

From the Presidency of the Competition Authority
DECISION OF THE COMPETITION BOARD

File number: 2023-1-028

Decision Number: 24-07/125-50

Decision Date: 8.02.2024

A. MEMBERS IN ATTENDANCE

The Chairman: Birol KÜLE

Members: Ahmet ALGAN (Deputy Chairman), Hasan Hüseyin ÜNLÜ, Ayşe ERGEZEN, Cengiz ÇOLAK, Berat UZUN

B. RAPPORTEURS: Melisa AĞYÜZ AYDOĞDU, Funda SOYLU, Nadire Büşra EKİNCİ, Alp Tuna MERCİMEK, Muhammet DEMİREL, Zehra Seda KAYNAR, Zeyneddin SEZEROĞLU, Müslüm YILMAZ

C. UNDER

EXAMINATION: - Meta Platforms, Inc.

Representatives: . M. Fevzi TOKSOY, Bahadır BALKI, Erdem AKTEKİN, Ertuğrul Can CANPOLAT, Nabi Can ACAR, Caner K. ÇEŞİT
Çamlıca Köşkü Tekkeci Sok. No:3-5 34345 Arnavutköy
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- (1) **D. SUBJECT OF THE FILE:** The request for an interim measure within the scope of article 9 of the Act no 4054 on the Protection of Competition concerning Meta Platforms, Inc.'s data combination between its new application Threads and Instagram.
- (2) **E. PHASES OF THE FILE:** Preliminary Examination Report numbered 2023-1-028/ii, which was prepared upon the claim that Meta Platforms Inc. (META) violated article 6 of the Act no 4054 on the Protection of Competition (the Act no 4054) by means of its new application Threads with Instagram Was discussed in the Competition Board (Board) meeting on 03.08.2023 and it was decided that a preliminary inquiry shall be made about META pursuant to article 40 of the Act no 4054.
- (3) Within the framework of the preliminary inquiry, an on-site inspection was conducted on the premises of Meta Platforms İstanbul Bilişim Ltd. Şti.¹, which is META's representative and only established subsidiary in Türkiye.
- (4) During the preliminary inquiry, Google International LLC, Google Ireland Limited, Google LLC and Google Reklamcılık ve Pazarlama Limited Şti., Twitter Inc.², SNAP Inc., Tiktok Turkey Dijital Medya ve Reklam Limited Şti. and Pinterest, Inc., which are META's competitors, were asked to provide information and documents. The information and documents requested from competitors were submitted to the registry of the Competition Authority (the Authority) on various dates.
- (5) In line with the evaluations made depending on the information obtained during the on-site inspection and responses submitted to the Authority's registry, in the Board meeting on 23.11.2023, the decision numbered 23-54/1031-M that an investigation be initiated about META according to article 41 of the Act no 4054 was taken. The Investigation Notification was sent to META, which is under investigation, on

¹ The undertaking was established initially under the title Madoka Turkey Bilişim Hizmetleri Ltd. Şti on 27.03.2014. Its business title was amended as Meta Platforms İstanbul Bilişim Ltd. Şti. META TÜRKİYE, it is the established representative and only subsidiary of META in Türkiye.

² X Corp. is Twitter, Inc.'s successor company.

06.12.2023. On 11.12.2023, META received the said report. META's first written plea about the claims in question entered the Authority's registration with the letter dated 10.01.2024 and numbered 47176.

- (6) As a result of the data obtained and the assessments made within the scope of the file, according to article 9(4) of the Act no 4054, which states that *“where the occurrence of serious and irreparable damages is likely until the final decision is taken, an interim measure may be taken in order to maintain the situation before the infringement”*, the requirement for an interim decision about META, which is found to be dominant in “social media market”, which is defined in a wide sense to cover Instagram during the preliminary inquiry process. Accordingly, the Information Note dated 06.02.2024 and numbered 2023-1-028/BN-01 was discussed and a decision was taken.
- (7) **F. RAPPORTEUR OPINION:** The Information Note briefly states that it would be appropriate to impose an interim measure according to article 9(4) of the Act no 4054, *“for preventing Meta Platforms Inc.’s combination of data obtained through Threads with the data obtained from Instagram in order to prevent likely competition infringements and serious and irreparable damages in the product market that is the subject of the investigation until the final decision is taken”*, and in case of failure to fulfill this obligation, it is necessary to impose administrative fines to the undertaking according to article 17 of the Act.

