facebook Marketplace and their possibilities to successfully operate on the market.
- (1237) OCAS providers can also be limited in their ability to use online display advertising on Meta's platforms to promote their services, despite the wide reach of those platforms. Due to Meta's dominant position and the must-have character of its platforms (see section 6.4), advertisers normally cannot totally abandon online display advertising on Meta's social media platforms. However, in order to reduce the risk related to placing ads on Meta's platforms, they might have to reduce the use of Meta's Business Tools or their advertising activity altogether on Meta's platform to a level which does not reflect the most efficient strategy and therefore harms advertisers which would be then less exposed to potential buyers/sellers. This is because the more they use those advertising services, the more ads-related data Meta can obtain and use to the benefit of Facebook Marketplace.
- (1238) A contemporaneous internal document of [...] discusses the risks of sharing ads-related data with Meta [...]:
- (1) [...].¹⁴²⁸
 - (2) [...].¹⁴²⁹
- (1239) Such concerns are also reflected by other submissions made by OCAS providers to the Commission:

¹⁴²³ [...].

¹⁴²⁴ [...].

¹⁴²⁵ [...].

¹⁴²⁶ [...].

¹⁴²⁷ [...].

¹⁴²⁸ [...].

¹⁴²⁹ [...].

- (1) A study submitted by [...] explained its reaction to the launch of Facebook Marketplace: [...].¹⁴³⁰
 - (2) [...] also explained [...].¹⁴³¹
 - (3) This goes in line with a statement from [...].¹⁴³²
- (1240) The validity of those statements in showing harm to Meta's trading partners is not contradicted by Meta's argument that the reactions of the quoted companies only reflected independent commercial decisions, that those companies did not know whether Meta actually made use of their data and that they should have been in any case aware that any effect of the use of a single company's ads-related data would only have a negligible effect on Facebook Marketplace.¹⁴³³
- (1241) First, while OCAS providers might not know with certainty about Meta's actual use of their ads-related data, the T&C on Data Use were known to all of them and the possibility that Meta would use their ads-related data was therefore a realistic possibility to which they responded. And indeed, some of the companies raised that concern with Meta, seeking protections, which Meta in most cases refused to provide, [...] (see recitals (1257) to (1258)). Second, Meta brought no evidence that any use of ads-related data from just one OCAS provider would only have marginal effects on Facebook Marketplace. Third, even if the use of the data of a single OCAS provider had only marginal effects on Facebook Marketplace, this could not as such alleviate the concerns of the OCAS providers: indeed, the T&C on Data Use authorise Meta to use the data of several customers, not just one of them. Each customer can therefore legitimately be concerned with the potential effects resulting from the cumulated use of all data. The quotes mentioned above show that in any case those OCAS providers considered that the effects were sufficiently large to trigger their reactions. These were therefore no business decisions these OCAS providers would have taken in the absence of the T&C on Data Use, but reactions to those harmful trading conditions. Fourth, also the use of ads-related data from just a single OCAS provider can create significant harm if such data is, for example, used by Facebook Marketplace to target promotions to those users who have expressed interest in this specific OCAS provider's products by clicking on this company's ads on Facebook (see section 7.3.5.2.1.1).
- (1242) The harm shown by the quotes above is not contradicted either by Meta's argument that the reactions by those OCAS providers did not stop Facebook Marketplace from growing exponentially, which, in Meta's view, showed that Meta did not use the data. Apart from the fact that no counter-factual can be established and Meta might have even grown more without those OCAS providers' reactions, this ex-post view does not reflect the advertisers' considerations they had to make when responding to the T&C on Data Use.
- (1243) Meta acknowledges that the disclosure of ads-related data derived from or provided by an advertiser to other third parties with whom that advertiser competes may cause serious harm to the advertiser. To prevent such harm to happen, in its Business Tool Terms, Meta commits not to disclose Campaign reports or Analytics of one advertiser to any third party (see recital (1161) above). Analytics are "*insights about*

¹⁴³⁰ [...].

¹⁴³¹ [...]

¹⁴³² [...].

¹⁴³³ Comments on the LoF, paragraphs 264 to 270.

people and their use of your apps, websites, products and services.”¹⁴³⁴ Apart from event data, this should also include impression and ad click data, since it is precisely the link between the viewing of an ad on Facebook (impression data), the clicking on an ad on Facebook (ad click data) and the later actions on the advertiser’s website (event data) which may give indications about the effectiveness of an ad campaign.

- (1244) Meta also further acknowledges the serious harm that can arise from the use of ads-related data in its rule on soliciting buyers. Indeed, the Business Tool Terms include clauses that exclude the possibility for advertisers on its platforms to solicit the buyers of other advertisers (a practice known as “conquesting”): as set out above, (see recital (1150) above), with its second event data clause Meta commits not to open up any conquering possibilities among advertisers based on advertisers’ individual event data via its advertising tools.
- (1245) However, those rules do not apply to Facebook Marketplace itself, even though Facebook Marketplace is in competition with other OCAS providers. Indeed, as indicated above (see recital (1152) above), Meta does not include its own businesses, such as Facebook Marketplace, into the scope of those restrictions. It neither restricts the disclosure of such information internally towards Facebook Marketplace nor any potential use of such information by Facebook Marketplace (see section 7.3.4.1.7).
- (1246) If Meta acknowledges the concerns by advertisers in general by incorporating such clauses into the Business Tool Terms, there is no reason why those clauses should not apply also to Facebook Marketplace. Meta did not include Facebook Marketplace into this clause, thereby keeping for itself exactly those possibilities, which it blocked for other advertisers.¹⁴³⁵ Meta could easily apply the same rule to itself. This would also require that it uses only the same advertising tools (Meta Ads Manager) for the promotion of Facebook Marketplace as the ones used by all advertising clients of Meta and does not revert to any specific promotion tools which are only available to Meta.
- (1247) It is true that, with the first event data clause of the Business Tool Terms (see recital (1150) above), Meta will use an advertiser’s event data for delivery optimization only after aggregating it with other data. This addresses a behaviour similar to conquesting: while targeting rather refers to the definition of the target audience for an ad, delivery optimization relates to the effective selection of users (among the target audience) who will see an ad. This clause defines some limits that may be applicable to Facebook Marketplace. However, those limits are weak since the clause authorises Meta to proceed with the use of the ads-related data for the purpose of delivery optimisation to the benefit of Facebook Marketplace [...]. Considering that Meta deals with a multitude of advertisers and therefore has many individual sources, aggregating the data from one advertiser with another source is a limited hurdle. It is even possible [...] can make the data more relevant as it could help filtering out exceptional single sourced data which could be noise. This could give Meta a similar (or even greater) advantage than the use of data relating to just one competitor, leading to a similar (or even greater) burden on other OCAS providers.

¹⁴³⁴ Meta Business Tool Terms, paragraph 2.a.ii.1,

¹⁴³⁵ The use of this instrument, which is available to all advertisers (including the use of the same data sources and procedures) would ensure that Meta promotes Facebook Marketplace based on the same data principles as applicable to all advertisers. However, Meta explained that it [...] – see Meta’s reply to Q44 of the Commission’s RFI to Meta of August 2019 (ID354).

- (1248) Furthermore, [...].
- (1249) It cannot be argued that soliciting by Facebook Marketplace cannot cause any harm since it only relates to advertisement and since, after being exposed to this advertisement, the user is still free to choose between the Facebook Marketplace product and the competing OCAS product. Even if it is generally difficult to predict and measure the effect an advertisement has on a user, it is undoubted that advertising generally has an impact on the user's choices. The better targeted an advertisement is, the higher is the probability that it has a real impact on the user's choice. This is the whole business model applied by Meta, which allows for very targeted advertisements (based on the exact user profiles and users' actions) and which has thereby become an unavoidable advertisement platform (see section 6.4.2).
- (1250) Meta's T&C on Data Use therefore cause harm to OCAS providers, because they reserve for Facebook Marketplace a targeting option based on its privileged access to sensitive data related to OCAS providers' advertisement activities, which is not equally available to the latter and therefore increase their business risk on the OCAS market.
- (1251) Ads-related data may also be directly used by Meta for the improvement and optimization of Facebook Marketplace. This results in difficulties for OCAS providers to compete with Facebook Marketplace on a level playing field. By being able to use those data for the improvement and optimization of its services, Facebook Marketplace benefits from a competitive advantage not based on its own merits but on insights Meta gets into the business of the OCAS providers that are its customers, insights that Facebook Marketplace should not have into its competitors' business. Also this use case was covered by the temporary [...] for the optimization of Facebook Marketplace (see section 7.3.4.2). This provision covered ad click data, product catalogue data and event data.
- 7.3.5.2.2.3. OCAS providers expressed concerns regarding Meta's possibilities to use ads-related data and [...]
- (1252) [...].
- (1253) Meta's internal documents confirm that [...] as shown by a document dated 29 March 2019¹⁴³⁶ ([...]): [...].
- (1254) [...].¹⁴³⁷
- (1255) Another email exchange within Meta dated 12 June 2018¹⁴³⁸ also indicates the [...].
- (1256) Another internal document reveals [...].¹⁴³⁹
- (1257) The internal documents also show that, [...]. An internal e-mail of 30 October 2016 reads: [...].¹⁴⁴⁰
- (1258) Another internal email of 18 December 2017 [...].¹⁴⁴¹

¹⁴³⁶ [...] (ID1494-412).

¹⁴³⁷ [...] (ID2122-6453).

¹⁴³⁸ [...] (ID4317-19820).

¹⁴³⁹ [...] (ID2122-11006).

¹⁴⁴⁰ [...] (ID2122-242).

¹⁴⁴¹ [...] (ID4320-30727).

- (1259) Following the concerns raised by advertisers, as from 2017/2018, [...] ¹⁴⁴² [...]. ¹⁴⁴³
- (1260) Since 2017, [...] ¹⁴⁴⁴ However, according to Meta, [...]. ¹⁴⁴⁵
- (1261) It also appears from internal documents that [...]. For instance, an internal e-mail exchange of 2018 which discusses [...]. ¹⁴⁴⁶
- (1262) As explained above, Meta made clear that [...]. In any event, the Commission takes the view that if those [...], this would not have had an implication on the unfair nature of Meta's trading conditions with OCAS providers unless Meta had made those legally binding in its agreements with the OCAS providers.
- (1263) The fact that Meta keeps the possibility for itself in its T&C on Data Use to make use of ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace despite the concerns expressed by OCAS providers in that respect shows that Meta does not relinquish the possibility of such a data use and therefore can use the ads-related data whenever it may seem opportune. Otherwise, it would have already introduced restrictions in this respect in the T&C on Data Use.
- 7.3.5.2.2.4. Meta ensures more far-reaching safeguards for data it makes accessible to third parties than for data it derives or receives from third parties
- (1264) The circumstance that the T&C on Data Use provide Meta with a benefit which translates into harm to OCAS providers is also underlined by the fact that Meta ensures more far-reaching safeguards for data it makes accessible to third parties than for data it derives or receives from third parties. In the framework of other services, Meta gives third parties access to data it controls. The primary way that third parties obtain access to data on Meta's platforms is via APIs which are a link between the platforms and a third party's system (such as an app) which allows the third-party system to programmatically interact with the platforms, including to access data from Meta. ¹⁴⁴⁷
- (1265) In those contexts, Meta enforces limits on the usage of that data by third parties in competition with services offered by Meta.
- (1266) One example is the "WhatsApp Business Solution". The WhatsApp Business Solution Terms indicate under "Restrictions": *"With respect to any data you obtain from using the WhatsApp Business Solution, you must not directly or indirectly (a) with the exception of the content of your message threads, use such data to track, build, or augment profiles on individual WhatsApp users; (b) share, transfer, sell, license, or distribute such data, including any anonymous, aggregate, or derived forms of such data, to any third parties; or (c) retarget on or off of WhatsApp and the Facebook Companies' services, use piggybacking or redirects, or combine that data with any other third-party sources of data."* ¹⁴⁴⁸

¹⁴⁴² [...] (ID1529-51989).

¹⁴⁴³ Meta claims that [...]. Meta's reply to Q33 of the Commission's RFI to Meta of July 2021 (ID2704).

¹⁴⁴⁴ [...] (ID2122-4217). According to Meta, [...] (ID2704).

¹⁴⁴⁵ Meta's reply to Q33 of the Commission's RFI to Meta of July 2021 (ID2704).

¹⁴⁴⁶ [...] (ID1529-32200). [...] (ID2122-5367).

Another internal document discussing [...] (ID1529-32200).

¹⁴⁴⁷ Meta's submission under "Background" (Tranche 3 – Facebook Main platform reply) to the Commission's RFI to Meta of March 2019 (ID190).

¹⁴⁴⁸ WhatsApp Business Solution Terms, available at <https://www.whatsapp.com/legal/business-solution-terms>, downloaded on 29 August 2022 (ID5412).

