

COMPETITION AUTHORITY

COMPETITION BOARD DECISION

File No. : 2021-1-002 (Investigation)
Decision No. : 22-48/706-299
Date of Decision : October 20, 2022

A. BOARD MEMBERS IN ATTENDANCE

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

B. RAPPORTEURS: Zeynep ŞENGÖREN ÖZCAN, Can SARIÇİÇEK,
Esra KÜÇÜKİKİZ, Burcu ÇALIŞKAN OLGUN, Betül AYHAN,
Selçuk YILMAZ, Melisa AĞYÜZ AYDOĞDU, Talha ALPAY,
Büşra ÖZCAN, Nadire Büşra EKİNCİ, Rıdvan ÖRNEK

C. APPLICANTS :- Ex Officio

- Hamdi PINAR
Bilkent University Faculty of Law Çankaya Ankara

D. PARTIES UNDER INVESTIGATION:

- Meta Platforms Inc. (Formerly: Facebook, Inc.)
- Meta Platforms Ireland Limited (Formerly: Facebook Ireland Limited)
- WhatsApp LLC
- Madoka Turkey Bilişim Hizmetleri Ltd.Şti.
Representatives: Dr. M. Fevzi TOKSOY, Bahadır BALKI,
Erdem AKTEKİN, Ertuğrul Can BOLAT, Caner Kadir ÇEŞİT,
Nabi Can ACAR, Gözde Nur ÇEVİK
Çamlıca Köşkü, Tekkeci Sokak No:3-5 34345 Arnavutköy
Beşiktaş/İstanbul

(1) **E. SUBJECT OF THE FILE:** The claim that Meta Platforms, Inc. (Formerly, Facebook, Inc.), Meta Platforms Ireland Limited (Formerly, Facebook Ireland Limited), WhatsApp LLC and Madoka Turkey Bilişim Hizmetleri Ltd. Şti. violated Article 6 of the Act no 4054 on the Protection of Competition.

(2) **F. SUMMARY OF THE CLAIMS:** In summary, the Memorandum dated 11.01.2021 and numbered, which serves as the basis of the launch of the ex officio investigation, includes the following observations:

- *WhatsApp* is an application owned by the WhatsApp Inc., founded in the United States of America (USA) in 2009, which provides instant text and/or voice messaging, video and/or voice call services on multiple platforms, has the

characteristics of an online consumer communication tool, and is used by more than two billion people in over 180 countries¹;

- Currently offering services to the users without ads and free-of-charge, in 2014 *WhatsApp* was acquired by Facebook, Inc.², which is a leading tech company founded in the US in 2004 and which owns platforms such as *Instagram*, *Facebook* and *Messenger* in addition to *WhatsApp*. According to the company's 2019 Annual Report, it has 30 products and/or subsidiaries, operating applications and websites that offer social networking services, consumer communication services, numberless communication and photo/video sharing functions, and it also provides online advertising services in these areas,
- Facebook, Inc. provides its social networking services over the *Facebook* and *Instagram* platforms, its consumer communication services and numberless communication services over the *Facebook Messenger* and *WhatsApp* platforms,
- In addition to *Facebook*, which ranks number one in the list of "social media platforms with the most users" at the global scale, Facebook, Inc. also owns the applications *WhatsApp*, which ranks third, *Facebook Messenger*, which ranks fourth and *Instagram*, which ranks sixth,
- *WhatsApp* users were sent an information text concerning the updates to its terms of service and privacy policy, which noted:

"WhatsApp is updating its terms and privacy policy.

Key updates include more information about:

- *WhatsApp's service and how we process your data.*
- *How businesses can use Facebook hosted services to store and manage their WhatsApp chats.*
- *How we work with Facebook to deliver integrations in Facebook Company Products.*

By tapping AGREE, you accept the new terms and privacy policy, which take effect on February 8, 2021. After this date, you'll need to accept these updates to continue using WhatsApp. You can also visit the Help Center if you would prefer to delete your account and would like more information."

- According to the information text above, in order to continue using *WhatsApp*, users had to approve the sharing of their personal *WhatsApp* data with Facebook, Inc. companies or otherwise they would not be able to use *WhatsApp* after 08.02.2021; thus, through this update, Facebook, Inc. was forcing *WhatsApp* users to open their personal data to the use of Facebook, Inc. companies,
- Consequently, an examination must be conducted to determine if Article 6 of the Act no 4054 on the Protection of Competition (Act no 4054) would be violated by the data sharing requirement introduced as a condition on *WhatsApp* users to

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

² The acquisition of *WhatsApp* was not subject to notification since it was below the turnover thresholds specified by Article 7 of the Act no 4054 on the Protection of Competition and the Communiqué Concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board, no 2010/4. For the decision concerning the approval of the *Facebook/WhatsApp* acquisition in the EU (COMP/M.7217, (2014), *Facebook/WhatsApp*), see https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_7217. Accessed: 10.01.2021.

continue using the service as well as by the use of the data acquired in Türkiye from certain products and services provided by the undertakings concerned to serve other products and services offered by the same undertakings.

- (3) Meanwhile, the application submitted by Hamdi PINAR and entered into the Competition Authority (Authority) records with the date 11.01.2021 and number 14318, raises the following points:
- In its last update of its privacy policy, *WhatsApp* announced that users would be forced to merge their *WhatsApp* data with their *Facebook* data, as a prerequisite of continuing to use *WhatsApp*,
 - If the last update provided was not accepted by the users, they would be unable to use the *WhatsApp* application after 08.02.2021,
 - Facebook, Inc., Facebook Ireland Ltd. and Facebook Germany GmbH's decision to forcibly merge the *Facebook* and *WhatsApp* data of the users in Türkiye through the *WhatsApp* privacy policy to be implemented on 08.02.2021 was an abuse of dominant position under Article 6 of the Act no 4054 and therefore the undertaking in question should be imposed administrative fines by the Competition Board (Board) and structural measures should be taken as per Article 9 of the Act no 4054.
- (4) **G. PHASES OF THE FILE:** The Memorandum dated 11.01.2021 and numbered 2021-1-002-BN-01 was discussed in the Board meeting of 11.01.2021, and it was decided that an *ex officio* investigation should be launched on Facebook, Inc., Facebook Ireland Limited, WhatsApp Inc. and WhatsApp LLC under Article 40 of the Act no 4054 to determine whether the data sharing requirement to be implemented on 08.02.2021 constituted an infringement under Article 6 of the Act no 4054.
- (5) In addition, an "INTERIM MEASURE DECISION" under Article 9.4 of the Act no 4054 was also taken at the Board meeting of 11.01.2021, in consideration of the possibility that the practices under examination could lead to significant and irreparable harm before the final decision to be taken at the conclusion of the investigation. The relevant decision reads, "*It is decided that an interim measure decision should be taken, ordering FACEBOOK to suspend the terms it introduced concerning the use of WhatsApp user data in Türkiye for other services from February 8, 2021, and to provide information, before the specified date, that it has suspended the new terms to all of its users who approved these terms or who received but refused to approve the notification.*"
- (6) With respect to the INTERIM MEASURE DECISION dated 11.01.2021 and numbered 21-02/25-10 taken by the Board, the application sent by the WHATSAPP representatives, which was entered into the Authority records on 04.02.2021 with the number 14892, stated that the update to the *WhatsApp* Terms of Service and Privacy Policy, to be implemented on 08.02.2021 (UPDATE) was postponed to 15.05.2021 globally, that this was announced³ to the public on 15.01.2021, and therefore the INTERIM MEASURE DECISION had no grounds and was not necessary; as a result, the Board was asked to decide that WHATSAPP had complied with the INTERIM MEASURE DECISION, with no prejudice to the view that the INTERIM MEASURE DECISION was groundless.

³ Referencing the announcement in the blog on WHATSAPP webpage. See. <https://blog.whatsapp.com/giving-more-time-for-our-recent-update/?lang=tr>, Accessed: 8.10.2021.

- (7) The application made on behalf of FACEBOOK, which entered into the Authority records on 10.02.2021 with the number 15004, states that the INTERIM MEASURE DECISION was in violation of the Act as well as of the established case-law of the Board and administrative courts, that Article 9.4 of the Act no 4054 did not grant the Board the right to intervene with an action not yet implemented in the market, and that imposing a fine on FACEBOOK despite the UPDATE being postponed before 08.02.2021 would only reinforce the unlawfulness of the INTERIM MEASURE DECISION with an improper practice.
- (8) The Memorandum dated 10.02.2021 and numbered 2021-1-002/BN-02 addressing the applications in question was discussed in the Board meeting of 11.02.2021 and the decision no 21-07/106-Mİ was taken, stating that in order to assess the compliance of the steps taken by the parties with the INTERIM MEASURE DECISION, it should be determined if there was a change in the scope, nature and area of use of the data shared both before and after the approval data by those users who approved the notification. The investigation parties were asked to provide information to clarify this point with a letter dated 11.02.2021 and numbered 20646. The responses sent by the investigation parties show that, with respect to the data who did or did not approve the UPDATE, there was no difference in the scope, nature and area of use for the shared data as compared to pre-UPDATE period, with the relevant data being collected and shared in the same way. Additionally, the parties noted that they did not intend to request approval again from the users who previously did or did not give their approvals but that they intended to contact the Board before 15.05.2021, the scheduled date of the relevant UPDATE, that the users would be able to use the *WhatsApp* service during that time but those who did not give approval would be unable to use the *WhatsApp* service from 15.05.2021 on.
- (9) From the information acquired after the investigation decision was taken, it can be understood that data sharing between *WhatsApp* and Facebook, Inc. actually started in 2016 and the data sharing power in question was included in all versions of *WhatsApp*'s Privacy Policy since that time; in particular, *WhatsApp*'s current Privacy Policy explained "*(Facebook) receives information from these family of companies and shares information with these companies.*" Accordingly, it is clear that the practice of sharing the data acquired through *WhatsApp* with the other Facebook, Inc. companies has been continuing since 2016, that the relevant data sharing is not limited solely to the transfer of data from *WhatsApp* to other Facebook, Inc. companies, that *WhatsApp* could use the data acquired by any of the Facebook, Inc. companies as well, and therefore the data sharing concerned is bidirectional, even multi-directional.
- (10) The Memorandum dated 24.02.2021 and numbered 2021-1-002/BN-03, prepared in response, was discussed in the Board meeting of 11.03.2021 and it was decided, with number 21-13/162-M, that the scope of the current investigation should be "*expanded to determine whether Article 6 of the Act no 4054 was violated by the use of the data Facebook, Inc., WhatsApp LLC, Facebook Ireland Limited, Madoka Turkey Bilişim Hizmetleri Ltd. Şti. acquired within the framework of each of the products or services they provide to serve other products and services offered by other Facebook group companies, including the above-mentioned ones,*" and that Madoka Turkey Bilişim Hizmetleri Ltd. Şti. (MADOKA), which is the representative and the only established subsidiary of Facebook, Inc. in Türkiye, should be included as a party in the investigation.
- (11) The information provided by the parties during the investigation revealed that the legal structure and trade name of the company previously titled WhatsApp Inc. was changed

to WhatsApp LLC on 01.01.2021 and that *WhatsApp* service in Türkiye was provided solely by WhatsApp LLC, based on which the Board meeting of 11.03.2021 ruled to remove WhatsApp Inc. from the scope of the investigation concerned, with a decision numbered 21-13/162-69. The aforementioned Board meeting also took the decision dated 11.03.2021 and numbered 21-13/162-M to bring the application by Hamdi PINAR, which entered into the Authority records on 11.01.2021 with the number 14318, under the scope of the *ex officio* investigation initiated.

- (12) In accordance with Article 43.2 of the Act no 4054, FACEBOOK was notified about the initiation of the investigation and the fact that it needed to submit its first written plea within 30 days, with a letter dated 03.02.2021 and numbered 20227. Following the expansion of the investigation and the addition of MADOKA, notifications concerning the requirement to submit additional pleas were made with the letters dated 26.03.2021, numbered 23148 and dated 26.03.2021, numbered 23150; meanwhile, FACEBOOK's first written pleas were entered into the Authority records within the statutory period with the numbers 15783, 17512 and 17514, on 08.03.2021, 28.04.2021, 28.04.2021, respectively.
- (13) In the letter sent by WHATSAPP, which was received in the Authority records with the date 12.05.2021 and number 17834, it is stated that the UPDATE would not be implemented in Türkiye on 15.05.2021, that the UPDATE currently had no date scheduled for implementation in Türkiye, that all users including those who previously approved the UPDATE would continue to use *WhatsApp* with full functionality, that in other words, the previous "*WhatsApp* Terms of Service and Privacy Policy" would remain in force, and that users in Türkiye would therefore not receive any notification asking them to approve the UPDATE. The Memorandum dated 18.05.2021 and numbered 2021-1-002/BN-04 concerning the aforementioned points was discussed in the Board meeting of 20.05.2021, and the decision numbered 21-26/322-M was taken, which states "*Since the information letter dated 12.05.2021 and numbered 17834, sent on behalf of WhatsApp LLC, certified before the Authority that the update of February 8, 2021 would not take effect on May 15, 2021 for any of the users in Türkiye, including those who previously approved it, and that WhatsApp users in Türkiye would not receive any notification asking them to approve this update, it is decided that the obligations specified in the Board's interim measure dated 11.01.2021 and numbered 21-02/25-10 have been met, and that no further action is necessary at this stage.*"
- (14) Following the expansion of the scope of the investigation, an extension was requested with the Memorandum dated 03.06.2021 and numbered 2021-1-002/BN-05, on the grounds that in order to better understand FACEBOOK's data collection and usage policies and to establish the effects of these policies on the market, information must be requested from FACEBOOK and from many other players in the market to conduct a detailed examination, and that the planned data compilation and numerical analyses under the investigation also required time; this matter was discussed in the Board meeting of 10.06.2021 and the decision no 21-30/379-M was taken, extending the investigation for a period of six months following its expiration.
- (15) Meanwhile, the petition submitted by the investigation parties and received into the Authority records on 22.06.2021 with the number 18814 refers to the information on the launch of the UPDATE in the regions it would be implemented in, and the impact of the last changes to the implementation plan for the UPDATE on the INTERIM MEASURE DECISION, asking for the revocation of the INTERIM MEASURE DECISION. Parties were asked to provide information on the issues mentioned in the petition concerned, and the response letters numbered 19655, 20553 and 21692

received by the Authority on 16.07.2021, 24.08.2021 and 01.10.2021 included additional explanations by the investigation parties. In addition to the above, the investigation parties repeated their request for the revocation of the INTERIM MEASURE DECISION and the authorization of the implementation of the UPDATE throughout Türkiye within the framework of the plan above, asking for the opportunity to present this proposal to the Investigation Committee and/or the Board as part of a meeting. The Memorandum dated 18.10.2021 and numbered 2021-1-002/BN-07 on the issues raised were discussed in the Board meeting of 21.10.2021, and the decision numbered 21-51/702-M was taken, stating *“Within the framework of the points raised in the letters numbered 18814, 19655,, 20553 and 21692 submitted by the investigation parties on 22.06.2021, 16.07.2021, 24.08.2021 and 20553, respectively, it was decided that revoking the Board’s INTERIM MEASURE DECISION dated 11.01.2021 and numbered 21-02/25- 10 was not necessary; therefore, the request of the parties for the revocation of the INTERIM MEASURE is denied as well as their request to be able to implement the update to the WhatsApp Terms of Service and Privacy Policy (UPDATE), scheduled for 08.02.2021, without violating the INTERIM MEASURE DECISION, even if the INTERIM MEASURE DECISION was not revoked.”*

- (16) During the investigation process, an on-site inspection was conducted at MADOKA on 20.08.2021. A dawn-raid was carried out at Esentepe Mah. 23 Temmuz Sok. No:2/1 Şişli/İstanbul, the known address of MADOKA, and the law firm Beceni-Türkekul-Sevim (BTS PARTNERS) was found at that address. During the inspection conducted, BTS PARTNERS lawyers stated that MADOKA was a representative of a social network provider authorized under the The Law no 5651 on the Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (Law no 5651), that in other words, MADOKA was a subsidiary of FACEBOOK established to fulfill a legal obligation. Moreover, it was stated that a room in their offices was rented to MADOKA, and the undertaking conducted its operations from that room. A copy of their sublease agreement with the undertaking as well as a copy of the letter of attorney showing that they were authorized to represent MADOKA were presented. In addition, it was stated that MODAKO had no employees within the border of the Republic of Türkiye and the person authorized to represent the undertaking was currently abroad, that any notifications to the undertaking were received by the employees of BTS PARTNERS on behalf of MADOKA and that there were no computers owned by the undertaking in the room leased by MADOKA. Since MADOKA employees were not in Türkiye and there were no electronic media or IT system owned by MADOKA in the room where the undertaking conducted its activities, the on-site inspection was limited to the examination of the physical environment. These findings recorded by the Authority professional staff with an inspection report during the on-site inspection conducted at MADOKA on 20.08.2021 were presented to the Board with a Memorandum dated 31.08.2021 and numbered 2021-1-002/BN-06, and the Board’s decision dated 02.09.2021 and numbered 21-41/597-M ruled that the Information and Communication Technologies Authority should be informed about the current situation of the relevant representation office. The issue was conveyed to the Information and Communication Technologies Authority with a letter dated 18.10.2021 and numbered 32957.
- (17) The letter providing information about the trade name change sent by Facebook, Inc., one of the parties under investigation, was received into the Authority records on 01.11.2021, with the number 22578. A memorandum dated 17.11.2021 and numbered 2021-1-002/BN-08 on the subject was discussed during the Board meeting on

25.11.2021, and it was decided to “*change the name of the investigation party previously referred to as Facebook, Inc. to Meta Platforms Inc.*”⁴

- (18) The letter sent by Facebook, Inc., titled Additional Written Plea, entered into the Authority records with the date 21.12.2021 and number 23934. The additional plea in question was taken under evaluation, despite the fact that it was not received into the Authority records within the legal term for submitting the first written plea.
- (19) The Investigation Report prepared, dated 11.01.2022 and numbered 2021-1-002/SR-01, was notified in accordance with Article 45 of the Act no 4054 and the undertakings were asked to submit their second written pleas. The Investigation Report was received by FACEBOOK on 20.01.2022. FACEBOOK requested an additional 30 days before submitting its second written plea, and the parties were granted a 30-day extension for preparing their second written pleas with the Board decision dated 03.02.2022 and numbered 22-07/90-M. FACEBOOK’s second written plea was submitted to the Authority records within the legal term, on 06.10.2020 with the number 26457.
- (20) Within the framework of the provision “(...) *Those charged with conducting the investigation submit an additional written opinion within 15 days against the pleas to be submitted by the parties, and this is also notified to all members of the Board and the parties concerned. The parties may reply to such opinion within 30 days... In case justifiable grounds are provided, these periods may be extended only once and by one-fold at the most*” in Article 45.2 of the Act no 4054, the rapporteurs requested a one-fold extension to the period for the preparation of the additional written opinion and, with the Board decision dated 24.03.2022 and numbered 22-14/241-M, the relevant period was extended for 15 days following its expiry.
- (21) The Additional Opinion dated 20.04.2022 and numbered 2021-1-002/EG was received by the parties on 27.04.2022. FACEBOOK then requested a 30-day extension for submission of the third written pleas, and the Board granted the parties the requested 30-day extension for the third written pleas with its decision dated 18.05.2022 and numbered 22-23/363-M. FACEBOOK’s third written plea was submitted to the Authority records with the number 29271, within the legal period, on 06.10.2020. Since a hearing was requested by the parties under investigation, a hearing was held on 11.10.2022.
- (22) In accordance with the Report, Additional Opinion and the evidence collected as a result of the investigation, the written pleas, the statements made in the hearing and the content of the file under examination, the Board took its final decision, dated 20.10.2022 and numbered 22-48/706-299.
- (23) **H. RAPORTEURS’ OPINION:** As a result of the relevant Investigation Report and the Additional Opinion, the following conclusions and observations are made concerning the claims comprising the subject matter of the file:
 - a) Madoka Turkey Bilişim Hizmetleri Ltd. Şti. does not play a role in the provision of the activities under examination and therefore cannot have any liability for the claims evaluated within the framework of the investigation,

⁴ A significant portion of the investigation process was conducted on the company titled Facebook, Inc., under the relevant name and those titles were used in the correspondence. For the sake of consistency and in order to avoid confusion, the reasoned decision will continue to use the name Facebook, Inc. when referring to Meta Platforms, Inc., and the abbreviation FACEBOOK was used to cover Meta Platforms, Inc. and its subsidiaries.

- b) The FACEBOOK economic entity comprised of Facebook, Inc., Facebook Ireland Limited and WhatsApp LLC holds dominant position in the markets for personal social networking services, consumer communication services and online display advertising,
- c) FACEBOOK led to the distortion of competition by obstructing the activities of its competitors operating in the personal social networking services, consumer communication services and online display advertising markets and creating barriers to market entry by merging the data it collected from the *Facebook*, *Instagram*, *WhatsApp* and *Messenger* services, which are known as its core services, and thereby violated Article 6 of the Act no 4054,
- d) Thus, administrative fines must be imposed on FACEBOOK in accordance with Article 16.2 of the Act no 4054 on the Protection of Competition and the provisions of the “Regulation on Fines to Apply In Cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position”,
- e) In order to ensure the termination of the violation set out in paragraph c) and to establish effective competition in the market, FACEBOOK must
 - a. Stop merging the data collected from its core services of *Facebook*, *Instagram*, *WhatsApp* and *Messenger* and technically unbundle these data,
 - b. Limit the use of data collected from each core service to the improvement of the relevant core service and for the purposes of the online advertising market provided under that same service,
 - c. Store the data collected by each core service in a separate database.

I. EXAMINATION AND ASSESSMENT

I.1. Parties under Investigation

I.1.1. Facebook, Inc.

- (24) Facebook, Inc. is a public company established on 29.07.2004 under the laws of the Delaware State, USA, with its headquarters in California. The firm is listed on the NASDAQ since 18.05.2012. Facebook, Inc., was established by Mark ZUCKERBERG and founding partners Dustin MOSKOVITZ, Chris HUGHES and Eduardo SAVERIN. Facebook, Inc., operates as the main provider of the *Facebook*, *Instagram* and *Messenger* services outside of the European Region.⁵ The only subsidiary of Facebook, Inc. in Türkiye is MADOKA, which operates as Facebook, Inc.’s representative in Türkiye under the Law no. 5651. It has been noted that the strategic decisions concerning the “Core Services,” consisting of *Facebook*, *Instagram*, *Messenger* and *WhatsApp*, as well as other important decisions are taken by the Facebook, Inc. Board of Directors at the global scale.
- (25) The FACEBOOK core services under investigation are *Facebook*, *Instagram*, *Messenger* and *WhatsApp*, and each of the services concerned have a mobile application that users can download free-of-charge. FACEBOOK states that it does not mandate the use of its core services, that users can freely decide to use one or several of the relevant services or to use the relevant services as much as they want, that each

⁵ These services are provided by Facebook Ireland Limited within the European Region.

of the aforementioned core services is an independent service and users are not obliged to use one service in order to be able to use another.

- (26) FACEBOOK notes that its products are comprised of *Facebook* (including the *Facebook* mobile app and the browser in the application), *Messenger*, *Instagram*, (including applications like *Boomerang*), *Portal* branded devices, *Oculus* Products (when used with a *Facebook* account), *Facebook Stores*, *Spark AR Studio*, *Audience Network*, *NPE Team* applications and other features, applications, technologies, software, products or services as well as *Facebook* business tools provided by Facebook, Inc. or Facebook Ireland Limited within the scope of the privacy policy; however, they do not include some products and services provided by FACEBOOK but have their own privacy policies and terms of service, such as *Workplace*, *Free Basics*, *Messenger Kids* and *Oculus* Products.
- (27) In the course of time, FACEBOOK added some innovations to its existing products and services. Accordingly, the features “*Newsfeed*”, “*Like Button*”, “*Timeline*”, “*Facebook Groups*”, “*Go Live*”, “*Facebook Watch*” and “*Facebook Shops*” were added to the *Facebook* application in 2006, 2009, 2011, 2014, 2015, 2017 and 2020, respectively. On the other hand, the *Instagram* service received new features and functions as well, such as “*Direct Messaging*” in 2013, “*Boomerang*” in 2015, “*Instagram Stories*” in 2016, “*Instagram Shopping*” and “*Instagram TV*” in 2018. Moreover, recently *Instagram* implemented the “*Live Rooms*” function, allowing users to broadcast live with up to three people.⁶
- (28) FACEBOOK does not charge individual users for taking advantage of its products and services. FACEBOOK generates a majority of its income from ad sales, and a small portion of it from the sales of a series of non-ad products and services. Around (.....)% of Facebook, Inc.’s annual global income comes from ad sales. That income is generated mostly from the ads published on *Facebook*, *Instagram* and *Messenger*. It is also stated that Facebook, Inc. is also active in a limited sense in the ad technology supply chain with the *Facebook Audience Network*, which it characterizes as a source of demand for third-party servers, but that it does currently not have any other involvement in the supply chain. At the same time, it was noted that FACEBOOK currently does not provide ad services on *WhatsApp*, nor does it generate ad income from *WhatsApp*. Based on the position of the advertiser/customer, Facebook, Inc., also generates income from the sales of products and services (non-advertising products/services) to advertisers and customers located in Türkiye.
- (29) FACEBOOK states that one of the economic goals for which the data collected under the core services detailed above can be used is related to the way FACEBOOK services are funded. Accordingly, instead of paying a fee, users agree to be shown the ads for which businesses and organizations make a payment to FACEBOOK. In line with the information collected under the file, the geographical scope of certain policies and terms applicable to core services have changed with time. As an example, the parties point to the fact that *WhatsApp* Terms of Service had been applied at the global scale until 2018, after which it was presented in two versions, consisting of “individuals living in countries outside of the European Region, including Türkiye” and “Individuals Living in the European Region”.

I.1.2. Facebook Ireland Limited (FACEBOOK IRELAND)

⁶ “Doubling Up on Instagram Live with Live Rooms”
<https://about.instagram.com/blog/announcements/doubling-up-on-instagram-live-with-live-rooms>.
Accessed: 27.12.2021.

- (30) FACEBOOK IRELAND is a company headquartered in Ireland and established on 06.10.2008, which is indirectly under full ownership of Facebook, Inc. The investigation parties have stated that FACEBOOK IRELAND is not active in the provision of the *WhatsApp* service, provided in Türkiye by WhatsApp LLC. An examination of the shareholding structure of FACEBOOK IRELAND shows that it does not own shares in WhatsApp LLC and in WhatsApp LLC subsidiaries.
- (31) FACEBOOK IRELAND provides the *Facebook*, *Instagram* and *Messenger* services in the European Region, as well as the *Workplace* service outside of the US and Canada. Moreover, outside of the US and Canada, FACEBOOK IRELAND also conducts sales, marketing other international activities. In addition to the ads directed towards users in Türkiye, FACEBOOK IRELAND generates income from Türkiye through the following services. Examples of these services are *Payments (Games)*, *Facebook Reality Labs*, *WhatsApp Business API* and *Workplace*.

I.1.3. WhatsApp LLC (WHATSAPP)

- (32) The undertaking, which was established in 2009 under the trade name WhatsApp, Inc., was acquired by Facebook, Inc. in 2014. The liability structure of the undertaking changed on 01.01.2021, transforming from a joint-stock company to a limited liability company, and on the same date its business name was changed from WhatsApp Inc. to WhatsApp LLC. It is noted that WHATSAPP is the provider of the *WhatsApp* service outside of the European Region, and it is the sole provider of the *WhatsApp* service in Türkiye as well. *WhatsApp* offers instant text and/or voice chatting as well as video and/or voice call services allowing users to communicate among themselves, which can be used individually or in groups. Fundamentally, *WhatsApp* is an application that can be accessed through smartphones with internet connection, by registering with a phone number. However, the application may be simultaneously used on different devices through the browser-based *WhatsApp Web* application and the *WhatsApp Desktop* application which may be installed on a computer, by synchronizing the messages sent/received between the smartphone and the computers. Moreover, it is noted that voice and video calls have become usable on the *WhatsApp Desktop* app as of March 2021.⁷
- (33) In 2018, WHATSAPP offered the “*WhatsApp Business API*” application to businesses, allowing them to message their customers. Accordingly, the *WhatsApp Business API* application, which allows businesses to send and receive messages from customers, is integrated into the businesses’ own systems and business flows through direct *WhatsApp API* integration or through third-party “Business Solution Providers.” The *WhatsApp Business API* lets businesses respond to chats initiated by customers to provide customer support on *WhatsApp* and/or send notification templates to customers at any time. It is noted that the businesses are not charged if chats initiated by customers are responded within 24 hours, but that a fee is charged for sending notifications.
- (34) According to the information collected, final users are not charged for using the *WhatsApp* application and the *WhatsApp Business API* application, and currently they are not shown advertisements on the aforementioned applications.

I.1.4. Madoka Turkey Bilişim Hizmetleri Ltd. Şti. (MADOKA)

⁷ <https://about.fb.com/news/2021/03/introducing-private-and-secure-whatsapp-calling-on-desktop/>. Accessed: 10.11.2021.

- (35) MADOKA, founded on 27.03.2014, is the local representative sole subsidiary of Facebook, Inc. in Türkiye. It is stated that MADOKA is the representative of Facebook, Inc. in Türkiye under the law no 5651. The investigation parties state that MADOKA did not participate in conducting the services or commercial activities (including the services *Facebook*, *Messenger*, *Instagram* or *WhatsApp*) carried out by Facebook, Inc. and related subsidiaries in Türkiye or in any other place.

I.2. Relevant Market

I.2.1. Information on the General Characteristics of the Market

- (36) FACEBOOK is active in the development and operation of many digital products, online services and application software. The claims comprising the subject matter of the investigation fundamentally concern FACEBOOK's social networking services as well as its services in the fields of consumer communication, in particular numberless communication, and online advertising services offered in connection with those services. FACEBOOK provides the social networking services concerned through the platforms *Facebook* and *Instagram*; while its numberless communication services are offered through *Facebook Messenger* and *WhatsApp*. In addition, in connection with the provision of *Facebook*, *Instagram* and *Messenger* services, FACEBOOK also offers, and generates income through, online advertising services.
- (37) The applications with which FACEBOOK provides the aforementioned services to commercial or final users are generally referred to as "social media platforms", and these markets are characterized as "multi-sided markets." In such markets the platform, in other words, the service provider undertaking concerned, offers different services to different user groups on different sides of the market. In such two-sided markets where the demands of the different user groups are interconnected, indirect network effects may arise; i.e., one user group may gain more benefit from the increasing usage of the other group. In that framework, final and/or commercial users receive social media services, while advertisers take advantage of the online advertising service. An increase in the number of users on the platform may benefit the advertisers, but an increase in the number of advertisers on the platform may be disturbing for the consumers.
- (38) Another economic characteristic connected with network effects is the feedback loop. This effect consists of consecutive cycles of indirect network effects and occurs where a situation that affect the demand of one of the user groups impacts the demand of the user group that created the initial effect in the first place and this interaction continues in the form of repeating cycles. In terms of social networking services, as the number of users benefiting from the relevant service goes up, the platform becomes more valuable for advertisers since it serves as a gateway for reaching consumers. This is because the platform is then able to engage in more effective targeted advertising, thanks to the data it collects from its users, and thus can attract more advertisers.
- (39) However, it would be mistaken to believe that the network effects dominating the social networking and numberless communication services are the only reason for the evolution of the market. At that point, in addition to strong network effects, the preferences and habits of users, another point to take into account is whether or not there are limitations on multi-homing due to actions and behavior of the undertakings. In that sense, first mover advantage is found to be the reason behind consumers' marked preference for applications provided by FACEBOOK, such as *Facebook* and *WhatsApp*; which leads to advertisers increasingly choosing single-homing. It is clear

that the structure in question can create competitive bottlenecks for those competitors offering either of these services.

- (40) Another salient feature in two-sided markets is the fact that platform operators active in these markets can take advantage of asymmetric pricing. Asymmetric pricing is where demand from different user groups are taken together to set up a pricing structure. In this framework, pricing may be done independent of marginal costs, or even in a way where one side of the market subsidizes the other. The subsidization opportunity in question leads to the formation of a “zero” price for one side of the market. These prices are expected to be implemented for users critically important for the operation of the platform and allow the charging of higher prices to those users on the other side of the platform, i.e. to advertisers. The platform operator demands an advertising service fee from advertisers in return for providing them access to the consumers, yet in most circumstances does not ask for a monetary compensation from the other platform users, that is to say, from the consumers. Thus, although users who benefit from the relevant services for a “zero” price believe that they do not pay anything, they in fact do make a payment with the “data” they provide to the relevant platform. Forming the currency of digital markets, “data” is mostly provided by the consumers unwittingly and can be easily sacrificed. Platforms use this seemingly free service to draw consumers into the platform and then use this consumer platform they own to attract the other user group (advertisers or commercial users) from which it generates its income. Consequently, with regard to the provision of the relevant services, the data acquired by big platforms that can monitor almost every action users take on the relevant platforms grant significant power to the undertakings concerned.
- (41) Characteristics such as the network effects mentioned above, single-homing tendency of the consumers, first mover’s advantage and data advantage mainly indicate that these markets are characterized with significant barriers to entry and growth. It is known that these market characteristics can lead to much more significant outcomes, particularly in digital markets. Thus, it is very important to prevent these structural barriers concerning the services in question from being supported by undertaking conduct and to keep the barriers to entry and growth in question at a minimum level. It should also be emphasized that in markets which are susceptible to monopolization and/or tipping to this degree, tiniest conduct by undertakings may lead to a snowball effect and therefore utmost care must be taken at all times. Moreover, it should also be noted that since the relevant markets have a different structure from traditional one-sided markets and function differently, certain differences must be observed in the analyses and examinations conducted in these markets during the entirety of the investigation processes under competition law, from relevant market definition to theories of harm.
- (42) In order to present the general characteristics of the market and to expose the social media platforms’ impact potential in Türkiye, some of the basic indicators included in the Digital 2021 Report⁸ are quoted below.
- The top five most downloaded applications in Türkiye are *Tiktok*, *WhatsApp*, *HES-Life at Home*, *Trendyol* and *Instagram*, while this ranking goes *Tiktok*, *Facebook*, *WhatsApp*, *Zoom* and *Instagram* globally.