G. EXAMINATION AND ASSESSMENT

- (8) The file basically examines the claim that whether META violated article 6 of the Act no 4054 by linking Threads, which was launched in July 2023 in Türkiye, with Instagram. While the process was ongoing, as of November 2023, updates enabling users to delete Threads profiles without deleting the related Instagram account were made. Depending on the fact that META made improvements, it is thought that it is not necessary to take an interim measure decision in terms of the claims concerning linking.
- (9) On the other hand, during the preliminary inquiry process, it was found that META combined the data obtained through Threads with the data obtained from Instagram³. It was concluded that potential anticompetitive effects of this situation should be assessed in detail within the scope of the investigation, taking into account the obligations imposed on META by the Board with its decision dated 20.10.2022 and numbered 22-48/706-299 about terminating data combination. Accordingly, the following assessments are made.

G.1. The Importance of Data for Digital Markets

- (10) First, an assessment is made about the critical role of data in digital markets under this heading. In fact, although users, who use the relevant services at “zero” price, think that they do not make any payments, they pay the relevant platform with their data they provide. Data is like the currency of digital markets. Consumers may provide data unconsciously or offer data easily. Platforms use this service which seems free to attract customers to the platform. They use their customer base to attract the user group from whom they obtain revenues, in other words, advertisers or commercial users. Therefore, within the framework of offering the relevant services, the data

³ In Instagram Help, “How information from your Instagram account is used on Threads?” the following information is given: “When you create a profile on Threads, it will be connected to the Instagram account that you logged in with” and “We use data from Threads to personalize and improve your experiences across Instagram and to promote the safety and integrity of our services.” (Source: https://help.instagram.com/179980_294969821/?helpref=hc_fnav, Accessed: 31.01.2024).

collected by big platforms that can track almost every step of consumers on such applications give the undertaking a great power.

- (11) The abovementioned facts about data advantage show that those markets are characterized by important barriers to entry and expansion. The said market characteristics may lead to much serious competitive concerns especially in digital markets. Thus, it is important to prevent reinforcement of these structural barriers for the relevant services by means of undertakings' behavior and keep those barriers to entry and expansion at the minimum level. It should be noted that even a small step by undertakings in markets that are so inclined to monopolization can create a snowball effect and utmost care should be taken.
- (12) Another tendency in digital markets is that undertakings exist as an ecosystem composed of services in many different and/or related markets. In this structure, data obtained from each service and from users feed and strengthen first other services provided by the relevant undertaking and then the ecosystem created by the undertaking as a whole. Although ecosystems consist of activities in different markets, they direct consumers to stay under the impact area of the undertakings. On one hand, ecosystems offer users options that facilitate their choices, on the other hand they may create barriers to entry for the competitors who do not have such tools.⁴
- (13) One of the competitive concerns that may create a barrier to entry is data combination. Data combination can lead to exclusionary effects in the market. The theory of harm concerning exclusionary effects stemming from data combination is in fact associated with the business model based on data. Data is a critical input for online advertising. Digital platforms offer services to users for free while they are trying to gain revenues by providing inventory to advertisers. The value of this inventory can be increased with data, which enable better targeting, improve measurement and support the relevance of the advertisements to the targeted customers.⁵ The said business model depends on encouraging users to use the platform by offering a content that takes users' attention, collecting users' data and gaining revenues by using the data sets in online advertising. Data has a central role in digital markets and the business model of many undertakings providing online platform services. Collecting vast amount of data and using data for commercial purposes can grant competitive advantage to undertakings. Due to direct and indirect network effects, data provides unique opportunities to its owner, preventing new entries and foreclosing the market in favor of the incumbent undertakings.
- (14) Since one of the issues addressed in the investigation is combining the data obtained through Threads with the data obtained through Instagram, the assessments about whether this behavior requires the Board take an interim measure are given in the following section.