- (1267) It appears on this basis that Meta does not want business users of its WhatsApp Business Solution to benefit from Meta's data beyond the mere service they receive from WhatsApp or to even build up parallel services on the basis of Meta's data. It is notable that the prohibition imposed by Meta covers both direct and indirect use.
- (1268) The rules about the use of data from the Messenger platform are similarly strict. Provision 8.8.4 of the Developer Policies states: *"Don't use any data obtained from us about the people you reach in Messenger and/or Instagram Messaging, other than the content of message threads, for any purpose other than as reasonably necessary to support the message types you elect to use."*¹⁴⁴⁹
- (1269) The fact that Meta establishes far reaching safeguards on the use by third parties of data they obtained via the WhatsApp and, Messenger platforms, but provides little safeguards, if any, on the use by Meta of data derived from or provided by third party OCAS further confirms that the T&C on Data Use are harmful for OCAS providers and unfair.
- 7.3.5.3. The lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the T&C on Data Use is not necessary nor proportionate to achieve a legitimate objective
- (1270) The Commission concludes that the lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the T&C on Data Use is not necessary to achieve a legitimate objective. In the absence of a legitimate objective, that lack of restrictions cannot be regarded as proportionate for the achievement of a legitimate objective either.
- 7.3.5.3.1. The lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the T&C on Data Use is not necessary to achieve a legitimate objective
- (1271) The Commission considers that the lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the Meta's T&C on Data Use is not necessary to achieve a legitimate objective. Meta does not need to have unlimited possibilities to use ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace in order to achieve any legitimate business objective.
- (1272) The T&C on Data Use relate to the provision of online display advertising services on social media platforms since they define the conditions under which advertisers may use those services. Meta provides online display advertising services to advertisers by allowing companies to place ads on Meta's platforms. In addition, advertisers can also use Meta's Business Tools for specific targeting and measuring of the success of their ad campaigns. In this respect, Meta's business activities consist in the provision of online display advertising services to advertisers by which Meta monetizes the social media platforms it offers to users. In this context, the lack of any restrictions in Meta's T&C on Data Use as regards the use of ads-related data for the benefit of Facebook Marketplace is not related to, and hence not necessary for, the provision of online display advertising services on a social media platform.

¹⁴⁴⁹ Developer Policies, available at <https://developers.facebook.com/devpolicy/>, downloaded on 27 September 2024, point 8.8.4.

- (1273) Online display advertising services provided by Meta consist mainly in the placement of ads on Facebook, Facebook Messenger and Instagram for the advertiser's products and in the targeting of the most suitable users in order to promote the advertiser's products. When using ads-related data derived from or provided by an OCAS provider in the context of its use of Meta's online display advertising services for the benefit of Facebook Marketplace, Meta does not promote that advertiser's products, but only its own. In other words, when entering into a contract with Meta, advertisers expect to receive online display advertising services for which they pay. They do not expect that Meta collects data from their online display advertising services in order to promote its own business in an adjacent market (here the market for OCAS) where they are themselves active.
- (1274) Restricting Meta's possibilities to use ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace would not prevent Meta from offering online display advertising services to advertisers of an equal quality in general. The data pool used for the targeting of ads would not be reduced by such a restriction, since any such restriction would only relate to the use of the ads-related data derived from or provided by OCAS providers specifically for Meta's own business in an adjacent market, *i.e.* Facebook Marketplace. The data could still enter into the general algorithms for the Meta Ad Manager or other models, which serve all advertisers in the same way.
- (1275) Such restrictions would also not prevent Meta from providing online display advertising services to OCAS providers. To the contrary, they would render Meta's services more attractive in the eyes of OCAS providers who have concerns regarding Meta's use of such data. With such restrictions, advertisers could use Meta's online display advertising services without having to fear at the same time that such a use will create losses to them due to a potential use of the ads-related data by Facebook Marketplace.
- (1276) It also cannot be argued that Meta needs to be able to make unlimited use of ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace in order to be able to run its online display advertising business profitably. Indeed, Meta's online display advertising services are already highly profitable.¹⁴⁵⁰
- (1277) Finally, the functioning of Facebook Marketplace does not constitute a legitimate objective requiring the lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in Meta's T&C on Data Use. In addition, and in subsidiary order, the Commission notes that while ads-related data derived from or provided by OCAS providers may be useful for Facebook Marketplace, it is in any event by no means necessary. Indeed, (a) other OCAS providers operate without using such data derived from or provided by competitors, (b) Facebook Marketplace can rely on extensive data derived in the rest of Facebook as well as on other Meta's platforms, and (c) Facebook Marketplace can rely on extensive ads-related data derived from or provided by advertisers which are not OCAS providers.
- (1278) The conclusion that the lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the Meta's T&C on Data Use is not necessary to

¹⁴⁵⁰ "Meta Reports Fourth Quarter and Full Year 2021 Results", available at <https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx>, downloaded on 15 September 2022 (ID5304).

achieve a legitimate objective is also not contradicted by Meta's arguments stating that:

- (1) Meta uses ads-related data to develop and optimise its display advertising service, that is necessary for its advertising business;¹⁴⁵¹ and
 - (2) Meta uses ads-related data to support efficient and effective ad targeting.¹⁴⁵²
- (1279) In this respect, the Commission does not object to Meta using ads-related data for its general display advertising services (including to improve the targeting of ads therein). Instead, it only takes issue with Meta's possibility as reflected in its T&C on Data Use to use such ads-related data also for the specific benefit of Facebook Marketplace. As set out above (see section 7.3.5.2.1), this covers in particular any use of ads-related data for the improvement of Facebook Marketplace, such as the ranking of listings, for the solicitation of buyers and sellers to the benefit of Facebook Marketplace with specific advertising tools and for overall strategic advantages of Facebook Marketplace.
- (1280) The vast majority of display advertising on Meta's platforms happens outside of Facebook Marketplace¹⁴⁵³ and would therefore not be affected by any restriction about the use of ads-related data for the benefit of Facebook Marketplace. In addition, as regards the limited share of Meta's display advertising that takes place within Facebook Marketplace, to the extent that the improvement of such display advertising could be viewed as an improvement of Facebook Marketplace, the terms and conditions could be termed in a way that authorises the use of ads-related data within Facebook Marketplace solely for the purpose of improving display advertising therein, as opposed to other purposes such as improving the ranking of listings, the solicitation of buyers and sellers to the benefit of Facebook Marketplace with specific advertising tools or for overall strategic advantages of Facebook Marketplace.
- 7.3.5.3.2. The lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the T&C on Data Use is not proportionate to achieve a legitimate objective
- (1281) The assessment of proportionality requires to verify whether any harmful trading conditions are limited to what is strictly necessary for the pursuit of a legitimate interest, or whether they go beyond what is strictly necessary, as the same legitimate objective could be reached by less onerous means.
- (1282) When certain trading conditions are (to some extent) necessary for the provision of the service and the pursuit of other legitimate objectives, they may still be unfair if they go beyond what would be strictly necessary to achieve that legitimate objective, and therefore are disproportionate. In applying the principle of proportionality, which therefore involves a certain balancing of the different interests, special regard has to

¹⁴⁵¹ SO Response, paragraphs 408 to 411.

¹⁴⁵² SO Response, paragraphs 404 to 407.

¹⁴⁵³ Meta's revenue in the EEA in 2022 which consisted almost exclusively of revenue from online display ads amounted to approximately EUR 17 billion. Facebook Marketplace contributed approximately EUR [...] to this revenue, which means that it represented [...] % of the total. See Meta's reply to Q15 (Facebook Marketplace's online display advertising revenue) and Q22 (Meta's revenue in the EEA) of the Commission's RFI to Meta of July 2023 (ID10812 with Annex Q15, ID10803, and Annex Q22, ID10805).

be given also to the question whether a certain legitimate aim could be achieved by other means, which are less onerous for the other parties.

- (1283) As set out in the necessity assessment above (see section 7.3.5.3.1), there is no legitimate objective the achievement of which would make it necessary to provide for the possibility of an unlimited use of ads-related data derived from or provided by OCAS providers for the benefit of Facebook Marketplace. In the absence of any such legitimate objective, there is no scope for a distinct proportionality assessment of whether Meta's possibilities under its T&C on Data Use to use ads-related data for the benefit of Facebook Marketplace are strictly limited to what is required to achieve that specific legitimate objective or whether the latter could be achieved by any less onerous means. In these circumstances, the Commission concludes that the lack of restrictions on the use of ads-related data for the benefit of Facebook Marketplace in the T&C on Data Use is also not proportionate for the achievement of a legitimate objective.

7.3.5.4. Meta availed itself of the flexibility granted by its terms and conditions in several instances

- (1284) In a case about unfair trading conditions under Article 102(a) TFEU, it is not necessary to show that the dominant company has actually made use of the unfair trading conditions, since it is their imposition and the imbalance in rights and obligations, including the benefits and risks between the dominant company and its business partners or the final consumers, which are at the heart of this form of abuse (see also recitals (1106) to (1110) above).
- (1285) However, there is evidence that Meta actually availed itself of the flexibility granted by the T&C on the Data Use. This constitutes a relevant addition to the findings identified above, which highlights that the benefits for Facebook Marketplace of Meta's T&C on the Data Use are not only potential.

7.3.5.4.1. Lack of structural barriers within Meta

- (1286) On the basis of Meta's statements in the proceedings, as well as Meta's internal documents, the Commission concludes that there are no structural barriers within Meta preventing access to data collected for different purposes.
- (1287) Meta's difficulties to contain data flows is well-described in an internal document made public: *"We fundamentally lack closed-form properties in Facebook systems. For more than a decade, openness and empowering individual contributors has been part of our culture. We've built systems with open borders. The result of these open systems and open culture is well described with an analogy: Imagine you hold a bottle of ink in your hand. This bottle of ink is a mixture of all kinds of user data (3PD, 1PD, SCD, Europe, etc.) You pour that ink into a lake of water (our open data systems; our open culture) ... and it flows ... everywhere. How do you put that ink back in the bottle? How do you organize it again, such that it only flows to the allowed places in the lake?"*¹⁴⁵⁴

¹⁴⁵⁴ Available at Vice.com - <https://www.vice.com/en/article/akvmke/facebook-doesnt-know-what-it-does-with-your-data-or-where-it-goes>, downloaded on 3 October 2023 (ID11533) as well as the document linked to that webpage <https://www.documentcloud.org/documents/21716382-facebook-data-lineage-internal-document>, downloaded on 3 October 2023 (ID11534).

- (1288) Specifically with regard to Facebook Marketplace, Meta stated that “*Marketplace is not a separate product and is fully integrated into Facebook*. [...]”¹⁴⁵⁵
- (1289) An internal e-mail exchange from August 2018 within Meta about [...] further confirms [...] stating that it “[...]”¹⁴⁵⁶
- (1290) The decentralised nature of data management is also described in Meta’s reply to the Commission’s request for information indicating that “[...]”¹⁴⁵⁷
- (1291) The conclusion that there are no structural barriers within Meta preventing access to data collected for different purposes is also not contradicted by Meta’s arguments stating that there is no requirement under Article 102(a) TFEU for Meta to have structural barriers in place and that the lack of thereof is not evidence of Meta using ads-related data.¹⁴⁵⁸ The Commission does not put forward such arguments but states that the flexibility provided by Meta’s T&Cs with regard to data use is not limited by any company-wide structural ring-fencing which would automatically prevent any actual use of ads-related data for non-ads purposes.
- (1292) Furthermore, and as described in recitals (1259) to (1262) above, the lack of such structural barriers is also not counterbalanced by adopted and implemented internal data use principles.
- (1293) [...], internal documents show that at the beginning of the discussions of the [...] in 2019, [...] (emphasis added):
 “[...]”¹⁴⁵⁹
 “[...]”¹⁴⁶⁰
- (1294) [...]. A Meta data science manager stated: [...].¹⁴⁶¹
- (1295) The relevance of this document is not contradicted by Meta’s arguments stating that:
- (1) the internal e-mail [...];
 - (2) this correspondence [...]; and
 - (3) the statement from one employee [...].¹⁴⁶²
- (1296) First, while the internal document [...]. Apart from the quote above [...] a data science manager stated that “[...]”¹⁴⁶³ Furthermore, it is also apparent from the quote above that [...].
- (1297) Second, contrary to Meta’s claim, it is not plausible that the e-mail exchange related [...]. Indeed, the only instance when [...] is mentioned is [...]. Therefore, the only plausible interpretation of this e-mail is that the [...].
- (1298) Finally, these statements do not originate from an employee unaware of those matters but from a data science manager of Meta, who had been conducting an analysis on how to improve Facebook Marketplace.

¹⁴⁵⁵ Meta’s reply to Q46 of the Commission’s RFI to Meta of March 2019 (ID196).

¹⁴⁵⁶ [...] (ID4317-18431).

¹⁴⁵⁷ Meta’s letter to the Commission of 24 September 2021 (ID2068).

¹⁴⁵⁸ Comments on the LoF, paragraph 272.

¹⁴⁵⁹ [...] (ID2122-5826).

¹⁴⁶⁰ [...] (ID2122-5826).

¹⁴⁶¹ [...] (ID2122-5826).

¹⁴⁶² SO Response, paragraph 465.

¹⁴⁶³ [...] (ID2122-5826).

7.3.5.4.2. Use of ads-related data for the improvement of Facebook Marketplace

- (1299) Based on evidence on file, the Commission concludes that Meta did use ads-related data for the improvement of Facebook Marketplace.
- (1300) [...] is richly illustrated by Meta's internal documents. Internal documents show that [...].

Figure 14: [...] ¹⁴⁶⁴

[...]

- (1301) This is also apparent from the fact that in late 2016, [...].
- (1302) In that context, Meta's engineers, addressing [...] in 2016, stated (emphasis added): [...] ¹⁴⁶⁵ Another executive confirmed that this usage pertains to (emphasis added) [...] ¹⁴⁶⁶
- (1303) In an internal e-mail exchange from November 2016 the justified nature of [...] concerns over data use is reiterated: *"As you may know, our recent launch of Marketplace featured strong Facebook vs [...] headlines and exacerbated [...] concerns around data usage by Facebook. Their primary worry is that we will use the data they send us for advertising purposes to bootstrap our competitive Marketplace product. We believe [...] concerns are reasonable since our teams do apply ad learnings to personalize Marketplace listings. The key challenge for us in answering their concerns, however, is technical—we have no blocks between Ads/Commerce data, and something like clicks (which we view as Facebook data) is fundamentally embedded into Facebook models."* ¹⁴⁶⁷
- (1304) The necessity of [...] is also apparent from the following internal document explaining that [...] ¹⁴⁶⁸
- (1305) The fact that Marketplace models have been [...] is confirmed by yet other Meta internal documents:
- (1) [...] ¹⁴⁶⁹
 - (2) An internal document of Meta titled [...] ¹⁴⁷⁰
- (1306) [...].
- (1307) [...] ¹⁴⁷¹ [...] ^{1472, 1473} [...] ¹⁴⁷⁴ [...].
- (1308) [...]:

¹⁴⁶⁴ [...] (ID2122-11249).