⁸ <https://datareportal.com/reports/digital-2020-global-digital-overview>, Accessed: 21.03.2021; <https://datareportal.com/reports/digital-2020-turkey>, Accessed: 21.03.2021.

- Among the most visited websites, *facebook.com* holds the third place in Türkiye and *instagram.com* comes fourth, with *facebook.com* ranking third and *instagram.com* ranking fifth globally.
 - The top five most-frequently used social media platforms in Türkiye are *YouTube* (%94.5), *Instagram* (%89.5), *WhatsApp* (%87.5), *Facebook* (%79) and *Twitter* (%72.5). On the other hand, the top five most-frequently used social media platforms worldwide are *Facebook*, *YouTube*, *WhatsApp*, *Facebook Messenger* and *Instagram* in descending order. The platforms *Instagram*, *WhatsApp* and *Facebook*, all of which are under the FACEBOOK umbrella, are among the top five social media platforms in the country.
 - There are 46 million active *Instagram* users and 38 million active *Facebook* users in Türkiye.
 - The number of active social media users rose by 6 million (11.1%) compared to the end of the previous year, reaching 60 million.
 - In the country, 99.7% of social media users visited or used a social media platform at least once in the previous month, with an average of 2 hours and 57 minutes being spent on social media per day.
 - The top four applications in terms of the number of active users are *Facebook*, *WhatsApp*, *Facebook Messenger* and *Instagram* globally, and it is remarkable that all of the applications concerned are owned by FACEBOOK.
 - Looking at which social media platform are used monthly by how many internet users between the ages 16-64 in Türkiye, it is observed that *Instagram* holds the second place with 89.5%, *WhatsApp* holds the third place with 87.5%, *Facebook* is fourth with 79%, and *Facebook Messenger* is sixth with 54.2%. It is striking that four of the top six undertakings in the rankings are owned by FACEBOOK.
 - In the ranking based on the average time social media users in Türkiye spend on the relevant applications, first place goes to *WhatsApp* with a monthly average of 15 hours, the second place is held by *Instagram* with a monthly average of 19.7 hours, and the third place is *Facebook's* with 13.1 hours – once again, it's remarkable that all of the applications in question are owned by FACEBOOK. These numbers show that social media users in Türkiye spend more time on this platform than both European Union (EU) and global averages, and therefore they are subject to the effects on the relevant platforms at a higher level.
- (43) Digital 2021 Report also notes that *Facebook* can show ads to 38 million people in Türkiye, which holds 12th place in the global rankings in this respect. Meanwhile, with 56.5%, *Facebook's* ad target audience access rate in Türkiye is above the global average of 35.8%. Another interesting statistic is the fact that *Instagram's* worldwide average ad target audience potential is around 20% and Türkiye holds the first place in *Instagram* ad target audience access rate rankings, with a rate of 68.4%.
- (44) The market characteristics detailed above show that the Türkiye is an important market for social networking services, numberless consumer communication services and online advertising services markets, which are dominated by globally large players.

I.2.2. Relevant Product Markets

- (45) Within the framework of FACEBOOK's aforementioned fields of activity, the relevant product market was assessed under four separate categories based on the main

activities: (i) social networking services, (ii) consumer communication services, (iii) online advertising services, and (iv) user attention.⁹

I.2.2.1. Social Networking Services Market

- (46) Social networking services may be defined as platforms that allow users to get in touch with their friends and families, follow news or recent developments and share creative content with each other.¹⁰ Social media platforms facilitate interaction between users and help them communicate with each other, sharing and discovering interesting content. The platforms concerned can generally be accessed on a mobile application and some of them can be used on a web browser, while some are accessible through both.
- (47) It can be said that FACEBOOK is active in the field of “social media service” in the widest sense. *Facebook* can be accessed at the “www.facebook.com” website on a web browser or through its mobile application which can be downloaded from application stores, and it allows users to contact each other, share and discover content, and communicate with other users who are on the same service over mobile devices and personal computers. *Instagram*, on the other hand, can be accessed on the “www.instagram.com” website with a browser or through the mobile application which may be downloaded from application stores. The *Instagram* application allows users to take photos or videos, customize them with filters, share them with their friends or followers in their feed or send them directly to their friends.
- (48) Published by the United Kingdom Competition and Markets Authority (CMA), the “Online Platforms and Digital Advertising Report” (CMA Report) states that such platforms tend to have some common features such as setting up consumer accounts or profiles, which allow consumers to create an online persona; creating a ‘feed’ or homepage where consumers can engage with content including posts, photos and videos; and messaging features allowing consumers to communicate directly with others. In addition, most social media platforms also feature adverts that target user attention.¹¹ The report in question lists *Facebook, YouTube, Snapchat, WhatsApp, Instagram, TikTok, Twitter, LinkedIn, Pinterest, Reddit* and *Tumblr* among the platforms which may be included in the wider “social media” definition. The table in the CMA Report showing the varying functionalities of the social media platforms is provided below.

Table -1: Functionalities of the Social Media Platforms¹²

Undertaking	Profile/Account	Personalized Feed	Friends/Contacts	Followers/subscribers	Photo sharing	Video sharing	Comments	Messaging
Youtube	✓	recommended	✓	✓	✓	✓	✓	✓
Facebook	✓	newsfeed	✓	✓	✓	✓	✓	✓
Snapchat	✓	discover	✓	✓	✓	✓		✓
WhatsApp	✓		✓		✓	✓		✓
Instagram	✓	explore	✓	✓	✓	✓	✓	✓
Twitter	✓	timeline		✓	✓	✓	replies	✓

⁹ The assessment in question is compliant with the European Commission’s (Commission) *Facebook/WhatsApp* decision as well. COMP/M.7217.

¹⁰ CMA (2020), “Online Platforms and Digital Advertising”, Market Study Final Report, p. 42, <https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study>, Accessed: 18.11.2021.

¹¹CMA (2020), “Online Platforms and Digital Advertising”, Market Study Final Report, p. 114.

¹² The Table was translated into Turkish by the Rapporteurs.

Linkedin	✓		✓	✓	✓	✓	✓	✓
TikTok	✓	for you	✓	✓	✓	✓	✓	✓
Pinterest	✓			✓	✓	✓	✓	✓
Reddit	✓	front page	✓	✓	✓	✓	✓	✓
Tumblr	✓	dashboard		✓	✓	✓	✓	✓

Source: CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 117.

- (49) The report emphasizes that the level of competition between different social media platforms does not depend on the extent the platforms concerned share the common functionalities, but on the extent users consider the platforms substitutes of each other. Moreover, even though their main functions are mostly the same, these platforms are found to be different in terms of some significant features, including the user needs they meet. Platform differentiation may be based on communication among the users or consumption of content. In that scope, platforms that encourage communication can facilitate consumers' interaction between social networks with different values, while users utilize content-oriented platforms to create and share content about their personal lives, areas of interest or a combination thereof, and/or to passively consume this type of content produced by other users. Generally, it is accepted that social media platforms accessed for similar reasons would constitute closer substitutes for each other from a consumer perspective and therefore would become closer competitors.¹³
- (50) The "Online Nation - 2019 Report" published by the UK Office of Communications (Ofcom) states that attempting to map the exact boundaries of the social media sector is difficult, that communicating with others through user-generated text, photos and videos might be considered the central function of social media, that many online platforms facilitate such interactions, and that the concept of "social media" has blurred boundaries that intersect with video-sharing services, blogging sites, messaging apps and forums.¹⁴
- (51) The US Antitrust Subcommittee's "Competition in Digital Markets Report" (Subcommittee Report) similarly notes that social media products and services include social networking, messaging and media platforms designed to facilitate sharing, creating and communicating online content and information. The German Competition Authority's *Facebook*¹⁵ decision is referenced to emphasize that the demand for social networking services is different from the demand for other social media services. Social networking platforms provide an "intensive social experience" through the features of their products/services, allowing users to find other people they know online, interact with these people and create networks with them. Users utilize social networking platforms to exchange experiences, opinions and content between certain persons defined based on their identities. Social media platforms, on the other hand, mainly facilitate the distribution and consumption of content.¹⁶

¹³ CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 118-119.

¹⁴ OFCOM (2019), "Online Nation - 2019 Report", 30.05.2019, p. 118, https://www.ofcom.org.uk/data/assets/pdf_file/0025/149146/online-nation-report.pdf, Accessed: 15.11.2021.

¹⁵ Bundeskartellamt, Decision B6-22/16, para. 249, https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/Missbrauchsaufsicht/2019/B6-22-16.pdf?__blob=publicationFile&v%5, Accessed: 09.11.2021.

¹⁶ Subcommittee on Antitrust (2020), "Commercial and Administrative Law of the Committee on the Judiciary, Investigation of Competition in Digital Markets", p. 91.

- (52) One of the cases where the Commission examined social networking services, the *Facebook/WhatsApp* decision notes that business models and functionalities of social networking services are rather variable. This decision also states that a vast majority of social networking services were free for users; however, the undertakings providing the relevant services were able to generate income through advertisements or other ways such as fees charged for *premium* services.¹⁷ Most of those who took part in the market study conducted by the Commission within the framework of the file pointed out that the main function of a social networking service was to create a public or semi-public profile as well as a friends/contacts list. The participants listed exchanging messages, sharing content (for instance sending photos, videos or links), commenting on posts and recommending friends among the other important properties features of social networking services.¹⁸
- (53) The Commission's *Microsoft/LinkedIn* Decision generally describes social networking services as multi-sided platforms that enable users to connect, share, discover and communicate with each other across multiple devices (mobile and desktop) and means (e.g., via chats, posts, videos, recommendations), noting that social networking services are used to build social relations among people who share similar personal and career interests, activities, backgrounds or real-life connections.¹⁹
- (54) The German Competition Authority's *Facebook* decision remarks on the significant differences between the terms "social media" and "social networks". The decision concerned defines "social media" to cover all media used for communication purposes by internet users in which interaction plays an important role. Moreover, it is emphasized that different forms of social media may be classified according to varying criteria and in that sense "social networks" (e.g. *Facebook*, *LinkedIn* and dating portals) are different from "content sharing and entertainment platforms" (e.g. *YouTube*, *Instagram*, *Pinterest*), just as "knowledge communities" are different from "blogging platforms".²⁰ The decision concerned states that the goal of social networks is to provide an extensive "virtual space" to users. The network helps users develop "real interpersonal relationships". Depending on their preferences, users can perform various activities in these virtual spaces, such as remaining in contact with their friends, finding their acquaintances, sharing content, playing online games or buying/selling goods (for instance, through *Facebook Marketplace*).²¹ The decision also references the Commission's *Microsoft/LinkedIn* decision which defines the various functions a platform must have in order for it to be considered a platform by the final user and includes explanations on those functions.²² They are listed as registration (with a user name and e-mail address or a mobile phone number), setting up a personal user profile (residence, marital status, professions and hobbies, interests, etc.), a contact list, a news feed (a regularly updated dynamic presentation of the content/stories from the contacts, pages and other linked communities of a user), and communication.
- (55) As seen above, there is no universal, accepted definition for social media and social networking services. Social media services target the creation and consumption of content by the users to a larger extent, while social networking services target the creation of a network by users and their interaction with it. In that framework, social

¹⁷ COMP/M.7217, para. 46-47.

¹⁸ COMP/M.7217, para. 51.

¹⁹ COMP/M.8124, *Microsoft/LinkedIn*, para. 87.

²⁰ Bundeskartellamt, Decision B6-22/16, para. 168-170.

²¹ Bundeskartellamt, Decision B6-22/16, para. 250.

²² Bundeskartellamt, Decision B6-22/16, para. 257-263. Moreover, (.....)'s response letter was used.

media services may be considered a larger category that covers social networking services as well.

- (56) In addition, according to the results of the survey conducted for the Online Advertising Sector Inquiry performed by the Authority, *Instagram* holds the first place among the most commonly used social media applications, with a share of 55.1%. *Instagram* is followed by *YouTube* (46.7%), *Facebook* (44.5%), *Twitter* (14.1%), *TikTok* (5.1%), *Pinterest* (2.9%), *Snapchat* (2.5%) and *LinkedIn* (1.3%). According to the survey in question, the main goal in using social media is to keep up with the digital society (46.7%). This is followed by communication with the digital society (41.9%), keeping up to date with recent news (35.5%), keeping up with trends (24.6%), getting likes (24.0%), following posts by favorite products (23.4%) and publishing content (10.3%). Even though the users may have widely varying use cases, according to the aforementioned survey, one out of every four person noted that the social media application they preferred depended on the intended use. These results show that although users may use social media for very different purposes, the vast majority (three out of four persons) can use the same social media channel for different purposes.
- (57) Since there is no clarity as to the boundaries of social media and social networking concepts as of yet, the file herein examines those social media/social networking services that may become a competitor to FACEBOOK from the widest perspective and are most commonly preferred by the users, with respect to their substitutability with FACEBOOK.
- (58) FACEBOOK, on the other hand, raised the following points: users do not observe categorical distinctions when deciding on which services to use and similarly service providers generally do not limit themselves with a certain use case or user group; users have a wide range of interests and there are a large number of services which are in competition to allow users to meet those preferences, to discover, share and communicate with other users; these include chat services, messaging services, social networking services, video broadcast services, game and digital music platforms as well as telecommunications operators, newspapers and TV publishers; all of these services compete with each other to varying extent for user attention and interaction; there is strong and variable competition in this field and therefore cannot be limited to a specific service of functionality; the services in question include many different online service which provide similar features from a user perspective such as user registration, setting up of user profiles and contact lists, functions for searching new contacts, dynamic presentation of content based on users' fields of interests, and interaction/communication tools; relatively minor variations between these functionalities will not justify disregarding the services in question as active competitors; its competitors in the social networking services segment included *TikTok*, *Twitter*, *Tumblr*, *LinkedIn*, *Pinterest*, *Reddit*, *LINE*, *YouTube* and *Snapchat*.
- (59) At this juncture, an examination is conducted into whether that market includes the competing services which FACEBOOK claims are allegedly in the same market with its own social networking services, and which are most commonly preferred by users in Türkiye. To that end, it is first examined for which purpose *Facebook* and *Instagram* are used and which needs these services fulfill; after that, their substitutability with the services offered by *LinkedIn*, *YouTube*, *TikTok*, *Twitter*, *Snapchat* and *Pinterest* is assessed.

- (60) *Facebook* provides various features to users aimed at helping them get in touch with their friends and acquaintances and share content with their contacts. In that framework, the main functions of the *Facebook* social network are defined as “getting in touch,” “communicating,” “sharing” and “discovering”. Individual users taking advantage of the *Facebook* products and services are not charged. On the other hand, corporations and organizations make payments to publish the ads of their products and services aimed at individual users on *Facebook* channels.
- (61) *Facebook* can be accessed on web browsers and/or through its application. To be able to use *Facebook*, the user must first register on the service by creating a profile. Users are able to use their real names to enter information about themselves and set up a profile picture. Users can also enter information about their relationship status, current places of residence, past and current jobs, interests, religious and political views. Based on this information *Facebook* creates a personalized website for each user, consisting of three segments: “profile page”, “home page” and “find friends”. In addition to the personal information entered by the users, the profile page also includes the “timeline”. The relevant page lists and shows every activity of the users in a timeline in reverse chronological order. The home page is the central communication area and includes the “newsfeed” where the latest posts by the user’s friends or publishers are shown, which the user may subscribe to or mark by clicking on the “like” button. Posts in the newsfeed are listed for each relevant user’s level of interest, based on an algorithm.
- (62) *Facebook* users can express themselves in various ways, for instance by posting pictures or links on their own timelines, by commenting on or liking the activities of other users, or by playing games connected to *Facebook*. The service provided through *Facebook* has expanded to cover new tools and/or features such as *Facebook Groups* (2014), *Live* (2015), *Facebook Watch* (2017) and *Facebook Stores* (2020). *Live* offers *Facebook* and *Instagram* users as well as businesses the ability to contact friends and/or followers in a live broadcast, simultaneously receiving their reactions and comments live. This feature is said to enable users to get in touch on a more personal level and support interactivity instead of passively watching the content. *Facebook Watch* is a channel for users to find new videos, personalize their own watch lists and record videos. Moreover, in recent years, *Facebook* has been diversifying the user needs it can fulfill to serve the requirements of a much wider audience by adding different services outside of social networking (such as *Facebook Marketplace*). Thus, it is obvious that the most important reason for users to access *Facebook* is to interact with their existing close friends and family, and *Facebook* is trying to expand the scope of that interaction by introducing various features and functions.
- (63) *Instagram*, on the other hand, is a service aimed at sharing photos and short video clips, generally known as a “photo network” or “photo blogging” service. After registering on *Instagram*, users can upload profile pictures, enter personal information and create a contacts list of their close friends and family. *Instagram* provides a home page listing the content published by those the user is following, consisting of photos and videos. The profiles and posts of all users of the relevant service are open to the public by default. The users can change this setting to “private” and make their posts visible to only those they have approved. This feature is particularly important for *Instagram*. Although it was initially a social network, *Instagram* acquired social media-like features in time, suggesting contacts they can follow to users in addition to their close friends and family. In this case, the suggested contacts are sometimes potential acquaintances based on common contacts and sometimes they are third parties that

are offered based on the interests of the user. In addition, users can also check out profiles and users with public posts through the public “Discover” tab presented by *Instagram* in order to set up contacts. This discovery function can be personalized depending on the interests of the users (music, sports, style, humor, films and television, science, beauty). All of these features for adding contacts are implemented either automatically or on the approval of the relevant user, based on the privacy settings of the users who are being added as a contact. The mixed structure and features of the aforementioned tracking network indicates that *Instagram* holds a position between a social network and social media, and that its position can vary from user to user.

- (64) *Instagram*, mainly provides users with a service for sharing content consisting of photos and short video clips. In that context, users can use filters for the photos and videos they take, passively consume the content created by other users and comment on the aforementioned content. *Instagram* also provides individual users with a chat function for direct communication. In addition to this main function, *Instagram* also started to offer additional features such as *Instagram Stories* (2016), *Instagram Shopping* (2018), *Instagram TV (IGTV)* (2018) and *Instagram Reels* (2020). The *Instagram Stories* feature allows users to share videos limited to 15 seconds in the “stories” section which can be viewed for 24 hours instead of sharing a video of up to a minute as a post; these are deleted after 24 hours and are no longer viewable by anyone else other than the user. The *IGTV* feature lets users watch long format vertical videos from other *Instagram* users. *Reels*, on the other hand, lets users utilize sounds, effects and other creative tools to record 30-second videos made up of multiple clips that can be shared on *Instagram*.
- (65) *Instagram* is financed by providing online advertising services and thus users can use the *Instagram* service without paying any monetary fees. Most users take advantage of the relevant service by a mobile application and mobile devices with integrated cameras, while those who prefer can also access the service through a simplified desktop version.
- (66) The Commission’s *Facebook/WhatsApp* decision refers to *Instagram* as a photo and video sharing platform. The Subcommittee Report, on the other hand, considers *Instagram* a social network for photos and videos. On the other hand, according to the German Competition Authority’s *Facebook* Decision, while *Instagram* and *Facebook* services have some overlap, *Instagram* is not a social network that can be considered an alternative to *Facebook*. Instead, the decision notes that *Instagram* is a mobile photo sharing service with microblogging functions, which makes the service a competitor for *Snapchat* on one side and for *YouTube* on the other.²³ The relevant decision also states that the service provided by *Instagram* cannot be classified as a social networking service, since communication is limited to photos and videos. Since its attraction is mostly based on the number and relevancy of the content published, the relevant service is stated to be more among content platforms. While it is possible to set up a “private account” on *Instagram* which can only be viewed by those users approved by the profile owner, *Instagram* is mainly created for public use and thus resembles *YouTube* in that it can offer its users’ accounts as channels of advertisement. On the other hand, it is also pointed out that *Instagram* serves as an

²³ Bundeskartellamt, Decision B6-22/16, para. 334.

online photo diary and has a photo chat function which includes the option to edit photos before sharing them, which makes it more similar to *Snapchat*.²⁴

- (67) The survey conducted within the framework of the Online Advertising Sector Inquiry asked consumers why they preferred certain social media applications. According to the findings of the survey, the first reason for users' *Instagram* and *Facebook* choices was their "popularity as an application" (respectively, 64.4% and 65.8%), which was followed by "compatibility with interests" (respectively, 57.2% and 57.4%), "ease of use" (respectively 47.2% and 50.0%), "ability to reach more people" (respectively, 46.9% and 46.9%) and "entertaining content" (respectively, 38.9% and 33.7%). In that context, users clearly prefer the two relevant services due to similar reasons.
- (68) However, both services concerned are provided by the same company, and therefore discussions on the similarities and differences of these services will not be detailed further. The following pages will focus on whether competing products which FACEBOOK claims are in the same market with the *Facebook* and *Instagram* services offered in the social networking services segment, and which are most commonly used in Türkiye can be included in the relevant market as well as on additional assessments concerning the market definition, with each competitor addressed separately.

LinkedIn

- (69) First, a distinction must be made between social networks used for personal and professional purposes. *LinkedIn*, which *Facebook* suggests is a competitor in the social networking services market, offers a web-based social network focused on developing professional contacts. The basic networking service provided by *LinkedIn* is free of charge and gives access to fundamental social networking functions, such as a newsfeed. However, *LinkedIn*, (.....). *LinkedIn* can be accessed through its website on smartphones, tablets and computers, and *LinkedIn* also has applications for use on the iOS and Android operating systems.
- (70) *LinkedIn* states that *LinkedIn*, *Facebook* and *Instagram* have the common goal of supporting contact and interaction between people and include common features such as user profiles, newsfeeds, contact lists and communication/messaging tools, that *Facebook* and *Instagram* are used for both personal and professional purposes, that the target user base and use cases of professional social networks are not different than general social networks and instead they are more of a subset of the former. On the other hand, *LinkedIn* also states that the applications differed in terms of their revenue generation strategies, with *Facebook* and *Instagram* acquiring most of their income from digital advertising services while *LinkedIn*'s revenues came through (.....).
- (71) In the Commission's *Microsoft/LinkedIn* decision, it is concluded that social networking services used for professional purposes constituted a separate product market from other social networking services due to their different functionalities, features and use cases.²⁵ Professional social networks are used to maintain a professional identity, make useful contacts, search for job opportunities and stay in touch, while personal social networks are used to socialize, be entertained and kill time. Moreover, the two services are different in terms of content as well, with professional social networks providing access to career information, brand updates and information on current

²⁴ Bundeskartellamt, Decision B6-22/16, para. 334-338.

²⁵ COMP/M.8124, para. 115.

affairs, while personal social networks enabled access to information on friends, family and personal interests as well as entertainment updates.²⁶

- (72) Besides, since professional networks generally design their core functionalities in the form of “freemium” services which are subject to high charges, users may be more willing to pay for the service provided on those platforms in particular. Thus, it is noted that there is less opportunity for substitution between professional social networks and personal social networks with free services.²⁷
- (73) The results of the survey conducted by the Authority for the Online Advertising Sector Inquiry Report confirm the fact that *LinkedIn* is used for different purposes than other social networking platforms. According to the survey, the top reason users prefer *LinkedIn* is that it “provides business contacts,” with a rate of 59.1%. This is followed by “compatibility with interests” with 50.0%, “popularity” with 45.5%, “ease of use” with 40.9% and “ability to apply for job postings” with 36.4%. An overview of the top five reasons participants of the survey chose other applications in the social media market shows that none of the applications have “providing business contact” and “ability to apply for job postings” among the reasons for preferring them.
- (74) Thus, social networks for personal purposes mostly serve to keep in contact with personal connections, while social networks for professional purposes are generally used to support the users’ careers and for professional networking. In addition to their intended purpose, the content created for the platform, information provided to set up a profile and charging policy are different for the two types of service.
- (75) Consequently, it is decided that social networking services used for personal purposes are not a substitute for social networking services used for professional purposes. Therefore, it is concluded that the *Facebook* and *Instagram* services which are generally used for personal purposes do not compete with *LinkedIn* in the professional social networking segment where the latter is positioned.

Twitter

- (76) Twitter defines the service it provides as a microblogging²⁸ network and social networking service where users publish messages known as “tweets” and interact through these messages. *Twitter* is a global platform enabling users to create content, consume, distribute and discover the content created which was formed for public self-expression and real-time chat purposes. Users can benefit from the *Twitter* service free-of-charge, and *Twitter*, (.....). *Twitter* users can discover news, share their opinions and chat through the service in question. Users can also take advantage of photo, video clip and live feed features, including multimedia, and can participate in public chats. Although users are able to view and share short video clips on *Twitter*, it currently does not provide any features for long-form videos and does not consider itself a video sharing service.
- (77) *Twitter* states that it is in competition with (i) companies which offer products enabling people to create and share ideas, videos and other content or information, (ii) companies which provide ad inventories and opportunities to advertisers, (iii) companies which develop apps, and mobile apps in particular aimed at creating, collecting and distributing content in different sections of the internet, (iv) traditional, online and mobile businesses which enable people to consume content or marketers

²⁶ COMP/M.8124, para. 106.

²⁷ Bundeskartellamt, Decision B6-22/16, para. 277, 281.

²⁸ Microblogging refers to creating a blog by sending short status messages.

to reach their target audience and/or develop tools and systems to manage and optimize their ad campaigns. In that framework, according to *Twitter*, it is in competition with *Facebook*, *Instagram*, *WhatsApp*, *GOOGLE*, *YouTube*, *LinkedIn*, *Pinterest*, *Snapchat*, *TikTok* and *Verizon Media Group*, in addition to various social networking platforms, messaging and media companies with strong positions in some countries such as *WeChat*, *Kakao* and *Line* in terms of target audience.

- (78) *Twitter* also notes that *Twitter*, *Facebook* and *Instagram* each serve as social media platforms that enable contact and interaction with others, but there are differences between the platforms in terms of some of their features. For instance, although *Twitter* allows for uploading more than one media attachment at the same time, it currently does not have a “story” feature such as the one at *Instagram*. Moreover, *Instagram* is mostly focused on creative interaction associated with photos, pictures or video clips, while *Facebook* is focused on becoming a platform for connecting friends and family members online.
- (79) The *Facebook* Decision of the German Competition Authority, states that users do not see *Twitter* as a part of the social networks market, depending on the way they use the application. It goes on to say that based on the aforementioned reasons, *Twitter*, as a content platform, is comparable with *YouTube* which can generally also be classified as a “content sharing” platform; similar to *YouTube*, users can also access content on *Twitter* without registering and registration is only required for those functions that enable interaction with other users such as leaving comments on certain content or following them.²⁹
- (80) The results of the survey conducted for the Online Advertising Sector Inquiry show that users prefer *Twitter* based on the following reasons: “it is a popular application” (57.8%), “suitable to my fields of interest” (50.0%), “ease of use” (46.7%), “access to a wider audience” (38.1%) and “entertaining content” (33.6%). In light of the reasons users gave for preferring *Facebook* and *Instagram* over others, it becomes clear that users are choosing all of the aforementioned services for the same reasons.
- (81) Unlike social networking services, *Twitter* is more focused on creating, sharing and consuming content instead of interacting with existing friends and family, and thus is in closer competition with content sharing platforms. Considering *Twitter* is generally used for keeping up with news and other current happenings, it can be said that, in that sense, it is in competition with *Facebook*’s Newsfeed feature which lets its users follow news and other media. Thus, it is concluded that *Twitter* is in competition with FACEBOOK to an extent.

Snapchat

- (82) *Snapchat* is a camera application that allows users to communicate with friends and family via photos or videos called “*snap(s)*”. *Snaps* are temporary since they are deleted automatically shortly after viewing, however they can be used for 24 hours before automatic deletion and they can be saved by users as “memories”. SNAPCHAT states that users can share the content they create with one or more contacts directly through the application but cannot publicly publish them and therefore the application is designed for direct one-to-one communication and/or communication within small groups. Moreover, the “Discover” tab offered by *Snapchat* is mainly comprised of news and content on entertainment or sports; this content is provided to users after professional organization and inspection, but ordinary users are not able to share the

²⁹ Bundeskartellamt, Decision B6-22/16, para. 323-324.

content they create with a large audience. In addition to its main functionality mentioned above, *Snapchat* launched the feature “*Snapchat Stories*” in 2013 as well as voice and video call in 2016.

- (83) SNAPCHAT notes that it is a camera company that lets people express themselves, live in the moment, discover the world and have fun together. *Snapchat* is free for all users with no standard or *premium* subscription, and it generates its revenue from its online advertising activities. *Snapchat* is only available through mobile applications. SNAPCHAT notes that *Snapchat* is not a social networking platform but a camera application allowing direct communication between users, and that in the default application users did not have profiles similar to those offered by social networks such as *Facebook*. Rather, user profiles on *Snapchat* involve simple user information such as a permanent user name and a “Display Name,” which is selected by the user but can be changed at any time. The user is not asked to provide detailed information such as work history, residence address, marital status, favorite movies and TV shows, etc. Moreover, *Snapchat* does not have a profile photo for the user and instead, only the cartoon avatar of the user is displayed.
- (84) It is noted that the features of providing a camera and communication platform are what differentiates *Snapchat* from online social networks. While communication platforms enable direct communication between two people or within small and mid-sized groups, social networking services allow messaging all users added to the contacts list. In addition, users in social networking platforms basically choose the service in order to broadcast and receive information on their own networks. Accordingly, the scope in social networking services is wider than the user’s network. The information sent and shared may be shared with users who are separated from the sharing user by one or more degrees. On the other hand, content provided over *Snapchat* is shared with one or several friends and is not open to the public in a more general sense.
- (85) SNAPCHAT believes that social networking platforms are used to consume content from large audiences such as family, friends, friends of friends and public figures (influencers, etc.), and states that social media users can create and share not only videos and photos, but content of many different types and this content is not shared with a single person or a small group, but with a large audience. Additionally, communication channel services and social networking services are differentiated not only in terms of function, but also patterns of usage. Communication platforms are more suitable for enabling instant, simultaneous communication, while posts and comments on the social networks are not expected to receive instant response. On the other hand, SNAPCHAT notes that the *Snapchat* product is not in the same market as social networking services, such as FACEBOOK’s *Facebook* and *Instagram*, but that some features of these platforms can directly compete with each other.
- (86) The *Facebook* Decision of the German Competition Authority also points out that *Snapchat* cannot be seen as a direct rival to *Facebook* and that it cannot be considered a social networking service despite having expanded its functionality, mentioning that *Snapchat*’s competitor would be *Whatsapp* and particularly *Instagram*, instead of *Facebook*.³⁰
- (87) According to the results of the survey conducted for the Online Advertising Sector Inquiry, the top reason users prefer *Snapchat* is “field of interest,” with a rate of 54.5%.

³⁰ Bundeskartellamt, Decision B6-22/16, para. 298.

This is followed by “popularity,” “ease of use” and “entertaining content” with 50.0%, as well as “the ability to watch video/music/film/TV shows,” with 40.9%. A look at the reasons users submitted for preferring *Facebook* and *Instagram* mentioned above shows that “the ability to watch video/music/film/TV shows” are not among the top five reasons. Accordingly, in light of consumer preferences, it can be said that *Snapchat* is a platform more heavily focused on video/photo sharing.

- (88) Consequently, since it allows sharing photos and videos, *Snapchat* is closer to *Facebook* and *Instagram*. On the other hand, *Snapchat* is differentiated from the *Facebook* service by the fact that the communication between users on *Snapchat* is based on visuals instead of text-based messages, that these posts are temporary, that they are limited to a small group instead of a large network and are focused on close friends, and that it is not possible to create a comprehensive virtual profile. However, *Instagram* and *Snapchat*'s focus on video and photo sharing, and in particular, *Instagram*'s “Story” feature that automatically deletes the photos shared by users within 24 hours suggest that these two services are closer to each other. Therefore, FACEBOOK seems to be in competition with *Snapchat*, even though in a limited sense.

Pinterest

- (89) *Pinterest* is an application with the features of a visual discovery engine where users draw inspiration for their lives. Users visit the platform to discover new ideas for daily activities such as deciding on what to cook for dinner or what to wear, taking on big ventures such as re-designing a house or training for a marathon, and planning their wedding or dream vacation. In that context, *Pinterest* offers its users visuals called “pins,” which are suggested based on their tastes or interests. *Pinterest* users can save these suggestions into collections called boards.
- (90) *Pinterest* is available on iOS, Android, desktop and mobile web. The application also offers some features that allow “pinners” to communicate with each other. Users must enter their names and e-mail addresses to register to *Pinterest* and choose one or more among various fields of interest.
- (91) *Pinterest* has focused on shopping and on ensuring that the users can buy the products they find on *Pinterest*, developing the “Product Pins” feature that allows users to buy the relevant products directly through the application. In addition, *Pinterest* also offers a feature called “shop the look”, which lets users purchase various things shown in a *pin* together.
- (92) According to the information provided by *Pinterest*, in a survey conducted by the undertaking users have stated that *Pinterest* helps them more novel shopping ideas and inspirations compared to the other platforms. Similarly, according to another survey presented by *Pinterest* and conducted on weekly active users by *Talk Shoppe*, 68% of the users have stated that they discovered a new brand or product on *Pinterest*. Accordingly, users are actively searching for commercial content on *Pinterest*, and advertisers are increasingly meeting this expectation. This fundamental harmony between the goals of the users and the advertisers differentiates *Pinterest* from other services. (.....), but stating that it was in competition with online advertising companies that provide online services, content and advertising channels such as *Facebook* (including *Instagram* and *WhatsApp*), *GOOGLE* (including *YouTube*), *Snapchat*, *Twitter* and *Amazon*, which offer their users search engine and social networking services as well as facilities to discover, use or acquire various services and products.