G.2. META's Practices, which are the Subject of Data Combination

- (15) As stated above, during the preliminary inquiry process, it was found that META would combine the data obtained through Threads with the data obtained from Instagram. Before mentioning data combination, it is appropriate to make explanations about the launch of Threads in the European Union (EU).
- (16) As stated by META, Threads was launched globally in July 2023 except the EU. It is

⁴ KARAGÜLLE, O. (2020), "Dijital Platformlarda Pazar Gücünün Belirlenmesi", Competition Authority Expert Thesis, Ankara, p. 39

⁵ CMA and ICO (2021), "Competition and Data Protection in Digital Markets: A Joint Statement between the CMA and the ICO", p. 8,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/9873/10

thought that the regulations about digital markets played a role in the decision that Threads would not be launched in the EU immediately. The Digital Markets Act (DMA), which is the most important one among the said regulations, prohibits undertakings that are qualified as gatekeepers from combining the data they collect from different services without the explicit consent of the end user⁶. In line with this, in order for META to launch Threads in the EU, it should fulfill the obligations laid down in DMA.

- (17) During the preliminary inquiry, META stated that it aimed to launch Threads in EU until the end of 2023. According to the examinations and findings within the scope of the file, it is seen that META announced that Threads was launched in the EU on 14.12.2023⁷. At this point, it is concluded that META fulfills the obligations under DMA as it is able to launch Threads in the EU, in other words, the process for launching Threads has been made compliant with DMA.
- (18) Following the abovementioned explanations, policies about data combination between the said apps in terms of Türkiye should be addressed. Under the title “*How information from your Instagram account is used on Threads?*” on Instagram Help Center page, it is stated that the following data can be transferred from Instagram to Threads:
- Instagram login information,
 - Instagram account ID
 - Instagram name and username
 - Instagram profile information such as profile picture, bio and links,
 - Instagram followers,
 - Accounts the user follows on Instagram
 - The user’s age on Instagram.
- (19) Meta stated in its response letter sent during the preliminary inquiry that users who create a Threads profile based on their Instagram account are informed that their Threads and Instagram personal data can be combined while creating a Threads account.
- (20) In addition, it is stated that the data on Threads can be transferred to Instagram to personalize and improve the experiences on Instagram and improve the security and integrity of services⁸. It is stated that if users forget to log out of their Threads account and visit a news website, META can collect information such as which article they read at what time⁹. The following points are stated in Threads Supplemental Privacy Policy

⁶ Article 5 of the DMA is as follows:

“2. *The gatekeeper shall not do any of the following:*

(a) process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core platform services of the gatekeeper;

(b) combine personal data from the relevant core platform service with personal data from any further core platform services or from any other services provided by the gatekeeper or with personal data from third-party services;

(c) cross-use personal data from the relevant core platform service in other services provided separately by the gatekeeper, including other core platform services, and vice versa; and

(d) sign in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and has given consent within the meaning of Article 4, point (11), and Article 7 of Regulation (EU) 2016/679.

(...)”

⁷ See <https://www.pocket-lint.com/metas-threads-available-in-eu/> , Accessed: 01.02.2024.

⁸ See https://tr-tr.facebook.com/help/instagram/179980294969821?helpref=hc_fnav, Accessed: 01.02.2024.

⁹ See <https://news.bloomberglaw.com/ip-law/metas-move-tying-threads-to-instagram-raises-privacy-> red-4/10

attached to META's response:

- The data provided by users while using Threads or interacting with Threads,
- The data provided while creating a Threads account,
- Contents and interactions created while using Threads,
- Information about followers, other users and communities with which the user is linked and interacts
- Information about third party services and third party users that interact with Threads,
- App, device and browser information

will be collected through Threads and META will use this information to provide, personalize and improve Threads and META products (including seamless personalization of Threads and Instagram experience), to provide measurement, analytics as well as other business services (including advertisements). In addition, Article 6 of Threads Terms of Use includes the following statement: *"You must agree to the Privacy Policy and Threads Supplemental Privacy Policy to use the Threads Service."*

