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Order of the Vice-President of the Court in Case C-639/23 P(R) | Commission v Amazon Services Europe

Online advertising: Amazon's request to suspend its obligation to make an advertisement repository publicly available is rejected

Amazon Services Europe belongs to the Amazon group. Its business activities comprise online retail and other services such as cloud computing and digital streaming. It provides marketplace services to third-party sellers enabling them to offer products for sale via Amazon Store.

By a decision of 23 April 2023 ¹, adopted under the Regulation on a Single Market for Digital Services ², the Commission designated Amazon Store as a very large online platform. That means, in particular, that Amazon Store is obliged to make publicly available a repository containing detailed information ³ on its online advertising. Amazon sought the annulment of that decision before the General Court of the European Union. It had also made an application for interim measures. By order of 27 September 2023 ⁴, the President of the General Court ordered suspension of the operation of that decision in so far as Amazon Store will be required to make the advertisement repository publicly available. The Commission lodged an appeal before the Court of Justice against that order.

In his order today, **the Vice-President of the Court of Justice sets aside the part of the order of the President of the General Court suspending the Commission's decision in so far as it concerns the advertisement repository**. He finds that the Commission was denied, in breach of the principle that the parties should be heard, the opportunity to comment on the arguments put forward by Amazon during the proceedings before the General Court. Since the Commission presented to the Court of Justice the arguments that it intended to make against the elements put forward by Amazon before the General Court, **the Vice-President of the Court of Justice gives final judgment in the dispute and dismisses the application for interim measures**.

The Vice-President of the Court considers that Amazon's argument that the obligation introduced by the EU legislature to make an advertisement repository publicly available unlawfully limits its fundamental rights to respect for private life and the freedom to conduct a business, cannot be regarded, *prima facie*, as irrelevant and, moreover, as lacking in seriousness.

Furthermore, in the absence of a suspension, it is likely that Amazon would suffer serious and irreparable harm before the intervention of any judgment annulling the Commission's decision.

Those findings are not however decisive in themselves. It is necessary to assess whether the balancing of all the interests involved may justify refusing suspension. In that regard, the Vice-President of the Court finds that, in the event that suspension is not granted, the annulment of the Commission's decision would retain an interest for Amazon. In addition, it has not been demonstrated that, in such a situation, Amazon's existence or long-term development would be jeopardised. Moreover, suspension would lead to a delay, potentially for several years, in the full achievement of the objectives of the Regulation on a Single Market for Digital Services and therefore potentially allow an online environment threatening fundamental rights to persist or develop, whereas the EU legislature considered that very large platforms play an important role in that environment. **The interests defended by the EU legislature prevail, in the present case, over Amazon's material interests, with the result that the balancing**

of interests weighs in favour of rejecting the request for suspension.

NOTE: The General Court will deliver final judgment on the substance of this case at a later date. An order as to interim measures is without prejudice to the outcome of the main proceedings.

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The [full text](#) of the order is published on the CURIA website.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ Decision C(2023) 2746 final, see also the Commission's Press Release [IP/23/2413](#).

² [Regulation \(EU\) 2022/2065](#) of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services.

³ That information includes, in particular, the content of the advertisement, the person on whose behalf the advertisement is presented, the period during which the advertisement was presented, the main parameters used for targeting certain recipients, commercial communications published on very large online platforms or the total number of recipients of the service reached.

⁴ *Amazon Services Europe v Commission*, [T-367/23 R](#).