- (93) *Pinterest* emphasizes that it does not consider itself a social media service or a social networking service provider; instead, the services it provides may be considered complementary for the other social networking services. On the other hand, *Pinterest* states that all applications, regardless of their features and target areas, are in competition with each other for the time the user spends online, which is a limited resource. According to *Pinterest*, there is substitutability between its own service and *Instagram*'s "*Instagram Collections*" feature. Moreover, as of 2018 *Instagram* has started to offer a series of shopping features to help users purchase the products they see on *Instagram*, creating another similarity between *Instagram* and *Pinterest*. In that context, *Instagram* offered the "*checkout*" feature, which allows users to shop directly through *Instagram*, and *Facebook* turned the "*shopping*" element into the focus of the platform.
- (94) The German Competition Authority's *Facebook* Decision finds that, based on its features, *Pinterest* is not a part of the social networking market, that the service is focused on relatively limited communication and on collecting, organizing and viewing commercial and private photos, that commercial *pins* served to collect shopping ideas and offer product advertisements, and that *Pinterest* could therefore be put in the category of "photo blogs," which are a mix of blogging and content sharing.³¹
- (95) According to the results of the survey conducted for the Online Advertising Sector Inquiry, the top reason why users prefer *Pinterest* is "entertaining content," with a rate of 48.0%. This is followed by "suitability with fields of interest" with 46.0%, "ease of use" with 44.0%, "popularity" with 40.0% and "informative content" with 34.0%. In light of the above-listed reasons users offered for choosing *Instagram*, "entertaining content" is common to both services, but it is at the top of the list for *Pinterest* and at the bottom for *Instagram*. A similar observation is valid for *Facebook* as well. Another difference in terms of user choice is that *Pinterest* is preferred for "providing informative content" as well, which is not among the reasons why users choose *Instagram* and *Facebook*. On the other hand, *Facebook* is preferred for its "ability to reach more people," but this is not among the reasons why users choose *Pinterest*. So, users seems to be utilizing the social media services at different times and for different purposes.
- (96) Consequently, while the services of *Instagram* and *Facebook* are similar to *Pinterest* in terms of photo sharing and communication opportunities, the users are employing different methods when using the platforms in question. For instance, personal photos are shared more frequently on *Instagram*, while *Pinterest* focuses on the sharing of engrossing photos in various fields of interest. Moreover, unlike *Facebook* and *Instagram*, *Pinterest* is not focused on setting up a network with friends and family. In light of the explanations above, it seems difficult to classify the service provided by *Pinterest* as a virtual social space where users can meet various friends and groups to interact. On the other hand, it should be noted that the shopping functions offered within the scope of the *FACEBOOK* products are similar to the shopping features in *Pinterest* explained above, and therefore the relevant services are convergent in terms of certain characteristics.

YouTube

- (97) In the most general sense, *YouTube* is a video watching platform. Users can upload their own videos on this platform and create "channels" that include all videos uploaded

³¹ Bundeskartellamt, Decision B6-22/16, para. 331.

by a user in the form of a playlist. *YouTube* users can view the videos uploaded by other users, subscribe to channels and leave comments on videos. While *YouTube* can be used without registration, functionality in this case remains limited to watching videos. The service provided by *YouTube* can be offered free-of-charge or as a *premium* service without ads in return for a monthly fee. The platform is offered as a website and/or application accessible on all standard operating systems as well as an application for smart TVs.

- (98) The *Facebook* Decision of the German Competition Authority draws attention to the fact that video sharing websites like *YouTube* are fundamentally different from social networks which focus on the communication between users in a virtual social space.³² The decision states that most users use *YouTube* for entertainment and generally not for communicating with other friends, messaging or searching for acquaintances, which shows that *YouTube* is not a perfect alternative for *Facebook*; *YouTube* primarily serves to find relevant content and to entertain, however entertainment only accounts for a small fraction of *Facebook*'s applications.³³ The Decision also concludes that *Facebook*'s launch of "*Facebook Watch*" and "*Facebook for Creators*" functions in 2017 did not change the assessment that *YouTube* is not a social network, since video features comprise only a portion of *Facebook*'s general social networking functionality within the more comprehensive user experience provided and therefore *Facebook*'s entry into the video platform market did not make *YouTube* a part of the social networking market. On the other hand, *YouTube*'s services are offered either free with advertising or for a fee without advertising, which takes *YouTube* even further from social networks.³⁴
- (99) The CMA Report also examines the reasons for using *Facebook* and *YouTube*, finding that users valued communicating with friends and family when accessing *Facebook*, and watching videos when accessing *YouTube*. Besides, while *YouTube* may serve as a substitute to *Facebook* for watching entertaining videos, it is not seen as a close alternative in terms of important *Facebook* activities such as setting up a network for friends and family. Due to these reasons, it is concluded that in general, *Facebook* does not face significant competitive pressure from *YouTube*.³⁵
- (100) The US Subcommittee Report, on the other hand, emphasizes that users can share videos or communicate events similarly on *Facebook* and *YouTube*, but that there is a difference between sharing a video (for instance, the first steps of a child) on a social network such as *Facebook* or *Instagram* and publishing it publicly on *YouTube*. Thus, it is pointed out that the platforms concerned offer different services to their users and including them in the same market would be inconsistent due to the different interaction users form with each platform.³⁶
- (101) According to the results of the survey conducted for the Online Advertising Sector Inquiry, unlike *Facebook* and *Instagram*, users choose *YouTube* in order to "watch video/music/movies/shows". The survey indicates that the "ability to watch videos/music/movies/shows" is the top reason for choosing *YouTube*, with a rate of 52.9%. This reason is not among the top five reasons for choosing *Facebook* and *Instagram* listed above, given by the users. On the other hand, the second most

³² Bundeskartellamt, Decision B6-22/16, para. 309.

³³ Bundeskartellamt, Decision B6-22/16, para. 312.

³⁴ Bundeskartellamt, Decision B6-22/16, para. 315, 317.

³⁵ CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 125-128.

³⁶ Subcommittee on Antitrust (2020), "Commercial and Administrative Law of the Committee on the Judiciary, Investigation of Competition in Digital Markets", p. 91.

important reason for users' choice of *YouTube* is that it presents "entertaining content," with a rate of 51.9%. The "entertaining content" reason in question ranks fifth among the reasons users gave for choosing *Facebook* and *Instagram* both, with a rate of 33.7% and 38.9%, respectively.

- (102) Consequently, although users can upload videos both to video sharing platforms and to social networking platforms, there are significant differences between the two platform services. Creation of content by the users is an important feature of many social networking platforms. At the same time, *YouTube* provides its users access to a wider range of content, including paid *premium* music and video streaming services. On the other hand, unlike social networking platforms, video sharing platforms allow users the ability to share content with a large population (not only with friends and family) and to consume the content created by that large population. Moreover, video sharing and social networking platforms are similar in the sense that they offer free services to their users, but the fact that *YouTube* has adopted a payment policy for *premium services* moves it further away from social networking services. Lastly, the fact that *Facebook* is used primarily for communicating with friends and family while *YouTube* is used principally for watching videos points to significant differences between the user's reasons for preferring the aforementioned platforms. For that reason, it is difficult to talk about a substitution relationship between the *YouTube* and *Facebook* services.
- (103) On the other hand, *YouTube* has significant similarities to the *Instagram* service provided by FACEBOOK. While *Instagram* allows creating a "private account" that may only be viewed by approved users, it is mostly intended to share posts open to everyone who is a "follower". Since users can turn their accounts into an advertising channel in *Instagram* as well and can generate ad income if they acquire sufficient numbers of followers, it may be said that the *Instagram* service resembles the *YouTube* service in that sense. Thus, for both platforms, the ability to generate ad income is the most important factor for users having a public account. Moreover, *Instagram* is getting closer to the *YouTube* service with its *Instagram IGTV* feature where it shows longer videos. Therefore, it is concluded that *YouTube* and FACEBOOK are in competition in terms of some of their functionalities and intended uses, even if in a limited sense.

TikTok

- (104) *TikTok*, which allows persons, organizations and businesses to set up profiles and upload content on the platform, states that its goal is to inform, educate, entertain and inspire people across different languages, cultures and continents. In addition (.....), (.....) generates income through online advertising activities.
- (105) *TikTok* notes that there are other undertakings which enable similar activities, including uploading and sharing short-form videos, and that GOOGLE (*YouTube*), FACEBOOK (including *Instagram*) and SNAPCHAT can be counted among them. The undertakings emphasizes that it does not characterize itself as a "social media" or "social networking" service; rather it sees itself as a content and entertainment platform with some social features and messaging functionality. *TikTok* allows direct messaging as well as comments on the content shared, however these features are considered supplementary to the essential product offered.
- (106) *TikTok* states that it sees itself as a competitor for *Facebook* and *Instagram* in certain areas, to the extent that FACEBOOK products also facilitate creating, uploading and sharing entertainment content, including videos. Moreover, *TikTok* also shows some similarities to the traditional business model of *Facebook* and *Instagram* in that it is

mainly a two-sided platform that is funded by advertisements and offered to the users free-of-charge. On the other side, it is stated that *TikTok* is different from *Facebook* and *Instagram* since it currently lacks a photo-sharing feature and does not emphasize personal contacts and social charts as much as *Facebook* and *Instagram* do.

- (107) Although the *TikTok* application is predominantly accessed through mobile devices, it is available on the desktop and tablets as well. *TikTok* notes that its users attach particular importance to the mobile experience which facilitates access and allows them to create *TikTok* content with the device camera and microphone, but *TikTok* expects a certain level of substitution relationship between mobile access to its application and access through other channels since similar content is consumed on the other channels (desktop and tablet) and consumers can use the same account to access the platform on mobile, tablet and desktop.
- (108) The CMA Report states that *TikTok* seems to be in competition with “*Facebook Watch*” in particular, and that its feature which lets users create and share short-form videos up to 15 seconds seems similar to *Instagram* and *Snapchat*.³⁷ The Subcommittee Report states that *TikTok* defines itself as a “global platform for users to express their ideas by sharing videos,” that it meets the broad definition of social media since it is an application aimed at distributing and consuming video content, but that it is not a social networking service.³⁸
- (109) According to the results of the survey conducted for the Online Advertising Sector Inquiry, the top reason users gave for choosing *TikTok* is “popularity,” with a rate of 62.9%. This is followed by “entertaining content” (59.6%), “suitability to areas of interest” (47.2%), “ease of use” (47.2%) and “ability to watch videos/music/movies/shows” (43.8%). However, a look at the top five reasons users gave for choosing *Facebook* and *Instagram* reveals that “ability to watch videos/music/movies/shows” is not among them.
- (110) Unlike the social networking platforms that prioritize the communication of users with the networks they create, *TikTok* seems to be a predominantly content platform. On the other hand, it is evaluated that *TikTok* has similarities with the *Facebook Watch*, *Instagram Reels* and *Instagram Stories* features included among the services provided by FACEBOOK and therefore FACEBOOK and *TikTok* is in competition with each other in a limited sense.
- (111) Following the assessment of demand substitutability, social networking services are evaluated in terms of supply substitutability. The Commission’s *Microsoft/LinkedIn* Decision states that it would be impossible for a social networking service provider that is not substitutable with *LinkedIn* to develop *LinkedIn* or a product or service substitutable with it in the short term without significant investment, that the most important difficulty would be to attract a sufficiently wide user base and this could not be done without investment, that although implementing the additional functionality was not too difficult, transforming a social networking service from “personal” to “professional” required a change in approach, utilization and general functions and would be harder than a transformation in the opposite direction.³⁹

³⁷CMA (2020), “Online Platforms and Digital Advertising”, Market Study Final Report, p. 128, 134.

³⁸ Subcommittee on Antitrust (2020), “Commercial and Administrative Law of the Committee on the Judiciary, Investigation of Competition in Digital Markets”, p. 91, 93.

³⁹ COMP/M.8124, para. 110.

- (112) Supply-side substitutability is examined in the German Competition Authority's *Facebook* Decision with regard to various platforms as well. The decision notes that *Snapchat* cannot be included in the social networking market in terms of supply-side substitutability. It is also stated that, in general, big platforms cannot always be assumed to have the ability to enter related markets and become as successful as they were in the initial market, making them current competitors in various internet-related markets, that the services' scope cannot be transferred to other services, that while it may be technically feasible to switch to another product or expand the product portfolio, as illustrated by the example of Google+, the service starts from scratch in terms of the "critical mass" and this is especially true for products that require a complete change in underlying philosophy.⁴⁰ It is noted that the arguments for *Snapchat* are valid for *YouTube* as well, that *YouTube* cannot be included in the market due to supply-side substitutability, and that it cannot be expected to succeed in the social networking market in the short term with reasonable economic effort.⁴¹ Just as *Snapchat* and *YouTube*, *Twitter* and *Pinterest* cannot be included in the potential supply-side substitutability assumption either, since it cannot be assumed that these services would be willing or able to switch their applications in the short-term while expecting them to keep their user base.⁴²
- (113) Within the framework of the file, undertaking's views were requested concerning the legal procedure to be followed for operating in the market with respect to the services in the sub-segments of online social networking services as well as on the size of the required investment and whether there is differentiation in terms of technical requirements, however a satisfactory response was not received. Although it can be claimed that creating a novel product or service similar to the ones they are currently offering would not pose significant technical difficulties or require large investments for technology firms operating in the digital markets, the real problem the undertakings may face here would be to reach sufficient scale and user numbers. In the social networking markets, which are characterized by network effects, the value of a service for the users rises as the number of users participating in the network increases. In that framework, it does not seem possible to attract the attention of a large user base without some significant investments. The detailed explanations above show that there are common functions between the social media/networking platforms, each of which has already been examined separately, however they tend to focus on different functions and features. In addition to the existing network effects in the market, it may be hard for the undertaking providing the relevant service to change its focus and objectives.
- (114) In that context and in light of the market features listed above, the assessment on market definition has found that demand substitution is more prominent, and therefore, in accordance with the explanations in the Guidelines on the Definition of Relevant Market, the analysis on demand substitution and the conclusions of that analysis were given more weight in the definition of the market.

Differentiation Based on the Device or Operating System Used

- (115) An examination is conducted into whether social networking services should be differentiated according to the device (e.g. PC, smartphone, tablet) or operating system (e.g. Windows, MacOS, Android, iOS) used.

⁴⁰ Bundeskartellamt, Decision B6-22/16, para. 299-304.

⁴¹ Bundeskartellamt, Decision B6-22/16, para. 316-317.

⁴² Bundeskartellamt, Decision B6-22/16, para. 327, 333.

- (116) In its *Facebook/WhatsApp* Decision, the Commission states that those who participated in the market study within the scope of the file generally considered a social networking service offered across several platforms or operating systems as a single service. From a supply perspective, developing a social networking service for a certain platform or operating system requires time and resources, however this requirement is not deemed sufficiently important to support the existence of separate markets. Lastly, the decision finds that many social networks are accessible through multiple platforms and operating systems and therefore it is not necessary to differentiate social networking services according to platform or operating system.⁴³ In its *Microsoft/LinkedIn* Decision, the Commission also states that the relevant services are available on both mobile and desktop devices as well as on most operating systems, and thus professional social networks do not require further differentiation depending on the device or operating system on which they are available.⁴⁴ The German Competition Authority's *Facebook* Decision states that both desktop and mobile applications are used for these services, that the type of the operating system of the user is not important since most services are compatible with all operating systems, and that therefore no further differentiation in terms of the devices or operating systems used is necessary.⁴⁵
- (117) As mentioned above within the framework of the assessments made for each undertaking, most social networking services are compatible with different devices and operating systems, and therefore the evaluations in the decisions listed above are valid for Türkiye as well. Accordingly, it is concluded that there is no need for an additional differentiation between social networking services based on the device and operating system used.
- (118) As a result, it is apparent that there is no accepted definition of social media and social networking services, nor a clear view on which services they cover. On the other hand, in general, social networking services can be described as platforms which are used to set up social relationships between people who share similar personal interests, activities, histories or real-life contacts. Social networking services are multi-sided platforms that allow users to contact each other, share posts, communicate and make various discoveries. Generally, all social networking services offer some fundamental features with more or less variability as well as myriad functions. However, these functions are always being improved, and technological innovations are constantly changing depending on the needs and habits of the users.
- (119) Still, it should be noted that there is not a standard range of functionality for social networking services, and each functionality may correspond to a different consumer need. In that context, unlike the other platforms offering more specialized service aimed at certain goals/needs of the users, FACEBOOK's portfolio of social networking platforms (*Facebook* and *Instagram*) are characterized as platforms that can serve many different consumer needs from a single point and are noteworthy in that sense. None of the other social networking platforms are able to offer a service portfolio comparable to the wide range of applications offered by FACEBOOK, and instead, they each provide one or several more specialized service/services that compete with certain aspects of the FACEBOOK services.

⁴³ COMP/M.7217, para. 57-59.

⁴⁴ COMP/M.8124, para. 116.

⁴⁵ Bundeskartellamt, Decision B6-22/16, para. 263.

- (120) In addition to the functionalities offered, social networking systems also vary widely in terms of intended use. Within the framework of these goals, the boundaries are not yet clear for social networking services aimed at communication or content-sharing, but the distinction between social networking services used for personal and professional objectives seem to be relatively clearer. Consequently, it is just as possible to define narrower markets in consideration of each functionality and use case with respect to social networking services, as it is to make a more comprehensive market definition, such as “social networking services intended for personal use”.
- (121) At this stage, the first of the relevant products markets is defined in the widest sense possible, as “social networking services intended for personal use”.

I.2.2.2. Consumer Communication Services Market

- (122) Consumer communication services are multimedia communication solutions that help people contact their friends, family members and other persons in real time. Formerly developed for personal computers, these services are used increasingly as mobile applications. Today, applications that offer consumer communication services are among the fastest growing mobile applications. Consumer communication services may be offered through an independent application (e.g. *WhatsApp*, *Viber*, *Facebook Messenger*, *Skype*, etc.), or through a social platform (such as *Facebook* or *LinkedIn*), or as a function of wider offerings with similar features.⁴⁶ Of the applications provided by FACEBOOK, *Facebook Messenger* and *WhatsApp* are consumer communication applications, while *WhatsApp Business* is a corporate communication application.
- (123) According to the results of the survey conducted within the framework of the Online Advertising Sector Inquiry, 61.9% of the users in Türkiye use *WhatsApp* and 21.3% use *Facebook Messenger*, with the two applications concerned listed among the most frequently used online consumer communication services applications. Similarly, according to the Digital 2021 Turkey Report, the third most frequently used social media platform in the country is *WhatsApp*, with a share of 87.5%, followed by *Facebook Messenger* in the sixth place, with a share of 54.2%.⁴⁷
- (124) FACEBOOK notes that they face intense competition in the messaging segment from entrenched players with wide variety such as *iMessage*, *SnapChat*, *Zoom*, *Skype*, *Houseparty*, *Telegram*, *BiP*, *Messenger*, *WeChat* and *Signal*, as well as from SMS providers. Consequently, the following section primarily includes assessments on whether the competitors FACEBOOK claims to be in the same market as the consumer communication services provided by itself can be actually included in that market.

Substitutability between Social Networking Services and Consumer Communication Services

- (125) In light of the features detailed above, it is clear that the functions offered to users within the scope of social networking services are largely similar to the functions offered under consumer communication services that help users send content such as text messages, voice messages, photos, videos and offer similar functions. In that framework, the first point to examine in this section is whether there is potential substitutability between the social networking services evaluated in the previous section and the consumer communication services.

⁴⁶ COMP/M.7217, para. 13-15.

⁴⁷<https://datareportal.com/reports/digital-2021-turkey>, p. 47, Accessed: 10.11.2021.

- (126) Even if there are similarities between the relevant services, it is generally accepted that the two services in question are different. In its *Facebook/WhatsApp* Decision, the Commission emphasizes that there are differences between the two services and goes on to maintain this approach in its *Microsoft/LinkedIn* Decision, as well. It is stated that social networking services provide a richer user experience, that users can use social networks to share their interests, activities and life events, that they can create photo albums and express their opinions on the posts of other users.⁴⁸ Conversely, the services provided within the scope of consumer communication services are considered to be more limited, and the users' main goal is communicating with other users. Although social networks also allow communication between users, attention is drawn to the fact that there are differences in terms of how the two services are used and the communication functions they offer. On the other hand, it is emphasized that social networks aim to provide communication and information sharing for a larger audience, while more personal and target-oriented consumer communication applications such as *Facebook Messenger* and *WhatsApp* allow mostly one-on-one communication with a narrower audience. Similarly, the *Facebook* Decision of the German Competition Authority states that while consumer communication services are similar to social networks in that they serve to get in touch with friends and acquaintances, they do not allow users to create a virtual social space by exchanging ideas, experiences and messages.⁴⁹ Moreover, within the framework of consumer communication services, users do not have an option to set up a detailed profile with personal information such as their birth dates, marital status, professions and hobbies, so they cannot create an "online identity".
- (127) The results of the survey conducted for the Online Advertising Sector Inquiry support the fact that the social network users do not utilize this channel mainly for basic communication. An overview of the reasons for using a social network for the participants of the survey shows that the top reason is "keeping up with the digital society" with a rate of 46.7%, followed by "communicating with the digital society" with 41.9%, "keeping up with popular topics" with 35.5%, "following innovations" with 24.6%, "getting likes" with 24%, "following the posts of popular celebrities" with 23.4%, and "publishing content" with 10.3%. The factors affecting the users' choice of social media applications in the same survey, meanwhile, include "entertaining content," "ability to reach more people," "watching videos/music/movies/TV shows," "following celebrities," "informative content" and "business news, creating a business network and ability to apply to job postings" with shares of 39.6%, 38.9%, 33.1%, 32.8%, 21.9%, and 5.8%, respectively. All of these findings show that the main goal for using social networking services for the users is to follow a wider section of the society including celebrities, to keep up with the news, to get likes by publishing their own content and to view entertaining content. These results clearly prove that users utilize social networks for purposes that go beyond the intended uses of consumer communication services.
- (128) In that context, the following points are made by the undertakings who were asked to provide their opinions on whether social networking services should be considered substitutable with consumer communication services:

⁴⁸ COMP/M.7217, para. 52-56.

⁴⁹ Bundeskartellamt, Decision B6-22/16, para. 287, 290.

- Video conference services are not considered a substitute for social media services; since the e-mail service is predominantly a tool used in official business, correspondence and for data storage it is not substitutable with social media services, and neither is instant messaging services since they mainly offer messaging, voice and video chat services;
- All forms of communication are in competition to a certain degree, and the simultaneous use of multiple conferencing or messaging applications, i.e. multi-homing, is widespread in communication services sector; the ease of switching between services leads to strong competition between providers of communication services;
- E-mail services are not considered substitutable with social media services since generally the former is used for business activities and related purposes; social media services may substitute video chat and instant messaging services to an extent as users need to register into the *Facebook* social network to access consumer communication services such as *Facebook Messenger*;
- There are fundamental differences between the main focuses of social media services and consumer communication services, with the former being used for publishing content to a wide audience while the latter generally provides direct communication among equals which is made clear by the fact that many users actively use both popular social media services and consumer communication services at the same time but for different purposes; therefore the two services are not considered substitutes for each other;
- Users tend to use many different electronic communication services, including e-mail, instant messaging, video conferencing and messaging tools offered by social networks in a way similar to social networking services, through multi-homing, and one form of communication can be used for connecting to another platform; for instance, one user can send another user (.....) information for a video conference call through e-mail or instant messaging, and also there are no significant barriers before switching between different electronic communication services or different forms of electronic communication;
- Social networking services are not seen as an alternative to consumer communication services, it is not possible to make voice calls over some social networks and the messaging features provided are generally less developed and less rich than specialized messaging services such as *WhatsApp* - for example, the same level of encryption is not provided; however, messaging features offered within social networks are simply a supplementary element to the main product on offer and should not be expected to fulfill the same purpose;
- Thanks to the expansion of the communication infrastructure and the ease of access to mobile applications and services based on various technologies such as SMS/MMS, cellular voice, data or e-mail protocols, users have many options with which they can communicate quickly and efficiently.

(129) A significant portion of the undertakings which submitted their opinions noted that social networking services cannot be considered substitutable with various types of consumer communication services, in terms of either usage or features on offer, and that many users are able to utilize both social networking services and consumer communication services at the same time, but for different purposes. Moreover, the fact that social networking service providers also offer messaging services in addition

to their main service (e.g. FACEBOOK offering *Facebook Messenger*) supports the supplementary nature of the two services concerned.⁵⁰

- (130) As a result of the evaluations conducted, it is concluded that the two services in question are supplementary rather than substitutable.

Substitutability between Corporate Communication Services and Consumer Communication Services

- (131) Consumer communication services enable real-time communication with friends, family members and others, while corporate communication services (e.g., *skype for business*) are used for commercial and professional purposes by companies. In the Commission's *Microsoft/Skype*⁵¹ Decision, consumer communication services are evaluated as a relevant product market that is separate from corporate communication services.⁵² It is noted that consumers approach communication from a social perspective, while businesses use communication with a task-oriented point of view. The decision also states that corporate communication services are differentiated from consumer communication services in terms of the features they offer.⁵³ In that context, it is emphasized that corporate communication services are more sophisticated and reliable than consumer communication services with higher redundancy, robustness, security, reliability, ancillary functionality, management and support requirements, and that unlike consumers, businesses would not tolerate lower quality of service.
- (132) Moreover, it is known that businesses, and especially large-scale companies can choose to purchase communication services, sometimes for very high prices; however, consumers are willing to pay less for a communication service provided over the internet. According to the results of the survey conducted for the Online Advertising Sector Inquiry, 53.9% of internet users prefer to see ads since they do not wish to pay for services which are currently provided for free. In addition, only 7.6% of internet users are willing to pay to avoid advertisements, with only 3.1% of the users of messaging/video chat applications consenting to make payments for utilizing these channels. Similarly, another study conducted by the Interactive Advertising Bureau (IAB)⁵⁴ shows that 75% of the European users prefer to view targeted ads instead of paying (subscribing) to access many websites and application on the internet. All of this data confirms that consumers do not wish to pay for the communication service offered over the internet and are differentiated from the companies which use corporate communication services in that aspect.
- (133) In that context, the following points are made by the undertakings who were asked to provide their opinions on whether they see substitutability between corporate communication services and consumer communication services [e-mail, video conference, instant messaging (e.g. *Facebook* and *WhatsApp Messenger*)].
- Communication services aimed at consumers and corporate users utilize fundamentally similar software, but user preferences can vary between consumers and corporate users in terms of supplementary functionality, administration,

⁵⁰ Bundeskartellamt, Decision B6-22/16, para. 292.

⁵¹ COMP/M. 6281.

⁵² The same approach was maintained in the Commission's *Microsoft/Nokia*, *Facebook/WhatsApp* and *Microsoft/LinkedIn* Decisions.

⁵³ COMP/M. 6281, para. 14.

⁵⁴ Interactive Advertising Bureau (2021), "What Would an Internet without Targeted Ads Look Like?", https://iab europe.eu/wp-content/uploads/2021/04/IAB-Europe_What-Would-an-Internet-Without-Targeted-Ads-Look-Like_April-2021.pdf, Accessed: 10.11.2021.

security and reliability; while a series of basic features are offered free-of-charge in communication services, there is an option for accessing additional paid functions, with users generally choosing free, basic features (consumers focus more on entertainment features and visual effects, while corporate users focus on administration, security, reliability and features that reinforce productivity); moreover, when targeting consumers or corporate users, providers of communication services can adopt different marketing strategy, payment mechanism, data storage policy and customer service approaches;

- Different versions of communication services are developed to target corporate users and consumers, whereby professional use-oriented services can receive more attractive features for businesses such as more administrator control, facilities for higher number of participants and longer video conferences, and additional functions for collaboration; however, some corporate users - small businesses in particular - can choose consumer versions of communication services for their business needs;
- There are different intended uses for consumer and corporate communication services and thus the two kinds of services are not substitutable with each other for the users;
- In light of the width of the interaction opportunities on offer, these services currently have a series of common features, regardless of their intended use; in case an undertaking develops (or gets a license to use) a specific method for altering a certain type of content/functionality (text, audio, video, pictures, etc.), there are infinite possibilities that feature can create for the targeted use case;
- Consumer communication services and corporate communication services may be similar but they have different target audiences and intended uses wherein corporate communication services are generally business-focused and help companies, employees and customers while consumer communication services provide a more general form of communication to a larger audience; consumers approach communication from a socialization perspective, while undertakings utilize communication with a task-oriented point of view; however, the market for these services has been changing in the recent years, and their development even accelerated as a consequence of the pandemic; thus, there may be some overlap between these types of communication services, with the inclusion of social aspects in corporate communication services, consumer communication services have become stronger as well; in that context, such services can be substitutable to a degree.

(134) In light of the evaluations included above, it is found that both users and application providers differentiate between consumer and corporate communication services in terms of pricing structures, functions on offer and intended uses, and that they are not considered to be substitutable with each other. Within that framework, even if some small and/or mid-sized businesses are likely to choose consumer communication services instead of corporate solutions, this is due to the fact that the businesses in question have limited corporate communication needs in terms of scale and functionality, which may approximate the communication needs of individual users as well as their use cases for the relevant services. On the other hand, since consumers are sensitive to the price they paid or will pay to use the service and may have lower expectations from the service they receive (additional functions, security, etc.) and limited communication needs compared to corporate communication services,

consumer communication services do not converge with corporate communication services for the consumers and thus one cannot be considered a substitute for the other. This shows that the existing competitive pressure in the market has a unilateral characteristic, from consumer communication services towards corporate communication services. Consequently, it is concluded that the two services in question constitute two separate relevant product markets.

- (135) Within the framework of this observation made, a separate assessment must be conducted for the *WhatsApp* and *WhatsApp Business* services provided by WHATSAPP. In line with the explanations above, *WhatsApp* is considered to be a consumer communication service in general, as it is mostly used by consumers in order to communicate with friends, family and close acquaintances and does not serve corporate purposes. *WhatsApp* can be downloaded from application stores for free and is offered to consumers without any need to pay. Registering with a phone number and having an internet connection is sufficient to use the relevant service. On the other hand, the *WhatsApp Business* application fundamentally serves corporate communication needs since it allows businesses to send messages to and receive messages from their customers, and therefore has the characteristics of a corporate communication service. The *WhatsApp Business* lets businesses respond to chats initiated by customers to provide customer support on *WhatsApp* and/or send notification templates to customers at any time. In that context, it is noted that WHATSAPP does not charge businesses if chats initiated by customers are responded within 24 hours, but that a fee is charged for sending notifications. It is apparent that corporate communication services are not just limited to communication between corporations but may be used to access all stakeholders the relevant organizations may wish to contact. Thus, the fact that one side of the *WhatsApp Business* application is made up of corporate users and the other side of consumers should not prevent the application from being characterized in this way. Moreover, other corporate communication services may involve communicating with different stakeholders as well. In that sense the main issue of note is largely the nature of the communication to be established.
- (136) However, due to some features of the *WhatsApp Business* application, it's possible to claim that it is still in a hybrid state. The first of these features concerns charging principles. Accordingly, the application may be accessed and used freely and only some of the functions it provides (sending notification) are offered for a fee or a fee may be charged for normally free functions under certain circumstances (when chat initiated by customers are responded later than 24 hours). Apparently, the application is offered to businesses for free or for very reasonable fees during launch, until it reaches a certain scale. This points to the possibility that the application may be provided for a fee in the future. It is also possible that free and for-pay *premium* versions will be offered, similar to other communication applications. None of these possibilities would prevent the classification of the relevant application as a corporate communication service.
- (137) Lastly, in order to use the *WhatsApp Business* app, businesses are asked to confirm their business phone numbers and define a business name. While businesses have the option to create a business profile with additional information (address, category, description, working hours, e-mail address and website), they do not have to create such a profile. In that framework, the *WhatsApp Business* application seems to provide a different service from *WhatsApp* and offer users more professional and business-focused communication opportunities. The difference in the information requested from

the users of the two applications confirms that the target audiences of the services are different. However, creation of a business profile that requires more detailed information is not currently mandatory, which is a practice implemented during launch that aims to attract consumers by providing ease of use until the application achieves a certain scale in the market. This may change in the future as the service becomes more widely known in terms of professional use cases, and the profile may see more frequent active use.

- (138) In light of the explanations given concerning *WhatsApp* and *WhatsApp Business*, it is concluded that WHATSAPP is involved as a service provider in the markets for consumer communication and corporate communication services, which are defined as separate product markets, and therefore is active in both of the markets.