G.3. Assessment about Imposing an Interim Measure

- (21) According to article 9(4) of the Act no 4054, *"where the occurrence of serious and irreparable damages is likely until the final decision is taken, in order to maintain the situation before the infringement"* an interim measure decision can be taken.
- (22) As explained above, despite the measures imposed in the Board decision dated 20.10.2022 and numbered 22-48/706-299, META continue to combine user data obtained from Instagram and Threads, which is a serious finding that there is an infringement of competition under article 6 of the Act no 4054. Since data combination was the subject of previous Board decisions, the assessments in the Board decision about META dated 20.10.2022 and numbered 22-48/706-299 should be noted.
- (23) The decision in question states *"META's data collection in terms of all products and services including Facebook, WhatsApp, Instagram and Messenger services which are called core services is based on terms of use and privacy policy of each product. Within the scope of this policy, META collects a wide variety of data under different categories from its products. (...)"* It is found that META collects various and comprehensive data.
- (24) In addition, it is stated in the said Board decision that thanks to this data collected, META enables users to discover and reach content that is customized and personalized according to their interest, besides, it provides advertisers with the opportunity to expand their business and reach groups who are likely to be interested in their products or services; META can also offer ad measurement solutions with personalized experience and innovative ads depending on the information it collects. Moreover, it is also emphasized that META uses the information collected to personalize the features and content (including News, Instagram Feed, Instagram Stories and ads) and to make suggestions to users (groups or events that the user might be interested in or the topics that the user may want to follow).
- (25) As a result, in the Board decision dated 20.10.2022 and numbered 22-48/706-299, it was decided that
 - META distorted competition by complicating the activities of its competitors

operating in personal social networking services and online display advertising markets and creating barriers to entry to the market by means of combining data collected from core services and violated Article 6 of the Act no 4054.

- META should submit the Authority the necessary measures within the period determined to terminate the violation and to ensure the establishment of efficient competition in the market
- (26) In addition to the cases in Türkiye, it is necessary to mention about the German Competition Authority's (Bundeskartellamt) investigation about Facebook/Oculus. According to Bundeskartellamt's press announcement dated 10.12.2020, META's linkage between Oculus virtual reality products and social media platform Facebook was put under examination under the scope of competition infringement¹⁰. The Oculus platform, which was previously operated separately from Facebook started to be offered as an additional function under *Facebook Reality Labs on Facebook*. The use of "Quest 2 VR" glasses required a Facebook account.
- (27) During the proceedings, amendments were made to German competition laws (GWB)¹¹ and following those amendments, according to GWB Section 19a(2), for Bundeskartellamt to initiate proceedings, META was announced *a company of paramount significance across markets*¹².
- (28) Finding that META holds a dominant position in German social media market and has an important position in the growing virtual reality market, Bundeskartellamt focuses on the requirement to have a Facebook account to use Oculus products and how the data obtained from Oculus products will be processed in its proceeding.
- (29) During the proceeding, META resorted to commitment procedure to resolve Bundeskartellamt's concerns. In summary META offered the commitments that it will allow users to create a "META account" apart from Facebook and Instagram and use Oculus products (*Quest 2* and *Quest Pro* glasses) by means of this account¹³.
- (30) The proceeding has not been finalized yet and is ongoing in terms of META's data combination practices¹⁴. Looking at the process about data combination in detail, it is seen that, pursuant to GWB Section 19a(2)¹⁵ Bundeskartellamt may prohibit

¹⁰See

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2020/10_12_2020_Facebook_Oculus.html, Accessed: 01.02.2024

¹¹ See

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/28_01_2021_Facebook_Oculus.html;jsessionid=A5DE9475902482B4648A5F7979C32263.1_cid389?nn=3591568, Accessed: 01.02.2024.

¹² See https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/04_05_2022_Facebook_19a.html;jsessionid=A5DE9475902482B4648A5F7979C32263.1_cid389?nn=3591568, Accessed: 01.02.2024.

¹³ See https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/23_11_2022_Facebook_Oculus.html Accessed: 01.02.2024.

¹⁴See https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/23_11_Facebook_Oculus.html, Accessed: 01.02.2024.

¹⁵ GWB Section 19a (2)

"4. creating or appreciably raising barriers to market entry or otherwise impeding other undertakings by processing data relevant for competition that have been collected by the undertaking, or demanding terms and conditions that permit such processing, in particular

a) making the use of services conditional on the user agreeing to the processing of data from other services of the undertaking or a third-party provider without giving the user sufficient choice as to whether, how and for what purpose such data are processed;

(...)"

demanding terms and conditions that create/appreciably raise barriers to market entry or that will create such result, in particular making the use of services conditional on the user agreeing to the processing of data from other services of the undertaking or a third-party provider without giving the user sufficient choice as to whether, how and for what purpose such data are processed.