¹⁴⁶⁵ [...] (ID2122-13813).

¹⁴⁶⁶ [...] (ID2122-2852).

¹⁴⁶⁷ Internal e-mail exchange of 8 November 2016. See paragraph 455 of Exhibit 1: Revised version of Advertisers' First Amended Complain in Case No. 20-cv-08570-JD, *Klein v Meta Platforms, Inc.*, available at <https://www.courtlistener.com/docket/18714274/353/1/klein-v-meta-platforms-inc/>, downloaded on 30 November 2023 (ID11953).

¹⁴⁶⁸ [...] (ID2122-766).

¹⁴⁶⁹ [...] (ID2122-8040).

¹⁴⁷⁰ [...] (ID3483-97).

¹⁴⁷¹ Meta's reply to Q19.1 of the Commission's RFI to Meta of March 2022 (ID3497).

¹⁴⁷² Meta's reply to Q19.1 of the Commission's RFI to Meta of March 2022 (ID3497).

¹⁴⁷³ Meta's reply to Q19.1 and Q9 of the Commission's RFI to Meta of March 2022 (ID3497 and ID3245).

¹⁴⁷⁴ Meta's reply to Q19.1 and Q10 of the Commission's RFI to Meta of March 2022 (ID3497 and ID3245).

- (1) [...].¹⁴⁷⁵
- (2) [...].¹⁴⁷⁶
- (3) [...].¹⁴⁷⁷
- (1309) [...].¹⁴⁷⁸
- (1310) [...].¹⁴⁷⁹ [...].¹⁴⁸⁰
- (1311) [...].
- (1312) The Commission's conclusion that Meta did use ads-related data for the improvement of Facebook Marketplace is also not contradicted by Meta's arguments stating that:
- (1) an expansive data lineage analysis of Facebook Marketplace's [...] does not reveal that Meta has been using ads-related data in Facebook Marketplace;¹⁴⁸¹
 - (2) [...].¹⁴⁸² [...].¹⁴⁸³ [...].¹⁴⁸⁴ and
 - (3) some internal documents cited are dated prior to Facebook Marketplace's launch in the EU or refer to historic data use prior to this launch date.¹⁴⁸⁵
- (1313) First, the data lineage exercise performed by Meta does not contradict the evidence brought forward above with regard to the use of ads-related data for the improvement of Facebook Marketplace.
- (1314) In the first place, the exercise was performed only for [...].¹⁴⁸⁶ [...].¹⁴⁸⁷ [...].
- (1315) In the second place, even for the [...] identified, the exercise provides information only for the specific time of its creation, *i.e.* the response to the Commission's request for information on 22 November 2021. When asked about potential past changes that could have influenced the results of the exercise, Meta replied that [...] and provided a [...].¹⁴⁸⁸
- (1316) Second, the "feature importance" analysis, which resulted in the pie charts presented to the Commission, does not contradict the evidence brought forward above with regard to the use of ads-related data for the improvement of Facebook Marketplace.

¹⁴⁷⁵ [...] (ID2122-6046).

¹⁴⁷⁶ [...] (ID2122-5974).

¹⁴⁷⁷ [...] (ID2246-1063).

¹⁴⁷⁸ Annex to Meta's reply to Q19 of the Commission's RFI to Meta of March 2022, FB_DGC_LEV_000018442.pdf (ID3483-96).

¹⁴⁷⁹ E-mail from [...], (ID2122-6559).

¹⁴⁸⁰ Internal e-mail exchange of August 2019, Subject: "Re: Accounts for Next [...] Amendment", FB_DGC_LEV_000010051.msg (ID2122-6874).

¹⁴⁸¹ SO Response, paragraphs 461 to 463.

¹⁴⁸² SO Response, paragraphs 461 to 463.

¹⁴⁸³ Meta's presentation at the technical meeting of 25 March 2021, slide 19 (ID1666).

¹⁴⁸⁴ SO Response, paragraphs 461 to 463.

¹⁴⁸⁵ Comments on the LoF, paragraph 274.

¹⁴⁸⁶ Meta provided a non-exhaustive list of the [...] in reply to Q26.2 of the Commission's RFI to Meta of July 2021 (ID2269).

¹⁴⁸⁷ Meta's reply to Q A of the Commission's RFI to Meta of July 2021 (ID2704).

¹⁴⁸⁸ Meta's reply to Q4 of the Commission's RFI to Meta of July 2021 (ID2188).

- (1317) In the first place, similar to the data lineage exercise, the feature importance was examined by Meta for only [...] used in relation to Facebook Marketplace.¹⁴⁸⁹ As just stated, the Commission cannot verify that these [...].
- (1318) In the second place, and again similarly to the data lineage exercise, the feature importance pie charts provide information pertinent only at the time of their creation, that is the reply to the Commission's request for information.
- (1319) In the third place, the Commission was not able to verify its results as Meta did not submit the underlying data. Indeed, when asked to provide underlying data, Meta responded that "[...] due to [...]."¹⁴⁹⁰ Not only did this not allow the Commission to verify the results of Meta's calculations, but it also prevented the Commission from performing robustness tests on the conclusions drawn by Meta, for instance by testing whether the 'feature importance' calculated varies in certain different hypotheses.
- (1320) In the fourth place, whilst the pie chart concludes that [...] ¹⁴⁹¹ [...] it also does not conclude that the data has no importance at all, let alone that the use of that data cannot have a material influence for the benefit of Facebook Marketplace. Indeed, the feature importance calculation provides an estimate of the relative importance of diverse sources of data on average. Certain sources of data may have a limited influence on average but be of significant importance in certain particular cases. This could be the case for example in instances where data from other sources is missing. In the specific case of non-Facebook Marketplace data, the data would substantially be more important for users who visit Facebook Marketplace for the first time. In those instances, by definition, there would be limited data on the user from Facebook Marketplace, but more from outside of Facebook Marketplace. For those cases, non-Facebook Marketplace data would have a substantial influence on the outcome, without this being visible on the average "feature importance" calculation.
- (1321) In the fifth place, the fact that Facebook Marketplace kept the non-Facebook Marketplace data as input to its machine learning models shows that those provide benefits to the models, despite their relatively limited "feature importance". Otherwise, Meta would remove that source of data from the inputs of the model, as this would cut costs. As Meta explained: "[...]".¹⁴⁹²
- (1322) Third, several internal documents cited above are dated well after the launch of Facebook Marketplace in the EEA¹⁴⁹³ or shortly before the launch of Facebook Marketplace in Austria, Belgium, Czechia, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain and Sweden (14 August 2017).¹⁴⁹⁴ There is nothing in those documents or other documents on file which suggest that Meta changed the way in which it used ads-related data (other than [...]) in that short interval, and indeed Meta does not claim that such changes at short notice happened, let alone provided evidence of such short notice changes. Even those documents that predate substantially the launch of

¹⁴⁸⁹ [...] (Meta's reply to Q6.c of the Commission's RFI to Meta of July 2021 (ID2188)).

¹⁴⁹⁰ Meta's reply to Q6 of the Commission's RFI to Meta of July 2021 (ID6447).

¹⁴⁹¹ The feature importance exercise did not assess specifically the importance of ads-related data, but instead that of the wider subset of non-Facebook Marketplace data.

¹⁴⁹² Meta's reply to Q3 of the Commission's RFI to Meta of July 2021 (ID6447).

¹⁴⁹³ See e.g. "[...]" (ID2122-766); "[...]" (ID2122-6046); "[...]" (ID2122-5974); "[...]" (ID2246-1063); "[...]" (ID2122-6559); "[...]" (ID2122-6874).

¹⁴⁹⁴ See e.g. internal e-mail exchange of June 2017, Subject: [...] (ID2122-8040).

Facebook Marketplace in the EEA show that Meta did avail itself of the flexibility in the T&C on Data Use to use ads-related data of OCAS providers for the benefit of Facebook Marketplace. This shows at the very least that such usage is not merely hypothetical, but instead a real possibility. It also confirms that OCAS providers were right to be concerned that such usage could happen.

- (1323) Finally, at the time of all documents, Facebook Marketplace had been already launched in the United Kingdom, which was at the time a Member of the European Union. It is therefore not credible that Meta would have changed its practices on data use at the moment it launched Facebook Marketplace in the current Member States of the EEA because of the specific content of EU law, as Facebook Marketplace was, at the time, already active in a Member State in which EU law was applicable.

7.3.5.4.3. Use of ads-related data for the promotion of Facebook Marketplace

- (1324) Based on evidence on file, the Commission concludes that Meta did use ads-related data for the promotion of Facebook Marketplace.
- (1325) First, Meta itself confirmed in a reply to the Commission's request for information that it [...] (among other data types) in order to [...]. As set out above (see recital (857) above), not all users see the Facebook Marketplace tab, but only a group of users who – [...]– are considered to be most likely to use the Facebook Marketplace tab.¹⁴⁹⁵
- (1326) It is notable that Meta only confirmed such use when the Commission confronted it with an internal document in which [...]. The internal document sets out that while for this purpose [...] data are not used, [...].¹⁴⁹⁶
- (1327) The examples listed in the approval request relate to [...] ¹⁴⁹⁷ [...] ¹⁴⁹⁸ [...]. In any event, ads from OCAS providers can fall into both specified categories.
- (1328) As to the implementation of the use of ad click data for the Targeted Tab, Meta confirmed that use case regarding [...] was approved in July 2019 and implemented shortly after.¹⁴⁹⁹ In the SO Response Meta stated that “*Meta no longer uses [...] to confirm the surfacing of the Marketplace Tab.*”¹⁵⁰⁰ Meta did not specify when it stopped using ad click data for such purposes, nor did it provide evidence in support to its claim that it stopped using that data. However, this confirms that Meta had indeed been using that data at least for a certain period.
- (1329) With regard to [...], Meta stated that while [...].¹⁵⁰¹
- (1330) The approval request clarifies that there [...].¹⁵⁰² Indeed, while previously stating that [...],¹⁵⁰³ Meta – in reply to questions about this internal document – confirmed that [...].¹⁵⁰⁴

¹⁴⁹⁵ Meta's reply to Q9, Q10.1 and Q10.2 of the Commission's RFI to Meta of March 2022 (ID3245).

¹⁴⁹⁶ [...] (ID2122-13208).

¹⁴⁹⁷ [...], downloaded on 15 March 2024 (ID12901).)

¹⁴⁹⁸ [...] (ID2122-13208).

¹⁴⁹⁹ Meta's reply to Q10.2 of the Commission's RFI to Meta of March 2022 (ID3245).

¹⁵⁰⁰ SO Response, paragraph 474.

¹⁵⁰¹ Meta's reply to Q10.2 of the Commission's RFI to Meta of March 2022 (ID3245).

¹⁵⁰² [...] (ID2122-13208).

¹⁵⁰³ Meta's reply to Q28.a of the Commission's RFI to Meta of July 2021 (ID2188).

¹⁵⁰⁴ Meta's reply to Q13 of the Commission's RFI to Meta of March 2022 (ID3245).

- (1331) Second, in reply to the Commission's request for information, Meta also confirmed that [...].¹⁵⁰⁵ Meta also did not provide evidence in support to its claim that it stopped using that data.
- (1332) The Commission's conclusion that Meta did use ads-related data for the promotion of Facebook Marketplace is also not contradicted by Meta's arguments stating that:
- (1) the Facebook Marketplace tab in itself is [...]¹⁵⁰⁶ [...]¹⁵⁰⁷ - and
 - (2) the [...] comprised only one in hundreds of signals used to [...] is shown and that [...].¹⁵⁰⁸
- (1333) First, Meta's euphemism about the tab being [...] cannot change the reality that the Facebook Marketplace tab provides a benefit to Facebook Marketplace. Indeed, it functions as a permanently displayed advertisement, displayed to the majority of the users of Facebook. As indicated in sections 7.2.3.4.1.3 and 7.2.3.4.1.5, not only is the Facebook Marketplace tab by far the largest source of traffic to Facebook Marketplace (see Table 10), but Facebook Marketplace is also dependent on that traffic (see recitals (867) to (868) above). In situations where the tab was displayed less often, Facebook Marketplace immediately lost traffic, until the tab was displayed more often again (see recitals (869)(867), (921) and (974) above). Therefore, OCAS providers' data were used specifically for a tool that is crucial for Facebook Marketplace's success.
- (1334) Second, Meta did not provide any evidence in support of its statement that [...] comprised only "one in hundreds of signals" used to decide to which users the Facebook Marketplace tab is shown, let alone evidence about the relative relevance of that signal compared to the other signals. In any event, it is not plausible that Meta would have decided to use that signal as an input if it had provided no benefit. Furthermore, the Commission notes that any arguments regarding the *de minimis* nature of the impact of Meta's conduct should be treated separately from the question of whether Meta has actually used the data (see accordingly section 7.3.5.2.2.2 in this regard).

7.3.5.4.4. Indirect use of ads-related data

- (1335) Based on evidence on file, the Commission concludes that Meta did make indirect use of ads-related data to the benefit of Facebook Marketplace.
- (1336) The indirect use of ads-related data, that is [...],¹⁵⁰⁹ is not covered by Meta's general statements, which only refer to the direct (non)-use of ads-related data.¹⁵¹⁰
- (1337) Meta indeed confirmed that [...], stating that data that had been derived from the user's interaction with organic content that has been surfaced in the Newsfeed and which was (in part) based on ad click data was used for models optimizing Facebook Marketplace.¹⁵¹¹
- (1338) [...]. This is also well illustrated in internal documents:

¹⁵⁰⁵ Meta's reply to Q9 of the Commission's RFI to Meta of March 2022 (ID3245).