Substitutability between Traditional Electronic Communication Services and Consumer Communication Services

- (139) Another matter examined within the framework of the relevant product market assessment is whether the market definition should be expanded to include traditional electronic communication services. Consumer communication services such as SMS, MMS or e-mail are counted among traditional electronic communication services.⁵⁵ The Commission's *Facebook/WhatsApp* Decision states that the majority of the respondents to the market study consider traditional electronic communication services as substitutable with the consumer communication apps, while noting that there are elements suggesting a partial substitutability and/or limited complementarity between the two types of services.⁵⁶ The relevant decision states that both of the services are fundamentally used for communication but that user experience in consumer communication apps is richer in terms of functionality. This is because consumer communication applications provide features to users such as the ability to see when their contacts are online, when they are typing messages or when they last accessed the application, as well as similar additional functionalities. The decision also emphasizes that consumer communication apps are mainly offered free of charge and in any event are not priced per message, which means pricing conditions are significantly different than those for traditional electronic communication services. Although there are messaging bundles offered by telecom operators in traditional electronic communication services, users are still usually charged separately when they send MMS messages or when they send or receive messages from abroad (while roaming).
- (140) A study conducted in Finland among users concluded that mobile internet communications services and traditional communications services provided by mobile operators were used for different purposes and are not direct substitutes for each other.⁵⁷ Similarly, another study on the subject found that instant messaging services may sometimes substitute traditional communications services under some circumstances, but the other functions they offer create a significant difference from a consumer perspective. As a conclusion, the study noted that the two types of services

⁵⁵In the European Electronic Communications Code (EECC), the services in question are evaluated under traditional electronic communications services <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>, Accessed: 19.11.2021.

⁵⁶ COMP/M.7217, para. 29-31.

⁵⁷ KARIKOSKI J. and LUUKKAÏNEN S. (2011), "Substitution in Smartphone Communication Services", https://www.researchgate.net/publication/261312695_Substitution_in_smartphone_communication_services, Accessed: 09.11.2021.

were in competition with each other in certain areas, but that there was strong evidence to suggest that they cannot replace each other.⁵⁸

- (141) There is known to be asymmetrical substitutability between traditional consumer communication services and consumer communication applications.⁵⁹ That is to say, although consumer communication apps can put competitive pressure on traditional electronic communication services, there is no competitive pressure in the other direction. The use of traditional electronic communication services such as SMS and MMS are gradually declining⁶⁰, while the number of those using consumer communication apps increase⁶¹, which confirms the unilateral change in the consumer demand. If there is competitive pressure from the focus market toward others but no pressure from the other markets toward the focus market, the markets concerned are defined as separate relevant product markets.
- (142) In light of all of the observations above, it is concluded that traditional electronic communication services are not substitutable with consumer communication applications and that the two types of services constitute separate relevant product markets. Accordingly, it is found that there is no validity to FACEBOOK's claim that their messaging service is in the same market as SMS providers.

Consumer Communication Services According to Their Function

- (143) Consumer communication services may differ based on the functions and/or features they offer to their users. As a result, another issue that must be discussed when defining the relevant market is whether consumer communication services should be broken down into sub-categories based on the functions on offer. Basic functions provided by consumer communication services are instant messaging (IM), voice call and video call. Instant messaging is defined as a form of real-time short text messaging which can sense the availability of other users (whether they are online, offline or busy). Voice calls refer to calls using the Voice over Internet Protocol (VoIP) and mean that voice services are fully or partially delivered through networks based on the internet protocol. Video calls, on the other hand, can be described as a way of using bi-directional, synchronized video and voice transmissions to establish interaction between users at different locations. For video calls to work, a device must have a webcam and a microphone, which are available on many devices or can be added for a low cost.⁶²
- (144) In the assessment it conducted on demand substitutability in its *Microsoft/Skype Decision*⁶³, the Commission states that users are increasingly demanding services that

⁵⁸ ARNOLD R.C. G., SCHNEIDER A. and HILDEBRANDT C. (2016), "All communications services are not created equal – Substitution of OTT communications services for ECS from a consumer perspective", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2756395, Accessed: 09.11.2021.

⁵⁹ COMP/M.7217, para. 32.

⁶⁰ According to the 2021 second quarter data from the Information and Communication Technologies Authority (*Bilgi Teknolojileri ve İletişim Kurumu - BTK*), there were 21,975 million SMS and 13,9 million MMS sent in the 2nd quarter of 2018, which dropped down to 8,823 million for SMS and 9,8 million for MMS in the 2nd quarter of 2021.

<https://www.btk.gov.tr/uploads/pages/pazar-verileri/ceyrek-raporu-2021-2-ceyrek-30-09-21-v8-kurumdisi.pdf>, Accessed: 13.11.2021.

⁶¹ According to Statista data, the number of mobile phone messaging application users were 2.25 billion in 2018. This number is expected to reach 3.51 billion in 2025.

<https://www.statista.com/statistics/483255/number-of-mobile-messaging-users-worldwide/>, Accessed: 13.11.2021.

⁶² COMP/M. 6281, p. 4-5.

integrate a series of communication functions and thus enrich user experience. In that framework, a consumer can switch between three main types of service (IM, voice and video calls) easily, immediately and for free. For instance, a consumer can initiate a chat with instant messaging, then turn to voice or video call to continue the conversation, and moreover consumers who own a computer or device with camera and microphone functionality can even switch between methods any time they want, without interrupting the conversation. Adopting a similar approach in its *Facebook/WhatsApp* Decision, the Commission pointed out that different services can take on different forms to facilitate communication between consumers, but that this would not put those services into different markets or market segments.⁶⁴ 1 COMP/M. 6281, para. 26.

(145) In that context, the following points were made by the undertakings which were asked to provide their opinions within the framework of the file on whether consumer communication applications with different functionalities such as video conferencing, instant messaging or voice calls were seen as substitutes for each other by the consumers:

- All video call services (*WhatsApp* video chat, *FaceTime* etc.) provide the most basic feature of a video conferencing solution to users by allowing them to establish immediate face-to-face communication with video but in terms of general intended use video conferencing solutions have different features such as supporting higher number of participants, the ability to participate using different platforms (phones, tablets, computers, etc.), screen sharing, ability to invite other users via links, etc.; in that framework, video call services are not currently considered direct substitutes for video conferencing solutions (*BiP*, *Meet*, *Zoom*, *Google Meet*, *Microsoft Teams*, *Cisco Webex* etc.),
- All communication services are in competition with each other to an extent, communication through the relevant services can start with a chat but can be quickly switched to a one-to-one call or a video conference with internal or external participants, or even to a shared video presentation,
- Consumer communication services help users interact with each other by any means and using any existing media and therefore the functions expected from consumer communication services in the present day include text messaging, voice and video calls, as well as photo, video or voice message sharing; the functions concerned can be used independent of or in various combinations with each other; many of the services allow sharing content in multiple formats (videos, pictures, text, etc.), however some of them specialize on one (or several) of these functions and exclude others or sometimes some functions offered by the provider are not widely used by the consumers (e.g., text and photo messaging on (.....)); whether consumers view competing communication services as substitutes depends on their immediate communication needs.

(146) Undertakings which submitted their opinions on the matter noted that consumer communication applications could specialize on different areas and provide better services in their specialized fields. For example, the *Zoom* application which offers video conferencing services is generally used for holding meetings and accordingly the application has certain features that are different than those offered by undertakings providing instant messaging services (e.g., *WhatsApp*), such as supporting high

⁶⁴ COMP/M. 7217, para. 25.

number of participants, screensharing, and the ability to invite others via meeting links. On the other hand, users seem to have the facility to easily switch between the functionalities offered by consumer communication applications.

- (147) However, in its *Microsoft/Skype* Decision, the Commission stated that, in terms of supply-side substitution, the majority of consumer communication service providers have all of the functionalities.⁶⁵ It also points out that many undertakings that offer consumer communication applications such as MICROSOFT, Skype, GOOGLE, APPLE, FACEBOOK, Yahoo! and AOL can provide all three main functions. According to the Commission, instant messaging (IM), for instance, is perceived not as an independent communication service but as part of a wider market and thus should not constitute a separate product market. Based on the data from the market study, the Commission states that it is important for undertakings to offer multiple functions together, however it is quite difficult to divide this market into smaller segments without significant functionality overlap. As a result of the evaluations conducted, the Commission left open the question of whether consumer communication services market should be broken down into smaller pieces depending on the functions offered by the relevant services (IM, voice calls, video calls).
- (148) According to the Commission's *Facebook/WhatsApp* Decision, all competitors reportedly stated that the time and cost required to develop each functionality depended on the complexity of the relevant feature, however all consumer communication service providers offered a series of functions that largely overlapped with those offered by *Facebook Messenger* and *WhatsApp*. Consequently, the relevant Decision specifies that the relevant product market should include all consumer communication applications that include communication functions.⁶⁶
- (149) In that context, with respect to the e-mail services, video conferencing services, instant messaging services under the scope of numberless call/communication services, the following points are made by the undertakings whose opinions were requested on whether there were differences in the legal procedures, investment costs and technical requirements/processes for operating in the market:
- All of the services in question need high investment costs since they require supporting high number of users, providing uninterrupted service and having high technical capabilities, and video conferencing services in particular also demand high bandwidth since they involve video transmission;
 - There does not seem to be significant barriers to entry for any of the communication services concerned; the power of cloud computing as well as the distribution power provided by the internet or integrated application stores allow developing new communication apps with minimum development time and monetary investment, and the biggest challenge in that sense is not creating the app, but attracting meaningful user groups to the relevant application;
 - The number of companies providing communication services and the scope of their activities show that there are no significant barriers in the market making it harder to operate in it, with many successful entries having been made including *Line* (2011), *WeChat* (2011), *SnapChat* (2011), *Kakao Talk* (2010), *Viber* (2010), *Kik Messenger* (2010), and more recently *TikTok* (2016), *Microsoft Teams* (2017) and *Telegram* (2013), which shows that implementing a new consumer

⁶⁵ COMP/M. 6281, para. 28-29.

⁶⁶ COMP/M.7217, para. 26-27.

communication application is a relatively easy process in terms of both time and costs;

- Communication services are provided by many providers operating in a competitive segment of the market; there are investments and fixed costs required as well as technical and legal requirements that must be met, however the variety of the existing alternatives (for example, *Facebook Messenger*, *WhatsApp*, *WeChat*, *Signal*, *Telegram*, *Viber*, *Zoom*, *Teams*, *Skype*, *Google Duo* and *BiP*) clearly shows that there are no significant barriers to entry and growth.

(150) In light of the above assessments submitted by the undertakings whose opinions were requested, it is clear that undertakings currently operating in the market providing various consumer communication services would incur financial and time costs when offering a new function – albeit at different levels for each one (for instance, video conferencing services need higher bandwidth due to video transfer) – in any case, it would not be difficult for the relevant undertakings to switch between the functionalities concerned. Especially considering the fact that undertakings operating in the market currently offer numerous functionalities including instant messaging, voice calls and video calls, it is concluded that consumer communication services do not require being divided into sub-segments according to the functionalities they offer and there is no need to define a separate market for each.

Consumer Communication Services According to the Channel Used

- (151) To ensure thoroughness in the process of relevant market definition, it is decided that the applications providing consumer communication services (desktop/laptop computer, smartphone, tablet, etc.) should be separately examined in terms of the channels used. According to the Digital 2021 Türkiye report⁶⁷, 97.2% of the users in Türkiye use smartphones, 71.2% use laptop or desktop computers and 44.4% use tablets. Although applications providing consumer communication services are known to be in more common use in the mobile channels, in parallel with technological developments and the undertakings' desire to be included in more channels, both mobile and desktop/laptop versions of these types of applications are now being offered to users. Accordingly, users are able to use the smartphone consumer communication apps on their desktop/laptop computers, either by directly downloading them to their computers (e.g., *Zoom*, *Telegram*) or by scanning the qr code shown on their web browsers with the instant messaging application on their phones.
- (152) For example, *WhatsApp* recently launched the secure *WhatsApp* call for the desktop and enabled one-to-one voice and display call functions on *WhatsApp*'s desktop version.⁶⁸ Moreover, *WhatsApp* stated that it planned to expand this function to include group calls for up to eight people. In addition, it announced the development of a tool called "multi-device beta program" to let users log in to their *WhatsApp* accounts on multiple devices at the same time, sending and receiving messages through secondary (companion) devices (e.g., desktop/laptop computer) even when their primary device (phones) are offline.⁶⁹ Similarly *Facebook Messenger* as well as many consumer communication service applications such as *BiP*, *Telegram*, *Signal*, *Skype*, *Zoom* can be accessed on desktop/laptop computers in addition to mobile devices.

⁶⁷ <https://datareportal.com/reports/digital-2021-turkey>, p. 21, Accessed: 10.11.2021.

⁶⁸ <https://about.fb.com/news/2021/03/introducing-private-and-secure-whatsapp-calling-on-desktop/>, Accessed: 18.11.2021.

⁶⁹ <https://faq.whatsapp.com/general/download-and-installation/about-multi-device-beta/?lang=en>, Accessed: 18.11.2021.

- (153) In its *Microsoft/Skype* Decision, the Commission notes that consumer communication services vary between channels in terms of features and quality on offer, and that all users do not have access to all channels, making substitution of consumer communication services between channels more difficult.⁷⁰ In the *Microsoft/Nokia* Decision, a majority of the stakeholders which took part in the market study conducted by the Commission stated that the functions offered by consumer communication services are similar, regardless of the channels they are on; meanwhile, some stakeholders pointed out that certain consumer communication applications, especially those that support video calls, perform better on computers and others argued that some consumer communication apps are optimized for on-the-go situations in terms of functionalities and quality, but the basic functions and intended use remain the same.⁷¹ In this context, the Commission refrained from making a clear market definition in both decisions on the grounds that alternative market definitions for apps providing consumer communication services depending on the channel (desktop/laptop computer, smartphone, tablet, etc.) would not increase the competitive concerns in the file. On the other hand, in its *Facebook/WhatsApp* Decision, the Commission pointed out that certain consumer communication services apps were available on all types of devices while some other consumer communication services apps were not; for instance, *WhatsApp* can only be used on smartphones and there were no plans to launch it on other platforms; therefore, the assessments under the file could be made based on the “consumer communication applications for smartphones” market.⁷²
- (154) However, in light of the developments after the Commission Decisions mentioned above, providers of consumer communication services apps have started to take steps with an aim to ensure effective use of their services by the users on every channel; for instance, *WhatsApp* can now offer the functions it provides on mobile devices (video and voice calls) on desktops/laptops as well by downloading the “*WhatsApp*” application to the computers in question. Moreover, *WhatsApp* also announced that users will be able to use the *WhatsApp* application on up to four connected, secondary devices at the same time, without the need to keep their primary phones online. These developments show that the sub-categorization employed in the previous decisions with respect to consumer communication services based on smartphones has disappeared at present.
- (155) In that context, the following points are made by the undertakings who were asked to provide their opinions within the framework of the file on whether consumer communication services were seen as substitutable for each other by the users with respect to different channels:
- The consumer communication services they provide are accessible on web browsers without having to install a software or application as well as on mobile devices with Android or iOS applications⁷³, and users can reach every one using the same client regardless of the channel; for instance, a user on a computer can chat with someone using a phone or tablet; a supply-side assessment reveals that developing applications for the other channels mean an increase in the workload but this can be handled within a relatively short period of time; in light of the high level of competition between browsers and mobile operating systems, consumer communication application developers need to constantly do some work to ensure

⁷⁰ COMP/M. 6281, para. 35-36.

⁷¹ COMP/M.7047, para. 42.

⁷² COMP/M.7217, para. 21.

⁷³ (.....)

a consistent user experience with the somewhat different mechanisms of the operating systems; however, the relevant application developers are highly motivated to make sure that the service they offer can work on many platforms and browsers;

- The consumer communication services they provide⁷⁴ are generally used on computers, mobile devices (smartphones and tablets), rotary phones, video conference devices and supported voice assistant devices; consumer communication services do not vary between operating systems or devices in terms of performance and can generally work on all platforms; usually, they are available on multiple channels and can be seen as substitutes for each other;
- The goal is to ensure that communication services are usable on all types of devices used by customers to provide maximum flexibility, and therefore communication services are accessible on any web browser or through applications;
- The consumer communication services they offer are available on smartphones and tablets through iOS and Android applications or through an internet browser and they are also available as desktop applications, with the functions offered on the applications also accessible on the web browsers.

(156) In light of the assessments above, it becomes clear that providers of consumer communication services usually design or develop their applications so that they can be utilized on all channels, and even if the application is launched for a single channel, it can be adopted for use on others within a short period of time; meanwhile, customers have the same purpose for using consumer communication applications, regardless of the channel. Consequently, it is concluded that there is no need to break consumer communication services down into sub-categories based on the channels they use and to define a separate market for each segment, since both the intended uses and the functionalities of the service on offer are the same.

Consumer Communication Services According to Operating Systems

(157) Applications providing consumer communication services work in connection with the operating system installed on a device. An operating system is defined as “a *system software which controls the basic functions of an electronic device (PCs, smartphones and tablets) and enables the user to make use of such an electronic device and run application software on it*”.⁷⁵ Consumer communication applications can have varying features depending on the specific operating system. Accordingly, some applications (for example, APPLE’s *Facetime*, *iMessage* and *iChat* applications) only work on a single operating system (*iOS* or *macOS*), while other applications can function on multiple operating systems.

(158) When consumer communication services are examined in terms of the mobile operating systems on which they can be used, it is found that *WhatsApp*, for instance, supports *iPhone* with *iOS* as well as phones with *KaiOS 2.5.0* or newer, including *JioPhone* and *JioPhone 2*, and that users with one of these devices can install *WhatsApp* and register to the application with their phone numbers.⁷⁶ Similarly, *Facebook Messenger* is currently working on phones with *Android 4.0* or newer as well

⁷⁴ (.....)

⁷⁵ COMP/M. 6281, para. 38.

⁷⁶<https://faq.whatsapp.com/general/download-and-installation/about-supported-operating-systems/?lang=tr>, Accessed: 22.10.2021.

as on devices with *iOS 8* and newer⁷⁷; other consumer service applications such as *BiP*, *Telegram*⁷⁸ and *Signal* are available on phones with both *Android* and *iOS* operating systems.

- (159) As shown by the examples above, a significant portion of consumer communication applications, with some exceptions (e.g., *Facetime*, *iMessage* and *iChat*), are used on the *Android* and *iOS* operating systems, which command the largest share in smartphone operating systems. According to *Statcounter* data, as of October 2021, the global market shares of undertakings in the mobile device operating systems market were 71.09% for *Android* and 28.21 for *iOS*⁷⁹; on the other hand, the Turkish market shares were 83.11% for *Android* and 16.23% for *iOS*.⁸⁰ Similarly, the Digital 2021 Türkiye Report states that *Android* devices make up 83.92% of the share mobile operating systems receive from internet traffic, while a further 15.7% is from *iOS* devices.⁸¹ All of this data show that a significant 95% of the users take advantage of consumer communication services on devices with either *Android* and/or *iOS* operating systems.
- (160) Nonetheless, as mentioned above, consumer communication service applications can currently be downloaded on desktops/laptops or be used over the web through the internet browsers installed on desktop/laptop computers. For example; currently, *WhatsApp* and *Facebook Messenger* can be downloaded as applications on computers with *Windows* or *macOS* operating systems⁸² Similarly, *BiP* can be used as an application on *Windows* or *macOS* computers⁸³, while consumer communication apps such as *Telegram* and *Signal* are available on *Windows*, *macOS* and *Linux* operating systems.⁸⁴ According to *Statista* data, as of March 2021, the global market shares of undertakings in the desktop/laptop computer operating systems market are 73.54% for *Windows*, 15.87% for *macOS* and 2.38% for *Linux*⁸⁵, while *Statcounter* data show that their Turkish market shares are 84.08% for *Windows*, 5.31% for *macOS* and 3.07% for *Linux*.⁸⁶ The data in question indicate that consumer communication applications are usable on computers with *Windows* and *macOS* operating systems, which have the largest share in desktop/laptop operating systems market with 90%.
- (161) In its *Microsoft/Skype* Decision, the Commission makes an assessment on the possibility of classifying consumer communication apps according to the operating systems on which they can be used, where it states that there is limited interoperability between operating systems and user choices are technically restricted to the current options for the operating systems installed on the device; therefore, not all consumers

⁷⁷<https://tr-tr.facebook.com/help/messenger-app/197039404112757?helpref=related>, Accessed: 16.11.2021.

⁷⁸ <https://telegram.org/apps>; <https://signal.org/tr/download/>, Accessed: 16.11.2021.

⁷⁹ <https://gs.statcounter.com/os-market-share/mobile/worldwide>, Accessed: 16.11.2021.

⁸⁰ In terms of market share, *Android* and *iOS* operating systems are followed by *Samsung* (0.6%), *Series 40* (0.03%), *KaiOS* (0.01%) and *Windows* (0.01%); <https://gs.statcounter.com/os-market-share/mobile/turkey>, Accessed: 16.11.2021.

⁸¹ In terms of the share mobile operating systems receive from internet traffic, *Android* and *iOS* operating systems are followed by *KaiOS*, *Samsung OS* (0.3%) and other operating systems (0.1%); <https://datareportal.com/reports/digital-2021-turkey>, p. 63, Accessed: 16.11.2021.

⁸² <https://www.whatsapp.com/download/>, Accessed: 16.11.2021.

⁸³ <https://bip.com/tr/indir/>, Accessed: 16.11.2021.

⁸⁴ <https://signal.org/tr/download/>; <https://telegram.org/apps>, Accessed: 16.11.2021.

⁸⁵ <https://www.statista.com/statistics/218089/global-market-share-of-windows-7/>, Accessed: 16.11.2021.

⁸⁶ <https://gs.statcounter.com/os-market-share/desktop/turkey>, Accessed: 16.11.2021.

are able to switch between all consumer communication services.⁸⁷ On the other hand, in its *Facebook/WhatsApp* Decision, the Commission notes that different operating systems can provide different experiences but that existing consumer communication applications for separate operating systems are considered a single product by users and providers.⁸⁸

(162) Accordingly, the following points were raised by the undertakings who were asked to provide their opinions within the framework of the file on whether users consider consumer communication services substitutable with each other with respect to the different operating systems on which they can be used:

- Consumer communication services provided are available on *Windows* or *macOS* operating system-based computers as well as on mobile devices with *iOS* or *Android* operating systems; moreover, they can also be accessed through a web browser and/or as a *macOS* and *Windows* desktop application⁸⁹;
- The consumer communication applications provided are available on *Android* and *iOS* operating systems⁹⁰, and many other numberless consumer communication service are available on multiple operating systems, as a result of which consumer communication services on *Android* and *iOS* operating systems that offer instant messaging facilities are considered substitutable;
- All consumer communication services provided by them are available on the internet and on the *iOS*, *macOS*, *Windows*, *Android* operating systems, with the services working on all of these platforms and accessible on any internet browser, which allows effective use of all services on all relevant platforms;
- Most consumer communication applications are usually available *iOS* and *Android* devices, and are generally free for the users,
- Consumer communication services they provide are available on the *Windows*, *macOS*, *Android* and *iOS* platforms and users are able to reach everybody using the same client regardless of the operating system; for example, someone using the relevant application on *Android* can communicate with a user on *iOS*; moreover, supply-side substitutability is present since applications can be developed for different operating systems in a relatively short period of time; developers of communication applications have strong incentives to ensure that the services they provide are available on many platforms including operating systems as well as on browsers;
- Consumer communication services they provide are generally available on *Windows*, *macOS* and *Linux* operating systems as well as on mobile devices with *Android* and *iOS*; consumer communication services show no performance difference between operating systems or devices, can usually work on all platforms and are generally available on multiple channels, due to which they can be considered substitutes for each other;
- From the perspective of users, the use of consumer communication services on different operating systems is substitutable; users can take advantage of applications on any of the major operating systems and experience them in the

⁸⁷ COMP/M. 6281, para. 41.

⁸⁸ COMP/M.7217, p. 4.

⁸⁹ (.....);

⁹⁰ (.....);

same way; however, from time to time new features are launched on a single mobile operating system and are later expanded into the other operating systems; outside the differences in the launch dates of product features, the goal is to ensure the same user experience for all operating systems and devices, and thus consumers can consider different operating systems as substitutable in this context at a minimum.

- (163) In light of the assessments given above, it is concluded that there is no need to break consumer communication applications down into sub-categories based on the operating systems on which they can be used or to define a separate market for each, since they can offer the same functions to users on different operating systems, are in competition with the other consumer communication applications on the relevant operating system and the users consider these types of applications provided on different operating systems substitutes for each other, and since consumer communication service providers do not require a long time to develop applications for different operating systems and communication application developers have strong incentives to make sure that the services they provide are available on a large number of devices.
- (164) In light of all of the assessments above, the relevant product market was defined in the widest sense, as “*consumer communication services market*”.

I.2.2.3. Online Advertising Services

- (165) FACEBOOK generates income by providing social networking services to users for free on the one hand, while ensuring that advertisers can take out ads with third-party apps on *Facebook*, *Instagram* and *Messenger* and through the Facebook Audience Network (FAN). According to the information provided by FACEBOOK, they offer products which help advertisers create, target and distribute ads as well as products that let them manage and evaluate advertisement campaigns. Below, the main categories for the most frequently used products within the context of FACEBOOK’s advertising services are given.
- (166) A majority of those who take out ads with FACEBOOK channels use Ads Manager to create and manage their advertising campaigns, which is a *self-service* platform. Information provided by FACEBOOK shows that around (.....)% of the ad inventory sold globally was purchased through FACEBOOK’s Ads Manager. In other words, a very limited portion of FACEBOOK’s global ad inventory (around (.....)%) was sold directly to advertisers. Before making a bid with Ads Manager, advertisers can access the Audience Insights function in the Ads Manager, which helps them gain more information on various targeting criteria and options. Audience Insights show advertisers information such as the demographic distribution of specific targeting categories, business titles related to those categories, page likes, location and level of activity. In that framework, when an advertiser decides to bid on an ad, it has to complete the following five steps before being placed in the ad bidding mechanism: (i) selection of a marketing target (*for example, creating awareness, ensuring that the users think about the business, encouraging those interested in the business to make a purchase, etc.*), (ii) selection of a target audience (*for example, according to location, age, sex, language, and similar features*)⁹¹, (iii) selection of the channels (*for example, the advertiser deciding to publish the ad on any or all of FACEBOOK’s family of*

⁹¹ FACEBOOK notes that identifying details of specific users are not shared with the advertisers at this stage.

applications and services including Facebook, Instagram, Messenger and/or FAN), (iv) selecting an optimization for the presentation of the ad (*for example, the outcome intended with the advertisement such as clickthrough, conversion or video views*)⁹² and (v) selection of the format (*for example, visual ads, video ads and carousel ads*). Following the positioning of ads, FACEBOOK provides measurements on the performance of their ads to advertisers via Ads Manager and other tools. This way advertisers can see aggregated information on the audience the ad was shown to once a minimum number of ad shares is reached.

- (167) Outside of its ad publishing activities on the applications and/or websites it owns, FACEBOOK also provides classified ad services through *Facebook Marketplace*, which it integrated with the *Facebook* application in 2018. *Facebook* users can take out ads on *Facebook Marketplace* free-of-charge, in a total of 17 categories. These services are categorized under the “classified ads” subsection in the advertising sector. In this framework, it may be said that FACEBOOK’s activities in the advertising market consist of providing inventory to advertisers for displaying ads on its social networks and providing classified ads services through *Facebook Marketplace*.
- (168) FACEBOOK claims that a market definition for its advertising activities should take the whole advertising market into account. The undertaking points out the following as reasons for defining a single advertising market:
- Advertisers present their advertising messages with the intention to create a specific reaction in the audience in order to increase sales and profits and they engage in multi-homing between channels to maximize their return of investment; there are many services and businesses that help switch between channels; the easy availability of advertiser tools such as real time indicator tables and technologies that allow attribution between channels enable advertisers to move their ad budget to the campaign with the highest return on investment immediately;
 - The increasing measurability of ad efficiency decreases the importance of the selection of specific ad formats and channels when allocating ad budgets; improved ad measuring and targeting capabilities and the changes in users’ consumption habits have caused a convergence between the functionalities of many ad channels, including television, over-the-top video (OTT), digital video, out-of-home, and digital advertising, leading to an increase in competition;
 - There have been significant developments in digital advertising in the last decade; all advertising platforms focusing on search or display advertising (or both) aim to provide advertisers access to a relevant user base wherever they may be, therefore the distinction between search and display advertising has lost its validity, which is also observed in the independent report commissioned by the CMA⁹³;
 - *Performance Market Insider* explains the various reasons behind the convergence between display advertising and paid search advertising as follows: (a) the adoption of retargeting by search advertising providers (similar to display

⁹² The target audience that the ads will be shown to can vary depending on the advertiser’s choice of optimization. For instance, if the advertiser chooses to optimize its ad for clickthrough, then the ads will be shown to those people with a higher chance of clicking on the ad links, based on the behavior of *Facebook* users on *Facebook*.

⁹³The undertaking referenced the following link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803576/CMA_past_digital_mergers_GOV.UK_version.pdf.

advertising), (b) adoption of automatic bidding systems by display advertising providers (similar to search advertising), (c) increase of visuals in search advertising and (d) development of display advertising distribution systems by players on the traditional search advertising side⁹⁴

However, in consideration of the observations made and information gathered during the investigation process, it was concluded that the market definition suggested by FACEBOOK cannot be accepted, and the assessments on this matter are given below.

- (169) Advertising services may generally be divided into online advertising services and offline advertising services, based on the channel through which the service is provided. As explained in detail above, all advertising services provided by FACEBOOK belong amongst the online channels. Thus, the first issue that must be addressed is whether online and offline advertising services are substitutable.
- (170) The ACCC's Digital Platforms Sector Inquiry Report (ACCC Report) report states that offline advertising lacks the data collection mechanisms of online advertising to make projections about the purchasing intent of the consumers, that while offline advertising can target consumers to a certain extent via various campaigns (e.g., taking out ads in magazines on a certain topic of interest), this cannot achieve the same level of detailed targeting as online advertising campaigns. Moreover, the ACCC Report notes that, since many products and services can now be bought over the internet, online advertising makes it easier to directly respond to ad campaigns by encouraging consumers to click and/or purchase the advertised product, while offline advertising was less conducive for directly responding to the campaign.⁹⁵ The CMA Report also states that online advertising is significantly different from offline advertising by the fact that advertisers can use data to target specific audiences in online advertising.⁹⁶ Who will and will not view a specific online ad can be filtered in various ways according to criteria including age, neighborhood, profession, language, location, etc., while offline advertising has limited facility for targeting to that extent, since the channel provider or advertiser does not have access to user data at a similar quantity and diversity.
- (171) Another difference between online and offline advertising activities concerns pricing mechanisms. In its *Google/Double Click* Decision, the Commission states that the pricing mechanism for offline advertising is based on impressions viewed by a possible number of consumers estimated on the basis of general criteria, while in online advertising payment is based on the number of internet viewers that effectively establish contact with the ad.⁹⁷ The Commission also draws attention to the fact that "cost-per-click" and "cost-per-impression" criteria used in online advertising are based on the unique relationship between the internet user and the website, but in offline advertising this kind of definite connection between the advertisement's reach and cost cannot be established. In that framework, advertisers can optimally adjust and/or expend their advertising budgets since online ads are based on clearer data, are conducted through relatively more accessible/transparent processes and use methods such as real-time bidding. On the other hand, offline advertising is more opaque due to various reasons, including the fact that the exact number of interactions created cannot be known and that advertisers cannot estimate the bids of other advertisers.

⁹⁴The undertaking referenced the following link: <https://performancein.com/news/2016/06/06/where-and-why-convergence-between-display-and-paid-search/>

⁹⁵ ACCC (2019), "Digital Platforms Inquiry - Final Report", p. 91.

⁹⁶ CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 217.

⁹⁷ COMP/M.4731, (2008), *Google/Double Click*, para. 46.

- (172) At the same time, according to the CMA Report, interviews with the advertisers have led to the conclusion that advertisers can use online and offline advertising as supplementary channels and that there is limited substitutability between the two.⁹⁸ The ACCC Report and the sector inquiry conducted by the French Competition Authority on online advertising also arrived at the same conclusion.⁹⁹
- (173) According to the preliminary findings of the Online Advertising Sector Inquiry, 34 out of 43 undertakings whose opinions were requested and whose responses were received stated that there was no substitutability between offline and online advertising, while six stated that there was both substitutability and complementarity between the two types. One of the remaining three undertakings noted that offline advertising contributed to brand awareness in particular, while online advertising allowed personalized ads towards smaller audiences; another undertaking stated that the real purpose of advertisements was to provide information about a product or service to the consumer and therefore traditional and online advertising could be considered substitutable but that the substitutability or complementarity between the two types of advertising as well as the distribution thereof would vary depending on the product of the advertiser; and one undertaking noted that there was no complementarity between the two with the exception of the brand communication strategy.
- (174) When the decisions on the subject are examined, the *Google/Double Click*¹⁰⁰, *Microsoft/Yahoo! Search Business*¹⁰¹, *Facebook/WhatsApp*¹⁰², *Microsoft/LinkedIn*¹⁰³, *Verizon/Yahoo*¹⁰⁴, *Apple/Shazam*¹⁰⁵, *Google AdSense*¹⁰⁶ and *Google/Fitbit*¹⁰⁷ Decisions of the Commission clearly show that online advertising does not belong in the same market with offline advertising due to its wider targeting abilities and different pricing mechanisms. A similar approach was adopted in the German Competition Authority's *Facebook*¹⁰⁸ Decision as well as the Board's *Google AdWords*¹⁰⁹ and *Google Shopping Unit*¹¹⁰ Decisions.
- (175) The following points are made by the undertakings whose opinions were requested within the framework of the file:
- In offline advertising, the same ad is viewed by the entirety of the target audience, but online advertising allows better communication by more in-depth targeting for different segments, directing users to do research and gather information about the product. Moreover, it enables data acquisition, and provides advantages such

⁹⁸ CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 217 and Appendix N: Understanding Advertiser Demand for Digital Advertising, N.19-N.21

⁹⁹ ACCC (2019), "Digital Platforms Inquiry - Final Report", p. 91 and Autorité de la concurrence, "Opinion no. 18-A-03 of 6 March 2018 on data processing in the online advertising sector", para. 170-174, https://www.autoritedelaconcurrence.fr/sites/default/files/integral_texts/2019-10/avis18a03_en_.pdf. Accessed: 27.12.2021.

