

## COMPETITION AUTHORITY

### COMPETITION BOARD DECISION

File No : 2021-1-002  
Decision No: : 21-02/25-10  
Decision Date : 11.01.2021

#### A. MEMBERS IN ATTENDANCE

Chairman : Birol KÜLE  
Members : Arslan NARİN (Deputy Chairman), Şükran KODALAK,  
Ahmet ALGAN, Hasan Hüseyin ÜNLÜ

B. RAPPORTEURS: Ebru İNCE, Tuğçe SAYER, Zeynep ŞENGÖREN ÖZCAN,  
Can SARIÇİÇEK, Betül AYHAN, Burcu ÇALIŞKAN OLGUN,  
Selçuk YILMAZ, Funda GÖKTEPE, Büşra ÖZCAN

C. APPLICANT : Ex officio

D. UNDER EXAMINATION : - Facebook Inc.,

- Facebook Ireland Ltd.,

- WhatsApp Inc.,

- WhatsApp LLC

(All referred to as Facebook)

Representatives: Atty. Bahadır BALKI, Atty. Ertuğrul Can  
CANBOLAT, Atty. Caner Kadir ÇEŞİT, Atty. Nabi Can ACAR, Atty.  
Gözde Nur ÇEVİK  
Çamlıca Köşkü, Tekkeci Sokak, 3-5, Arnavutköy, 34345  
Beşiktaş/İstanbul

- (1) **E. SUBJECT OF THE FILE:** The necessity for an interim measure to be taken within the framework of Article 9 of the Act no 4054 concerning the terms imposed by Facebook in Türkiye regarding the use of WhatsApp users' data for other services starting from 08.02.2021.
- (2) **E. PHASES OF THE FILE:** Recently, it is seen that *WhatsApp* users have been informed that the privacy policy will be updated. Within the framework of the informative text published by the relevant undertaking, it is thought that this practice may cause some exploitative and exclusionary effects in terms of competition law. The Information Note dated 11.01.2021 and numbered 2021-1-002/BN-01, which was prepared within this framework, has been discussed and concluded.
- (3) **F. RAPPORTEUR OPINION:** In the Information Note in question, it is stated that
- An interim measure should be taken within the framework of Article 9 of the Act no 4054 on the Protection of Competition (the Act no 4054), and in this context, Facebook should end the terms and conditions regarding the use of *WhatsApp* application users' data for other services in Türkiye starting from 08.02.2021 and Facebook should notify all users who have accepted or who have seen the information but have not accepted the terms and conditions that it has ended the new terms and conditions about data sharing.

#### G. EXAMINATION AND ASSESSMENT

- (4) WhatsApp Inc. was established in 2009 in the United States of America (USA). WhatsApp is an online consumer communication app with multi-platform features and

provides instant text and/or voice messaging, video and/or voice call services; it is used by more than 2 billion people in more than 180 countries<sup>1</sup>.

- (5) WhatsApp, which is currently being offered to users without ads and free of charge, was acquired by Facebook Inc. in 2014<sup>2</sup>. Facebook Inc. was established in 2004 in the USA and it is one of the leading technology companies globally. Facebook Inc. includes platforms such as Instagram and Facebook Messenger in addition to *WhatsApp*.
- (6) Within the framework of the information in the file, the concerns caused by the data sharing obligation imposed by Facebook to *WhatsApp* users to be implemented on 08.02.2021 are assessed. First of all, the scope and importance of *WhatsApp* data should be emphasized. In addition to its users' message contents, location, profile photo and group data, *WhatsApp* application can also access other information on users' devices. There is a concern that these are not limited to information such as contacts and galleries and that the data used in other applications downloaded on the device are partially accessible. It is also seen that the obligation imposed on users is not explained accurately.
- (7) On the other hand, on Facebook, users share the information that they would like to share with the all members of a closed group, whereas on *WhatsApp*, users may share private data or data that may include trade secrets in smaller groups. Therefore, *WhatsApp* data is generally more confidential than any social media content; they are the kinds of data that people do not want to share with a wider circle. The concerns caused by the use of that data in other markets in which Facebook operates and by making the data sharing mandatory for using *WhatsApp* can be classified within the scope of the Act no 4054 as follows:
  - Tying WhatsApp data with other Facebook company products and data,
  - Facebook's use of its power in the consumer communication services market in a way that obstructs the activities of its competitors in online advertising,
  - Exploitation of consumers due to excessive data collection and the use of data for other services.
- (8) The fourth paragraph of Article 9 of the Act no 4054 states that "*where the occurrence of serious and irreparable damages is likely until the final decision is taken, interim measures can be taken in order to maintain the situation before the infringement*". It is thought that these practices are likely to cause serious and irreparable damage until the final decision is taken as a result of the investigation, when the market power of eFacebook in (i) consumer communication services, (ii) social network services and (iii) online advertising services markets is taken into consideration.

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<sup>1</sup> <https://www.WhatsApp.com/about/> Accessed: 11.01.2021.

<sup>2</sup> In 2014, Facebook announced that it made a proposal for the acquisition of *WhatsApp* messaging application; various competition authorities initiated examinations regarding the acquisition under merger and acquisition regimes. Acquisition of WhatsApp was not subject to notification on the ground that it was under the turnover thresholds pursuant to article 7 on mergers and acquisitions of the Act no 4054 and the Communiqué no 2010/4 on the Mergers and Acquisitions Calling for the Authorization of the Competition Board. For the decision on the authorization of WhatsApp/Facebook acquisition in the European Union (COMP/M.7217, Facebook/WhatsApp (2014)) see [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_7217](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7217) Accessed: 10.01.2021.

For the decision taken as a result of incorrect and misleading information given by Facebook within the framework of the acquisition (COMP/M.8228), see [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=2\\_M\\_8228](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8228) Accessed: 10.01.2021.

- (9) If WhatsApp users accept the terms and conditions offered by Facebook, other group companies will also have the relevant data and will start using that. In this case, if it is decided to end Facebook's behavior in question as a result of the investigation, it is very difficult to take back that data and remove the advantages gained by Facebook from the use of that data. It is obvious that the practice in question will create an irreparable situation in this respect. Therefore, it is considered that it would be appropriate to apply an interim measure for Facebook's practice under examination.
- (10) It is known that some of the WhatsApp users have been informed by Facebook that their data will be used for other services as of 08.02.2021. In this case, it is quite possible that some of the users have accepted these terms. Thus, the relevant interim measure should be valid for all users in Türkiye, including users who have accepted these new terms of use offered by Facebook. Therefore, it is concluded that it would be appropriate for Facebook to notify all users in Türkiye who have accepted or have not accepted those terms that it has ended the new terms and conditions of use that include mandatory data sharing.

#### **H. CONCLUSION**

- (11) According to the report prepared and the scope of the file examined, pursuant to the fourth paragraph of Article 9 of the Act no 4054, it has been decided that interim measures shall be taken and accordingly Facebook shall end the terms and conditions imposed to use *WhatsApp* users' data for other services starting from February 8, 2021 in Türkiye. In addition, Facebook shall notify all users that it has ended the new terms and conditions involving mandatory data sharing until the said date regardless of whether those users have accepted or have not accepted these terms and conditions. The decision can be subjected to appeal at Ankara Administrative Courts within 60 days as of the notification of the reasoned decision.