¹⁵⁰⁶ SO Response, paragraph 473.

¹⁵⁰⁷ Comments on the LoF, paragraph 276.

¹⁵⁰⁸ SO Response, paragraph 474.

¹⁵⁰⁹ Meta's reply to Q14 of the Commission's RFI to Meta of May 2020 (ID5633).

¹⁵¹⁰ For example, Meta stated that: [...]. (Emphasis added, Meta's reply to the Commission's RFI to Meta of May 2020, Introductory Submission, paragraph 9 (ID5633)).

¹⁵¹¹ Meta's reply to Q14 of the Commission's RFI to Meta of May 2020 (ID5633).

(1) [...].¹⁵¹²

(2) [...].¹⁵¹³

(1339) The Commission cannot accept Meta's arguments that [...].¹⁵¹⁴

(1340) First, Meta conflates impossibility with economic burden. Meta did manage (at least allegedly) to perform a [...] used in Facebook Marketplace, at least up to a certain number of levels. Meta did not explain why it would be impossible to replicate the same exercise for the remaining models. It is likely that, to perform such an exercise, Meta would have to incur resources and costs, but economic burdens cannot as such exonerate a company from the special responsibility that derives from Article 102 TFEU. In addition, to the extent that avoiding an economic burden could be considered an objective justification or an efficiency, Meta would bear the burden of proving that it meets the criteria of the case law to that effect, which it did not do.

(1341) Second, Meta's claim that it cannot avoid the indirect use of ads-related data for the benefit of Facebook Marketplace absent a comprehensive overview of data lineage for all its models is contradicted by [...] ¹⁵¹⁵ [...] ¹⁵¹⁶ [...].¹⁵¹⁷

(1342) [...] ¹⁵¹⁸ ¹⁵¹⁹ [...].

7.3.6. *No objective justification or efficiencies*

(1343) As set out in section 7.3.5.3, the Commission concludes that the flexibility regarding data use offered to Meta by the T&C on Data Use is not necessary for the attainment of any legitimate objective. Meta did not bring forward arguments amounting to the objective justification of its conduct.

(1344) Meta argued instead that a potential use of ads-related data to the benefit of Facebook Marketplace and in particular for its improvement would benefit OCAS providers as advertising clients. It thereby evoked an efficiency argument. More specifically, Meta argued the following efficiencies:

- (1) advertisers, including OCAS providers, would benefit from any improvement of Facebook Marketplace since they would receive with Facebook Marketplace another valuable and even improved platform to place ads;¹⁵²⁰
- (2) advertisers, including OCAS providers, would also benefit from any use by Meta of their ads-related data for the improvement of Facebook Marketplace because an improved Facebook Marketplace would also create more user engagement with Facebook and therefore with the ads displayed on the personal social network, including ads from OCAS providers;^{1521 1522}

¹⁵¹² [...] (ID2122-6453).

¹⁵¹³ [...] (ID2122-11645).

¹⁵¹⁴ [...] (ID5633).

¹⁵¹⁵ [...] Meta's reply to Q16 of the Commission's RFI to Meta of August 2019 (ID354).

¹⁵¹⁶ Meta's reply to Q5 of the Commission's RFI to Meta of March 2022 (ID3348); [...].

¹⁵¹⁷ [...] E-mail from [...] (ID2246-770).

[...] (ID2246-167).

[...] (ID2122-6738).

¹⁵¹⁸ [...] (ID2122-12455).

¹⁵¹⁹ [...] (ID2122-12455).

¹⁵²⁰ SO Response, paragraphs 401 to 403 and 480.

¹⁵²¹ SO Response, paragraphs 398 to 400.

- (3) data derived from users' engagement with Facebook (including all Facebook Marketplace content) is used to support efficient and effective ad targeting, delivery and measurement for all advertisers (including OCAS providers).¹⁵²³
- (1345) First, regarding the claim that OCAS providers would benefit from an improved advertising platform, the Commission notes the following.
- (1346) In the first place, the relevant benefits to take into account are only those related to OCAS providers. The Commission does not object to the use of ads-related data of other advertisers for the benefit of Facebook Marketplace.
- (1347) In the second place, the number of ads placed by OCAS providers on Facebook Marketplace is limited. Meta notes in footnote 891 of the SO Response that [...]. Only a minority of OCAS providers confirmed in the market investigation that they have used Facebook Marketplace in the past as an advertising platform.¹⁵²⁴ Not all of those OCAS providers were able to specify the ad spend that had been allocated specifically to Facebook Marketplace. Most of them allocated only a small fraction (less than 10%) of their total EEA display advertising spend to advertising on Facebook Marketplace.¹⁵²⁵
- (1348) This is also not contradicted by the data presented by Meta showing that OCAS providers place ads on Facebook Marketplace at a higher rate than other advertisers¹⁵²⁶ as even according to Meta's internal data, this ad spend remains limited.
- (1349) This demonstrates that OCAS providers would most likely not see any major benefit for themselves in the strengthening of Facebook Marketplace. Even if some of them could appreciate the possibility of placing ads on Facebook Marketplace, as opposed to not being able to place ads on Facebook Marketplace, it is not possible to infer from that that they would also consider on balance that the additional benefit from those ads on a Facebook Marketplace strengthened by their ads-related data outweigh the burden created by Facebook Marketplace using their ads-related data. In any event, Meta did not grant OCAS providers an option to perform such balancing and imposed its own choice.
- (1350) In the third place, the claim that Facebook Marketplace is a valuable advertising platform for OCAS providers based on the fact that [...] is unfounded. Apart from the fact that this is only one very limited example and that Etsy cannot be considered as an OCAS provider, the figures only reflect that ads on the [...] – something which, if anything, rebuts rather than confirms Meta's assertion that advertisers would see a benefit in having more advertising space on Facebook Marketplace.
- (1351) In the fourth place, this argument in effect negates the competitive relationship between Facebook Marketplace and other OCAS providers and insinuates that other OCAS providers are predominantly advertising clients of Facebook Marketplace and not competitors. This is however not the case as the concerns raised by OCAS

¹⁵²² Similarly, Meta argued that it „offers user-engaging features like Facebook Marketplace precisely to fulfil users' demand and grow users' engagement with Facebook and, as a result, with the ads delivered on Facebook.” (Comments on the LoF, paragraph 282).

¹⁵²³ Comments on the LoF, paragraph 282.

¹⁵²⁴ Replies to Q F.1 and Q F.A.2 of the Commission's RFI to OCAS providers of July 2023; [...].

¹⁵²⁵ Replies to Q F.A.2 of the Commission's RFI to OCAS providers of July 2023 [...] as well as the replies of [...] to subsequent follow-up questions on ad spend.

¹⁵²⁶ Comments on the LoF, paragraph 283.

providers towards Meta on the use of their ads-related data to the benefit of Facebook Marketplace show (see section 7.3.5.2.2.3).

- (1352) In the fifth place, the overwhelming majority of OCAS providers does not allow other OCAS providers (including Facebook Marketplace) to place ads on their OCAS platforms.¹⁵²⁷ An often-mentioned reason is that they see them as competitors¹⁵²⁸, as the following statements show:
- (1) According to [...].¹⁵²⁹
 - (2) According to [...].¹⁵³⁰
 - (3) According to [...].¹⁵³¹
- (1353) Second, regarding Meta's claim that the T&C on Data Use improved advertising platform for OCAS providers, the Commission notes the following.
- (1354) In the first place, while the harm created by an unfair use of ads-related data for OCAS providers is direct, the possible improvement of Facebook as an advertising platform due to the improvement of Facebook Marketplace resulting from that unfair use is at best remote. The concerns raised by OCAS providers regarding a use of ads-related data by Meta to the benefit of Facebook Marketplace (see 7.3.5.2.2.3) do not reflect the expectation of any advantage from this. Meta has not given any evidence that would show that such an abstract and remote benefit could be tangible.
- (1355) In the second place, the statements in Meta's internal documents indicating that [...] (see recitals (1257) to (1258) above). Indeed, in full knowledge of the business and the circumstances, Meta's own executive considered that [...].
- (1356) In the third place, Meta's claim that rival OCAS providers would benefit from a use by Facebook Marketplace of their ads-related data because this would enable them to advertise more efficiently on Facebook or Facebook Marketplace is overall counterintuitive. In essence, it revolves to stating that Facebook Marketplace's competitors should welcome Meta using their ads-related data to outcompete them, since they would have the opportunity to recover a part of the traffic unfairly taken away from them by placing more successful ads on the improved Facebook platform. It is not logical to assume that OCAS providers would rather welcome the opportunity to giving one of their competitors money to regain lost traffic with ads instead of objecting to the loss of traffic in the first place.
- (1357) Finally, regarding Meta's claim that other advertisers would benefit from a use of ads-related data to the benefit of Facebook Marketplace, the Commission notes that Meta has not provided any substantiation of this claim. Any such indirect advantage cannot outweigh the harm which such use of ads-related data would do to OCAS providers.
- (1358) Third, with regard to Meta's argument that signals on users' engagement allows better advertising services, the Commission notes that it did not raise any concern with regard to the use of ads-related data for the provision of online display advertising services.

¹⁵²⁷ Replies to Q E.1 of the Commission's RFI to online classified ads providers of July 2023.

¹⁵²⁸ Replies to Q E.1 of the Commission's RFI to online classified ads providers of July 2023.

¹⁵²⁹ [...].

¹⁵³⁰ [...].

¹⁵³¹ [...].

(1359) It can therefore be concluded that Meta has not shown any valid efficiencies related to its T&C on Data Use.

7.3.7. *Duration of the infringement*

(1360) The Commission concludes that the start date of the infringement consisting of the imposition of unfair trading conditions on Facebook Marketplace's competitors regarding ads-related data is:¹⁵³²

(1) 14 August 2017 in Austria, Belgium, Czechia, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain and Sweden;

(2) 8 November 2017 in Bulgaria, Croatia, Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Romania, Slovenia;

(3) 27 November 2017 in Poland; and

(4) 19 March 2018 in Slovakia.¹⁵³³

(1361) This is because (i) the Commission concludes that Meta is dominant in each national market for online display advertising services on social media platforms in the EEA at least since 2017; and (ii) Meta became a competitor in the market for OCAS since the respective dates of launching of Facebook Marketplace in each Member State.

(1362) In the framework of the DMA compliance report, Meta has indicated a number of measures it took in order to comply with Article 6(2) of the DMA (see recitals (1162) to (1164) above). The measures in any case do not include a change to Meta's T&C on Data Use. The Commission therefore considers that the infringement is ongoing.

(1363) Meta claimed that its terms and conditions must be interpreted in line with its legal obligations, including Article 6(2) of the DMA, and that Meta – in line with those obligations – does not use ads-related data in competition with its advertisers and had confirmed this via compliance safeguards as set out in its DMA compliance report and via an updated Code of Conduct¹⁵³⁴, which should be sufficient to dispel any concerns from advertisers and the Commission in this respect¹⁵³⁵.

(1364) However, the mere declaration that Meta (currently) does not use ads-related data from business users in competition against them does not represent a commitment for the future. It also does not form part of the contracts concluded with advertisers since those are based on Meta's existing terms and conditions which have remained unchanged and continue to give Meta unlimited possibilities to make use of ads-related data. If Meta had wanted to give a firm and legally binding commitment not to use ads-related data to the benefit of Facebook Marketplace at present and in the future ([...] – see section 7.3.4.2), it would have changed its terms and conditions. The fact that Meta avoids doing so, shows that such a legally binding commitment is not its intention.

¹⁵³² Corresponding to the period of when Facebook Marketplace was launched in each Member States, notably as Meta never had any restrictions in place in its T&C on the Data Use.

¹⁵³³ Meta informed the Commission that it had launched Facebook Marketplace also in Iceland and Liechtenstein for the first time on 27 August 2024 in reply to Q1 of the Commission's RFI to Meta of August 2024 regarding revenue and turnover data. The findings of the Decision do not cover these countries.

¹⁵³⁴ Comments on the Letter on Fines, paragraph 33.

¹⁵³⁵ Comments on the Letter on Fines, paragraph 37.

7.3.8. *Conclusion on imposition of unfair trading conditions on OCAS providers*

- (1365) Based on the above considerations, the Commission concludes that Meta's terms and conditions do not restrict Facebook Marketplace's possibility to use ads-related data in competition against other OCAS providers. These terms and conditions are unfair and therefore amount to an abuse by Meta under Article 102(a) TFEU of its dominant position in those national markets for online display advertising on social media platforms where Meta is dominant.