¹⁰⁰ COMP/M.4731, para. 45-47.

¹⁰¹ COMP/M.5727, Microsoft/Yahoo! Search Business, para. 61.

¹⁰² COMP/M.7217, para. 75, 79.

¹⁰³ COMP/M.8124, para. 159.

¹⁰⁴ COMP/M.8180, Verizon/Yahoo, para. 25.

¹⁰⁵ Case/M.8788, para. 133-135.

¹⁰⁶ Case AT.40411, para. 123-134.

¹⁰⁷ Case M.9660, Google/Fitbit, para. 151.

¹⁰⁸ Bundeskartellamt, B6-22/16, para. 354-357.

¹⁰⁹ Board Decision dated 12.11.2020 and numbered 20-49/675-295.

¹¹⁰ Board Decision dated 07.11.2019 and numbered 19-38/575-243.

as payment of ad fees for displaying ads to the right target audience on the right channel as well as reportability and measurability;

- Due to the increasing use of the web, it has become harder to reach the target audience through exclusively offline advertising. Online advertising makes it possible to increase the number of visits; offline and online channels cannot substitute, but complement each other;
- Due to the cost and the numerical limits associated with offline advertising, it is usually proffered by larger advertisers. However, based on the principle of continuity, large advertisers maintain their offline advertising campaigns on digital platforms as well. Thus, when offline and online advertising are used in concert, they result in effective work in terms of complementarity;
- With the advent of online advertising, those advertisers who communicate predominantly through TV, printed press, journals and radio ads as part of their traditional media planning have found the opportunity to steer their customers to buy, acquire and act through online channels as well;
- Although they try to reach similar goals, types of online and offline advertising are distinguished from each other by the materials, tools and technologies they use, and there are significant differences between the two types of advertising in terms of competencies. Online advertising is able to reach the target audience more efficiently and presents tools which allow precise measurement of the ads' efficiency;
- Offline advertising supports long-term brand awareness, but online advertising can meet immediate user needs. In certain businesses targeted communication provides fewer opportunities than online advertising and although online literacy may be increasing, offline advertising is more efficient when trying to reach a target audience over a certain age;
- For awareness (demand creation) campaigns, online and offline advertising are equivalent, therefore they are in competition for work aimed to increase brand recognition. Online advertising allows easier targeting and measuring of users, which makes it the favored option for getting more direct sales;
- Online and offline ads have limited association with each other, but some advertisers use both offline and online channels in order to reach customers who do not use the internet. Depending on the goal of the ad campaigns, advertisers utilize a mix of competing platforms (TV, printed press, outdoor and internet) in combination, allocating their budget between these channels;
- In some cases, online and offline channels are used to complement each other, however even though unit prices are lower for the internet channel, they are still higher than those of the TV channel. Therefore, some advertisers can opt for the TV channel instead of the online channel;
- Complementarity between offline and online advertising may vary depending on the sector, target audience and media budget of the advertising brand. For instance, brands who wish to reach a target audience between ages 18 to 45 can include more online ads, in which case internet advertising usually plays a "complementary" role in campaigns to reach the target audience. Fundamentally, there is substitutability between all types of advertisements in terms of reaching the consumer and increasing brand recognition, however there are characteristics

that distinguish online advertising from offline advertising, even though these are limited in number;

- Online and offline advertising have the same general goal: advertisers compete with each other to ensure that consumers spend money. Nowadays, even smart TVs allow the presentation of targeted ads based on audience information during ad breaks. Moreover, outdoor advertising is becoming more targeted, and therefore no distinction should be made between the two types.

- (176) Within the framework the points above, a small portion of the undertakings operating in the online advertising sector has noted that there is a substitution relationship between online advertising and offline advertising since they serve the same purpose; however, a significant majority of the relevant undertakings are of the opinion that the two types differ in terms of targeting, manner of operation and measurement mechanisms, and that these two types are complementary rather than substitutable. In this context and in light of the information provided above, it is concluded that the two types of advertising are not substitutable, in contrast to what has been asserted by FACEBOOK.
- (177) Following the determination that online and offline advertising are not substitutable, another question that must be answered is whether there is a need for defining the sub-categories of the market. This is because the online advertising channel does not consist of homogeneous products and services but can be classified further, according to the type of the ad, where the ad is placed and many such similar criteria.¹¹¹ For instance, in the *Google/DoubleClick* Decision, the Commission stated that online advertising can be categorized according to the selection mechanism (search advertising, non-search advertising and classified advertising), ad format (text, graphic, etc.), or the distribution channel (direct or indirect).¹¹² Meanwhile, in the *Microsoft/Yahoo! Search Business* Decision, the Commission divided online advertising into four categories, according to selection mechanism, appearance or format, the device on which the ad is viewed, and pricing mechanism.¹¹³ While online advertising channels may be divided into two main groups consisting of the search engine providers (search advertising) and content providers (non-search advertising/display advertising) channels in the most general terms, some sources¹¹⁴ and decisions¹¹⁵ define a third category in the form of classified advertising.
- (178) Search advertising refers to the text ads published by the search engine at the top or bottom of the organic results for a relevant search, provided advertisers bid on the keywords in the search query. Display advertising refers to showing visual advertisements in the form of texts, images and/or videos on the website/application of a publisher¹¹⁶. Classified advertising, on the other hand, refers to a model wherein

¹¹¹ Bundeskartellamt (2018), "Online Advertising, Series of Papers on Competition and Consumer Protection in the Digital Economy", p. 4, https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_III.pdf?__blob=publicationFile&v=5, Accessed: 27.12.2021.

¹¹² COMP/M.4731, para. 10-15.

¹¹³ COMP/M.5727, para. 33-46.

¹¹⁴ CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 59; ACCC (2019), "Digital Platforms Inquiry - Final Report", p. 89; ACCC (2021), "Digital Advertising Services Inquiry", p. 29-30, <https://www.accc.gov.au/publications/digital-advertising-services-inquiry-final-report>, Accessed: 20.12.2021.

¹¹⁵ COMP/M.4731; COMP/M.5727.

¹¹⁶ GERADIN, D. and KATSIFIS, D. (2019), "An EU Competition Law Analysis of Online Display Advertising In The Programmatic Age, *European Competition Journal*", 15:1, p. 59.

advertisers make payments to a particular website serving a specific vertical market or to a general website to list certain products or services.¹¹⁷ Ad payments in this field typically take the form of listing or commission fees.¹¹⁸ Within the framework of this information, it may be said that providers of search advertising channels help advertisers reach users who conduct searches on the internet, while content providers, i.e., display advertising channel providers help advertisers contact the visitors of relevant websites. Classified advertising serves the purpose of publishing products and prices on e-commerce websites, or ads on classified ads websites, getting them shown at higher rankings and/or making them more eye-catching. In that context, considering FACEBOOK, as a content provider, supplies display advertising channels through the social networks it owns, the first point that should be addressed is if display advertising services offered by FACEBOOK can substitute search advertising and classified advertising services.

- (179) On the subject of substitutability between search advertising and display advertising, after conducting interviews with media agencies and advertisers of various sizes, the CMA concluded that search advertising and display advertising played different roles in the consumers' purchasing process, that search advertising aimed to pass those consumers who are interested in buying the product on to the purchasing process but display advertising was more suitable to increasing brand recognition and reaching new audience, that advertisers generally allocated separate budgets for these two types of advertising, and that they were not used interchangeably.¹¹⁹
- (180) The ACCC Report accepted that search advertising and display advertising showed a level of convergence in the last 15 years but noted that the two advertising types carried out different functions and had limited substitutability. Accordingly, first of all, display advertising is better than search advertising for creating brand awareness. Secondly, although both types of advertising can be used for "direct response campaigns," where consumers start the online search process through a search engine, search advertising is more effective in terms of conversion (buying the product, contacting the supplier of the product, etc.). This is because, especially for search engine services, the key words used when submitting an inquiry can provide stronger evidence to help interpret the user's intent to purchase, allowing the provision of ad services that are tailored for the user's purchase intention. In that framework, conversion-focused campaigns generally prefer search advertising to display advertising.¹²⁰
- (181) The France Report also specifies that search advertising and non-search advertising were not substitutable, emphasizing that there were significant structural differences between the markets for search advertising and display advertising, that the number of players in the search advertising market was much lower, and that entry to this market required developing a sufficiently strong general search engine as well as a platform for selling search-based ads.¹²¹

¹¹⁷ ACCC (2019), "Digital Platforms Inquiry - Final Report", p. 89; ACCC (2021), "Digital Advertising Services Inquiry", p. 26; CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 60-61.

¹¹⁸ CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 60-61.

¹¹⁹ CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 226, 250.

¹²⁰ ACCC (2019), "Digital Platforms Inquiry - Final Report", p. 92-93.

¹²¹ Autorité de la concurrence, "Opinion no. 18-A-03 of 6 March 2018 on data processing in the online advertising sector", para. 176-182.

- (182) According to the preliminary findings of the Online Advertising Sector Inquiry, 32 out of 39 undertakings whose opinions were requested and who responded to the relevant question stated that there was no substitutability between search advertising and display advertising but that the two types of ads could complement each other. In addition, one of the undertakings stated that it used these two types of ads sometimes to complement and sometimes to substitute each other, one of them noted that they were complementary to each other but were partially substitutable, and one explained that although the ad channels were independent of each other, they can substitute one another for the purposes of achieving the purpose of the ad campaign. The remaining four undertakings specified that the main difference between the two types of ads was the fact that search advertising showed consumers those results that were directly relevant to the search term, that search based advertising focused on performance while display advertising was assessed in terms of brand perception, that display advertising could benefit search network advertisement by increasing the number of searches related to the brand or the product.
- (183) When the decisions on the subject are examined, the observations of the Commission and the FTC concerning the *Google/DoubleClick* acquisition emerge as relevant. In the decision concerned, the Commission took the views of the advertisers and publishers into account, and stated that although search advertising and non-search advertising could put some amount of pressure on each other from the perspective of the advertisers, that distinction is more sharply drawn for publishers.¹²² FTC, on the other hand, remarked in its decision that search advertising did not present a significant restriction on the prices or quality of the other online ads sold either directly or indirectly by the publishers and therefore the two types were not substitutable.¹²³ The relevant decision concluded that the online ads offered by search engines and content providers were used for different purposes, with the first providing an original opportunity to reach potential consumers directly. In its more recent *Google AdSense*¹²⁴ and *Google/Fitbit*¹²⁵ Decisions, the Commission clearly showed that search advertising and display advertising formed separate markets.
- (184) According to the German Competition Authority's *Facebook* Decision, many advertisers claimed that search advertising was a separate market within online advertising, that search advertising was directed towards the last stage of the purchasing process while non-search advertising, especially display and social media advertising targeted the first stage of it, concluding that the two types of advertising constituted different markets.¹²⁶ Similarly, in its quite recent *Facebook/Kustomer*¹²⁷ and *Facebook/Giphy*¹²⁸ Decisions, the CMA referenced its Report to note that search advertising and display advertising comprised different markets. Meanwhile, the Board's recent *Google AdWords* Decision noted that 84% of the undertakings whose opinions were requested did not consider the two types of ads as substitutes, that search advertising and non-search advertising served different marketing purposes and that there were differences between the two types of advertising in terms of

¹²² COMP/M.4731, para. 48-56.

¹²³ FTC File No.071-0170, *Google/DoubleClick*, p. 3.

¹²⁴ Case AT.40411.

¹²⁵ COMP/9660, para. 151-155.

¹²⁶ Bundeskartellamt, B6-22/16, para. 358-360.

¹²⁷ https://assets.publishing.service.gov.uk/media/618a6328d3bf7f56059042d5/Facebook.Kustomer_-_Phase_1_Decision_.pdf, Accessed: 23.12.2021, para. 106-11.

¹²⁸https://assets.publishing.service.gov.uk/media/61a64a618fa8f5037d67b7b5/Facebook__Meta__GIP_HY_-_Final_Report_Public_Version_301121_.pdf, para. 5.165-5.174, Accessed: 23.12.2021.

method of payment, costs and conversion rates, and concluded that there was currently no substitutability among them.

(185) The following points are made by the undertakings whose opinions were requested during the investigation process:

- Search advertising allows communication according to interests while display advertising creates recognition and brand perception. In terms of integrated communication, search advertising must be supported with display advertising. Search advertising allows specifying certain fields and this data may be used to show targeted ads through display advertising;
- There is no substitutability between search advertising and display advertising, and that these two types of advertising are in fact complementary;
- The benefits of the online advertising models for advertisers may vary and therefore advertisers generally use them to complement each other. However, they can be substitutable in some cases; for instance, if there is no video or design image for the product the advertiser wishes to promote, it can opt for search advertising exclusively. Both types of advertising can be used together, depending on the target audience the advertiser wishes to reach, or only one can be chosen depending on budget and expectations from the campaign. Search advertising is predominantly used for campaigns with high return, while display advertising is also used for recognition;
- There are similarities between the goals for which advertisers use these types of advertising, but they also differ in terms of targeting opportunities, interaction, measurement, conversion rates, costs, and formats. It is difficult to come to a definite conclusion on this matter, since search advertising and display advertising are in a process of convergence, but that process is not yet advanced enough to serve as a substitution relationship;
- Both types of advertising are seen as ways to help consumers find, discover and purchase brands, products and services. Although it depends on the provider, both types have similar capacity in terms of audience targeting and area of access, in addition to other characteristics. In general, both types help consumers find brands, products and services, with no significant difference between types of online advertising. In the past, search advertising was more target-oriented and was used for conversion, while display advertisement was less target-oriented and used to increase brand recognition. However, nowadays there is no significant difference between the uses of the two types, with improvements in behavioral targeting technologies helping match display advertising much closely with the interests of the consumers. Moreover, search advertising is increasingly using images, similar to traditional display advertising formats. An example of visual search advertising is Google's Product Listing Ads.

(186) In light of the points raised above, while a small portion of the undertakings operating in the online advertising sector state that search advertising and display advertising are substitutable and are gradually converging, a large portion of them note that the two types of advertising serve different purposes. In that context and in light of the information provided above, it is concluded that there is no substitutability between the two channels.

(187) Another issue that must be addressed under the current market definition is the substitutability between classified advertising and display advertising. The CMA Report

indicates that although there is no uniform approach concerning which services should be included in the classified advertising category, a classification can be made involving those online platforms which provide advertisers the opportunity to list certain products and services, while letting users make comparisons between these lists. Moreover, it is mentioned that classified advertising is widespread in fields such as e-commerce, employment, travel, real estate and vehicles.¹²⁹ The ACCC Report also concludes that advertisements in such platforms are generally taken out by individuals or concern “one-off” sales of one or several products and could only put limited competitive pressure on display advertising.¹³⁰

- (188) According to the preliminary findings of the Online Advertising Sector Inquiry, 17 out of 27 undertakings whose opinions were requested and who responded to the question stated that classified advertising was not substitutable with display advertising, while one undertaking noted that these two advertising types were actually complementary with partial substitutability. Another emphasized that if display advertising was not available on the listing website, the classified advertising model could be chosen but if it was available display advertising could be used instead of classified advertising, in which case there may be substitutability; however, after gaining access through display advertising, users tended to go to listing sites for searching prices and therefore classified advertising played a supplementary role in communication. Another undertaking stated that it could not opine on the subject since it did not use classified advertising. Without making a clear assessment on substitutability/complementarity, the remaining undertakings stated that classified advertising communicated product information; that if users search for a product they viewed with display advertising on *Google*, the product may be shown in the shopping tab and this behavior of the users had a positive effect on shopping; that classified advertising is the type of advertising that attracts the most attention from the users; that once display advertising reaches potential customers, the products viewed in case they visit the relevant website could be shown in a listing format; that classified advertising allows product-specific advertising, while display advertising allows general targeting; that these two types of advertising are important tools for creating awareness.
- (189) The Commission’s *Microsoft Yahoo! Business* Decision notes that classified ads do not target the website content or any particular characteristics of the user, instead they comprise the main content of the webpage on which they are shown and are shown in the same manner to all visitors of the website. Therefore, they are different from both search advertising and display advertising.¹³¹
- (190) The following points were made by the undertakings whose opinions were requested during the investigation process:
- There is no substitutability between the two types of advertisements since in classified advertising the owner of a furniture, car or house exhibits his/her goods, but display advertising involves a commercial company taking out advertisements. Moreover, classified advertising is only suitable for e-commerce platforms such as shopping websites, while display advertising serves different marketing goals;
 - Classified advertising models are important for data acquisition with their sale/traffic redirection and similar effects, and the data acquired therein could

¹²⁹ CMA (2020), “Online Platforms and Digital Advertising”, Market Study Final Report, p. 61.

¹³⁰ ACCC (2019), “Digital Platforms Inquiry - Final Report”, p. 94, 97.

¹³¹ COMP/M.5727, para. 41.

provide access to different users who behave similarly through cross-impressions and display advertising models;

- Generally, all online advertising types are complementary of each other, and both types are performance-based ad formats. Thus, one of them can be chosen based on campaign performance;
- The two types of advertising are not directly related to each other, and they have significant differences in the graphic elements and textual approach they use. While search advertising and classified advertising may involve similar behavior, there is no substitutability between classified advertising and display advertising;
- Classified ads are more dynamic than display advertisements due to the fact that the campaign content is not fixed. Classified ads can present the content the users are looking for through various options, but display advertising involves planning a campaign based on a specific product and service;
- Classified advertising is focused on products and prices and therefore allows product-specific advertising compared to display advertisements. As a result, they are not substitutable;
- Although they do not provide classified advertising services, they believe the two types are not substitutable since classified advertising is designed to identify a single party and a single transaction, while display advertising targets a large group of users;
- Classified advertising can be divided into two: electronic sale platforms such as N11, TRENDYOL, HEPSİBURADA, and ad listing sites such as SAHİBİNDEN, HEPSİMLAK, etc. Among the types of display advertising, native ads can serve as a substitute for classified advertising, that there is no complementary relationship between the two types of ads since they both use behavioral targeting methods and serve similar use cases.

(191) Nearly all of the undertakings operating in the online advertising sector emphasize that there is no substitutability between classified advertising and display advertising. In that framework, it is concluded that there is no substitutability between classified advertising and display advertising, in light of the fact that the two types of advertising have significant difference in purpose and business models, and of the opinions of the undertakings as well as the case-law.

(192) At this juncture, considering FACEBOOK conducts its online advertising services over the social networks it owns, an assessment was performed as to whether display advertising activities through social networks constituted a separate market. In that context, the majority of the advertisers whose opinions were requested stated that online advertising activities through social media channels must be defined as a separate market within online display advertising activities due to the fact that social media channels use different technologies than those in the other display advertising channels, and that social media platforms are distinct from other display advertising channels in terms of targetability, user pool and the time users spend on the platform. However, some of the undertakings noted that the two types of online advertising could be both substitutable and complementary, depending on the content of the campaign.

(193) Moreover, with regard to increasing brand awareness in a more general sense, it is mentioned that display advertising through social networks and display advertising through social media are substitutable, that social media channels and social networks

do not constitute separate markets for display advertisements, despite the fact that they offer different targeting and ad model options. On the other hand, one undertaking emphasized that, although they had substitutable characteristics in a more general framework, social networking ads and social media ads could be differentiated on specific points. Two undertakings stated that since social networks offer measurement and consumer interaction opportunities different from those of social media, online display advertising activities conducted through social networks constitute a separate market.

- (194) Within the framework of the information above, it is clear that in terms of online display advertising services, most advertisers position social media platforms differently than other display advertising channels since they provide detailed and varied data on the users' tastes, interests and contacts with other users, since users spend a lot of time on these platforms and since they provide opportunities for better targeted advertising. However, it seems there is no clear distinction between social networks and social media in terms of display advertising services. At this juncture, it must be noted that while other publishers that fall outside the scope of social media platforms but provide display advertising services may utilize certain tracking/data collection techniques, it is not likely that the data acquired in this way can reach the scale of the data social media platforms acquire on a user-by-user basis. In that framework, a market for "*online display advertising through social media channels*" can be defined within the online display advertising services market. On the other hand, it is concluded that the relevant product market can be defined as the "*online display advertising*" market in general, but the assessment to be conducted should also take into account the "*online display advertising through social media channels*" market.
- (195) The last point to evaluate within the framework of FACEBOOK's online advertising activities is whether a market definition for classified advertising should be made with relation to the classified advertising services provided through *Facebook Marketplace*. FACEBOOK explains that the *Facebook Marketplace* service is an integrated feature of the *Facebook* service, that sellers can list and sell their products to buyers for free, and therefore even though the products on *Facebook Marketplace* are presented in a list format, this should not be considered an "ads service" or "online classified ads service". In that context, the ad listing service offered through *Facebook Marketplace* must be compared with the services provided by the undertakings offering classified advertising services such as *Sahibinden.com*, *arabam.com* or *zingat.com*. In the *Facebook Marketplace* application, users can place an unlimited number of advertisements without charge, in a total of seventeen different categories. Buyers, in turn, can view these advertisements but have to sign in to *Facebook* if they want to access the ad details or contact the advertiser. In other words, unlike the business model adopted by undertakings such as *Sahibinden.com*, *arabam.com* or *zingat.com* which offer listing services, buyers on *Facebook Marketplace* cannot access all details of the ad or contact the advertiser unless they are *Facebook* users. In addition, compared to the other undertakings which provide listing services, *Facebook Marketplace* has very limited options for filtering products on sale. In that framework, the functioning of *Facebook Marketplace* is different than the business models of other undertakings offering listing services in some respects. However, it is impossible to deny that all undertakings that offer listing services fundamentally provide the same type of service. On the other hand, FACEBOOK's actions under assessment within the framework of the file seem to cause concerns with respect to online display advertising services in particular, and the focus should be put on the effects these actions might

have in that market. Consequently, it is not found necessary to conduct a more detailed examination with respect to online classified advertising services and define a separate market concerning FACEBOOK's *Facebook Marketplace services*, since this would not change the conclusion of the file.

- (196) In light of the explanations provided above, another relevant market within the framework of the file is defined as “*online display advertising market*”.

I.2.2.4. Discussions on Defining a Market for User Attention

- (197) In recent years, phrases similar to “competition for the attention of the user” has seen frequent use, particularly in the technology sector, media and literature. In that context, the majority of the undertakings which provide online platform services are said to have turned customer attention into a business model, and further, that this has become a type of economy. As such, another point examined in the file involves whether it is possible to define a market of “user attention”.
- (198) To be able to make a market definition based on user attention, we must be able to define user attention as a product or service. However, user attention clearly is not a product, nor is it a service offered by an undertaking. On the contrary, user attention is an element held by the consumer, and it is a resource consumers allocate between certain products or services, or other practices and activities. In that regard, the term in question refers to the attention consumers consciously and/or electively focus on a specific area. In that sense, it may be seen as a factor that can shed light on evaluations regarding demand substitutability and that can have a price-like impact, rather than as a product that comprises a relevant market.
- (199) Some of the issues that may arise in this framework must be pointed out. Accordingly, it must first be noted that consumers’ decision to direct their attention towards platform services is assumed to be no different than their decisions on whether or not to make a monetary payment in a traditional market.¹³² The first consequence of that assumption is that, similar to the established competition law practice wherein money is not considered a product or service for which the undertakings compete, it does not seem possible to see user attention as a product or service undertakings are in competition for. Although money and user attention can represent the final goal undertakings are trying to achieve in that context, the relevant product market is made up of the products and services with which they compete among themselves to reach that final goal. The second consequence of the aforementioned assumption is that an analysis on the matter is rather complicated by the fact that, when directing their attention, users may act in consideration of their preferences, certain habits or rituals, or various developments in the world. Therefore, a consumer may choose one TV show over the other, or make a habit out of reading his e-mails instead of watching TV at a particular time of the day, or use her smart phone based on different dynamics in her place of work and during her vacation.
- (200) Still, it may be acceptable to assert that undertakings compete for consumer attention. However, in light of the explanations provided above, competition for user attention in this sense is no different than competition for the money to be spent by the consumers, and these factors refer to the final goal undertakings wish to achieve by offering the products and services with which they actually compete in the markets where they operate. In addition, it is clear that in digital markets, where defining the market and

¹³² WU, T. (2017), “Blind Spot: The Attention Economy and the Law”, p. 782 <https://ssrn.com/abstract=2941094>, Accessed: 23.12.2021.

conducting market analysis is rather difficult, relying on such a fundamental assumption is easy and simple, and therefore attractive. At the same time, it should be noted that this assumption is based on two unrealistic postulates.¹³³ The first of these is that everybody's attention is worth roughly the same. Although the attention of all consumers may be considered to have roughly the same value under certain circumstances (advertisements published in the shows on mainstream media, etc.), in actuality, the attention from different users is evaluated differently, both in an absolute sense, and within the context of the product/service attention is directed towards. Undertakings selling a certain product can find it more valuable to access certain demographic focus groups. Thus, it is possible to target females or males, specific professional groups, expecting families, etc., depending on the product that will be offered to the consumers' attention. As a result of this assessment, the attention of some users may be more valuable, depending on the relevancy of the product offered to their attention. The second postulate is that all states of conscious attention are considered equal. However, in reality, some processes of conscious attention by users (for example, a user searching for a product on the internet) are clearly more valuable than others (for example, consumers who are watching TV or reading a book). In that framework, as mentioned above, in addition to many factors such as consumers preferring one TV show over the other (preferences) or making a habit of reading e-mails rather than watching TV at certain hours of the day (rituals) or basing the use of smart phones on different criteria at the work place and on vacation (developments related to the modern life), it is also possible for consumers to choose to direct their attention towards a non-commercial area, outside of their technological environment.¹³⁴ To wit, various behavior such as putting time an effort into developing one's hobbies, working out, learning a new language, spending time with one's family, children or friends require conscious attention from consumers as well.

- (201) The literature says that platform service providers first compete to draw attention from non-commercial areas, and then compete to draw attention towards themselves instead of having it distributed among all platforms offering similar services. However, within the scope of the observations above, it is noted that the element of customer attention does not have the basic characteristics required to be defined as a relevant market, that the idea of competing in such a market is based on rather subjective consumer behaviors as well as on certain assumptions that do not reflect the realities of the market, and that this idea is not measurable since it cannot be adapted to the tests currently in use for defining the relevant market. In other words, as explained in detail above, such a market definition would clearly miss the mark since it would be subject to rather subjective and variable assessments due to the usage habits of the consumers, their rituals or different behavioral patterns. Also, in addition to the measurement difficulties stemming from the division of user attention between commercial and non-commercial areas, when all actors in the commercial area are taken into account, there is a risk that even the attention directed towards that area exclusively can make the market seem larger than it is and therefore make undertakings with high market share/power appear unimportant. Due to all of these concerns, the necessity of such a market definition should be examined separately.

¹³³ WU, T. (2017), "Blind Spot: The Attention Economy and the Law", p. 783-784.

¹³⁴ EVANS, D.S. (2020), "The Economics of Attention Markets", p. 18, <https://ssrn.com/abstract=3044858>, Accessed: 25.12.2021; WU, T. (2017), "Blind Spot: The Attention Economy and the Law", p. 784.

- (202) Basically, platform service providers are motivated to improve their content, increase the quality of that content and reduce the number of ads in order to keep the users' attention. The relationship between the content, the time allocated to the platform concerned and the advertisements create a positive relationship between the two groups of platform users. At the same time, if the platform decreases the quality or amount of the content it provides and increases advertisement space, this can lead to a reduction in the time consumers spend on the platform, as well as the value they attach to it. Also, feedback loops are actively implemented on these platforms.¹³⁵ Accordingly, advertiser demand for a platform allows undertakings to enrich the platform's content and thus attract more users, in turn platforms with more users draw more demand from advertisers, and thus are able to attract even more users by further improving their content.¹³⁶ It is believed that the importance providers of basic platform services attach to consumer attention stems from this process.
- (203) The discussions in the literature concerning the definition of a market for user attention point to two fundamental possible competition concerns with relation to this hypothetical market.¹³⁷ The first of these concerns is that, in response to less/limited competition, undertakings offering platform services will increase the prices they ask from advertisers and the level of attention they demand from consumers (by increasing the amount/area of the ads displayed). As part of this first concern, it should be noted that increasing the number of ads shown to users could lead to a drop in service quality as well. The second concern is that the ease with which higher prices can be demanded from advertisers can result in these prices being passed on to the consumers. In addition to these two fundamental concerns, there is also the fact that excessive number of ads can lead to a loss in welfare for advertisers and consumers.¹³⁸ To that end, in order to eliminate the concerns in this hypothetical market, the literature suggests ensuring competition between undertakings that demand consumer attention and introducing regulations and restrictions concerning the provision and/or procurement of online advertising services.¹³⁹
- (204) In light of the observations above, it is clear that the hypothetical "user attention" market is proposed to refer to the competition concerns in data-focused markets more efficiently. This proposal is based on concerns in the online advertising market in particular. Another proposal in that framework is to ensure competition in platform services that serve as a channel for advertising market. Consequently, it is concluded that defining a hypothetical "user attention" market would bring no additional benefits if competition is established in the aforementioned online advertising, social media/social networking and consumer communication services markets. Thus, any evaluation to be made in a potential user attention market within the framework of the file would not be significantly different than those to be made for the relevant three product markets and/or would not bring any additional benefits to establishing competition in the market.

I.2.3. Relevant Geographic Market

¹³⁵ NEWMAN, J. M. (2020), "Antitrust in Attention Markets: Definition, Power, Harm", University of Miami Legal Studies Reserch Paper No. 3745839, p. 32, <https://ssrn.com/abstract=3745839>, Accessed: 25.12.2021.

¹³⁶ EVANS, D.S. (2020), "The Economics of Attention Markets", p. 13.

¹³⁷ WU, T. (2017), "Blind Spot: The Attention Economy and the Law", p. 799; NEWMAN, J. M. (2020), "Antitrust in Attention Markets: Definition, Power, Harm", p. 22-24.

¹³⁸ EVANS, D.S. (2020), "The Economics of Attention Markets", s. 26.

¹³⁹ NEWMAN, J. M. (2020), "Antitrust in Attention Markets: Definition, Power, Harm", p. 29-37.

- (205) The relevant geographic market is the geographic area wherein competitive conditions are sufficiently homogeneous. Although the definition of these markets is based on the regions where undertakings are engaged in the supply and demand of the products and services, competitive conditions must be homogeneous within the relevant region and must be sufficiently different from those in the neighboring regions to ensure easy distinction.
- (206) In terms of online platform services providers such as FACEBOOK, the foremost factor in determining the geographic borders of the markets is the geographical area in which their activities are conducted, similar to traditional markets. At this point, characteristics of platform service providers that differ from the traditional markets become important. *Facebook* is being used by around 2.8 billion people each month in 220 countries around the world, and it is the most commonly used, most active social media platform globally, with the number of its users increasing every day. According to the Digital 2021 Report, around 36.9% of the people around the world use *Facebook*.¹⁴⁰ Based on the information acquired under the file, Facebook, Inc. is operating as the main provider of the *Facebook*, *Instagram* and *Messenger* services outside the European Area. Facebook, Inc., sells products and services to advertisers and customers (non-advertising products and services) in countries outside the European Area and Türkiye, both by itself and through its subsidiaries based in many different countries.
- (207) In this context, the information above delineates the border of the two-sided platform services provided by FACEBOOK with relation to advertisers and customers, who make up the first group benefiting from those services, and there is no barrier before the expansion of the services offered to new countries. However, there are no borders with respect to the consumers, who are the other group that benefit from the services. Consumers can take advantage of the social networking and/or consumer communication services, regardless of the country/location in which they reside/live. Moreover, while the content of the advertisements shown can change, consumers remain the target of online advertising activities. In that framework, geographic borders for the consumers who can benefit from the services offered by FACEBOOK encompass the whole world. In other words, online platform services are accessible globally to either side of the market, both technically and theoretically. As well, within those geographic borders, there are no differences that necessitate distinguishing between regions with respect to the services offered by the platform to different user groups (consumer/advertisers).
- (208) Nevertheless, it should be noted with respect to advertisers that while the advertising services offered by the relevant platform service in the other countries where it operates can be a substitute to a limited extent for the large-scale advertisers specifically, provided the consumers in that country are also targeted, for smaller advertisers and advertisers who only target local users, they cannot serve as an alternative. It must also be emphasized that since these platforms' act based on different economic goals than traditional markets (behavioral expectations, sale amounts, etc.), their activities have different geographic borders at the same time (such as a country, a region or the whole world) and thus makes it harder to define the market as worldwide. As a result of these different geographic borders, platforms can work with different advertisers and the advertisers they reach can be different at each geographic sub-category. In addition, online platform service providers obtain their income not from the consumers, but from the advertisers, and accordingly their

¹⁴⁰ <https://datareportal.com/essential-facebook-stats>, Accessed: 22.12.2022.

activities are focused regionally. The reason for this is the fact that ad campaigns and ad content used by the advertisers are aimed at the national/local market (that is, they aim to promote the products and services they offer to those consumers who are located within the same geographic borders and can purchase the relevant products and services). This observation is also supported by the fact that the online platform service providers in question operate in many countries and that they generally establish a business unit in many of those countries to conduct their advertising activities and function as a contact point.

