

THE COMPETITION BOARD'S MESSAGE IS VERY CLEAR: DO NOT COMBINE DATA!

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Dominant platforms like FACEBOOK try to make money by usually offering their services to users for free on the one hand, while providing advertisers with data that supports the attribution of ads on the other.

Competition Board concluded the investigation it was conducting on Meta (Facebook) and Whatsapp. According to the announcement on the Authority's website concerning the decision dated 26.10.2022, which is a milestone in terms of data-related competition violations, the Board found that the FACEBOOK economic entity abused its dominant position and distorted competition by combining the data it gathered from Facebook, Instagram and WhatsApp services and complicating the activities of its competitors in the personal social networking services and online display advertising markets and by creating barriers to market entry, and therefore it imposed administrative fines on the company.

Facebook wanted to use WhatsApp data

Before discussing the details of this decision, let's go back about two years. As known, at that time, notifications began to arrive on our mobile phones that we had to consent to the sharing of WhatsApp data with Facebook companies in order to continue using WhatsApp, otherwise we would not be able to use WhatsApp as of February 8, 2021. The update concerned the collection, processing and use of more data by Facebook. As the question "What will WhatsApp do with the data it requests from us?" was raised in the users' minds, the Competition Board quickly intervened in the situation and issued an interim decision that attracted a lot of public attention. On 11.01.2021, the Competition Authority announced that an *ex officio* investigation was launched on Facebook and WhatsApp, and that the obligation to share WhatsApp data with Facebook companies was suspended.

Facebook is dominant in its market

FACEBOOK clearly received the message that it could not combine the data obtained from Facebook, Instagram and WhatsApp services with the violation decision. So what does this decision mean for Facebook, Instagram and WhatsApp users? Looking at the details of the short decision, the announcement about the decision reveals that three different markets were defined in order to assess FACEBOOK's practices, consisting of (i) social networking services for personal use (ii) consumer communication services, and (iii) online display advertising

services, with FACEBOOK holding dominant position in all three. FACEBOOK offers its social networking services via Facebook and Instagram, and its consumer communication services via the Facebook Messenger and WhatsApp platforms. In addition to this, FACEBOOK also offers online advertisement services via Facebook, Instagram and Messenger, and generates income through these services. The data FACEBOOK has gathered via Facebook, Instagram and WhatsApp, particularly concerning user habits and the content in their posts, is a critical input for the online advertising market.

Barriers of entry can be created for competitors

Dominant platforms like FACEBOOK, try to make money by usually offering their services to users for free on the one hand, while providing advertisers with data that supports the attribution of ads on the other. The more data they collect and analyze, the more versatile user profiles they have and the better products and advertisements they can offer. Therefore, these companies that collect and aggregate data can gain competitive advantage over their competitors by strengthening their positions in the market and create barriers to entry for competitors. We will learn the grounds for the findings of violation in the above-mentioned Board decision on FACEBOOK after the reasoned decision is published. However, we can say this with respect to the users: FACEBOOK will no longer be able to use the data collected from WhatsApp within the framework of targeted advertising activities carried out on Instagram.

Facebook is now monitored by the Competition Board

Another striking aspect of the decision is that FACEBOOK will have to submit a remedy proposal to the Authority within one month following the reasoned decision, which must include the measures to be taken to terminate the violation and reestablish competition, which must be implemented within six months. Moreover, FACEBOOK will have to submit a report to the Authority every year for a period of five years. Therefore, we can say that Facebook will be monitored by the Competition Board for a long time.

Facebook is also in trouble in Germany and England

We observe that there is an increase in the number of examinations and legislative work being conducted by various authorities around the world concerning data-related infringements. As known, Germany also experienced a process similar to the one in Türkiye in relation to FACEBOOK. In the beginning of 2019, the German Competition Authority Bundeskartellamt introduced restrictions on FACEBOOK not to combine user data from different sources without users' "informed consent" due to competition concerns. However, the legal dispute with FACEBOOK related to this decision is still pending in the courts. Not satisfied with that, Germany also defined Meta as "an extraordinarily important undertaking for intermarket

competition.” I can almost hear what the readers ask, “We know the concept of undertakings which hold a dominant position, but are we now being introduced to the concept of extraordinarily important undertakings?” Yes! In early 2021, long before the Digital Markets Act prepared by the European Commission in the European Union came into force, the German legislator expanded the control toolkit on abuses by adding Article 19a to the German Competition Act. It will now be able to apply this toolset to Meta and introduce various obligations. These developments may be subject of another article.

Finally, before digressing further, let us note that the European Commission launched an investigation in June 2021 to examine whether Meta used the data it collected, especially from advertisers, within the scope of its advertising activities on the social network platform, to the advantage of Facebook Marketplace against its competitors. Similarly, with the investigation it launched in June 2021, the UK Competition Authority (CMA) is also examining whether Facebook favored its own services, especially Facebook Marketplace and Facebook Dating, over its competitors through the collection and use of advertising data. Therefore, it looks like Facebook, one of the biggest players in the digital market, will be dealing with data-related investigations around the world for a while.

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