- (31) In line with this, Bundeskartellamt focuses on the facts that META's social media service Facebook and virtual reality product Oculus are different services and that users must be provided with sufficient options in data processing policies related to those services as well as on the design of options and consent requests and for which limited purposes the data will be allowed to continue to be combined without the consent of users.¹⁶ Bundeskartellamt and META wait for the assessment of the Court of Justice of the European Union (CJEU) about "Facebook data processing" for the conclusion of the proceeding in this respect.
- (32) On the other hand, the parties reached a settlement that until CJEU announces its decision, the data obtained by means of Oculus concerning the users who access virtual reality products by using separate META account will be kept separately from the data obtained from other META services.
- (33) Depending on the explanations above, in addition to being examined during the investigation process, META's data combination needs to be dealt under interim measure decision to protect the situation before the violation. Thus, competitive concerns to be created by data combination, which is also the subject of interim measure and the investigation, are explained below.
- (34) As a player, which has been active in the market for long years, META owns large, comprehensive and detailed data. The said data power reinforces META's market power by enabling META to follow users' preferences and wishes at the right time and develop and design its products and services in line with user preferences
- (35) META has large and diverse user base, as well as users of all ages, which makes Facebook and Instagram¹⁷ attractive for also advertisers. The data power gained thanks to the width of the user base is used to develop business and services. In addition to being important for the services provided by the relevant undertaking in the related markets, data power allows platforms offering "zero price" services to obtain revenues by means of targeted advertising.
- (36) Advertisers increasingly prefer META products because of its customer portfolio. As a result, in addition to earning more revenues¹⁸ and allocating more resources to service development, META complicates its competitors' access to advertisers, thus to financial resources. Consequently, taking into account the existence of indirect network effects in the market, this situation constitute an entry barrier by making it difficult for potential competitors which will enter social network services market to attract advertisers to finance their services.
- (37) In addition, META operates as an ecosystem with its core services and related services, which contributes to each of its services, enables it to leverage its power and

¹⁶ See https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/23_11_20_22_Facebook_Oculus.html?nn=3591568, Accessed: 01.02.2024.

¹⁷ As META states, advertisements are not displayed on Threads

¹⁸ It is known within the scope of the information in the file that META does not charge individual users for its products and services. A large part of META's revenues ((.....)%) are obtained from advertising. It is stated that these revenues are for the most part obtained from advertisements displayed on Facebook, Instagram and Facebook Messenger within the framework of advertising activities.

accumulation in one service to another. As a result, META feeds its position and power in the market in terms of each service it provides.

- (38) Data combination as a result of the data transfer mechanism between Instagram and Threads may result in creating or strengthening entry barriers and use of data obtained through services where the undertaking has market power in different markets in a way to create anticompetitive effects.
- (39) Within the scope of this investigation, META is found to be dominant, which strengthens the facts concerning anticompetitive effects to be created by data combination. It is considered that META's combining the data obtained through Threads with the data obtained from Instagram during the investigation process will serve for protecting and even strengthening META's current position in the market. Moreover, this behavior will raise concerns such as preventing consumers from making choices freely besides exclusionary competitive concerns. In order to use Threads, users must accept the above-mentioned terms of use and privacy policy, otherwise, they cannot use Threads.
- (40) As a result, it is concluded that in case the intervention to competition problems observed in digital markets is late, it is likely that the competition in the market may be distorted and mostly irreversible results may occur; thus, in order to prevent irreparable harms in terms of data combination behavior, which was regarded as an infringement according to the Board decision dated 20.10.2022 and numbered 22-48/706-299, it is necessary to impose an interim measure according to article 9(4) of the Act no 4054, for preventing Meta Platforms Inc.'s combination of the data obtained through Threads with the data obtained from Instagram in order to prevent irreparable damages until the final decision is taken. It is concluded that the interim measure mechanism can resolve the potential competition problems to occur until the final decision is taken on the basis of the claims that are under the scope of the ongoing investigation.

H. CONCLUSION

- (41) According to the report prepared and the scope of the file examined, within the scope of the investigation conducted as per the Board decision dated 23.11.2023 and numbered 23-54/1031-M, it has been decided UNANIMOUSLY that pursuant to article 9(4) of the Act no 4054, an interim measure shall be imposed for *“preventing Meta Platforms Inc. from combining the data obtained through Threads with the data obtained from Instagram in order to prevent likely competition infringements and the irreparable damages that may be created by those in the relevant product market which is the subject of the investigation until the final decision is taken”*, in case those obligations are not fulfilled, the undertaking shall be imposed administrative fines according to article 17 of the same Act, with the decision subject to appeal before Ankara Administrative Courts within 60 days as of the notification of the reasoned decision.