- (209) There are a limited number of Board decisions where the geographical market was defined as the “world”¹⁴¹. In addition, the usual Board practice is to focus the assessment on the Turkish market, while taking into account the global market to the extent required by the subject matter of the relevant file. Thus, it is decided that the market should be defined as “the area falling within the borders of the Republic of Türkiye,” despite the observation that the activities comprising the subject of the file were conducted in a much wider region¹⁴².
- (210) Article 2 of the Act no 4054 which specifies the scope provides: *“This Act covers all agreements, decisions and practices which prevent, distort or restrict competition between any undertakings operating in or affecting markets for goods and services within the borders of the Republic of Turkey; abuse of dominance by dominant undertakings in the market...”* In that framework, since the decision will be based on the assessment of the effect FACEBOOK’s practices have within the border of the Republic of Türkiye with respect to the allegations in the file, the relevant geographical market was defined as “Türkiye”. Since the services offered by FACEBOOK can be provided to all consumers and advertisers residing in Türkiye under the same conditions and since both consumers and advertisers are able to access the relevant services throughout the country, breaking the market down into and defining sub-categories was deemed unnecessary. However, the “*global*” market was also taken into consideration for all examination and assessment processes under the file, including the analyses on the consumer side of the relevant market, for definitions of the relevant product market, and for the dominant position assessment.

I.3. Examinations Conducted by Other Competition Authorities on Facebook

- (211) In recent years, FACEBOOK’s behavior in different markets has frequently become the subject of competition law examinations all around the world. In that context, concerns about the user data held by Facebook, Inc. and the use of that data go back to the founding of the company. The execution of numerous acquisitions by Facebook, Inc., as detailed above, brought about competitive concerns related to the abuse of dominant position in the relevant markets. Throughout the years, assessments about the allegedly weak privacy provided by the company¹⁴³, the rise in the number of users, the changes and developments related to the undertaking’s utilization of the user data created the concerns in question and then exacerbated them, and these competitive issues led to the launch of examinations by competition authorities.

¹⁴¹ Board Decisions dated 02.06.2011, numbered 11-33/724-227 and dated 06.07.2011, numbered 11-41/870-272.

¹⁴² Board Decision dated 04.11.2004 and numbered 04-70/1006-245.

¹⁴³ <https://www.businessinsider.com/well-these-new-zuckerberg-ims-wont-help-facebooks-privacy-problems-2010-5?IR=T> ; <https://www.techrepublic.com/index.php/blog/techrepublic-out-loud/facebook-proves-that-the-erosion-of-privacy-is-inevitable/> ; <https://www.techrepublic.com/index.php/blog/techrepublic-out-loud/facebook-proves-that-the-erosion-of-privacy-is-inevitable/> . Accessed: 21.03.2021.

(212) The examinations conducted by competition authorities within this context, and the applications reviewed by the court emphasize the dominant position held by FACEBOOK in various markets and analyze the restrictive effects of the undertaking's exclusionary and exploitative conduct. The current file examines the allegation that FACEBOOK abused its dominant position by using the data it acquired in Türkiye within the framework of each of its products and services to the advantage of other products and services provided by FACEBOOK. Thus, before assessing FACEBOOK's conduct under examination, currently ongoing investigations and recent court decisions for each country will be summarized below, including the decisions of competition authorities on FACEBOOK's practices which are similar or related to the subject matter of the present case, in particular.

Germany

(213) The German Competition Authority launched an examination on Facebook, Inc. and the undertaking's subsidiaries in Germany and Ireland (Facebook Ireland Limited and Facebook Deutschland GmbH) in 2016, based on the allegation that it abused its dominant position in the market for social networks through its terms of service related to the utilization of user data.¹⁴⁴ The first assessment of the German Competition Authority states that Facebook, Inc.'s collection and utilization of data from third parties could constitute an abuse.¹⁴⁵ According to these initial assessments, Facebook, Inc.'s terms of service violated data protection rules to the disadvantage of the users. Taken in connection with Facebook, Inc.'s dominant position, it is stated that this behavior could not be assumed to have taken place with the consent of the users concerning the collection and processing of the data. Accordingly, Facebook, Inc.'s business model required the users to give their consent to the "whole package" if they did not want to be deprived of the entirety of the service.

(214) As a result of the examination conducted, the German Competition Authority announced that it prohibited Facebook, Inc. from merging the user data it acquired from different sources.¹⁴⁶ Accordingly, without the user's voluntary consent, the data collected from third-party websites could not be matched and used with a *Facebook* account. The main concern of the decision is clearly caused by the user data collected by the companies Facebook, Inc., Facebook Ireland Limited and Facebook Deutschland GmbH through the use of other corporate services (*WhatsApp*, *Oculus*, *Masquerade* and *Instagram*) or third-party websites and applications, and then merged with the user data already on the social network (*Facebook.com*).¹⁴⁷ According to the decision which found that Facebook, Inc. held dominant position in the market for social networks aimed at individual customers, users do not have sufficient control over their own data when utilizing Facebook, Inc. services, due to the dominant position of the undertaking in question. Additionally, it was observed that Facebook, Inc. harmed the users' rights under the General Data Protection Regulation¹⁴⁸ (GDPR), which is a part

¹⁴⁴https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2016/02_03_2016_Facebook.html, Accessed: 19.11.2021.

¹⁴⁵https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2017/19_12_2017_Facebook.html, Accessed: 19.11.2021.

¹⁴⁶https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2019/07_02_2019_Facebook.pdf?__blob=publicationFile&v=2, Accessed: 19.11.2021.

¹⁴⁷https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/Missbrauchsaufricht/2019/B6-22-16.pdf?__blob=publicationFile&v=5, Accessed: 19.11.2021.

¹⁴⁸<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN> Accessed: 19.11.2021.

of the EU legislation, by processing the user data within the framework of its targeted and personalized online advertising operations.

- (215) The decision adopts the GDPR as a standard in determining whether the behavior under examination constituted an abuse of dominant position through exploitative conduct. In this context, the decision seems to have termed Facebook, Inc.'s behavior involving the imposition of its terms of service on the users and the later use of data in violation of the GDPR provisions, without any user control, as "exploitative business terms."¹⁴⁹
- (216) In accordance with the decision of the German Competition Authority, Facebook, Inc. was given a twelve-month period to terminate the infringement involving the collection, merging and utilization of user data from different sources. In response to the ruling of the Higher Regional Court of Düsseldorf (Oberlandesgericht Düsseldorf) in the lawsuit filed by Facebook, Inc. on the subject, the German Competition Authority applied to the Federal Court of Justice (Bundesgerichtshof). The Federal Court approved the decision stating that Facebook, Inc. abused its dominant position, reversing the ruling of the Higher Regional Court of Düsseldorf.¹⁵⁰ Currently, the Higher Regional Court of Düsseldorf has applied the preliminary ruling procedure of the EU law in the lawsuit filed by Facebook, Inc. and related subsidiaries against the decision of the German Competition Authority, and submitted seven separate questions to the Court of Justice of the European Union (CJEU).¹⁵¹ These questions submitted to the CJEU are related to the intervention boundaries of competition law and data protection law in general.
- (217) On 10.12.2020, the German Competition Authority announced that it initiated an examination on Facebook, Inc. in response to the undertaking tying the virtual reality platform *Oculus* to *Facebook*. Adding *Oculus* as an additional function on *Facebook* under "*Facebook Reality Labs*" makes a *Facebook* account mandatory for using the *Oculus Quest 2 VR* goggles, and existing *Oculus* accounts cannot be used for new registrations. The relevant announcement of the German Competition Authority states that Facebook, Inc. holds dominant position in Germany with its social network and is an important player in the developing virtual reality market, and that the examination would look at whether and to what extent this tying arrangement would affect competition in both areas of activity.¹⁵²

Australia

- (218) ACCC filed a suit against Facebook, Inc. and two of its subsidiaries (Facebook Israel Ltd. and Onavo, Inc.) with the Federal Court, on the grounds that Facebook, Inc. engaged in false or misleading conduct when promoting the freely downloadable mobile software application, named *Onavo Protect*, which offers virtual private network (VPN) services to consumers.¹⁵³ ACCC claims that significant amount of personal data collected by *Onavo Protect* within the framework of the users' activities were used to

¹⁴⁹https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2019/07_02_2019_Facebook.pdf?__blob=publicationFile&v=2, Accessed: 19.11.2021.

¹⁵⁰https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Pressemitteilungen/2020/23_06_2020_BGH_Facebook.pdf?__blob=publicationFile&v=3, Accessed: 19.11.2021.

¹⁵¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62021CN0252&from=EN>, Accessed: 19.11.2021.

¹⁵² https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2020/10_12_2020_Facebook_Oculus.html, Accessed: 08.12.2021

¹⁵³ <https://www.accc.gov.au/media-release/accc-alleges-facebook-misled-consumers-when-promoting-app-to-protect-users-data>, Accessed: 19.11.2021.

the commercial advantage of Facebook, Inc., but that users were not allowed an informed decision concerning the collection and use of their own data.¹⁵⁴

India

- (219) Competition Commission of India (CCI), launched an examination in response to *WhatsApp* users being forced to approve the sharing of their data on their *WhatsApp* user accounts with Facebook, Inc. and its subsidiaries following the update to the *WhatsApp* privacy policy and terms of service.¹⁵⁵ Since the notification text concerning the updates to the privacy policy and terms of service, shown to *WhatsApp* users since January 2021, suggested that the update would be implemented on 08.02.2021 and that *WhatsApp* users would have no options other than to approve the update following the aforementioned date, CCI took action on its own initiative and requested information from WHATSAPP and Facebook, Inc.
- (220) The CCI stated that the collection of excessive data in data-based ecosystems required competition-law review and noted that the behavior involving the collection and sharing of data to an extent beyond what could be justified in digital markets would provide competitive advantages to dominant undertakings, which could have both exploitative and exclusionary effects. Despite WHATSAPP postponing the planned update to 15.05.2021, the CCI found that the conduct had already been implemented, and the postponement merely set a new deadline for users to approve the update. WHATSAPP, on the other hand, claimed that the update planned for 2021 should not lead to any concerns under competition law, and that instead, it provided higher levels of transparency concerning the collection, utilization and sharing of data for users.
- (221) In its decision, the CCI established that *WhatsApp* held dominant position in the market for messaging applications for smart phones¹⁵⁶ in India and found that following *WhatsApp*'s announcement of the changes to its privacy policy, rival applications such as *Signal*, *Telecom* were downloaded but this did not result in a meaningful decrease in the number of *WhatsApp* users. According to the initial examination of the CCI (*prima facie*), the update planned by *WhatsApp* reflects a "take it or leave it" approach which is supported by *WhatsApp*'s market position and power. In addition, the CCI decided that an examination should also be connected during the investigation concerning *WhatsApp*'s claims that the update did not expand the limits of the data exchange between *WhatsApp* and Facebook, Inc., but merely provided more transparency to users on the subject.
- (222) On August 2020, the CCI concluded the investigation it was conducting on *WhatsApp*, Inc. and Facebook, Inc. concerning the fact that downloading the *WhatsApp* application on user devices pre-installed the *WhatsApp Pay* feature. The complaint examined in the investigation alleged that users were imposed unfair contract terms as a result of the pre-installation, that internet based messaging apps and Unified Payment Interface (UPI) activated digital payment applications constituted two different markets, that these two products had separate consumer demand, that WHATSAPP made bundled sales and that the pre-installation used *WhatsApp*'s dominant position in internet based messaging applications as a leverage in the Unified Payment

¹⁵⁴https://www.accc.gov.au/system/files/ACCC%20v%20Facebook%20Inc%20%26%20Ors_%20Concise%20Statement_0.pdf, Accessed: 19.11.2021.

¹⁵⁵ https://www.cci.gov.in/sites/default/files/SM01of2021_0.pdf, Accessed: 19.11.2021.

¹⁵⁶ In the decision, the CCI refers to the relevant messaging applications as "over-the-top" apps, which is a term that means something like "over the networks". In that sense, it refers to the same thing as numberless/number independent communications apps.

Interface activated digital payment applications market. The CCI defined the relevant markets as “OTT messaging applications on smart phones in India” and “Unified Payment Interface activated digital payment applications,” and concluded that *WhatsApp* was dominant in the market for OTT messaging applications on smart phones. However, it also decided to reject the application concerned, on the grounds that a separate registration process was required for using *WhatsApp Payment*, that *WhatsApp Messenger* and *WhatsApp Pay* were two different products, that the installation of the relevant feature did not mandate its use, that the users could freely choose whether to use *WhatsApp Pay*, and that digital payment applications market was quite competitive.¹⁵⁷

United States of America

- (223) In its first decision concerning Facebook, Inc. in 2011¹⁵⁸, the FTC made the following observations: private information such as the “friends list” was made publicly accessible without getting the approval of the users or even informing them; third party applications were able to access almost all of the data of the users even though they did not need it; data that the users marked as viewable only by friends were actually accessible not only to the friends list but also to third-party applications used by those friends; although Facebook, Inc. declared that it tested and confirmed the security of third-party applications with its “Approved Applications” program, such tests and confirmations were not conducted; user data was shared with advertisers despite declarations to the contrary; content owned by those users who suspended or deleted their accounts (including photos and videos) were still viewable following the deletion of the account despite declarations to the contrary; the transfer of personal data was not done in compliance with the “Safe Harbor” agreement between the US and the EU, despite declarations to the contrary. In order to eliminate these concerns, the FTC suggested that Facebook, Inc. sign an agreement that included the conditions it would have to meet¹⁵⁹.
- (224) The acquisition of WHATSAPP by Facebook, Inc. in 2014¹⁶⁰ was examined by the FTC, and the transaction was approved subject to conditions. Accordingly, each company was required to maintain its privacy arrangements and processes, any data transfer between the companies or any changes to the privacy policy had to receive express consent from the users, and no data could be transferred between the parties without express consent. Moreover, it was recommended that any changes to the rules concerning how the data on *WhatsApp* would be acquired, used and shared, should grant users the right not to accept those changes.¹⁶¹
- (225) However, the condition prohibiting “the transfer of data between the parties” included in FTC’s conditional approval was violated by Facebook, Inc. in the later periods, and the undertaking was imposed fines in 2019 on the grounds that it failed to comply with its obligations related to the privacy and security of its users.¹⁶²

¹⁵⁷ cci.gov.in/sites/default/files/15of2020-pdf?download=1, Accessed: 7.12.2021.

¹⁵⁸ <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>, Accessed: 21.03.2021.

¹⁵⁹ <https://www.ftc.gov/sites/default/files/documents/cases/2011/11/111129facebookagree.pdf>, Accessed: 21.03.2021.

¹⁶⁰ <https://money.cnn.com/2014/02/19/technology/social/facebook-WhatsApp/>, Accessed: 21.03.2021.

¹⁶¹ https://www.ftc.gov/system/files/documents/public_statements/297701/140410facebookwhatappltr.pdf, Accessed: 21.03.2021.

¹⁶² <https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions>, Accessed: 21.03.2021.

- (226) In 2020, the FTC filed a lawsuit against Facebook, Inc., claiming that the undertaking adopted a systematic strategy throughout the years to protect its monopoly in the market for social networking services by anti-competitive practices.¹⁶³ In the lawsuit where the relevant product market was defined as the social networking services market in the US, the FTC claims that Facebook, Inc. held more than 60% share in the market for personal social networking services in the US and was dominant in the relevant market. The FTC also states that barriers to entry created by direct network effects and high switching costs rendered Facebook, Inc.'s market share sustainable. According to the FTC, in order to defuse any competitive threats it faced, the undertaking engaged in three main anti-competitive practices throughout the years. It is claimed that first of all, Facebook, Inc. acquired *Instagram* in 2012 to prevent its competitor in social network services to increase its scale, with Facebook, Inc. officials realizing that *Instagram*, which was a rapidly growing initiative among personal social networking services, posed a threat to the monopoly power held by *Facebook*. The allegation is that although Facebook, Inc. tried to compete with *Instagram* at first, it later acquired *Instagram* for a relatively cheap price, and thus removed the threat posed by *Instagram* while also preventing other undertakings drawing attention in the social networking market through photo sharing.
- (227) It is claimed that the second anti-competitive practice was the acquisition of *WhatsApp* in 2014, and that Facebook, Inc. had realized OTT messaging applications were potential threats that could enter the personal social networking market. In particular, it is emphasized that *WhatsApp* was the category leader in mobile messaging in 2012, and that *Facebook* chose to acquire *WhatsApp* instead of competing with it. Thus, Facebook, Inc. managed to prevent the potential threat posed by *WhatsApp* on *Facebook*'s personal social networking monopoly and prevented future mobile messaging applications from scaling up to enter the social networking market.
- (228) Lastly, it is claimed that Facebook, Inc. introduced anti-competitive conditions regarding access to its platform via connections such as "application programming interfaces" (*APIs*) which allow third-party developers to create interfaces by their applications. FTC notes that third-party applications are only allowed to interact with *Facebook* by using Facebook, Inc.'s *APIs* and that, between 2011-2018, Facebook, Inc. provided its *APIs* to applications if they avoided offering the basic functions of *Facebook* and connecting with other social networks. It is alleged that such restrictions may take various forms, such as preventing applications on *Facebook* from integrating with any apps on competing social platforms, preventing such apps from connecting or redirecting to each other; preventing third party apps from transferring user data to competing social networks without Facebook, Inc.'s permission; preventing transfer of data to apps that resemble Facebook, Inc. products or services; preventing users of third-party apps from accessing their friends who do not use the app, etc. In the relevant period, the undertaking is alleged to have restricted competition by tying *Facebook* access from applications of third-party software developers to specific conditions. An example of this is from 2013, when *Twitter* launched the *Vine* app which lets users record and share short video clips and Facebook, Inc. turned the *API* off which would allow *Vine* access to friends through Facebook.
- (229) Concerning Facebook, Inc., FTC asks that assets and businesses, including but not limited to *WhatsApp* and *Instagram* be divested if required in order to re-establish

¹⁶³https://www.ftc.gov/system/files/documents/cases/051_2021.01.21_revised_partially_redacted_complaint.pdf, Accessed: 6.12.2021.

competition, the non-monetary measures required to re-establish competition be taken, a pre-notification obligation be imposed for future mergers and acquisitions, introduction of anti-competitive conditions for access to *APIs* and data be banned, conduct of a similar nature be avoided in the future, and periodic compliance report be submitted to the FTC.

- (230) On the other hand, 48 state attorneys submitted to the court a complaint application with similar concerns on Facebook, Inc. on the same date as FTC.¹⁶⁴ The application in question states that the relevant undertaking engaged in predatory acquisition practices which constituted infringements, that user choice was restricted, that user privacy was reduced to increase ad revenues, and that the services offered to smaller competitors were restricted. This complaint was merged with the lawsuit filed by the FTC.¹⁶⁵
- (231) FTC's complaint was dismissed by the court on 28.06.2021.¹⁶⁶ The court justified its dismissal by pointing out that FTC failed to provide sufficient basis for its claim about Facebook, Inc. having 60% or higher market share in the personal social networking services market and that it was not clear which companies constituted the remaining 40% of the market. Also, the court noted that while the existence of a personal social networking services market seemed reasonable, it was not clear what criteria were used to measure the relevant market share, that it did not find the claims concerning the *APIs* convincing, and that the overall undertaking policy to deny competitors *API* access did not constitute an exclusionary practice on its own. Moreover, even if these practices by Facebook, Inc. did constitute an infringement, the last practice in that framework was from 2013 and thus it in no way "is violating" or "is about to violate" antitrust laws, which is a necessary condition for an injunction. At the same time, the court also stated that the *API* policy in 2011 did not prevent app developers from creating applications for social networks other than *Facebook*.
- (232) Following the dismissal above, the FTC submitted its amended complaint to the court.¹⁶⁷ In that complaint FTC presents additional data and evidence supporting its allegation that Facebook, Inc. is a monopoly which abuses its market power. The complaint alleges that the undertaking tried to address the existential threat that was created by the changing dynamics of the market by acquiring *WhatsApp* and *Instagram*, and it also specifies that the *Facebook* platform was at first kept open to third-party app software developers who were later misled by the introduction of new restrictions to the open access policies. The data on the market share of Facebook, Inc. in the market for personal social networking is supported by detailed statistics.
- (233) Meanwhile, the court dismissed the complaint submitted by the state attorneys, emphasizing that the allegations in the complaint concerning the acquisition of *WhatsApp* and *Instagram* took place at least six years and the allegations concerning the *API* policies happened at least five years before the complaint and pointed out that

¹⁶⁴ https://ag.ny.gov/sites/default/files/state_of_new_york_et_al._v._facebook_inc._-_filed_public_complaint_12.11.2020.pdf, Accessed: 7.12.2021.

¹⁶⁵ https://www.courtlistener.com/docket/18735353/federal-trade-commission-v-facebook-inc/?filed_after=01%2F10%2F2021&filed_before=01%2F16%2F2021&entry_gte=&entry_lte=&order_by=asc, Accessed: 29.12.2021.

¹⁶⁶ <https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2020cv03590/224921/73/>, Accessed: 7.12.2021.

¹⁶⁷ https://www.ftc.gov/system/files/documents/cases/ecf_75-1_ftc_v_facebook_public_redacted_fac.pdf, Accessed: 7.12.2021.

violations which occurred so long ago could not serve as a basis for an injunction.¹⁶⁸
In response, the states appealed the decision.¹⁶⁹

France

- (234) In 2019, the French Competition Authority launched an investigation on Facebook, Inc., in response to a complaint by *Criteo*, which is a company operating in the field of online advertising in France. The complaint includes the claims such as *Criteo* losing its FMP¹⁷⁰ (Facebook Marketing Partners) status in 2018, having to face defamation/slander behavior from the end of 2017, and losing access to certain Facebook, Inc. interfaces (*User Level Bidding API*-ULB API and *Order Level Reporting API*-OLR API). The press release by the French Competition Authority states that ULB API enables personalizing the bid amount and product suggestions during the auction process, while OLR API allows access to *Facebook* user data in order to identify conversions by users with more than one device and to attribute sales from different devices to a specific user according to log in information. The press release notes that there is a high chance Facebook, Inc. would distort the access conditions for its ad inventory and the data concerning the ad campaigns on *Facebook* since its conduct is not transparent and objective. Moreover, it also mentioned the lack of transparency, stability and impartiality in the definition and application of investment guarantees for the FMP program as well as different users receiving different treatment, while touching upon the competitive concerns related to the reduction in the FMP's ability to provide value-added services through ad technologies caused by the removal of access to the ULP API, which especially impacted *Criteo*'s ability to optimize its campaigns in individual bids. In response to the aforementioned competitive concerns, Facebook, Inc. offered some commitments which includes maintaining the *FMP AdTech* performance criterion in an objective, clear and non-discriminatory manner as well as developing and making available a "recommendation functionality" for business partners with the *FMP AdTech* badge. The proposed commitments are only applicable to advertising technology suppliers in advertising campaigns which target those users of the Facebook and Instagram services identified by Facebook as being located in France. The commitments concerned were made available for public opinion¹⁷¹, and if they are found sufficient to eliminate the competition concerns in question following the submission of opinions by third parties (advertisers, online ad operators), the French Competition Authority will make them binding and close the investigation.¹⁷²

Argentina

- (235) In response to a suggestion by the Argentinian Competition Authority (*Comisión Nacional de Defensa de la Competencia – CNDC*), the government of Argentina imposed an injunction on 17.05.2021 to postpone *WhatsApp*'s update concerning the "Privacy Policy and Terms of Service" of 15.05.2021 for a period of six months or until

¹⁶⁸<https://storage.courtlistener.com/recap/gov.uscourts.dcd.224923/gov.uscourts.dcd.224923.137.0.pdf>. Accessed: 13.12.2021.

¹⁶⁹ https://regmedia.co.uk/2021/07/28/ags_appeal.pdf, Accessed: 7.12.2021.

¹⁷⁰ As noted in the press release by the French Competition Authority, Facebook, Inc., offers an ecosystem consisting of more than 100 ad technology providers to its Marketing Partners, with an aim to provide them with supplementary services to help them develop ad campaigns. Becoming an FMP is subject to certain conditions related to the amount of ad expenditure and ad categories.

¹⁷¹ <https://www.autoritedelaconurrence.fr/en/article/online-advertising-facebook-proposes-commitments-autorite>, Accessed: 7.12.2021.

¹⁷² https://www.autoritedelaconurrence.fr/en/press-release/context-investigation-opened-autorite-online-advertising-sector-facebook-proposes#_ftn1, Accessed: 7.12.2021.

the authority can evaluate the effects of the relevant update.¹⁷³ According to the CNDC, which announced that it would examine the potential commercial uses of the data Facebook, Inc. collected from *WhatsApp* users, *WhatsApp* is installed on 76% of the smart phones in Argentina. Therefore, CNDC points out that consumers cannot switch from *WhatsApp* to a different messaging app, that *WhatsApp*'s bargaining power in question would lead to an asymmetry whereby a majority of the consumers would be forced to approve the new terms of service. Consequently, CNDC concludes that *WhatsApp* would collect an excessive amount of personal data, and then inappropriately share those personal data with the other applications of the group, such as *Facebook* and *Instagram*. CNDC is concerned that by processing the newly acquired data, Facebook, Inc. will be able to strengthen its dominant position in the online advertising market and other markets, raise the entry barriers in those markets, and make it harder for non-integrated rivals to survive in the market.

Brazil¹⁷⁴

- (236) In May 2021, a group of regulatory authorities (*National Data Protection Authority*, ANPD; *National Consumer Secretariat*, Senacon; and *Federal Prosecution Service*, MPF) including the Brazilian Competition Authority (*Administrative Council for Economic Defense*, CADE) recommended to suspend *WhatsApp*'s update to its "Privacy Policy and Terms of Service" due to concerns that it might "violate the users' data privacy rights". While the assessment process on the matter was ongoing, the authorities also recommended that Facebook, Inc. Refrain from using or sharing the data acquired from *WhatsApp*. On its part, WHATSAPP decided not to remove or limit *WhatsApp* functionality for a period of 90 days following 15.05.2021, the date of the update, and then globally expanded its commitment not to suspend or delete any user accounts due to the changes in the privacy policy and terms of service to cover all users, without a 90-day limitation.¹⁷⁵ Following this, it was announced that WHATSAPP committed to implement some of the measures proposed by the four relevant authorities in Brazil. The measures concerned include increasing the level of transparency for the Privacy Notice to be implemented in Brazil, updating the terms of *WhatsApp Business*, preparing the impact assessments requested by the ANPD, and developing training materials for users on using the application safely.¹⁷⁶

European Commission

- (237) The acquisition of WHATSAPP by Facebook, Inc. was notified to the Commission in 2014 and the Commission authorized the transaction.¹⁷⁷ The decision explained that *Facebook*'s online messaging extension *Messenger* was not a close rival to *WhatsApp*, that consumers would continue to have a large number of alternatives following the

¹⁷³ <https://www.argentina.gob.ar/noticias/nuevas-condiciones-del-servicio-y-politicas-de-privacidad-de-whatsapp-0>, Accessed: 7.12.2021.

¹⁷⁴ <https://www.gov.br/anpd/pt-br/assuntos/noticias/cade-mpf-anpd-e-senacon-recomendam-que-whatsapp-adie-entrada-em-vigor-da-nova-politica-de-privacidade>, Accessed: 07.12.2021; https://www.gov.br/anpd/pt-br/assuntos/noticias/inclusao-de-arquivos-para-link-nas-noticias/recomendacao_whatsapp_-_assinada.pdf, Accessed: 7.12.2021.

¹⁷⁵ <https://www.gov.br/anpd/pt-br/assuntos/noticias/apos-esforco-interinstitucional-whatsapp-se-compro-mete-a-atender-as-recomendacoes-sobre-sua-politica-de-privacidade>, Accessed: 8.12.2021.

¹⁷⁶ <https://www.gov.br/anpd/pt-br/assuntos/noticias/apos-esforco-interinstitucional-whatsapp-se-compro-mete-a-atender-as-recomendacoes-sobre-sua-politica-de-privacidade>, Accessed: 8.12.2021.

¹⁷⁷ https://ec.europa.eu/commission/presscorner/detail/en/IP_14_1088, Accessed: 21.03.2021.

transaction, and that there would be no reduction in the level of competition. The decision also pointed out the existence of competing applications in the markets, such as *Line*, *Viber*, *iMessage*, *Telegram*, *WeChat* and *Google Hangouts*.

- (238) Moreover, the decision made some observations concerning the online advertising market and examined whether the position of the undertaking in the online advertising market would be strengthened after the transaction. Accordingly, following the transaction, (i) *WhatsApp* may be used as a new channel for offering ads to consumers and/or (ii) *WhatsApp* may be seen as a potential source of user data to improve the targeting of *Facebook* ads. However, the Commission concluded that this was not a competitive concern since there would be no changes in the data already used by Facebook, Inc. for targeting. On the other hand, the Commission stated that data privacy concerns that might arise following the transaction as a result of the increase in the amount of data controlled by Facebook did not fall under EU competition law.
- (239) Around three years after the decision, in 2017, the Commission imposed fines on Facebook, Inc. for submitting misleading information in the WHATSAPP acquisition.¹⁷⁸ Accordingly, in its 2014 notification concerning the transaction, Facebook, Inc. had stated that it would be unable to automatically match *Facebook* user accounts with *WhatsApp* user accounts in a reliable way, but there were amendments to *WhatsApp* terms of service and privacy policy in August 2016 aimed at that and the phone numbers of *WhatsApp* users were associated with the *Facebook* users' accounts.
- (240) In June 2021, the Commission announced that it would examine whether the online advertising data owned by Facebook, Inc. provided excessive advantage in those markets where Facebook, Inc. is active through *Facebook Marketplace*, such as the classified advertising market, in particular. In that framework, the Commission stated that it would address whether Facebook, Inc.'s position in the social networks and online advertising markets distorted competition in the neighboring markets.¹⁷⁹ The Commission also noted that, as part of the investigation, it would examine whether the way *Facebook Marketplace* is integrated into *Facebook* is a form of tying that provides advantages to it in reaching consumers while preventing the provision of competing classified advertising services.

United Kingdom

- (241) In June 2021, the CMA announced that it would examine whether the data Facebook, Inc. collected within the framework of its advertising services and the data it acquired via logins provided unfair advantage to the *Facebook Marketplace* and *Facebook Dating* applications.¹⁸⁰

I.4. Assessment

I.4.1. Assessment of Data Processing in Digital Markets under Competition Law

I.4.1.1. Data-Driven Operation in Digital Markets and Legal Framework for Data-Based Concerns

- (242) Products offered on digital platforms are generally referred to as zero-price products and users are able to use these services without making any monetary payments, in return for the data they provide to the service provider. As a result, these platforms are

¹⁷⁸ https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1369, Accessed: 21.03.2021.

¹⁷⁹ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2848, Accessed: 8.12.2021.

¹⁸⁰ <https://www.gov.uk/government/news/cma-investigates-facebook-s-use-of-ad-data>, Accessed: 8.12.2021.

known as “data-driven undertakings”. Many platforms that operate in this way collect a large amount and variety of user data, and the data thus collected usually go much beyond those actively submitted by the users during their use of the platform.¹⁸¹ The data concerned may be used in developing and improving the products or services offered or they may be important in terms of services in the related markets. Moreover, they help platforms offering zero-price services generate revenue by their targeted advertising activities to fund the free services they provide. In that framework, for digital markets, data is fundamentally seen as an important input with respect to online services, production processes, logistics, smart devices and artificial intelligence, and it is predicted that access to data and data usage will have a larger effect on the competitiveness of undertakings going forward.¹⁸² Today, the competitiveness of undertakings are increasingly measured by the amount, variety and quality of the data they own.¹⁸³ This is a feature that stands out more in digital markets.

- (243) In terms of data collection, what differentiates digital platforms from other undertakings is the fact that they have the capacity to collect data more easily and for lower costs. Even though it is rather hard to measure how much data is collected and stored at any specific moment, the rapid development of digital platforms, digital technologies and data storage capacities has enabled the creation of big databases larger than previously possible.¹⁸⁴ Platform service providers utilize various data collection methods when creating the databases in question.¹⁸⁵ Some of the data (for example, name and contact information provided during registration) are offered actively by the consumers. Other data is collected passively by the platforms from the consumers. Examples for this group include wi-fi network, location, IP address, information acquired from visits to third-party websites or other online activities. Then the platform creates inferred data by analyzing the actively or passively acquired data. At this stage, first and third-party data must also be mentioned. First party data is collected by the undertakings itself, when the undertaking’s own users make use of the undertaking’s own services; third party data, on the other hand, refers to the data collected by third-party undertakings.
- (244) Data collected by digital platforms from different resources via various methods include almost real-time information on the users’ behavior and buying decisions. The data concerned are mainly used to improve the services on offer, develop new services and generate income through targeted-advertising. The Furman Report also notes that the

¹⁸¹ ACCC (2019), “Digital Platformss Inquiry-Final Report”, p. 23.

¹⁸² European Commission (2019), “Competition Policy For The Digital Era”, p. 7, 16, <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>, Accessed: 17.08.2021.

¹⁸³ GRAEF, I (2016), “Data as Essential Facility”, Doctorate Thesis, KU Leuven, <https://core.ac.uk/download/pdf/34662689.pdf>, Accessed: 30.11.2020; LANDE, R. H. (2008), “The Microsoft-Yahoo Merger: Yes, Privacy is an Antitrust Concern”,

https://www.researchgate.net/publication/228211331_The_Microsoft-Yahoo_Merger_Yes_Privacy_is_an_Antitrust_Concern, Accessed: 11.01.2022; JUST, N. (2018), “Governing Online Platforms: Competition Policy in Times of Platformization”, Telecommunications Policy, Volume 42, Issue 5, p. 386-394,

<https://www.sciencedirect.com/science/article/abs/pii/S0308596117303415>, Accessed: 11.01.2022.