7.4. **Conclusion on the abuses**

- (1366) In light of the analysis contained in the sections above, the Commission concludes that Meta committed two separate infringements of Article 102 TFEU and Article 54 of the EEA-agreement as follows:
- (1) the tying of Meta's OCAS, Facebook Marketplace, with Facebook constitutes an abuse of Meta's dominant position in the EEA-wide market for personal social networking services including hybrid social media platforms; and
 - (2) the imposition of unfair trading conditions on OCAS providers, which compete against Facebook Marketplace, constitutes an abuse of Meta's dominant position in national markets for online display advertising on social media platforms.
- (1367) The Commission concludes that there is no single and continuous infringement in the present case for the following reasons.
- (1368) First, the two abuses are not part of an overall plan. Instead, in this case, the main objectives of the two infringements appear to be different. On the one hand, the tying conduct is primarily aimed at providing Facebook Marketplace with a substantial distribution advantage that competitors cannot match or offset, thereby tending to exclude OCAS providers from the national markets for OCAS. On the other hand, the conduct regarding the unfair trading conditions is aimed at collecting and using ads-related data from OCAS providers to the benefit of Facebook Marketplace.
- (1369) Second, and regarding paragraph (838) of the SO, where the Commission took the preliminary view that the unfair trading conditions reinforce the ability to carry out the tying conduct by allowing Meta to better determine to which users to target the Facebook Marketplace tab, the Commission observes that this complementarity is limited to one of the tying entry points (*i.e.* the Facebook Marketplace tab) and the data was only used on those mobile devices where the Facebook Marketplace tab is targeted under the "dynamic" (*i.e.* personalised) selection since August 2018 (see recital (846)). In addition, based on the Response to the SO,¹⁵³⁶ it appears that such reinforcing effect, on one of the means of tying, might have actually taken place only in a subset of the period covered by this Decision.
- (1370) The Commission's conclusion that for those reasons the abuses relating to tying and unfair trading conditions constitute two separate infringements is not contradicted by Meta's arguments.

¹⁵³⁶ SO Response, paragraph 474.

- (1371) In particular, Meta argued that the SO acknowledges that both conducts pursue an identical objective and that their application was consistent throughout the relevant period and across all EEA Member States.¹⁵³⁷
- (1372) Furthermore, Meta argued that the two infringements should be regarded as an overall plan due to the link between them regarding their objectives, the period of application and the consistency of the conduct.
- (1) With respect to the objectives, Meta claimed that both infringements should be considered as leveraging Facebook's alleged market power to restrict competition on the markets for OCAS for the benefit of Facebook Marketplace and that in a similar situation of two theories of harm in the case *Google Android*, the Commission concluded on a single and continuous infringement.¹⁵³⁸
 - (2) With respect to the period of application, Meta claimed that the same duration of both infringements is further evidence of the overall plan.¹⁵³⁹
 - (3) With respect to the consistency of conduct, Meta rejected the Commission's argument that the use of data for the Facebook Marketplace dynamic tab was only limited by arguing that it is in its view contradictory to rely on the actual use of data for the assessment of a single and continuous infringement while such actual use was not considered as relevant by the Commission for the assessment of the unfair trading conditions abuse under Article 102(a) TFEU.
- (1373) First, it is not correct that the SO relied on a single continuous infringement. In fact, the SO preliminarily concluded in paragraph (836) that Meta committed two separate abuses and that each of them constituted an infringement of Article 102 TFEU in its own right. The SO then left open the possibility that the two abuses could also, in addition, constitute a single and continuous infringement of Article 102 TFEU. Indeed, the Commission's findings in the SO on whether these two separate behaviours could amount to a single continuous infringement were of a preliminary nature which were further developed in the Letter on Fines.
- (1374) Second, with respect to the infringements' respective objectives, it is not the case that the two infringements pursue an identical objective, although indirectly they may partially result in an impact in the same relevant market, as companies that are exploited (in this case the OCAS providers) may also be harmed in their performance in the market where they compete with Meta. The two infringements differ significantly as to their nature, objectives and effects. The tying abuse constitutes a practice by which Meta affords a distribution advantage to Facebook Marketplace that cannot be matched by other OCAS providers. That advantage is capable of restricting competition in the national markets for OCAS in the EEA. In contrast, the unfair trading conditions abuse consists in the collection and use by Meta of very valuable ads-related data obtained from OCAS providers, which are dependent advertising customers. Those unfair conditions cause direct harm to OCAS providers, irrespective of any restriction of competition, a situation which is covered specifically by Article 102(a) TFEU. As opposed to this, in *Google Android*, none of

¹⁵³⁷ SO Response, paragraph 506; Comments on the Letter on Fines, paragraph 20.

¹⁵³⁸ Comments on the Letter on Fines, paragraph 22 and 23.

¹⁵³⁹ Comments on the Letter on Fines, paragraph 24.

the theories of harm related to trading conditions imposed by a dominant undertaking on its customers under Article 102(a) TFEU harming the latter directly.

- (1375) Third, with respect to the period of application, the same duration simply results from the fact that Meta started the two abusive conducts from the launch of Facebook Marketplace and, so far, has not terminated them. This equal duration cannot be taken as evidence that the two abuses form part of an overall plan, but only that both are related to the operation of Facebook Marketplace and were put into place from the beginning of its operation in the EEA. However, as explained in the recital above, these two conducts differ significantly, they are not interdependent and each of them could have been implemented separately by Meta.
- (1376) Fourth, contrary to Meta's allegation it is not contradictory to analyse the actual use of data by Meta differently for the purpose of establishing the infringement under Article 102(a) TFEU and for determining the existence of a single and continuous infringement, as those are different legal concepts requiring separate assessments. Indeed, the actual use of data is not considered as relevant for the finding of an infringement under Article 102(a) TFEU (see recital (1284)). The Commission nevertheless set out the evidence showing that Meta has actually used ads-related data of OCAS providers to the benefit of Facebook Marketplace (see section 7.3.5.4). The Commission does not see any logic contradiction in considering the extent of such actual use for the purposes of the analysis of a single and continuous infringement, even though it was not relevant for the finding of an infringement of Article 102(a) TFEU.

8. JURISDICTION

8.1. Principles

- (1377) In order to justify the Commission's jurisdiction, it is sufficient that conduct is either implemented in the EEA or is liable to have immediate, substantial and foreseeable effects in the EEA.¹⁵⁴⁰
- (1378) The criterion of implementation is satisfied by mere sale within the Union, irrespective of the location of sources of supply and of production plants.¹⁵⁴¹
- (1379) The criterion of immediate, substantial and foreseeable effects of conduct in the EEA is satisfied when the conduct in question is capable of having such an effect, there being no need to show actual effects.¹⁵⁴² A relevant factor in conducting this assessment is whether the conduct was intended to produce effects within the internal market.¹⁵⁴³

¹⁵⁴⁰ Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85 *Ahlström Osakeyhtiö and Others v Commission*, EU:C:1988:447, paragraphs 11 to 18; Case T-102/96 *Gencor v Commission* EU:T:1999:65, paragraphs 89 to 101.

¹⁵⁴¹ Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85 *Ahlström Osakeyhtiö and Others (Wood Pulp) v Commission*, EU:C:1988:447, paragraph 17; Case T-102/96 *Gencor v Commission* EU:T:1999:65, paragraph 87.

¹⁵⁴² Case T-286/09 *Intel Corp. v Commission*, EU:T:2014:472, paragraphs 251, 252 and 296.

¹⁵⁴³ Case C-413/14P *Intel Corp. v Commission*, EU:C:2017:632, paragraphs 40 to 65.

8.2. Application to this case

- (1380) In the present case, the Commission concludes that it has jurisdiction to apply Article 102 TFEU and Article 54 of the EEA Agreement to Meta's conduct described in this Decision for the following reasons.
- (1381) First, Meta's conduct is implemented in the EEA as Meta has tied Facebook Marketplace to Facebook in all Member States of the EEA. Furthermore, Meta imposed unfair trading conditions on OCAS providers regarding ads-related data in all Member States of the EEA.
- (1382) Second, Meta's conduct is capable of having substantial, immediate and foreseeable effects in the EEA. In the case of tying, Meta's conduct is liable to affect the competitive structure in the EEA by foreclosing competing OCAS providers, which are active in the EEA and have users in the EEA. In the case of unfair trading conditions, Meta's conduct is liable to exploit OCAS providers that are operating in the EEA.

9. EFFECT ON TRADE BETWEEN MEMBER STATES

9.1. Principles

- (1383) Article 102 TFEU prohibits as incompatible with the internal market an abuse of a dominant position "in so far as it may affect trade between Member States". Article 54 of the EEA Agreement contains a similar prohibition.
- (1384) The effect on trade criterion consists of three elements.
- (1385) First, "*trade*" must be affected. The concept of trade is not limited to traditional exchanges of goods and services across borders but covers all cross-border economic activity. It also encompasses practices affecting the competitive structure of the internal market by eliminating or threatening to eliminate a competitor operating within the territory of the European Union.¹⁵⁴⁴
- (1386) Second, a practice must be capable of having an effect on trade between Member States.¹⁵⁴⁵ In other words, it must be foreseeable with a sufficient degree of probability on the basis of a set of objective factors of law or fact that the practice in question has an influence, direct or indirect, actual or potential, on the pattern of trade between Member States.¹⁵⁴⁶ Where a dominant undertaking engages in an abusive conduct in more than one Member State, such conduct is normally, by its very nature, capable of affecting trade between Member States.¹⁵⁴⁷
- (1387) Third, the effect on trade between Member States must be "*appreciable*". This is assessed primarily with reference to the position of an undertaking on a relevant

¹⁵⁴⁴ Joined Cases 6/73 and 7/73 *Istituto Chemioterapico Italiano and Commercial Solvents Corporation v Commission*, EU:C:1974:18, paragraphs 32 and 33; Joined Cases T-24/93 to T-26/93 and T-28/93 *Compagnie Maritime Belge a.o. v Commission*, EU:T:1996:139, paragraph 203.

¹⁵⁴⁵ Case 322/81 *NV Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 104; Case C-41/90 *Höfner and Elser v Macrotron*, EU:C:1991:161, paragraph 32; and Case T-228/97 *Irish Sugar v Commission*, EU:T:1999:246, paragraph 170.

¹⁵⁴⁶ Case 5/69 *Franz Völk v Établissement J. Vervaecke* [1969] ECR 295, paragraph 5/7.

¹⁵⁴⁷ Guidelines on the effect on trade concept contained in Articles 81 and 82 of the TFEU, OJ C 101, 27.4.2004, page 81, paragraph 75.

product market.¹⁵⁴⁸ The stronger the position of an undertaking, the more likely it is that the effect on trade between Member States of a practice will be appreciable.¹⁵⁴⁹

9.2. Application to this case

- (1388) In the present case, the Commission considers that the different forms of conduct described in sections 7.2 and 7.3 individually and collectively have an appreciable effect on trade between Member States for the following reasons.
- (1389) First, Meta's economic activities related to personal social networking services, online display advertising services on social media platforms and OCAS are, by their very nature, cross-border in scope due to their online character and being offered across the borders of the EEA Member States.
- (1390) Second, while the tying conduct affects the competitive structure of the internal market by eliminating or threatening to eliminate competitors operating within the territory of the EEA, the unfair trading conditions conduct harms OCAS providers active in the whole of the EEA.
- (1391) Third, the different practices have been implemented in the whole of the EEA.
- (1392) Fourth, since at least 2017, Meta holds a dominant position in the EEA-wide market for personal social networking services and in each national market for online display advertising services on social media platforms in the EEA.

10. ADDRESSEES

10.1. Principles

- (1393) Article 102 TFEU is addressed to undertakings. The concept of an undertaking refers to any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.¹⁵⁵⁰ The term "undertaking" must also be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.¹⁵⁵¹
- (1394) When such an economic entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.¹⁵⁵² However, the infringement of competition law must be imputed unequivocally to a legal person on whom fines may be imposed and the statement of objections must be addressed to that person. It is also necessary that the statement of objections indicates in which capacity a legal person is called on to answer the allegations.¹⁵⁵³
- (1395) The conduct of a subsidiary may be imputed to the parent company, even though the parent company does not participate directly in the infringement, if the parent company and the subsidiary form a "single economic unit" and therefore a single "undertaking" for the purposes of Union competition law. In particular, that may be

¹⁵⁴⁸ Case 5/69 *Franz Völk v Établissement J. Vervaecke*, EU:C:1969:35, paragraph 5/7.

¹⁵⁴⁹ Case T-65/89 *BPB Industries and British Gypsum v Commission*, EU:T:1993:31, paragraph 138.

¹⁵⁵⁰ Case T-132/07 *Fuji Electric Co. Ltd v. Commission*, EU:T:2011:344, paragraph 184.

¹⁵⁵¹ Case C-90/09 P *General Química and Others v Commission*, EU:C:2011:21, paragraph 35 and the case law cited.

¹⁵⁵² Case C-90/09 P *General Química and Others v Commission*, EU:C:2011:21, paragraph 35 and the case law cited.

¹⁵⁵³ Case C-97/08 P *Akzo Nobel and Others v Commission*, EU:C:2009:536, paragraph 57.

the case where a subsidiary, despite having a separate legal personality, does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, regard being had in particular to the economic, organisational and legal links between those two legal entities¹⁵⁵⁴. In the specific case, however, in which a parent company that owns 100% (or almost 100%) of the capital in a subsidiary that has committed an infringement of Union competition rules, there is a rebuttable presumption that that parent company in fact exercises decisive control over such subsidiary. In such a case, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held by the parent company in order to take the view that that presumption applies.¹⁵⁵⁵

10.2. Application to this case

- (1396) As set out above, the Commission concludes that Meta has committed two abuses of a dominant position (see sections 7.2 and 7.3), each of which constitute by itself an infringement of Article 102 TFEU and Article 54 of the EEA Agreement.
- (1397) For each of the two separate infringements, liability should be imputed to the following legal entities:
- (1) Meta Platforms Ireland Limited, formerly Facebook Ireland Limited, as the legal entity carrying out the two conducts constituting two distinct infringements, and
 - (2) Meta Platforms, Inc., formerly Facebook Inc., as the legal entity exercising decisive influence over Meta Platforms Ireland Limited.
- (1398) Meta Platforms Ireland Limited provides the services Facebook, Messenger and Instagram for all users within the European region and it is the sole contracting entity for all European users of those services.¹⁵⁵⁶ As such, in the EEA, Meta Platforms Ireland Limited is the entity offering Facebook and Facebook Marketplace embedded in the Facebook platform, and consequently it contracts related advertising services. Meta Platforms Ireland Limited is indirectly fully owned by Meta Platforms, Inc. (see recital (9) above).¹⁵⁵⁷

11. REMEDIES

11.1. Article 7 of Regulation 1/2003

11.1.1. Principles

- (1399) Where the Commission finds that there is an infringement of Article 102 TFEU, it may by decision require the undertaking concerned to bring such infringement to an end in accordance with Article 7 of Regulation 1/2003. For this purpose, it may impose any behavioural or structural remedies which are proportionate to the

¹⁵⁵⁴ Case C-521/09 P *Elf Aquitaine v Commission*, EU:C:2011:620, paragraph 54.

