



Commission sends preliminary findings to Meta over its “Pay or Consent” model for breach of the Digital Markets Act

Brussels, 1 July 2024

Today, the Commission has informed **Meta** of its preliminary findings that its “pay or consent” advertising model fails to comply with the [Digital Markets Act \(DMA\)](#). In the Commission's preliminary view, this binary choice forces users to consent to the combination of their personal data and fails to provide them a less personalised but equivalent version of Meta's social networks.

Preliminary findings on Meta's “pay or consent” model

Online platforms often collect personal data across their own and third party services to provide online advertising services. Due to their significant position in digital markets, gatekeepers have been able to impose terms of services on their large user base allowing them to collect vast amounts of personal data. This has given them potential advantages compared to competitors who do not have access to such a vast amount of data, thereby raising high barriers to providing online advertising services and social network services.

Under Article 5(2) of the DMA, gatekeepers must seek users' consent for combining their personal data between designated core platform services and other services, and if a user refuses such consent, they should have access to a less personalised but equivalent alternative. Gatekeepers cannot make use of the service or certain functionalities conditional on users' consent.

In response to regulatory changes in the EU, Meta introduced in November 2023 a binary “pay or consent” offer whereby EU users of Facebook and Instagram have to choose between: (i) the subscription for a monthly fee to an ads-free version of these social networks or (ii) the free-of-charge access to a version of these social networks with personalised ads.

The Commission takes the preliminary view that Meta's “pay or consent” advertising model is not compliant with the DMA as it does not meet the necessary requirements set out under Article 5(2). In particular, Meta's model:

- i. **Does not allow users to opt for a service that uses less of their personal data** but is otherwise equivalent to the “personalised ads” based service.
- ii. **Does not allow users to exercise their right to freely consent** to the combination of their personal data.

To ensure compliance with the DMA, users who do not consent should still get access to an equivalent service which uses less of their personal data, in this case for the personalisation of advertising.

Throughout its investigation, the Commission has been coordinating with the relevant data protection authorities.

Next steps

By sending preliminary findings, the Commission informs Meta of its preliminary view that the company is in breach of the DMA. This is without prejudice to the outcome of the investigation. Meta now has the possibility to exercise its rights of defence by examining the documents in the Commission's investigation file and replying in writing to the Commission's preliminary findings. The Commission will conclude its investigation within 12 months from the [opening of proceedings on 25 March 2024](#).

If the Commission's preliminary views were to be ultimately confirmed, the Commission would adopt a decision finding that Meta's model does not comply with Article 5(2) of the DMA.

In case of non-compliance, the Commission can impose fines up to 10% of the gatekeeper's total worldwide turnover. Such fines can go up to 20% in case of repeated infringement. Moreover, in case of systematic non-compliance, the Commission is also empowered to adopt additional remedies such as obliging a gatekeeper to sell a business or parts of it or banning the gatekeeper from acquisitions

of additional services related to the systemic non-compliance.

The Commission continues its constructive engagement with Meta to identify a satisfactory path towards effective compliance.

IP/24/3582

Quotes:

"Our investigation aims to ensure contestability in markets where gatekeepers like Meta have been accumulating personal data of millions of EU citizens over many years. Our preliminary view is that Meta's advertising model fails to comply with the Digital Markets Act. And we want to empower citizens to be able to take control over their own data and choose a less personalised ads experience."

Margrethe Vestager, Executive Vice-President in charge of competition policy - 01/07/2024

"Today we make another important step to ensure full compliance with the DMA by Meta. Our preliminary view is that Meta's "Pay or Consent" business model is in breach of the DMA. The DMA is there to give back to the users the power to decide how their data is used and ensure innovative companies can compete on equal footing with tech giants on data access."

Thierry Breton, Commissioner for Internal Market - 01/07/2024

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