¹⁸⁴ OECD (2016), “Big Data: Bringing Competition Policy To The Digital Era”, p. 14-24, <https://www.oecd.org/competition/big-data-bringing-competition-policy-to-the-digital-era.htm>, Accessed: 7.01.2022.

¹⁸⁵ OECD (2013), “Exploring the Economics of Personal Data: A Survey of Methodologies for Measuring Monetary Value”, OECD Digital Economy Papers No 220, p. 10, https://www.oecd-ilibrary.org/exploring-the-economics-of-personal-data_5k486qtxldmq.pdf?itemId=%2Fcontent%2Fpaper%2F5k486qtxldmq-en&mimeType=pdf, Accessed: 11.01.2022.

data collected by the platforms can contribute to improving the services provided in five different ways.¹⁸⁶

- a. Increasing the quality of the product and service by allowing a better understanding of the users' demands, habits and needs;
- b. Improving the quality of the products and services based on the products bought by the consumers and the feedback from consumer comments;
- c. Increasing productivity by better forecasting user demand and market trends, and organizing the production and distribution processes of the undertakings more efficiently;
- d. Enabling the discovery and utilization of new fields of business;
- e. Adopting more target-oriented business models, such as personalized promotions.

- (245) Data, which hold critical importance in digital markets in terms of both business development processes and revenue generation methods, provide significant competitive advantages to the undertakings in the market. Thus, unfair or abusive practices concerning such a critical input as data can limit competition in the market or lead to the creation of barriers to entry or growth. In addition, the sophisticated data collection and utilization processes of the undertakings are accompanied by concerns related to data privacy. As a result, concerns about how the data is used in digital markets may leave some areas open to intervention from multiple branches of law, including not only competition law, but also data protection law and consumer law.¹⁸⁷ When the "Big Data" concept first emerged, data-related concerns were mostly focused on privacy and thus were handled within the framework of data protection or consumer protection law; however, more recently, it is observed that data-related concerns are increasingly falling under the jurisdiction of competition law.¹⁸⁸ Various branches of law can approach a data-driven legal concern using their own intervention tools, and those interventions may serve widely different purposes targeted by the relevant law branches.
- (246) Principles for data protection and privacy also help to protect the consumer by ensuring transparency and increasing consumer awareness. Competition law can enhance consumer benefit by decreasing prices or increasing the alternatives available to the consumers. Thus, as a result of an integrated approach from various branches of law, a market structure can be achieved which is competitive in price, quality as well as privacy, with knowledgeable consumers. However, concerns may arise on certain points which allow intervention from multiple branches of law.
- (247) For assessments to be done in cases of abuse stemming from the data collection processes of dominant undertakings, which fall under the jurisdiction of competition law, it may be useful to keep in mind the rules concerning the collection of personal data. This is because in order to determine fully and correctly if a specific conduct related to the procedures of data collection or processing constitute an abusive behavior and then to identify the most effective intervention instruments for that

¹⁸⁶FURMAN, J. et al. (2019), "Unlocking Digital Competition", p. 23, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf, Accessed: 7.01.2022.

¹⁸⁷ ACCC (2019), "Digital Platforms Inquiry-Final Report", p. 5.

¹⁸⁸ OECD (2016), "Big Data: Bringing Competition Policy To The Digital Era", p. 5; OECD (2020), "Consumer Data Rights and Competition-Background Note", p. 2, [https://one.oecd.org/document/DAF/COMP\(2020\)1/en/pdf](https://one.oecd.org/document/DAF/COMP(2020)1/en/pdf), Accessed: 7.01.2022.

conduct, the legal framework regulating the processing of the data must be well understood. Therefore, the legislation on the protection of personal data becomes important for the evaluation.

I.4.1.2. Legislation Concerning the Processing of Personal Data

- (248) Since FACEBOOK services are predominantly targeted towards individual users, a large majority of the data collected by FACEBOOK consists of personal data. One of the issues examined within the framework of the file, namely the UPDATE submitted for the approval of its users by *WhatsApp*, is a request for individual users to authorize the sharing of their data with other FACEBOOK companies and is intended to get the users consent for this data sharing.
- (249) As known, the Constitution recognizes the right to ask for the protection of one's personal data as a fundamental right and freedom and specifies that the rules and procedures related to the protection of personal data must be regulated by law. In that context, the Personal Data Protection Law no 6698 (Kişisel Verilerin Korunması Kanunu-KVKK) came into effect following its publication in the Official Gazette dated 07.04.2016 and numbered 29677. The Law in question sets out the principles related to the collection, storage and processing of personal data in Türkiye.
- (250) According to Article 3.1 of the KVKK; personal data refers to "*any information relating to an identified or identifiable natural person,*" processing of personal data refers to "*any operation which is performed on personal data, wholly or partially by automated means or non-automated means which provided that form part of a data filing system, such as collection, recording, storage, protection, alteration, adaptation, disclosure, transfer, retrieval, making available for collection, categorization, preventing the use thereof,*" data subject refers to "*the natural person, whose personal data are processed,*" and data processor refers to "*the natural or legal person who processes personal data on behalf of the data controller upon its authorization*".
- (251) Article 4 of the KVKK, titled "General Principles," regulates that personal data will only be processed in compliance with procedures and principles laid down in that Law or other laws and that, in the processing of personal data, it is mandatory to comply with the principles of lawfulness and fairness, being accurate and keeping up to date where necessary, being processed for specified, explicit and legitimate purposes, being relevant, limited and proportionate to the purposes for which they are processed, and being stored for the period laid down by relevant legislation or the period required for the purpose for which the personal data are processed. Article 5 of the KVKK specifies the conditions for processing personal data, and the first paragraph of the Article concerned states that personal data cannot be processed without explicit consent of the data subject, while the second paragraph notes that personal data may be processed without seeking the explicit consent of the data subject, provided one of the conditions listed in the paragraph, which include the following, is true: "*It is expressly provided for by the laws, ...Processing of personal data of the parties of a contract is necessary, provided that it is directly related to the establishment or performance of the contract, ...Personal data have been made public by the data subject himself/herself...*"
- (252) On the other hand, Article 10 of the KVKK, titled "Obligation of Data Controller to Inform," regulates that at the time when personal data are obtained, the data controller or the person authorized by it is obliged to inform the data subjects about "*a) the identity of the data controller and of its representative, if any; b) the purpose of processing of personal data; c) to whom and for which purposes the processed personal data may*

be transferred; ç) the method and legal basis of collection of personal data, and d) other rights referred to in Article 11.”

- (253) All of these explanations show that KVKK looks for explicit consent in various Articles. The concept of “Explicit consent,” is explained in sub-paragraph (a) of Article 3 of the KVKK, titled “Definitions”. Accordingly, explicit consent refers to “*freely given, specific and informed consent*” and must include the “positive declaration of intent” of the consenting person. While there are no formal conditions for the grant of explicit content, it must meet three conditions: (i) it must be on a specific subject, (ii) it must be based on information, and (iii) it must be declared by free will.
- (254) The condition that explicit content be on a specific subject requires the data processor to clearly define on which subject the declaration of explicit consent is requested. Accordingly, a general declaration of will by the person concerned, such as an open-ended and ambiguous consent by the phrase “I consent to the processing of my personal data,” for example, is not considered “explicit consent” under KVKK on its own.¹⁸⁹ If data will be processed in multiple categories/at multiple points, explicit consent must be granted for all different data processing points, concerning which data will be processed for what purpose. The second condition is that explicit consent must be based on information. Accordingly, the person concerned must have full information not only on the subject in question, but also on the consequences of granting consent. By the information received, the person concerned is granted the right to determine the future of their own data deliberately, based on full knowledge. The third condition requires that explicit consent be declared with free will. Accordingly, explicit consent is a declaration of intent by the person concerned and can only be valid if the person is aware of what they are doing and makes their own decision. Where the parties are not equal in status, the assessment of whether consent has been given with free will requires particular attention. Another point that must be emphasized in this framework is the fact that explicit consent by the person cannot be a prerequisite for the provision of a product or service or for allowing the person to avail of the product or service.

I.4.1.3. Data-Based Concerns in Competition Law

- (255) As a result of the new data-driven economy concept and the business models developed around it, data now plays a central role in competition law assessments in the relevant markets. These types of business models assume that consumers pay for the services they use with their attention, interest and, in the most general sense, their data. On the other hand, for the undertakings offering these services to the consumer for zero-cost, both user data and the datasets created from a large amounts of user data are of capital commercial importance, since they do not receive any monetary compensation. These large-volume datasets on consumer choices and interests constitute a key input for the entirety of the digital markets in general, and for the functioning of targeted online advertising in particular.
- (256) Where data becomes prominent for competition law practice can be examined under three categories.¹⁹⁰ The first of these consists of the relevant market definition and establishment of dominant position processes, another is the mergers/acquisition review processes, and the last one is dominant position assessments. Abuse of dominance can be addressed under both exclusionary and exploitative abuse. Data-based exclusionary abuse generally involves behavior such as discrimination in data

¹⁸⁹ Açık Rıza Rehberi (Explicit Consent Guidelines), p. 4.

¹⁹⁰ OECD (2016), “Big Data: Bringing Competition Policy To The Digital Era”, p. 14-24.

access, prevention of data portability/interoperability, and data combining, as well as exclusion of the competitors or creation of entry barriers. Data-based exploitative conduct, on the other hand, is generally concerned with violation of privacy policies and the resulting decrease in the quality of service for the consumers, or with requesting more data to allow access to the existing services.

- (257) Assessments of abuse under competition law may usually be handled in two different ways. First of all, the concept of “privacy” may be taken as a quality element or competition parameter¹⁹¹, and practices that reduce privacy in data collection/utilization processes can be interpreted as reductions in service quality, and thus, in consumer welfare. Secondly, data can be considered an “input,” which is the approach increasingly adopted in the literature. In this case, data collection, utilization or merging, or the prevention of data portability/interoperability can be addressed under theories of harm such as increasing market power, creating barriers to entry, preventing market growth or user lock-in to a platform.
- (258) Where data is handled as an element of “quality,” competition law infringements are more frequently reviewed within the framework of exploitative conduct. Policies concerning data collection and processing can lead to the violation of the KVKK, but they can also mean the application of unfair contract terms under competition law. This situation creates an area of intervention that is at the intersection between the Act no 4054 and KVKK, with each legislation protecting separate interests. Also, according to Article 3.1 of the KVKK, personal data is defined as “*any information relating to an identified or identifiable natural person,*” and thus KVKK only regulates the processing of personal data in that sense. However, in addition to personal data, the Act no 4054 can also intervene with abuses that involve the processing of competitively sensitive data that is not necessarily personal.
- (259) In that framework, it should be emphasized that the concept of “user data” does not always overlap with the concept of “personal data” with regard to basic platform services. In the final report on digital platforms, prepared by the ACCC in June 2019, it is noted that user data include anonymized and aggregated data in addition to personal data.¹⁹² The joint study of the German and French Competition Authorities from May 2016, titled “*Competition Law and Data,*” prefers a triple division for data classification, which include the type of the data as well as the methods of collection. Accordingly, data are divided into three groups depending on (i) type, (ii) whether it is structured or unstructured, and (iii) ways of collection.¹⁹³
- (260) In this context, processes related to the collection of not only personal data, but all types of data that have competitive value in digital markets have become an integral condition for operating in multi-sided digital markets. Thus, in a legal relationship that allows consumers/final users to benefit from the relevant online product or service, any significant inequality or information asymmetry between the relevant undertaking and the consumer/user can potentially lead to the exploitation of the consumer by the relevant undertakings during the collection and utilization of user data and may require intervention by competition authorities. It is well-known that users in digital markets

¹⁹¹ OECD (2020), “Consumer Data Rights and Competition-Background Note”, p. 5-6.

¹⁹² ACCC (2019), “Digital Platforms Inquiry - Final Report”, p. 407.

¹⁹³ Autorité de la concurrence and Bundeskartellamt (2016), “Competition Law and Data”, p. 36, https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Berichte/Big%20Data%20Papier.pdf;jsessionid=82804A84D0BF87D8E26D44AC0B1AD501.2_cid390?__blob=publicationFile&v=2, Accessed: 14.12.2021.

generally lack full and complete information at a level comparable to the undertaking, and neither do they have the opportunity to negotiate the rules with the relevant platform. In addition to those failures, the lack of sufficiently clear, transparent and intelligible rules for the relevant platform's general operation or data policy makes it harder for users to take decisions that will protect themselves.

- (261) Where data is considered an input, on the other and, the violation is examined within the framework of exclusionary theories. As mentioned above, data has become one of the most important competition parameters, and the practices related to the processing, collection and transfer of data can lead to the restriction of competition in the market or create barriers to entry. For example, restrictions on data portability set up switching costs for the data owner. The owner of the data may find it onerous to provide its data to another platform, despite the existence of better and cheaper alternatives, and opt to stay with the first platform it first chose. This way, incumbent platform service providers can lock users in to their services. Thus, restricting data portability can reduce competition in the market by making it harder for users to use multiple platforms for the same service. Similarly, restriction of interoperability reinforces network and lock-in effects, to the advantage of the incumbents in the digital markets. Relatedly, where data portability and interoperability co-exist, switching costs drop significantly and consumers have the freedom to move between companies more easily.¹⁹⁴
- (262) Collection of large amounts of data and the use of those data for commercial purposes provide the owner of the data a kind of advantage that is inaccessible to competitors, due to the existence of indirect network effects. As undertakings gather more user data, they are able to assess consumer trends better and improve their services accordingly. Besides, in online advertising services, which is the main method of generating income for these undertakings, owning data allows the provision of a better targeted ad service, and those players wishing to enter the market by providing more effective ad impressions fail to make their presence felt in the online advertising market since they do not have such a detailed and expansive data set. Therefore, these players have limited ability to generate revenue or take advantage of market growth opportunities. The better an ad targets those who view it due to the data collected from consumers, the more advertisers are willing to pay for ad space, and this way consumers' personal data are turned into a type of income for online platforms.¹⁹⁵
- (263) Although such data-based concerns may emerge in various forms such as discrimination in data access, prevention of data portability or data combining, the main issue at hand for the present file is the merging of data acquired from the services offered by FACEBOOK between the services concerned. As a result, the following sections will provide the basic principles for the assessment of data combining and excessive data gathering under competition law.

I.4.1.4. Assessment of Data Combination under Competition Law

¹⁹⁴ CHAO, B. and R. SCHULMAN (2020), "Promoting Platform Interoperability", p. 21-22, https://d1y8sb8igg2f8e.cloudfront.net/documents/Promoting_Platform_Interoperability_2020-05_MYzVQTH.pdf, Accessed: 7.01.2022.

¹⁹⁵ BUITEN M. C. (2020), "Exploitative Abuses in Digital Markets: Between Competition Law and Data Protection Law", *Journal of Antitrust Enforcement*, Vol. 9, No: 2, p. 2 <https://academic.oup.com/antitrust/article-abstract/9/2/270/5903500?redirectedFrom=PDF>, Accessed: 16.08.2021.

- (264) In competition law, data collection activities that underlie data combining can be assessed as an exploitative abuse, under “exorbitant pricing” and/or “unfair terms of business”. With relation to data combination, exploitative abuse of consumers may occur if consumers lose control over their own data or if their data is aggregated without providing sufficient information or if the data collected from the consumers and aggregated in this way is disproportionate to the requirements of the service under which the data is collected.
- (265) Data is becoming ever more important for digital markets, and correspondingly, there are increasing efforts to reinforce the existing policy tools in response to the concerns about data use. In order to establish healthy competition in the market, many national authorities are proposing to prevent the merging of data digital platforms with a certain level of power in the relevant markets collected from various services and third parties. The background of these proposals are exclusionary competition law concerns such as the creation of entry barriers or strengthening of existing ones by combining data or the utilization of data acquired through services with market power to negatively impact competition in different markets, i.e., leverage effects, as well as exploitative competition law concerns such as prevention of customers from making their choices freely.
- (266) Thus, it is clear that data combination and practices related to the data collection processes can be evaluated with both exclusionary and exploitative theories of harm under competition law.

I.4.1.4.1. Assessment of Data Combination as Exploitative Abuse

- (267) Foremost among concerns stemming from data combining practices that can be considered exploitative abuse is the weakening of the consumers’ privacy during this process. In other words, in zero-price markets, dominant undertakings can abuse their market power by harming consumers’ privacy. Thus, a reduction in service quality is assumed to have occurred, caused by the violation of consumers’ privacy.¹⁹⁶ Non-price parameters valued by the consumers include customer services, innovation, quality and diversity in the market. In that sense, protection of privacy may be seen as one aspect of quality, or it may be considered a separate non-price parameter on its own. In that context, a dominant undertaking’s ability to decrease the quality of its online service by forcing a unilateral change in those policies onto final consumers can be examined under “unfair terms of business”.¹⁹⁷
- (268) Users frequently encounter lock-in effects based on online “take it or leave it” requirements. Moreover, online platforms usually fail to provide the protection they promise to their users concerning their privacy. Still, it is observed that consumers do not stop using services which do not actually meet their privacy requirements.¹⁹⁸ Since users cannot ignore some digital service providers which are generally very common,

¹⁹⁶ Stigler Center Report, Committee for the Study of Digital Platforms Market Structure and Antitrust Subcommittee Report, <https://research.chicagobooth.edu/-/media/research/stigler/pdfs/market-structure-report.pdf?la=en&hash=E08C7C9AA7367F2D612DE24F814074BA43CAED8C>, p. 44, Accessed: 16.08.2021.

¹⁹⁷ BOTTA M. and WIEDEMANN K. (2019), “Exploitative Conducts in Digital Markets: Time for a Discussion after the Facebook Decision”, p. 466,

<https://academic.oup.com/jeclap/article/10/8/465/5644110>, Accessed: 11.01.2022.

¹⁹⁸ Ibid., p. 472.

they do not really have a say about issues of privacy¹⁹⁹ or they adopt an indifferent attitude towards those issues.

- (269) At this stage, increasing transparency be a solution for removing the aforementioned privacy-related problems. If the terms and conditions of use and privacy implemented in the market for consumers are transparent, consumers can compare the terms and conditions and choose the most suitable ones, just as they do with regard to the price of the products/services. This can encourage undertakings in a competitive market to offer better, more transparent terms and conditions which include many options. However, if the consumers do not read or understand the terms and conditions concerned, undertakings will no longer have any incentive to offer more consumer-friendly terms and conditions. Especially in light of the fact that offering consumer-friendly conditions are usually more costly for undertakings (for example, when users restrict the commercial sales of their personal data), rational undertakings would be unlikely to offer better terms and conditions to uninformed or unaware consumers.²⁰⁰ As noted in the German Competition Authority's *Facebook* Decision, when consumers are not aware of FACEBOOK's data gathering practices, they will choose among competitors based on missing information. As a result, competitors will lose the income they would get through data collection or will miss out on potential income since they will be unable to attract more consumers, and they will have less incentives as well as resources to offer better terms to consumers. In this case, competitors might try to overcome this information asymmetry by emphasizing their privacy-friendly terms and conditions. However, it is known that in practice undertakings have difficulty in explaining to the users that they are privacy-friendly and convincing them to leave incumbent undertakings such as *Facebook*, *WhatsApp* and *Google*, which own lots of data.²⁰¹
- (270) This is because network effects are stronger than the consumers' security concerns or consumers regard services that collect more data as higher quality and/or these services offer consumers additional benefits which outweigh the loss in privacy. Another reason is the "privacy paradox," which explains that although consumers may claim they value privacy, they do not actually act accordingly. This shows that privacy is an aspect of quality for consumers. In this context, even if there is general consensus that privacy can contribute to consumer welfare, it is difficult to measure the privacy in question. As a result, regardless of the reason why consumers choose those services that collect large amounts of personal data, it is important for competition law and data protection law to coordinate and cooperate to protect the consumers' privacy in digital markets.²⁰²
- (271) Another exploitative concern that may arise in data gathering processes is that user data may be collected in a way that is disproportionate with the service or data not required by the service may be requested. Excessive amount of personal data platforms demand from final consumers in return for "free" access to an online service

¹⁹⁹ GORMSEN L. L. and LLANOS T. J. (2019), "Facebook's Anticompetitive Lean in Strategies", p. 51-52, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3400204, Accessed: 16.08.2021; ROBERTSON V. (2019), "Excessive Data Collection: Privacy Considerations and Abuse of Dominance in the Era of Big Data", p. 5, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3408971, Accessed: 16.08.2021.

²⁰⁰ Ibid., p. 12.

²⁰¹ Ibid., p. 16-17.

²⁰² Ibid., p. 17-19.

they provide can take the form of “exorbitant pricing”²⁰³. Since data is usually seen as the new currency of the digital age, it is proposed that such an analogy may be set up where the collection of excessive data can fulfill the exorbitant pricing criteria established with case-law.²⁰⁴

- (272) Although it is possible to examine the collection of disproportionate or excessive data under “exorbitant pricing” in theory, this type of assessment can introduce a series of problems in practice. Characterizing excessive data collection as an abuse similar to exorbitant pricing depends on the assumption that data can be translated into a measurable price/unit. Although expressing the value of data through monetary terms makes it possible to determine if there has been excessive data collection, some of the challenges with drawing a parallel between excessive data collection and exorbitant pricing can be listed as follows: (i) the monetary value of the personal data must be established by, for instance, the undertaking collecting the data and the person who owns the data, and this makes it hard for the parties to agree on a data “price;” (ii) although data may be called the currency of a data-driven economy, it is quite different than an actual currency by nature, which means that legal criteria based on monetary criteria such as resource scarcity and inimitability cannot be readily applied to money without significant change; (iii) expressing the value of personal data in monetary terms can lead to the non-monetary values concerning data such as privacy and ethics to go overlooked.²⁰⁵
- (273) Another controversial issue is encountered with regard to determining if the amount of the data collected is excessive, when we try to determine whether there is a reasonable relationship between the amount of the data collected and the economic value of the digital service received by the users.²⁰⁶ At this stage, there may be some difficulty in finding an appropriate reference with which the data may be compared. The benchmark for the comparison must be selected according to “objective, appropriate and verifiable criteria”. First of all, a comparison with other online platforms will show that many social networking platforms have similar terms of service concerning user data. So, it does not seem likely that an assessment of privacy policies in different markets would have the expected benefit. Moreover, the comparison conducted must reveal that the difference in terms of the quality and amount of the data demanded by other online platforms is “significant” and “persistent”.²⁰⁷ It is suggested that these terms contain ambiguities that leave a lot of discretionary power to the enforcers.²⁰⁸ Besides, such a comparison may be made more difficult if the privacy policies of online platforms are insufficiently clear. Secondly, comparing the data policies of the platform within themselves can make it possible to track the changes made to the privacy policies of the platform through time. In particular, if a new market entry is causing an

²⁰³ BOTTA M. and WIEDEMANN K. (2019), “Exploitative Conducts in Digital Markets: Time for a Discussion after the Facebook Decision”, p. 466.

²⁰⁴ ROBERTSON V. (2019), “Excessive Data Collection: Privacy Considerations and Abuse of Dominance in the Era of Big Data”, p. 9.

²⁰⁵ Ibid., p. 10; BUITEN M. C., (2020), “Exploitative Abuses in Digital Markets: Between Competition Law and Data Protection Law”, p. 7.

²⁰⁶ ROBERTSON V. (2019), “Excessive Data Collection: Privacy Considerations and Abuse of Dominance in the Era of Big Data”, p. 10-11.

²⁰⁷ Case C-177/16, Autortiesību un komunikēšanās konsultāciju aģentūra / Latvijas Autoru apvienība v Konkurences padome, ECLI:EU:C:2017:689, (Latvian Copyright Society).

²⁰⁸ BOTTA M. and WIEDEMANN K. (2019), “Exploitative Conducts in Digital Markets: Time for a Discussion after the Facebook Decision”, p. 467.

increase in privacy-friendly policies, a retrospective comparison may be conducted to evaluate the excessiveness of the previous policy.²⁰⁹

- (274) Nonetheless, the literature claims that in order to assess whether the collection of personal data is unfair in itself, other legal instruments, particularly those that include regulations on personal data protection could be used as a benchmark. However, it must be noted that data protection law and competition law are not necessarily aligned in all their aims. Indeed, competition law may regard certain unilateral conduct by undertakings as abusive even below the threshold of infringement imposed by data protection laws. In other words, a competition law infringement does not necessarily require a data protection law breach, but at the same time the latter will not always be sufficient to find an abuse of dominance under competition law.²¹⁰
- (275) These problems related to the comparison make it difficult to determine the border between legitimate and excessive data collection. This is because privacy preferences are quite subjective and determining whether the amount of personal data demanded by online platforms are actually excessive can be controversial.²¹¹ Regardless, the literature does include discussions on the idea that excessive data collection may be addressed under the provisions on unfair contract terms.
- (276) Exploitative conduct covers not only “imposition of direct or indirect unfair purchase or sale prices” but also “imposition of other unfair terms of business”. In that framework, collection of excessive data can be addressed under unfair terms of business, together with other practices about privacy and data collection policies. Unfair terms of business may be applicable where the data utilization policy is unreasonably expanded or where a dominant undertaking has a low level of privacy protection which serves to reduce product quality.²¹² In other words, at this juncture, what is important is not the amount of data, but questions such as how the data is processed, who has access to the data and how transparent the “data for service” policy is.
- (277) Evaluating privacy policies abuse under unfair terms of business requires that such privacy policies be considered “unfair”. In this regard, it becomes important when terms of business are unfair and/or unjust.²¹³ According to the decisions of the CJEU²¹⁴ and the Commission²¹⁵ on the subject, unfair terms of business include those concerning the period after the expiry of the agreement, as well as those which impose obligations that are not strictly necessary for achieving the goals of the agreement (indispensability test) and therefore unfairly infringe on the freedoms of one of the parties (equity), which do not comply with the principle of proportionality, which place unnecessary restrictions on the freedom of the parties that are not required for achieving the goals of the agreement, and which are imposed unilaterally. In the literature, there is a two-stage test for evaluating unfair terms of business. Accordingly, the first stage involves

²⁰⁹ ROBERTSON V. (2019), “Excessive Data Collection: Privacy Considerations and Abuse of Dominance in the Era of Big Data”, p. 12.

²¹⁰ Ibid., p.12.

²¹¹ BOTTA M. and WIEDEMANN K. (2019), “Exploitative Conducts in Digital Markets: Time for a Discussion after the Facebook Decision”, p. 467.

²¹² ROBERTSON V. (2019), “Excessive Data Collection: Privacy Considerations and Abuse of Dominance in the Era of Big Data”, p. 13.

²¹³ Ibid., p. 13.

²¹⁴ Société Alsacienne et Lorraine de Télécommunications et d'Électronique (Alsatel) v. SA Novasam, Case C-247/86, ECLI:EU:C:1988:469; BRT vs. SABAM, Case 127/73, EU:C:1974:25.

²¹⁵ Duales System Deutschland (DSD), Case COMP/34.493, [2001], OJ L166/1, para. 112; Amministrazione Autonoma dei Monopoli di Stato (AAMS) v. EC Commission [2001], General Court T-139/98, ECR II-3413.

evaluating whether the terms under examination are required to achieve the goals of the agreement, and the second stage evaluates if the terms in question are proportionate in light of the economic power of the dominant undertaking compared to its customers.²¹⁶ There are limited number of decisions where data combining behavior was evaluated under excessive data collection or imposition of unfair terms of business on the consumers.

- (278) These explanations show that in processes related to the collection and merging of data, practices involving the reduction of privacy, taking advantage of information asymmetry to collect disproportionate and excessive data, failing to sufficiently inform the users and to get their consent about data collection can be assessed under unfair terms of business. At the same time, acting in violation of the principle of proportionality in the collection of data can be handled as an exploitative abuse similar to exorbitant pricing, however the implementation of this assessment in practice would involve ambiguities about expressing the data in monetary terms and finding a benchmark to establish excessiveness. It is known that, in the digital sector, the *Facebook* Decision of the German Competition Authority which addressed data combining as an exploitative practice received some criticism since it failed to distinguish between consumer harm which was mainly caused by lack of information on the part of the user, and which stemmed from FACEBOOK's exploitative abuse of its dominant position. In that framework, with respect to the assessment of data-based exploitative conduct, the relevant authorities must delicately and scrupulously handle the matters of establishing consumer harm caused by abuse of dominance, identifying unfair terms with regard to data collection processes and privacy policies, and associating the collected data to what is required by the service.

I.4.1.4.2. Assessment of Data Combination as Exclusionary Abuse

- (279) The harm theory concerning the exclusionary effects of data combining is associated with the data-driven business model. Data is a critical input for online advertising. While digital platforms usually offer their services to users for free, they try to generate income by providing inventory to advertisers. The value of that inventory can be increased by data that allow better targeting, improve measurement and support the attribution of the ads viewed to the consumers targeted.²¹⁷ In this context, the business model in question is based on attracting users to the platform by providing content that draw their attention, and then collecting data on the users and taking advantage of the datasets acquired for online advertising to generate income. Data has a central role in digital markets, especially for the business models of many companies offering online platform services, so the large-scale collection and commercial use of data can provide competitive advantages to undertakings against their rivals. This is because, due to direct or indirect network effects, data can provide opportunities to its owner that cannot be utilized by other undertakings, thereby preventing new entries and foreclosing markets to the advantage of incumbents. As a result, dominant undertakings that collect and aggregate data can strengthen their dominance further. The quicker such companies collect and analyze data, the more versatile their user profiles, and they

²¹⁶ GORMSEN L. L. and LLANOS T. J. (2019), "Facebook's Anticompetitive Lean in Strategies", p. 42.

²¹⁷ 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/987358/Joint_CMA_ICO_Public_statement_-_final_V2_180521.pdf, Accessed: 16.08.2021.

can offer that much better products and advertisements. Thus, the more users they attract, the more data they can collect and process.²¹⁸

- (280) The fact that digital platforms generally form ecosystems comprised of complementary products and services means that they can utilize the user data they have gathered under one activity during the performance of others. On the one hand, this may be seen as beneficial since it allows users to receive more personalized services, but on the other hand, it risks tipping the market since it makes those who procure services from the platform more dependent on the platform. So, monitoring the balance between the two states and protecting the competitive structure of the market is important for competition law applications.
- (281) Moreover, the literature frequently notes that the data power concerned can create barriers to entry. In this context, although there are opinions suggesting that entry barriers would not form due to the non-rivalrous nature of the data and the existence of ample resources for it²¹⁹, it becomes important for the purposes of such an assessment to determine whether competing undertakings can acquire data comparable to the amount and diversity that a dominant undertaking can collect from alternative sources. OECD studies also indicate that high-volume accumulation of personal data or intense use of data analyses can increase market power, lead to lock-in effects on the consumers and increase barriers to entry, noting that such assessments should take into account whether the data is reproducible, available from other sources and substitutable with other datasets as well as how long it takes for the data to become historical and how necessary it is for potential rivals' entry into the market.²²⁰
- (282) In addition, while every undertaking can, in theory, purchase "third-party data," in light of the amount, diversity and quality of the datasets owned by incumbent undertakings, it may not be possible to access data at equivalent quality to the treasury of data held by incumbents through "third-party data". This is especially true for sectors such as search engines and social networking which provide free and interesting services to a large audience, which in turn allow the production of large-volume data that are not available to competitors.²²¹ The ability to process data is just as much important as the size of the data collected. The ability to collect and analyze large-volume data sets with a wide range of data can be critical for the markets in question.
- (283) An 2016 opinion by the French Competition Authority serving as a general guideline notes that when assessing if cross-utilization of data within a single economic entity, in other words an undertaking using the data it acquired from its customers in one market as input to develop its operations in another market would lead to restriction of competition, the criteria to consider can include (i) the conditions under which the data set is created, (ii) whether the relevant data set can be matched by the competitors

²¹⁸ COLANGELO G. and M. MAGGIOLINO (2018), "Data Accumulation and the Privacy-Antitrust Interface: Insights from the Facebook Case for the EU and the U.S.", TTLF Working Paper, No 31/2018, p. 39-40.

²¹⁹ The joint report of the French and German Competition Authorities points out three decisive factors for data availability, which are: (i) data's *non-rivalrous* nature, wherein the market actor does not prevent other undertakings from collecting the same data, (ii) the existence of data agents, and (iii) digital markets' tendency to collect data, increasing data availability. Autorité de la concurrence and Bundeskartellamt (2016), "Competition Law and Data", p. 36.

²²⁰ OECD (2016), "Big Data: Bringing Competition Policy To The Digital Era", p. 4.