¹⁵⁵⁵ Case C-97/08 P *Akzo Nobel and Others v Commission*, EU:C:2009:536, paragraph 60 and the case law cited.

¹⁵⁵⁶ WhatsApp Ireland is a separate legal entity, which provides the WhatsApp service for all users within the European region. It is owned by Meta Platforms, Inc.; Meta's reply (introduction) to the Commission's RFI to Meta of March 2022 (ID3245).

¹⁵⁵⁷ Meta's reply (introduction) to the Commission's RFI to Meta of March 2022 (ID3245).

infringement committed and necessary to bring the infringement effectively to an end.

- (1400) In order to bring an infringement to an end, a decision pursuant to Article 7(1) of Regulation 1/2003 may include an order to do certain acts or provide certain advantages which have been wrongfully withheld as well as prohibiting the continuation of certain acts, practices or situations which are contrary to the TFEU.¹⁵⁵⁸ In order to ensure that a decision is effective,¹⁵⁵⁹ the Commission may also require a dominant undertaking to refrain from adopting any measures having an equivalent effect to the conduct identified as abusive.¹⁵⁶⁰ Finally, any remedy must apply in relation to the infringement that has been established¹⁵⁶¹ and be proportionate¹⁵⁶² to attain the objective sought, namely the re-establishment of compliance with the rules infringed.¹⁵⁶³
- (1401) The Commission may require the undertaking concerned to submit to it proposals with a view to bringing the situation into conformity with the requirements of the TFEU.¹⁵⁶⁴

11.1.2. Termination of the infringement

- (1402) The Commission concludes that Meta should be required to bring the two infringements effectively to an end, if it has not already done so, and to refrain from any measure, which has the same or a similar object or effect. This shall include one of the measures indicated in sections 11.1.2.1 and 11.1.2.2 or any equivalent measure.

11.1.2.1. Remedies concerning the abuse by tying Facebook Marketplace to Facebook

- (1403) In order to bring the abuse consisting of tying Facebook Marketplace to Facebook to an end, Meta must ensure that Facebook Marketplace can no longer receive solely a unique distribution advantage by being tied to Facebook.

¹⁵⁵⁸ Joined cases C-6/73 and C-7/73, *Istituto Chemioterapico Italiano and Commercial Solvents Corporation v Commission*, EU:C:1974:18, paragraph 45; Joined cases C-241/91 P and C-242/91 P, *RTE and ITP v Commission ("Magill")*, EU:C:1995:98, paragraph 90; Case T-228/97, *Irish Sugar v Commission*, EU:T:1999:246, paragraph 298; Case T-128/98, *Aéroports de Paris v Commission*, EU:T:2000:290, paragraph 82.

¹⁵⁵⁹ Joined cases C-6/73 and C-7/73, *Istituto Chemioterapico Italiano and Commercial Solvents Corporation v Commission*, EU:C:1974:18, paragraph 46; Joined cases C-241/91 P and C-242/91 P, *RTE and ITP v Commission ("Magill")*, EU:C:1995:98, paragraph 91.

¹⁵⁶⁰ Case T-83/91, *Tetra Pak v Commission*, EU:T:1994:246, paragraphs 220 to 221.

¹⁵⁶¹ Joined cases C-6/73 and C-7/73, *Istituto Chemioterapico Italiano and Commercial Solvents Corporation v Commission*, EU:C:1974:18, paragraph 45.

¹⁵⁶² The principle of proportionality is enshrined in Article 5(4) of the TFEU according to which "*the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.*" The Court of Justice has interpreted this principle as meaning that "*measures adopted pursuant to EU law must not exceed what is appropriate and necessary to attain the objective pursued*", and that where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued. See Case C-15/83, *Denkavit v Hoofdproduktschap voor Akkerbouwprodukten*, EU:C:1984:183, paragraph 25 and Case C-354/95, *The Queen v Minister for Agriculture, Fisheries and Food, ex parte National Farmers' Union and Others*, EU:C:1997:379, paragraphs 49 to 50.

¹⁵⁶³ Joined cases C-241/91 P and C-242/91 P, *RTE and ITP v Commission ("Magill")*, EU:C:1995:98, paragraph 93.

¹⁵⁶⁴ Joined cases C-6/73 and C-7/73, *Istituto Chemioterapico Italiano and Commercial Solvents Corporation v Commission*, EU:C:1974:18, paragraph 45.

- (1404) Accordingly, Meta should implement one of the following remedy options, or any equivalent measure which effectively brings the infringement to an end:
- (1) To offer Facebook Marketplace solely as a separate standalone product (website or/and app) outside of Facebook, which is how OCAS providers offer their products. In this scenario, Facebook Marketplace would have to function as a standalone product (app and/or website), with no embedding in Facebook in the form of a tab, Jewel Notifications, Showcase Units or other equivalent tying methods available solely to Facebook Marketplace; or
 - (2) To offer end users a tool to choose neutrally one or several OCAS providers which they wish to have embedded to Facebook for their individual usage. In this scenario, Meta should be required to offer users of Facebook on a periodic basis the choice to select their preferred OCAS provider(s) from a list of eligible OCAS providers for each Member State. This option could include also Facebook Marketplace as one of the possible providers, if this is done in a neutral manner that does not favour Facebook Marketplace.
- (1405) Finally, Meta should refrain from adopting any practice or measure that have an equivalent object or effect as the abusive conduct.

11.1.2.2. Remedies concerning the abuse by unfair trading conditions to OCAS providers regarding ads-related data

- (1406) Meta should ensure both *legally* and *technically* that non-publicly available ads-related data derived from or provided by OCAS providers when they purchase Meta's online advertising services cannot be used by Meta either within Facebook Marketplace or within Facebook to the advantage of Facebook Marketplace. In particular, Meta should not use such data for any strategic decisions regarding Facebook Marketplace, the solicitation of buyers or sellers and for the improvement or optimization of Facebook Marketplace. This could be achieved by ensuring that ads-related data is not accessible to Facebook Marketplace from the outset.
- (1407) As regards the effects of the use that Meta has already made of the ads-related data, any such effects would have to be removed, in particular, via a retraining of any relevant machine learning Marketplace models (see also recital (1417)).
- (1408) Any effective remedy should prevent Meta from using ads-related data derived from or provided by OCAS providers both directly and indirectly (see also recital (1128)). [...]. This is without prejudice to other forms of indirect use, which may have the same object or effect.
- (1409) The data covered by the remedy should include both individual (*i.e.* non-aggregated) ads-related data and ads-related data aggregated by Meta based on individual ads-related data available to Meta through the operation of its online advertising services. Ads-related data should include at least impression data, ad click data, event data and product catalogue data. They should also cover any other data which were derived from or provided by OCAS providers when they used Meta's online advertising services and may provide Facebook Marketplace with an advantage in competition.
- (1410) Finally, Meta should refrain from adopting any practice or measure that has an equivalent object or effect.

11.1.2.3. Assessment of Meta's arguments about remedies

- (1411) Meta claimed that there is no legal basis under which the Commission can order the specific remedies proposed in the Decision as all its previous decisions adopted by

virtue of Article 7 of Regulation 1/2003 included only a cease-and-desist order that required the relevant undertaking(s) to bring the infringement in question to an end, and correctly leave it to the undertaking(s) to adopt the measures necessary for achieving this.¹⁵⁶⁵

- (1412) In addition, Meta's claimed that the Decision requirements do not meet the proportionality test set out in Article 7 of Regulation 1/2003, or the overarching principle of proportionality enshrined in Article 5(4) TFEU, as it goes so far by stating that one of the proposed tying solutions goes "*further than merely ending the tie*" and that the proposed unfair trading conditions solution would also require the removal of historic ads data use.¹⁵⁶⁶
- (1413) It then concludes that the burden would be on Meta to ensure that it brings any proven infringement(s) to an end.
- (1414) First, while the Commission may impose any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end (as confirmed by the Court already with respect to Article 3(1) of Regulation 17/62 and continues to apply to the subsequent Article 7(1) of Regulation 1/2003¹⁵⁶⁷), in this Decision, the Commission does not impose any specific remedies but sets out the result that such remedies should achieve. The possible remedies described above are only suggestions and Meta may adopt alternative, equivalent measures that bring the infringements to an end.
- (1415) Second, the Commission notes that the remedies as described in sections 11.1.2.1 and 11.1.2.2 are proportionate as they, or any other equivalent measures, are necessary to bring the infringements effectively to an end, and limited to what is necessary to achieve this objective.
- (1416) With regard to tying, the Commission notes that the first option envisaged in section 11.1.2.1 – that is the separation of Facebook Marketplace into a standalone product – simply aims at removing the advantage that the tie offers: the use of Facebook's ubiquity to distribute Facebook Marketplace. The second option foreseen in section 11.1.2.1 – opening up Facebook as a distribution channel to other OCAS providers – constitutes an equally appropriate means of putting the infringement to an end. The delineation of two alternatives for the implementation of an efficient remedy is therefore not disproportionate but rather offers the flexibility that Meta seeks with regard to measures necessary to bring the infringement to an end. Both alternatives are equivalent. Meta can choose either of the two or an equivalent measure which effectively brings the infringement to an end.
- (1417) With regard to unfair trading conditions: with respect to the optimization of Facebook Marketplace on the basis of ads-related data, section 11.1.2.2 requires that the effects of the use that has already been made of the ads-related data would have to be removed. This means that models which have been trained on the basis of ads-related data would have to be retrained on the basis of data which does not include ads-related data from OCAS providers. This does not go beyond what is necessary to bring the detriment on OCAS providers effectively to an end. Models which were trained on the basis of ads-related data incorporate learnings from ads-related data

¹⁵⁶⁵ SO Response, paragraphs 491 to 497.

¹⁵⁶⁶ SO Response, paragraph 498.

¹⁵⁶⁷ Case T-83/91, *Tetra Pak International SA v Commission*, EU:T:1994:246, paragraph 222.

from OCAS providers. Even without any future use of ads-related data, those models, without retraining, would continue to be based on ads-related data from OCAS providers and thus, Meta's use of those models would continue being detrimental to them to the benefit of Facebook Marketplace.

11.1.3. *Implementation of the remedies*

- (1418) Meta is granted 90 working days from the date of the notification of this Decision to implement measures that bring the infringements effectively to an end. A 90 working days period is appropriate to implement such measures, given that Meta may have to put in place certain technical arrangements.
- (1419) Meta shall notify the Commission, within 60 working days from the date of notification of this Decision, the measures by means of which it intends to bring the infringements effectively to an end. That communication should be sufficiently reasoned and detailed to enable the Commission to make a preliminary assessment as to whether those measures will ensure that the two infringements are brought to an end effectively and in accordance with the principles set out in sections 7.2 and 7.3. Silence on the part of the Commission between the 60 day deadline and 90 day deadline should not be interpreted as an indication that the intended measures communicated by Meta will ensure that the infringements are brought to an end effectively.
- (1420) The Commission is entitled to monitor the implementation by Meta of the remedies ordered in this Decision. For those purposes, it is entitled to use the powers of investigation provided for in Regulation 1/2003.¹⁵⁶⁸
- (1421) Considering the variety of the measures that Meta may take to bring the infringements effectively to an end, Meta should provide the Commission with periodic reports on the measures taken to ensure compliance with this Decision. The first of those reports should be submitted on the day when Meta brings the two infringements effectively to an end. Thereafter, reports should be submitted every six months for a period of five years from the date of submission of the first report.

11.2. **Article 23(2) of Regulation 1/2003 – Fines**

11.2.1. *Principles*

- (1422) Pursuant to Article 23(2)(a) of Regulation 1/2003 and Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area,¹⁵⁶⁹ the Commission may by decision impose fines on undertakings, where, either intentionally or negligently, they infringe Article 102 TFEU and Article 54 of the EEA Agreement.
- (1423) An infringement of Article 102 TFEU or Article 54 of the EEA Agreement is committed intentionally or negligently where the undertaking concerned cannot be unaware of the abusive nature of its conduct, whether or not it was aware that it was infringing the competition rules of the TFEU.¹⁵⁷⁰ Regarding an undertaking in a

¹⁵⁶⁸ Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 1265.

¹⁵⁶⁹ OJ L 305, 30.11.1994, page 6.

¹⁵⁷⁰ Case T-83/91 *Tetra Pak v Commission*, EU:T:1994:246, paragraph 239, upheld on appeal in Case C333/94 P, EU:C:1996:246, paragraph 48; Case T-229/94 *Deutsche Bahn v Commission*, EU:T:1997:155, paragraph 130; Case T-271/03 *Deutsche Telekom v Commission*, EU:T:2008:101, paragraph 295 upheld on appeal in Case C-280/08 P, EU:C:2010:603, paragraph 124; Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 319, upheld on appeal in Case C-295/12 P,

dominant position, the undertaking is aware of the abusive nature of its conduct where it is aware of the essential facts justifying both the finding of a dominant position on the relevant market and the finding by the Commission of an abuse of that dominant position.¹⁵⁷¹

- (1424) According to case law, the fact that a conduct contested by the Commission could be categorised as novel does not preclude the imposition of a fine, and the circumstance that an abuse is without precedent cannot call into question the gravity of an infringement or lead to a reduction in the amount of a fine.¹⁵⁷² Similarly, the Courts clarified that the principle *nulla poena sine lege certa*, which is enshrined in Article 49 of the Charter of Fundamental Rights of the European Union, cannot be interpreted as prohibiting the gradual clarification of rules of criminal liability by means of interpretations in the case law, provided that those interpretations are reasonably foreseeable.¹⁵⁷³
- (1425) Pursuant to Article 23(3) of Regulation 1/2003, in fixing the amount of the fines, the Commission must have regard to all relevant circumstances and particularly to the gravity and the duration of the infringement. In doing so, the Commission sets the fines at a level sufficient to ensure deterrence. The Commission ensures that any aggravating or mitigating circumstances are reflected in the fines imposed.
- (1426) The Commission enjoys a broad discretion as regards the setting of fines in relation to infringement of the EU competition rules.¹⁵⁷⁴ In setting the fines to be imposed, the Commission will, as a matter of principle, refer to the general methodology laid down in its Guidelines on Fines.

11.2.2. *Intent or negligence*

- (1427) The Commission concludes that, based on the facts described in this Decision, Meta committed the two separate infringements intentionally or, at the very least, negligently.
- (1428) First, Meta could, or should have been aware of the fact that it held a dominant position on the EEA-wide market for personal social networking services including hybrid social media platforms (see section 6.3) and the national markets for online display advertising on social media platforms (see section 6.4).
- (1429) Second, the Commission and the Court of Justice have repeatedly condemned such practices constituting the two separate infringements (see also in section 11.2.2.2).

EU:C:2014:2062, paragraph 156; Case C-681/11 *Schenker & Co. and Others*, EU:C:2013:404, paragraph 37; Case T-286/09 *Intel Corp. v Commission*, EU:T:2014:547, paragraph 1601; Case T472/13 *Lundbeck v Commission*, EU:T:2016:449, paragraph 762.

¹⁵⁷¹ Case 322/81 *NV Nederlandsche Banden Industrie Michelin v Commission*, EU:C:1983:313, paragraph 107; Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 320; Joined cases T-259/02 to T-264/02 and T-271/02 *Raiffeisen Zentralbank Österreich AG and Others v Commission*, EU:T:2006:396, paragraphs 207 and 210.

¹⁵⁷² Case T-814/17 *Lietuvos geležinkiai AB v European Commission*, EU:T:2020:545, paragraphs 340 to 341; Case C-72/15 *PJSC Rosneft Oil Company v Her Majesty's Treasury and Others*, EU:C:2017:236, paragraph 167; Joined cases C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P *Dansk Rørindustri and Others v Commission*, EU:C:2005:408, paragraphs 217 to 218.

¹⁵⁷³ Case C-591/16 *Lundbeck v Commission*, EU:C:2021:243, paragraph 166.

¹⁵⁷⁴ Case C-452/11 P *Heineken Nederland and Heineken v Commission*, EU:C:2012:829, paragraph 92; Case C-39/18 P *Icap*, EU:C:2019:584, paragraph 25.

- (1430) Meta's claims that the Commission failed to satisfy the legal requirements to prove that the abuses were committed intentionally, or at the very least, negligently,¹⁵⁷⁵ must be rejected.

11.2.2.1. Meta's claims that it did not commit the infringements intentionally

- (1431) The Commission rejects Meta's arguments stating that the "*manifest absence of any intent in this case must be taken into account when determining the appropriateness of imposing a fine at all, or at the very least, implies that any fine should be no more than nominal.*"¹⁵⁷⁶
- (1432) With regard to tying, Meta argued that the SO provided no evidence that Meta introduced Facebook Marketplace as part of an exclusionary effects strategy directed at OCAS providers but its sole intention was to respond to clear user demand with a view to further engaging users and capturing more of their time on Facebook.¹⁵⁷⁷ According to Meta, Facebook Marketplace does not generate revenue through listing fees and rival OCAS providers continue to be able to advertise on Facebook.¹⁵⁷⁸ Meta further argued that the development of Facebook Marketplace has had a pro-competitive effect and that there is no evidence of actual or potential anticompetitive foreclosure effects.¹⁵⁷⁹
- (1433) Similarly, as regards the unfair trading conditions, Meta submitted that the sole purpose of Meta's terms and conditions is to improve its services for the purpose of providing an engaging experience for users and a valuable proposition for advertisers to continue attracting their ad spend.¹⁵⁸⁰ Meta further argued that it could not have been aware that its T&C on data use could be considered by the Commission as creating anti-competitive harm considering that other market players had similar terms and conditions and that Meta did not find any evidence on actual use of OCAS providers' ads-related data to the benefit of Facebook Marketplace.¹⁵⁸¹
- (1434) First, in line with the case law recalled in recital (1423) above, an undertaking must be held to be aware of the anti-competitive nature of its conduct where it is aware of the essential facts justifying both the finding of a dominant position on the relevant market and the finding by the Commission of an abuse of that position. Meta was indeed aware of the factual elements on the basis of which the Commission found, first, the existence of a dominant position on the markets for personal social networking services including hybrid social media platforms and for online display advertising on social media platforms, and, second, that the tying practice and the imposition of unfair trading conditions constitute abuses of those dominant positions.
- (1435) Second, with regard to the tying conduct, the Commission notes that the fact that Meta was aware of, and actively building on, the distribution advantage that Facebook offers to Facebook Marketplace, is well documented in internal documents (see section 7.2.3.4.1.5). In particular, in the first place, prior to launching Facebook Marketplace, Meta recognized that tying Facebook Marketplace to Facebook would

¹⁵⁷⁵ Comments on the Letter on Fines, paragraph 13.

¹⁵⁷⁶ SO Response, paragraph 504.

¹⁵⁷⁷ SO Response, paragraph 502; Comments on the Letter on Fines, paragraph 14.

¹⁵⁷⁸ Comments on the Letter on Fines, paragraph 14.

¹⁵⁷⁹ Comments on the Letter on Fines, paragraph 15.

¹⁵⁸⁰ SO Response, paragraph 503.

¹⁵⁸¹ Comments on the Letter on Fines, paragraph 16.

bring along advantages for Facebook Marketplace which would not be possible to recreate otherwise.

- (1436) In the second place, it is irrelevant that rival OCAS providers are able to advertise on Facebook since the Commission's case is not about access to Facebook's advertising inventory but about Meta tying Facebook Marketplace to Facebook, with the view of affording itself a significant distribution advantage and which cannot be offset or matched by other OCAS providers.
- (1437) In the third place, section 7.2.3.4.5 of the Decision provides a detailed analysis of the exclusionary effects of the tie in the national markets for OCAS.
- (1438) Third, with regard to the unfair trading conditions, the Commission notes that Meta issued its T&Cs deliberately and in full knowledge of the concerns they raise. In the first place, OCAS providers communicated their concerns to Meta (see section 7.3.5.2.2.3). As set out above (see recitals (1257) to (1258)), [...]. Furthermore, those concerns raised by OCAS providers triggered [...] (see recitals (1259) to (1262)).
- (1439) In the second place, even if other market participants offering online display advertising services had similar terms, Meta must have been aware of its special responsibility as a dominant undertaking and its specific position due to its activities in the markets for online classified ads in the EEA.
- (1440) In the third place, Meta's argument that its T&C on Data Use were motivated by its wish to offer more attractive services to advertisers is also not convincing. The Commission does not take issue with Meta offering Facebook Marketplace or using ads-related data for its general advertising services, but only with using ads-related data to the specific benefit of Facebook Marketplace. Such data use is unrelated to the provision of advertising services in general.

11.2.2.2. Meta's claims that it did not commit the infringements negligently

- (1441) The Commission rejects Meta's arguments that neither of the two abuses could be considered as negligent since the Commission has relied in Meta's view on a novel application of the tying and unfair trading conditions case law.¹⁵⁸²
- (1442) First, as explained in recital (1424), the fact that a conduct contested by the Commission could be categorised as novel does not preclude the imposition of a fine. Moreover, Meta cannot rely on the alleged novelty of the theory on which the decision is based to rule out the possibility that there was intent to commit an infringement or negligence in that regard.¹⁵⁸³
- (1443) Second, with respect to the tying abuse, the Commission has neither applied a novel theory of harm nor applied a novel legal test. Recitals (730) to (756) provide a detailed overview of case law on tying, including the elements of the applicable legal test, which the Commission relied on in the case at hand.
- (1444) Third, also with respect to unfair trading conditions, the Commission has not applied a novel theory of harm. While there has been limited case law in recent years, Article 102(a) TFEU has already been assessed by the Courts as early as 1974 in *BRT v*

¹⁵⁸² SO Response, paragraph 501 and Comments on the Letter on Fines, paragraphs 6 to 12, and 17.

¹⁵⁸³ Case T-814/17 *Lietuvos geležinkeliai AB v European Commission*, EU:T:2020:545, paragraphs 340 to 341 and 349.

SABAM¹⁵⁸⁴ and was applied by the Commission regularly throughout many years,¹⁵⁸⁵ mostly with subsequent court cases.

11.2.3. *Joint and several liability*

(1445) The Commission concludes that all Meta legal entities mentioned in section 10.2 above are jointly and severally liable for each of the two infringements. Meta Platforms Ireland Limited is the entity active in the EEA in all affected markets. It is in turn indirectly fully owned by Meta Platforms, Inc, which is therefore presumed to exercise decisive influence over it. Meta did not provide any evidence to rebut this presumption. They should therefore be held jointly and severally liable to pay the fines.

11.2.4. *General methodology of the Guidelines on Fines*

(1446) Under the general methodology laid down in the Guidelines on Fines, the Commission sets the fine to be imposed in a given case on the basis of two distinct main steps.

(1447) First, the Commission defines the basic amount of the fines.¹⁵⁸⁶ The basic amount of the fines is to be set by reference to the value of the undertaking's sales of goods or services to which the infringement directly or indirectly relates in the relevant geographic area within the EEA.¹⁵⁸⁷ The value of sales will be assessed before VAT and other taxes directly related to the sales.¹⁵⁸⁸

(1448) The Commission will normally take into account the sales made by the undertaking during the last full business year of the occurrence of the infringement.¹⁵⁸⁹

(1449) The basic amount will be related to a proportion of the value of sales of up to 30%,¹⁵⁹⁰ depending on the degree of gravity of the infringements, multiplied by the number of years of the infringements.¹⁵⁹¹ In assessing the gravity of the infringement, the Commission has regard to a number of factors, such as the nature of the infringement, the market shares of the undertaking concerned, the geographic scope of the infringement and whether or not the infringement has been implemented.¹⁵⁹²

(1450) The Commission may also include in the basic amount an additional amount of a sum up to 25% of the value of sales¹⁵⁹³ ("entry fee") to deter undertakings from infringing the competition rules.

(1451) Second, where applicable, the Commission adjusts the basic amount upwards or downwards to take into account aggravating or mitigating circumstances.¹⁵⁹⁴ Those

¹⁵⁸⁴ Case C-127/73 *BRT v SABAM*, EU:C:1974:25.

¹⁵⁸⁵ For example, in the cases Tetra Pak II in 1991 (Commission decision of 24 July 1991 in Case IV/31043 Tetra Pak II), DSD in 2001 (Commission decision of 20 April 2001 in Case COMP D3/34493 DSD) and Gazprom in 2018 (Commission decision of 24 May 2018 in Case AT.39816 Upstream gas supplies in Central and Eastern Europe).

¹⁵⁸⁶ Point 10 of the Guidelines on Fines.

¹⁵⁸⁷ Point 13 of the Guidelines on Fines.

¹⁵⁸⁸ Point 17 of the Guidelines on Fines.

¹⁵⁸⁹ Point 13 of the Guidelines on Fines.

¹⁵⁹⁰ Point 21 of the Guidelines on Fines.

¹⁵⁹¹ Point 19 of the Guidelines on Fines.

¹⁵⁹² Point 22 of the Guidelines on Fines.

¹⁵⁹³ Point 25 of the Guidelines on Fines.

¹⁵⁹⁴ Point 27 of the Guidelines on Fines.

circumstances are listed non-exhaustively in points 28 and 29 of the Guidelines on Fines.

- (1452) When setting the fine, the Commission pays particular attention to the need to ensure that the fines have a sufficiently deterrent effect.¹⁵⁹⁵
- (1453) Finally, any fine thus established imposed for an infringement of Article 102 TFEU must pursuant to Article 23(2) of Regulation 1/2003, not exceed 10% of the undertaking's total turnover in the preceding business year.

11.2.5. *Basic amount of the fine*

- (1454) For the reasons set out in chapter 7.4, Meta's arguments that the SO's allegations relate only to a single and continuous infringement and not to two separate infringements must be rejected.
- (1455) Accordingly, in the present case, the Commission concludes that it is necessary to impose two fines on Meta: one for each of the two separate infringements of Article 102 TFEU and Article 54 of the EEA-agreement, as set out in sections 7.2 and 7.3.

11.2.5.1. Value of sales

- (1456) The Commission determines the value of sales based on the gross turnover of Facebook Marketplace (total of all fees and advertising revenues for Facebook Marketplace services, including (i) all revenue from ad inventory placed on Facebook Marketplace (through both the "feeds" and "search" placement options on Ads Manager); (ii) all revenue from boosted listings surfaced on Facebook Marketplace; (iii) all revenue from boosted listings surfaced off of Facebook Marketplace (*e.g.* on Newsfeed)¹⁵⁹⁶ generated by Meta during the last full business year of the infringements, in the EEA. This corresponds to Meta's FY 2023, which lasted from 1 January 2023 to 31 December 2023.¹⁵⁹⁷
- (1457) In Meta's FY 2023, the gross turnover of Facebook Marketplace in the EEA amounted to EUR [...].¹⁵⁹⁸

11.2.5.2. Gravity

- (1458) The gravity of the infringement determines the percentage of the value of sales taken into account in setting the fines. In assessing the gravity of the infringements, the Commission has regard to a number of factors, such as the nature of the infringement, the size and number of companies affected, the volume and value of the relevant data and the geographic scope of the infringement and the market share of Meta.¹⁵⁹⁹
- (1459) The Commission concludes that the proportion of the value of sales to be used to establish the basic amount of the fines in this case should be [...] % for the tying infringement and [...] % for the unfair trading conditions infringement. In reaching

¹⁵⁹⁵ Point 30 of the Guidelines on Fines.

¹⁵⁹⁶ Meta's reply to Q1 of the Commission's RFI to Meta of August 2024 (ID13051).

¹⁵⁹⁷ Meta's reply to Q4 of the Commission's RFI to Meta of August 2024 (ID13051).

¹⁵⁹⁸ Meta informed the Commission that it had launched Facebook Marketplace also in Iceland and Liechtenstein only on 27 August 2024 in reply to Q1 of the Commission's RFI to Meta of August 2024 regarding revenue and turnover data. Therefore, the findings of the Decision do not cover these countries and the revenues generated in Iceland and Liechtenstein are not included in the calculation of the fines.

¹⁵⁹⁹ Point 22 of the Guidelines on Fines.

this conclusion, the Commission takes into account the following factors under point 19 et seq. of the Guidelines on Fines.

- (1460) First, the relevant markets affected by the two separate infringements, namely the national markets for OCAS in the EEA, are of significant economic importance. This means that any anticompetitive behaviour on these markets is likely to have had a considerable impact (see sections 7.2.3.4 and 7.3.5.2).
- (1461) Second, the whole EEA, except Iceland and Liechtenstein, was covered by the two separate infringements.¹⁶⁰⁰
- (1462) Third, the Commission and the Court of Justice have already repeatedly condemned practices by undertakings in a dominant position that make the conclusion of a contract concerning a product or service subject to the acceptance of a supplementary obligation.¹⁶⁰¹ This justifies a higher percentage for the tying infringement.

11.2.5.3. Duration

- (1463) The Commission intends to take into account the durations as set out below.
- (1464) The starting date for the purposes of the calculation of the two separate fines would be the starting date of the infringements of Article 102 TFEU (see sections 7.2.5 and 7.3.7), namely:
 - (1) 14 August 2017 in Austria, Belgium, Czechia, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain and Sweden;
 - (2) 8 November 2017 in Bulgaria, Croatia, Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Romania and Slovenia;
 - (3) 27 November 2017 in Poland; and
 - (4) 19 March 2018 in Slovakia.¹⁶⁰²
- (1465) There is no evidence in the Commission's file indicating that the two infringements have terminated (see sections 7.2.5 and 7.3.7). Therefore, the Commission uses the date of the adoption of this Decision as the end date of the two infringements for the purpose of calculating the fine.
- (1466) The Commission therefore concludes that the duration of the two infringements is:
 - (1) 2649 days in Austria, Belgium, Czechia, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain and Sweden;

¹⁶⁰⁰ Meta informed the Commission that it had launched Facebook Marketplace also in Iceland and Liechtenstein only on 27 August 2024 in reply to Q1 of the Commission's RFI to Meta of August 2024 regarding revenue and turnover data. Therefore, the findings of the Decision do not cover these countries.

¹⁶⁰¹ See for example Case T-30/89 *Hilti v Commission*, EU:T:1991:70; Case T-83/91 *Tetra Pak v Commission*, EU:T:1994:246; Case C-333/94 P *Tetra Pak v Commission*, EU:C:1996:436; and Case T-201/04 *Microsoft v Commission*, EU:T:2007:289.

¹⁶⁰² Meta informed the Commission that it had launched Facebook Marketplace also in Iceland and Liechtenstein only on 27 August 2024 in reply to Q1 of the Commission's RFI to Meta of August 2024 regarding revenue and turnover data. Therefore, the findings of the Decision do not cover these countries.

- (2) 2563 days in Bulgaria, Croatia, Cyprus, Estonia, Greece, Latvia, Lithuania, Malta, Romania and Slovenia;
- (3) 2544 days in Poland; and
- (4) 2432 days in Slovakia.

11.2.5.4. Additional amount

(1467) The Commission concludes that the basic amount should include an additional amount in order to deter undertakings of a similar size and with similar resources from entering into the same type of infringements as Meta.¹⁶⁰³

(1468) In light of the factors set out in recitals (1460) to (1462), the additional amount should be 11% of the value of sales in 2023 as regards the unfair trading conditions infringement and 12% of the value of sales in 2023 as regards the tying infringement.

11.2.6. Adjustments to the basic amount

11.2.6.1. Aggravating or mitigating circumstances

(1469) The Commission may take into account circumstances that result in an increase or a decrease in the basic amount.¹⁶⁰⁴ These circumstances are listed in a non-exhaustive way in points 28 and 29 of the Guidelines on Fines.

11.2.6.1.1. Aggravating circumstances

(1470) In the present case, the Commission does not consider any aggravating circumstances that would result in an increase in the basic amount of any fines.

11.2.6.1.2. Attenuating circumstances

(1471) With regard to the tying, the Commission takes into account as an attenuating circumstance the fact that, whilst having the capability to foreclose competition in all Member States of the EEA, the conduct led to different degrees of actual exclusionary effects. For this purpose, the Commission applies a reduction of 10% calculated as a fixed percentage of the total value in the EEA of the basic amount of the fine applicable to the tying abuse.

(1472) The Commission rejects Meta's allegations that the Commission failed to evidence actual or potential anticompetitive foreclosure of the tie and, in particular, that it failed to satisfy the legal benchmark to demonstrate that the tie is capable of anticompetitive foreclosure, which should result in imposing a symbolic fine at most.¹⁶⁰⁵ Contrary to Meta's claims, section 7.2.3.4.5 of the Decision provides a detailed analysis of the exclusionary effects of the tie in the national markets for OCAS.

(1473) With regard to the unfair trading conditions, the Commission does not consider any attenuating circumstances that would result in a decrease in the basic amount of the fine.

(1474) The Commission considers that no further attenuating circumstances need to be taken into account with respect to either of the abuses. Meta's claim that it submitted commitment proposals which should be considered as a "*significant, consistent and genuine effort*" to cooperate and ought to be treated in Meta's view as mitigating

¹⁶⁰³ Point 25 of the Guidelines on Fines.

¹⁶⁰⁴ Point 27 of the Guidelines on Fines.

¹⁶⁰⁵ Comments on the Letter on Fines, paragraphs 27 to 29 and 31.

circumstances¹⁶⁰⁶ should be rejected. First, the cooperation foreseen in the Guidelines on Fines as mitigating circumstances to reduce the basic amount¹⁶⁰⁷ relates to the provision of evidence enabling the finding of an infringement, not to the submission of commitment proposals. Second, and as explained by the Commission to Meta in response to its submissions, the proposed commitments failed to fully address the Commission's concerns.¹⁶⁰⁸ Indeed, the fact that the Commission could not accept the commitment proposals made by Meta shows that they were insufficient to alleviate the competition concerns and can therefore not be considered as a genuine effort to cooperate justifying reduction of fine.

11.2.6.2. Deterrence

- (1475) Particular attention should be paid to the need to ensure that fines have a sufficiently deterrent effect; to that end, the fines to be imposed on undertakings which have a particularly large turnover beyond the sales of goods or services to which the infringement relates may be increased.¹⁶⁰⁹
- (1476) Based on the above, in the present case, the Commission applies a deterrence multiplier of 1.5 to both fines as Meta's worldwide turnover in the last financial year was very significant, also compared to the value of sales to be taken account, amounting to EUR 124.76 billion.¹⁶¹⁰
- (1477) Meta's argument that that an additional amount for deterrence would not be justified due to a novel application of theories of harm in this case must be rejected.¹⁶¹¹ Meta furthermore argues that an additional amount for deterrence along with a potentially high fine as well as the costly implementation of remedies might jeopardize the commercial viability of Facebook Marketplace and might lead to Facebook Marketplace leaving the market with negative effects on competition.¹⁶¹²
- (1478) The claim that the theories of harm applied in this case could be novel has been rebutted already above in section 11.2.2. With regard to Meta's claim regarding the financial viability of Facebook Marketplace, the Commission notes that, in view of the need that the fine is sufficiently deterrent, the financial viability to be considered is not that of Facebook Marketplace, but of Meta itself, which has to bear the fines. Considering Meta's worldwide turnover, its claim regarding financial viability must be dismissed.

11.2.7. Conclusion: final amount of the fine

- (1479) The Commission concludes that the final amount of the fines to be imposed on Meta amounts to [...] for tying and [...] for the imposition of unfair trading conditions.
- (1480) Meta's turnover in the business year ending 31 December 2023 was EUR 124.76 billion. As the amount of the fines set out in recital (1479) above is below 10% of that figure no adaptation is necessary pursuant to Article 23(2) of Regulation 1/2003.

¹⁶⁰⁶ Comments on the Letter on Fines, paragraphs 39 to 44.

¹⁶⁰⁷ Point 29 of the Guidelines on Fines.

¹⁶⁰⁸ The Commission explained the shortcomings of Meta's submission of 22 June 2022 in a call with Meta on 25 July 2022, as confirmed by e-mail of 26 July 2022, and during a meeting on 25 August 2022.

¹⁶⁰⁹ Point 30 of the Guidelines on Fines.

¹⁶¹⁰ Meta's reply to Q3 of the Commission's RFI to Meta of August 2024 (ID13051).

¹⁶¹¹ Comments on the Letter on Fines, paragraph 46.

¹⁶¹² Comments on the Letter on Fines, paragraph 47.

11.3. Article 24(1)(a)-of Regulation 1/2003 - periodic penalty payment

11.3.1. Principles

(1481) Pursuant to Article 24(1)(a) of Regulation 1/2003 and Article 5 of Council Regulation No 2894/94, the Commission may, by decision, impose on undertakings or associations of undertakings periodic penalty payments not exceeding 5% of the average daily turnover in the preceding business year per day and calculated from the day specified in the decision, in order to compel them to put an end to an infringement, in accordance with a decision taken pursuant to Article 7 of Regulation 1/2003.

11.3.2. Application to this case

(1482) The Commission concludes that it is necessary to impose periodic penalty payments pursuant to Article 24(1)(a) of Regulation 1/2003 and Article 5 of Council Regulation 2894/94 if Meta fails to: (i) implement measures that bring the infringements effectively to an end within 90 days from the date of notification of this Decision; (ii) notify the Commission within 60 days from the date of notification of this Decision the specific measures by means of which they intend to bring the infringements effectively to an end; and (iii) provide the Commission with periodic reports every six months, for a period of five years, on the action taken to comply with this Decision.

(1483) In setting the level of the periodic penalty payments, the Commission has taken into account the need to impose periodic penalty payments sufficient to ensure compliance by Meta with this Decision. The Commission has also taken into account the need to set periodic penalty payments that are sufficient to ensure compliance by other undertakings of a similar size and with similar financial resources.

(1484) Consequently, if Meta was to fail to comply with any of the requirements set out in recital (1482) above, the Commission would impose a daily periodic penalty payment of 5% of Meta's average daily turnover in the business year preceding such failure to comply.

HAS ADOPTED THIS DECISION:

Article 1

Meta Platforms Ireland Limited and Meta Platforms, Inc. have infringed Article 102 TFEU and Article 54 of the EEA Agreement by participating in the following infringements:

- (a) the tying of Facebook Marketplace to Facebook, and
- (b) the imposition of unfair trading conditions on OCAS providers;

since 14 August 2017 and continuing at the date of adoption of this Decision.

Article 2

For the infringements referred to in Article 1, the fines of EUR 395 202 000 in respect of the infringement under Article 1(a) and EUR 402 520 000 in respect of the infringement under Article 1(b) are imposed on Meta Platforms Ireland Limited jointly and severally with Meta Platforms, Inc.

The fines shall be credited, in euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE CENTRALE DU LUXEMBOURG
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/AT.40684

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an action pursuant to Article 263 of the Treaty is brought before the Court of Justice of the European Union against this Decision, the fines shall be covered by their due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in accordance with Article 108 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council.¹⁶¹³

Article 3

Meta Platforms Ireland Limited and Meta Platforms, Inc. shall, within 90 days from the date of notification of this Decision, bring to an end the infringements referred to in Article 1 in so far as it they have not already done so.

Meta Platforms Ireland Limited and Meta Platforms, Inc. shall refrain from repeating any act or conduct described in Article 1, and from any act or conduct having the same or equivalent object or effect.

Article 4

Meta Platforms Ireland Limited and Meta Platforms, Inc. shall, within 60 days from the date of notification of this Decision, notify the Commission of the measures by means of which they intend to bring to an end the infringements referred to in Article 1 in so far as they have not already done so.

Article 5

If the addressees of this Decision fail to comply with the orders set out in Articles 3 and 4, they shall incur a daily periodic penalty payment of 5 % of the average daily turnover of the undertaking to which they belong in the business year preceding such a failure to comply.

Article 6

This Decision is addressed to

Meta Platforms Ireland Limited

¹⁶¹³ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 26.09.2024, page 1).

Merrion Road
Dublin 4, D04 X2K5
Ireland

and

Meta Platforms, Inc.
1 Meta Way – Building 18
Menlo Park, CA 94025
United States of America.

This Decision shall be enforceable pursuant to Article 299 of the TFEU and Article 110 of the EEA Agreement.

Done at Brussels, 14.11.2024

*For the Commission
Margrethe VESTAGER
Executive Vice-President*