²²¹ Autorité de la concurrence and Bundeskartellamt (2016), "Competition Law and Data", p. 12.

under reasonable conditions, and (iii) whether the dataset is likely to provide significant competitive advantage to the undertaking.²²²

- (284) With respect to digital platforms, it is observed that data combining behavior can lead to the foreclosure of competitors, especially where it is in connection with the online advertising market. Although data power is critical for the whole online advertising market, it may be proposed that user data play a more important role especially in the display advertising market compared to search advertising. This is because with search advertising, the users provide the information on the product or service of interest to the platform immediately as they perform the search, and then the platform show the ads related to that subject to the user. On the other hand, with display advertising, users are shown advertisements which will presumably attract their attention at that instant when they are reading the news on a website or spending time on a social media app. Detailed user data become critically important in determining what will attract the attention of the users at that instant. Thus, access to valuable user data that allow more detailed audience targeting plays a significant part in the online advertising market in general, but especially in the online display advertising market.
- (285) However, with regard to the exclusionary effect data combining would create, multi-homing opportunities in the online advertising market and the incentives of advertisers towards multi-homing are important as well. It seems likely that the transaction costs advertisers face when using multiple display advertising platforms will benefit large incumbents or undertakings with lots of users, creating barriers to growth and entry for smaller rivals.
- (286) These observations show that, within the context of the exclusionary harm theories on data combining, emphasis is put on theories that involve the creation or augmentation of barriers to entry, competitors being unable to access equivalent data and creation of leveraging effects by the data. In this context, data combining practices carried out by dominant undertakings in the digital markets may create barriers to entry for undertakings wishing to enter online advertising markets in particular, and may lead to the foreclosure of these markets to small undertakings already operating in them. In addition, this may allow undertakings operating in multiple markets to create leveraging effects by transferring the data power they hold in one market to the others, thereby providing unfair advantages to these undertakings in online advertising.

I.4.2. FACEBOOK's Data Collection Policy

- (287) FACEBOOK's data collection policy for all of its products and services, including the core services of *Facebook*, *WhatsApp*, *Instagram* and *Messenger* are based on the terms of service and privacy policies of each product. Under this policy, FACEBOOK collects a wide variety of data from the products it offers, under different categories. Basically, the data collected by FACEBOOK consist of personal data (for instance, the phone number of a user), non-personal data (for instance, certain data about the device), anonymized data (for example, women between 21 and 40 are more interested in sporting equipment than men of the same age), and data collected by business partners (for instance, product information licensed by companies such as GfK, CNET, etc.).
- (288) Of the aforementioned core services, FACEBOOK applies a different data collection policy for *WhatsApp* than the other products in the same group.²²³ FACEBOOK

²²² Ibid., p. 31.

²²³ <https://www.facebook.com/help/195227921252400/>, Accessed: 8.12.2021.

classifies information collected from *WhatsApp* under three categories consisting of user-provided information, automatically collected information, and third party information²²⁴; meanwhile, information collected from the other core services are divided into the categories of user-provided information, device information and information from business partners.²²⁵ In addition to the data collected through the aforementioned services, FACEBOOK also collects data from third parties through FACEBOOK Business Tools. In that framework, the data collected by FACEBOOK under the three categories for each core product/service are detailed below.

I.4.2.1. Facebook, Messenger and Instagram's Data Collection Policies

(289)

(.....TRADE SECRET.....)^{226, 227, 228, 229, 230}

I.4.2.2. WhatsApp's Data Collection Policy

(290) In order to provide its services and to perform, improve, interpret, personalize, support and market these services provided, *WhatsApp* collects certain information from its users.²³¹ Some of this information is required for the provision of *WhatsApp* services and without them a user cannot receive any service.²³² Moreover, *WhatsApp* also includes some additional features which require collection of more information if utilized by a user. For instance, if users want to share location with their contacts, they must allow *WhatsApp* to access location data on their devices.

(.....TİCARİ SIR.....)^{233, 234, 235, 236, 237, 238}

²²⁴ https://www.whatsapp.com/legal/updates/privacy-policy/?lang=tr_ Accessed: 8.12.2021.

²²⁵ <https://www.facebook.com/privacy/explanation>, Accessed: 8.12.2021.

²²⁶ (.....)

²²⁷ (.....)

²²⁸ (.....);

²²⁹ (.....);

²³⁰ This is a piece of code that interprets the activities of the users on the websites where it is used, which allows measuring how effective the FACEBOOK ad is. For example, when users visit a website and take an action - for instance, purchase something - the pixel activates, reports the action and sends the report to FACEBOOK.

²³¹ <https://www.whatsapp.com/legal/updates/privacy-policy/?lang=eni>, Accessed: 28.12.2021.

²³² As an example, users must provide their mobile phone numbers to set up an account.

²³³ (.....);

²³⁴ (.....)

²³⁵ (.....)

²³⁶ (.....);

²³⁷ (.....);

²³⁸ (.....);

(291)

(.....TRADE SECRET.....)

I.4.2.3. FACEBOOK Business Tools

(292) FACEBOOK Business Tools consist of a series of products and services which are provided to help website owners and publishers, developers, advertisers, business partners (and customers) and other persons use, integrate with and exchange information with FACEBOOK, depending on users' browser and device settings.

(.....TRADE SECRET.....)

(293)

(.....TRADE SECRET.....)

(294)

(.....TRADE SECRET.....)^{239, 240}

(295)

(.....TRADE SECRET.....)

(296)

²³⁹ These are software offered to hardware and software developers that include some software development tools. Frequently they contain APIs, code samples and documentation as well.

²⁴⁰ For example, as part of its SDK infrastructure, *Facebook* can record API calls (e.g., when a user opens and closes an application). This allows *Facebook* to provide analyses to developers on how their applications are used, for example.

(.....TRADE SECRET.....)

(297)

(.....TRADE SECRET.....)

(298)

(.....TRADE SECRET.....)

I.4.2.4. Intended Uses of the User Data Collected by FACEBOOK

Facebook, Messenger, Instagram

(299) Facebook states that it collects the aforementioned data for one or more of the reasons listed below:²⁴¹

- a. Provision, personalization and improvement of FACEBOOK services, Provision of FACEBOOK services, personalization of their features and content (including ads), and enabling suggestions,
- b. Provision of measurement, analysis and other corporate services: Assisting advertisers and other partners with measuring the effectiveness and distribution of ads and advertising services, learning which users utilize the services, and understanding how users interact with websites, applications and services,
- c. Supporting security, integrity and safety: Confirming accounts and activities, fighting against harmful activities, identifying and preventing spam and other misbehavior, protecting the integrity of FACEBOOK services, and supporting security and safety elsewhere through FACEBOOK products/services,
- d. Communicating with users: Sending marketing messages to users, contacting users on FACEBOOK products, and informing users about FACEBOOK terms and policies,
- e. Research and innovation for social aid: Conducting research and innovating in the fields of general social aid, technological development, common good, healthcare and welfare, and supporting such work.

WhatsApp

(300) *WhatsApp* can collect the data detailed above for one or more of the following reasons:

²⁴¹ https://www.facebook.com/privacy/explanation_ Accessed: 28.12.2021.

- a. Conducting, providing, improving, personalizing and supporting *WhatsApp* services, including the providing methods to help users contact and communicate with other *WhatsApp* users,
- b. Ensuring the safety and security of *WhatsApp* services, including banning harmful behavior towards others and violation of terms and policies, and making sure that the service is used legally,
- c. Sending notifications to the users on the updates to the terms and policies of *WhatsApp* services, and contacting users about similar problems,
- d. Complying *WhatsApp*'s legal obligations under applicable law, including law enforcement orders to provide data for an investigation,
- e. Protecting vital interests of users and others, including the protection of their lives, physical integrity or safety, and fighting against harmful behavior as well as encouraging safety, security and integrity,
- f. Where *WhatsApp* processes data in the role of a data processor, providing measurement, analysis and other commercial services.

I.4.2.5. The Economic Purpose of the Data Collected by FACEBOOK

- (301) The first economic purpose served by the data collected by FACEBOOK and its subsidiaries as detailed above concerns how FACEBOOK services are funded. Instead of paying a fee to use FACEBOOK services, users accept viewing the ads for the publication of which businesses and organizations make payments to FACEBOOK. FACEBOOK uses its data on the users' activities and interests to show more relevant ads to users on behalf of the advertisers, without disclosing the identity of the user. FACEBOOK lets advertisers specify their business targets and an audience to which they wish to show their advertisements, and then shows those advertisers to those people who might be interested in them.
- (302) Thanks to all the data it collects, FACEBOOK allows users access and discover content adopted and personalized to their interests on the one hand, while letting advertisers grow their business or reach audiences who are more likely to be interested in their products or services on the other. FACEBOOK states that, thanks to the information it collects, it is able to offer such personalized experiences and innovative ads, as well as ad measurement solutions. Moreover, FACEBOOK uses the data it collects to personalize the features and content it offers (including the users' Newsfeed, *Instagram Feed*, *Instagram Stories* and ads), and to make suggestions to the users (such as groups and activities that might interest the users or subjects that the users might want to follow). For example, information shared by third parties can be used to select and personalize the ads that will be shown to users. Thus, in accordance with the options exposed to the users on how their data are used, FACEBOOK takes advantage of the data concerning the users' contacts, preferences, their interests and activities based on the information collected and learned from them, their way of utilizing interacting with FACEBOOK services, and on the people, locations or objects connected to them, in order to create personalized services they may find relevant.
- (303) (.....)²⁴². *WhatsApp* data are also used to determine if a user has a *WhatsApp* account. This ensures that the ads in question are only shown to those users with *WhatsApp* accounts. In line with *WhatsApp*'s Privacy Policy, information provided by *WhatsApp* can be used by other FACEBOOK companies for marketing purposes, to suggest

²⁴² (.....).

products and to improve user experience such as suggesting products or showing relevant offers and ads on *Facebook* or *Instagram*. The information provided by FACEBOOK explain that the data shared by *WhatsApp* have limited value for advertising. In principle, user data are valuable for advertising if they allow deductions about the interests of the users (based on their behavior and interaction), but since *WhatsApp* has end-to-end encryption, most of the data shared by *WhatsApp* with other FACEBOOK companies have limited relevancy in terms of determining the interests of the users and consequently would have limited value for advertising.

- (304) Data collected through the Core Services offered by FACEBOOK may be used to improve the quality of those services and optimize them for the users, including the addition of novel features or products based on the insights they provide.

I.4.2.6. FACEBOOK Subsidiaries with Which the Data Collected by *WhatsApp* Are Shared, and the Intended Uses of These Data

- (305) Since 2016 *WhatsApp*, has been sharing certain categories of data with other FACEBOOK companies, that is, with Facebook, Inc. and Facebook Ireland Limited, Facebook Payments, Inc. and Facebook Payments International Limited, Facebook Technologies, LLC and Facebook Technologies Ireland Limited, *WhatsApp* LLC and *WhatsApp* Ireland Limited.
- (306) The data categories shared by *WhatsApp* with the other aforementioned FACEBOOK companies include account registration information, transaction and payment data, information related to the service, information on the ways users contact other persons (including businesses) when utilizing *WhatsApp* services, mobile device information and IP address information.²⁴³ At the same time, *WhatsApp* claims that it has imposed substantial limits on the information it shares with other FACEBOOK companies and does not share the following data:
- a) End-to-end encrypted personal messages shared with friends, family and colleagues, including shared location data;
 - b) Call or messaging records for users, since *WhatsApp* does not collect this data;
 - c) Contact lists of users.
- (307) Moreover, it is stated that the data *WhatsApp* shares with other FACEBOOK companies (both in the current situation and following the planned UPDATE) can be used to conduct, provide, improve, contract, personalize, support *WhatsApp* services as well as market offers from *WhatsApp* services and other FACEBOOK companies²⁴⁴, and the relevant situations are detailed as follows:
- a. Helping improve the infrastructure and distribution systems,
 - b. Understanding how *WhatsApp* services or other FACEBOOK company services are used;
 - c. Promoting safety, security and integrity for FACEBOOK products in general (for example, securing the systems and fighting against spam, threats, abuses and violations);

²⁴³ *WhatsApp* may also share other information which is specified in the "Information We Collect" section of the current Privacy Policy, or which is acquired by notifying the user or getting approval from the user beforehand. <https://www.whatsapp.com/legal/updates/privacy-policy/?lang=tr>, Accessed: 28.12.2021.

²⁴⁴ <https://www.whatsapp.com/legal/updates/privacy-policy/?lang=tr>, Accessed: 28.12.2021.

- d. Improving the services and user experiences of other FACEBOOK companies (for instance making suggestions for users), personalizing their features and content, finalizing users' purchases and transactions, and showing offers and ads throughout FACEBOOK products in general;
- e. Providing integrations to allow users merge their *WhatsApp* experience with other FACEBOOK Products (for example, helping users connect their *Facebook Pay* accounts to make payments over *WhatsApp* or letting users connect their *WhatsApp* accounts to chat with their friends over other FACEBOOK products, such as Portal).

I.4.2.7. Other Subsidiaries with Which User Data Collected by One of the FACEBOOK Subsidiaries Are Shared, and Methods of Sharing

Facebook, Messenger, Instagram

- (308) FACEBOOK notes that it shares infrastructure, systems and technology with other FACEBOOK companies, including *WhatsApp*, to provide an innovative, relevant, consistent and reliable experience. FACEBOOK also states that, in order to achieve those goals, it processes user information among FACEBOOK companies, in compliance with the applicable laws as well as its terms and policies. Accordingly, FACEBOOK tries to understand how the users utilize and interact with (for example, determining the number of unique users on different FACEBOOK services) its services.

WhatsApp

- (309) FACEBOOK states that it processes the data shared by *WhatsApp*, for instance, on accounts that send *spam* messages within the scope of the service they provide, which allows it to take the necessary precautions against the *WhatsApp* account owners in case they are found to have accounts with *Facebook*, *Messenger* and *Instagram* as well.

I.4.2.8. Sharing of the User Data Collected by a FACEBOOK Subsidiary with Third-Party Undertakings

(310)

(.....TRADE SECRET.....)

I.4.2.9. Sharing of the User Data Collected by *WhatsApp* with Third-Party Undertakings

(311)

(.....TRADE SECRET.....)

I.4.2.10. Comparison of the User Data Collected by FACEBOOK and by Other Platforms

(312) In addition to the detailed explanations in the previous sections concerning FACEBOOK’s data collection policies, there is a need to compare the policies in question with the general functioning of the relevant sectors. In that framework, the tables below include the data collected by players active in the social networks, consumer communication services and online advertising markets, respectively.

Table-2: Types of Data Collected by Undertakings Operating in the Social Networking Market

Type of the Collected Data	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
User Name	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Password	(.....)	(.....)	(.....)	(.....)		(.....)	(.....)	(.....)
Date of Birth	(.....)	(.....)		(.....)		(.....)		
E-Mail address	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Phone Number	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Profile picture				(.....)	(.....)	(.....)		
Other information in the profile					(.....)	(.....)		(.....)
Location data			(.....)	(.....)		(.....)	(.....)	(.....)
Device information	(.....)	(.....)		(.....)	(.....)	(.....)	(.....)	(.....)
Account, etc. information in case of financial transactions	(.....)	(.....)	(.....)	(.....)			(.....)	(.....)
Contacts of the user			(.....)	(.....)		(.....)		
User photos				(.....)		(.....)		
Usage habits	(.....)	(.....)		(.....)	(.....)	(.....)	(.....)	(.....)
Cookie, etc. technologies	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)		(.....)
Other information from third-parties	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)		(.....)
Content in the user’s posts	(.....)	(.....)		(.....)	(.....)	(.....)	(.....)	(.....)
Source: Information provided by the undertakings								

Table-3: Types of Data Collected by Undertakings Operating in the Consumer Communication Services

Market²⁴⁵

Type of the Collected Data	(...)	(...) ²⁴⁶	(...) ²⁴⁷	(...)	(...)	(...)	(...) ²⁴⁸	(...) ²⁴⁹	(...) ²⁵⁰	(...) ²⁵¹	(...) ²⁵²	(...) ²⁵³	(...) ²⁵⁴
User Name	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Password	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Date of Birth		(...)		(...)	(...)					(...)	(...)		
E-Mail address			(...)	(...)	(...)	(...)		(...)		(...)	(...)	(...)	(...)
Phone Number	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Profile picture	(...)	(...)	(...)		(...)	(...)	(...)	(...)	(...)				
Other information in the profile	(...)	(...)	(...)			(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Location data	(...)		(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Device information	(...)			(...)	(...)	(...)	(...)		(...)	(...)	(...)	(...)	(...)
Account, etc. information in case of financial transactions	(...)			(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Contacts of the user	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)				
Usage habits	(...)						(...)	(...)		(...)	(...)	(...)	(...)
Cookie, etc. technologies	(...)		(...)	(...)	(...)		(...)	(...)				(...)	(...)
Other information from third-parties	(...)			(...)	(...)	(...)			(...)			(...)	(...)

Source: Information Acquired from the Undertaking

²⁴⁵ The table does not make a distinction concerning whether the types of data collected are based on user consent. (...).

²⁴⁶ (...);

²⁴⁷ (...);

²⁴⁸ (...);

²⁴⁹ (...);

²⁵⁰ (...);

²⁵¹ (...);

²⁵² (...);

²⁵³ (...);

²⁵⁴ (...);

Table-4: Types of Data Collected by Publishers in the Online Advertising Market²⁵⁵

Types of the Collected Data	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
User Name/Last Name	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Phone Number	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
E-Mail Address	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Message/Comment/Post Content	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Posting Date/Hour	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Device Data	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
IP	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Other information entered for registration	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Other information collected via cookies	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Invoice Information	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Contact Information	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Demographic Data	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Usage Data	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Location Data	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Payment Data	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Content Data	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Survey Responses	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Fingerprint	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Messages with Infringing Content	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Ads Viewed by the User	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Ads Clicked by the User	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
User's Traffic Information	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Browser Information	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)
Date of Transaction	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)	(...)

Source: Data acquired from undertakings.

²⁵⁵ The response letters of the publishers in the online advertising market included in the table have been examined, and similar categories with regard to the types of data reportedly collected by the undertakings have been aggregated and entered into the table.

I.4.3. Dominant Position Assessment for FACEBOOK

- (313) Dominant position is defined in Article 3 of the Act no 4054 as “*The power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers*”. Within the framework of this definition, an undertaking with the power to behave to an appreciable extent independent from competitive pressures is considered to be dominant. When determining the undertaking’s ability to act independent of competitive pressure, the assessment is based on the positions of the undertaking and its competitors in the market, barriers to entry and growth, and the bargaining power of the buyers in accordance with the Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings (Guidelines), keeping in mind the specific conditions of each case.
- (314) Multi-sided markets can differ from traditional markets both in terms of relevant market definition, and in terms of the criteria taken into account when establishing dominant position in the market. This is because when identifying dominant position, dynamics between the users on the different sides of the market must be taken into consideration. In that context, while traditional elements such as market share, vertical integration and barriers to entry are still functional, indicators including the ratio of users to potential users, network effects, and revenue/profitability are important in establishing market power in those markets.
- (315) The most important indicator to take into account when examining the market positions of the undertakings and the competitors is the market shares of the undertaking examined and of its rivals. In that context, market shares at a certain level are assumed to indicate dominant position. The Guidelines note that, in the absence of any indication to the contrary, the established practice of the Board is to accept that undertakings holding less than 40% of the market share are less likely to be dominant, emphasizing the need to conduct more detailed examinations for with a higher market share. However, it may be acknowledged that an undertaking with less than 40% market share may also hold dominant position, depending on the specifics of the market under examination.
- (316) In digital markets on the other hand, some criteria taken under consideration in the dominant position assessment may be more important. In particular, since market analyses based on price are not directly effective in reaching a conclusion²⁵⁶, other criteria may have to be examined. In this framework, calculation of the market shares of undertakings in digital markets may be based on their turnovers and user numbers, however for zero-price platforms or for those cases where all undertakings examined do not use similar revenue-generation models – for example, where undertakings demand payment from users on different sides of the platform – turnover may be unpractical for establishing market power.²⁵⁷ On the other hand, if market share calculations are based on user numbers, number of active users may be taken into account but since each active user would be using the platform at a different frequency, this criterion would contain less information to display the power of the platform. However, this challenge can be overcome by using indicators such as transaction volume, the amount of data used or the time spent on the platform.²⁵⁸

²⁵⁶ Facebook Decision, Bundeskartellamt, 2019, B6-22/16, p. 105.

²⁵⁷ Cerre-Center on Regulation in Europe (2019), “Market Definition and Market Power in the Platform Economy”, p. 72-73.

²⁵⁸ Ibid., p. 73.

- (317) The second step in establishing dominant position is the assessment of barriers to entry and growth. This is because the likelihood of potential and timely expansion of undertakings already operating in the market or the likelihood of entry into market by new undertakings can exert competitive pressure on the behavior of the undertaking examined. However, barriers to entry or barriers to growth in the market as a whole can serve as indicators that the undertaking examined has dominant position. Barriers to entry or growth may stem from the characteristics of the market concerned or from the characteristics or behavior of the undertaking examined. Barriers stemming from the characteristics of the relevant market can take the form of legal and administrative barriers such as state monopolies, authorization and licensing requirements and intellectual property rights, or they can be in the form of economic barriers such as sunk costs, economies of scale and scope, network effects, and switching costs faced by customers. Barriers stemming from the characteristics of the undertaking in question include those cases where the undertaking possesses key inputs and access to special information, spare capacity, a vertically integrated structure, a strong distribution network and a large product portfolio, high brand recognition, and financial and economic power. Such characteristics of the examined undertaking can make market entry or expansion by competitors harder by providing advantages to the undertaking over its actual or potential competitors.
- (318) In this context, features such as the network externalities stemming from the structure of digital markets, economies of scale, feedback loops, etc. can make it harder for competitors to enter the market or achieve any growth in it. Although network externalities are required for the existence of two-sided markets and platforms, they also force undertakings to operate at a certain scale. In that sense, network effects can be defined as the addition of another user to the system and expansion of the network having a positive effect on the value of the relevant platform to the user²⁵⁹, while indirect network effects are defined as the increase in the number of users on one side of the platform making it more attractive for the users on the other side²⁶⁰. Indirect network effects have a limiting effect on the number of multi-sided platforms in the market and they can cause market tipping and, later on, monopolization.²⁶¹ In this context, one of the biggest challenges of competing platforms on these markets is to have sufficient number of users on both sides of the market.²⁶²
- (319) Moreover, commercial use of commercial or final users' data is an important factor for competitiveness in all markets, including digital markets. Because of this, businesses tend to collect as much data as possible to improve the product or service they provide, to ensure the personalization of the products and services as well as the ads concerning those products and services, and to ultimately offer targeted ads. In addition to digitalization, the ability to offer products and services through the internet makes it possible to collect a wide variety of data from multiple, different sources. In other words, the digital channels in question have an advantage in data collection in terms of volume, variety and speed. The services in question which take the form of zero-price digital platforms are also known as data-based services. In this framework, the size and variety of the data held by the relevant undertakings provide those

²⁵⁹ KATZ, M. L. and C. SHAPIRO. (1994) "Systems Competition and Network Effects" *Journal of Economic Perspectives*, 8 (2): 93-115; 94.

²⁶⁰EVANS, D., S. (2009), "Two-Sided Market Definition", ABA Section of Antitrust Law, Market Definition In Antitrust: Theory And Case Studies, <https://ssrn.com/abstract=1396751>, Accessed: 16.09.2021, p. 5

²⁶¹ EVANS, D., S. and SCHMALENSEE, Richard (2012), "The Antitrust Analysis of Multi-Sided Platform Businesses", <https://www.nber.org/papers/w18783>, Accessed: 16.09.2021, p. 13-14.

²⁶² Ibid., p. 9.

undertakings a significant advantage compared to the others, both in terms of providing services with better quality and in line with consumer preferences, and in terms of identifying those areas in the market which are open to improvement and developing new services. Where the service is funded through targeted advertising or attention marketing instead of direct payments by its users, the quality and quantity of the data becomes an important indicator for establishing the market power of the undertaking holding the relevant data, in case user data is utilized for the execution of the targeted advertising activities in question.²⁶³

- (320) The last criterion that must be taken into account in establishing dominant position is buyer power. The assessment in this framework examines the ability of the bargaining power held by the customers of the undertaking in question to restrict that undertaking's practices. Where customers are relatively large and sufficiently informed about alternative sources of supply, or are capable of switching to another supplier or creating their own supply within a reasonable period of time, then these customers may be said to have bargaining power, i.e. buyer power, and they may put pressure on the conduct of the undertaking examined. In this case, the customers having buyer power may prevent the establishment of dominant position on the part of the undertaking.
- (321) In light of the explanations above, all of the aforementioned factors related to the establishment of dominant position were assessed under the file separately with relation to each of the markets in which FACEBOOK is active, namely personal social networking services, consumer communication services and online display advertising.

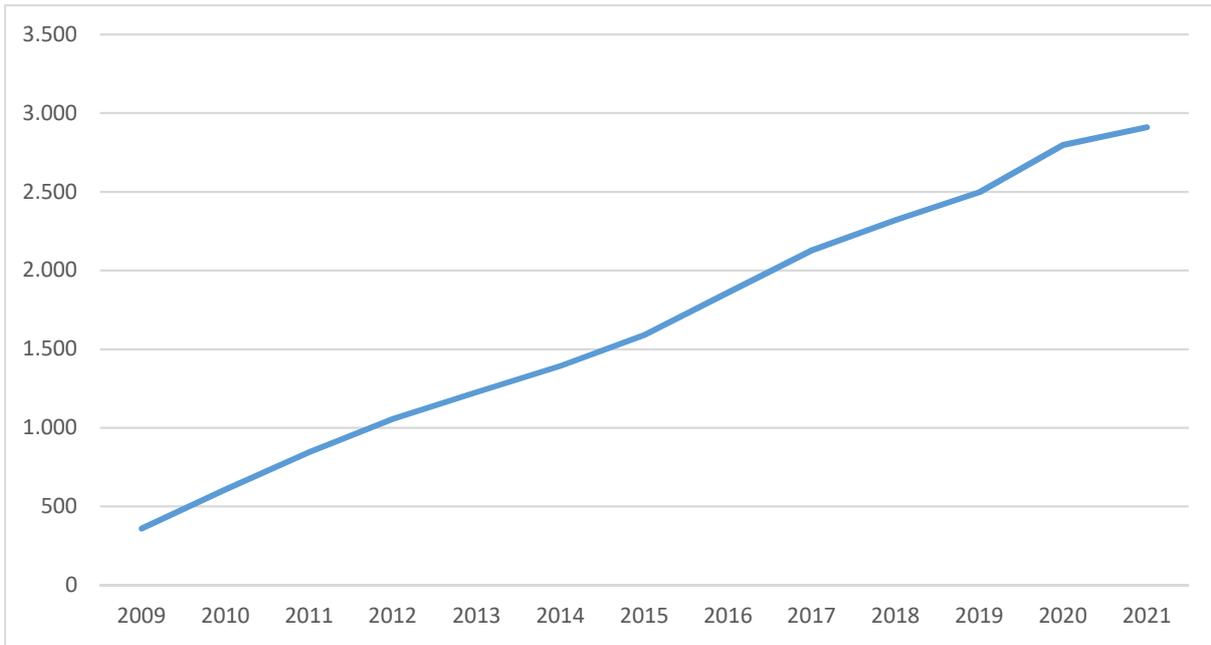
I.4.3.1. Dominant Position Assessment in the Personal Social Networking Services Market

- (322) *Facebook* was established in 2003 as a social networking service which initially allowed registration by Harvard students and then by students from other colleges, and it was made accessible to all users with a valid e-mail address in 2006. Gradually adding more features such as the News Feed, the like button, the ability to tag friends in the status and advertisements to its main functionality, in 2012 *Facebook* purchased the social networking service *Instagram*, whose core function was sharing photos and which was mainly used for that purpose, thereby expanding its activities in that area. According to *Statista* data²⁶⁴, *Facebook* has 2.91 billion active users globally, as of the third quarter of 2021. The same data suggests that the undertaking had 2.85 and 2.89 billion users in the first and second quarters of 2021, respectively, which shows an increasing trend in the number of users. A similar observation can be made year-over-year. Accordingly, the number of *Facebook*'s active users were measured as 2.49 billion, 2.79 billion and 2.91 billion in 2019, 2020 and 2021, respectively. The evolution of the relevant active user numbers can be viewed in the chart below:

²⁶³ *Facebook* Decision, Bundeskartellamt, p. 106.

²⁶⁴ "Number of monthly active Facebook users worldwide as of 3rd quarter 2021" <https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/> Accessed: 17.11.2021.

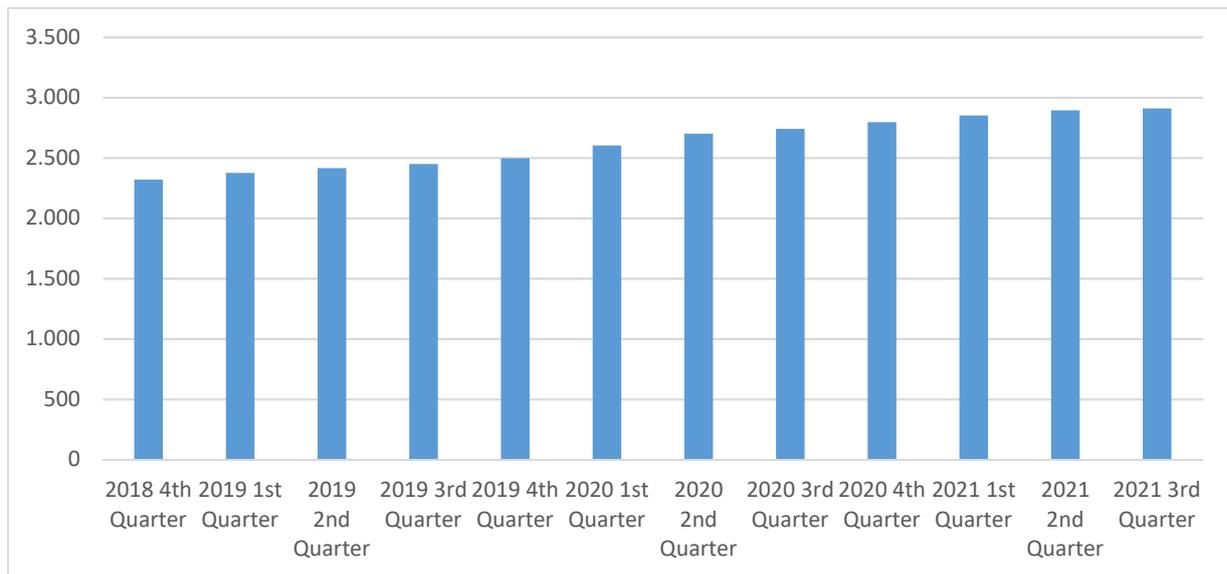
Chart-1: Number of Active Facebook Users



Source: Statista

(323) The following chart shows quarterly active user numbers disclosed by Facebook in its annual reports:

Chart-2: Number of Active Facebook Users Globally²⁶⁵



Source: FB Earnings Presentation Q3 2021.

²⁶⁵ Facebook defines monthly active users as registered and logged-in users who have visited Facebook or used the Messenger application on the web or on a mobile device within the last 30 days (who are also registered Facebook users). See Facebook, Inc. Annual Report, 28.01.2021, p. 55. The user number in question does not include Whatsapp, Instagram other FACEBOOK services. See FB Earnings Presentation Q3 2021, p. 3.

(324) *Statista* also lists the most popular social networks as of October 2020, based on the number of active users.²⁶⁶ Accordingly, the following table ranks the undertakings starting from the one with the highest number of active users to the lowest:

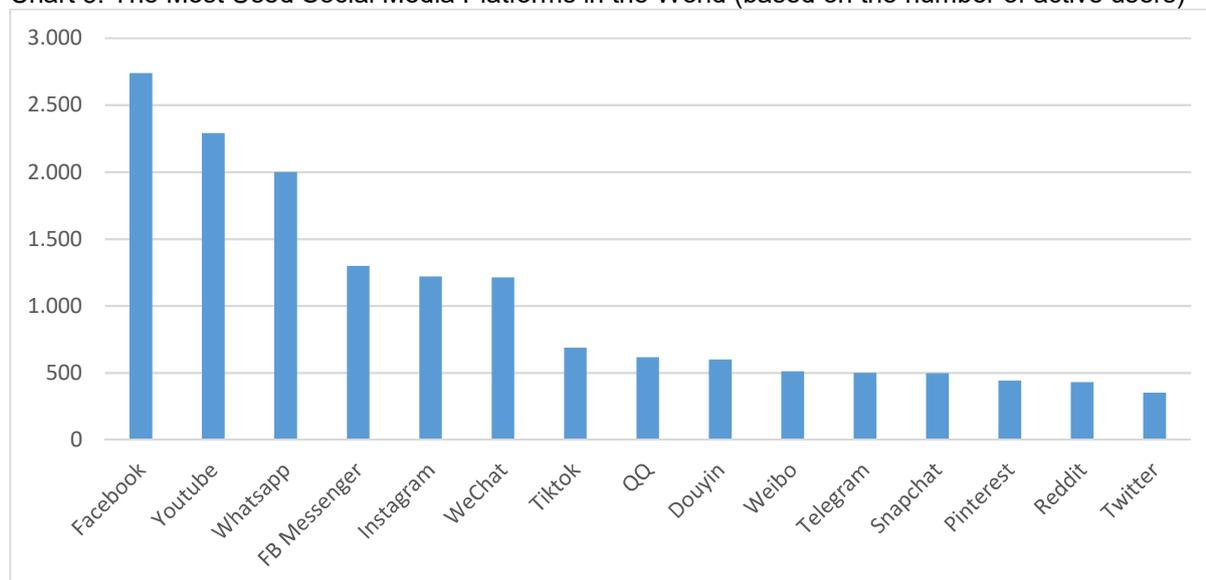
Table-5: Worldwide Active User Numbers for Social Networking Platforms

	Social Network	Number of Active Users (Millions)
1	Facebook	2,895
2	Youtube	2,291
3	WhatsApp	2,000
4	Instagram	1,393
5	Facebook Messenger	1,300
6	Weixin/WeChat	1,251
7	TikTok	1,000
8	Douyin	600
9	QQ	591
10	Sina Weibo	566
11	Telegram	550
12	Snapchat	538
13	Kuaishou	506
14	Pinterest	545
15	Twitter	463
16	Reddit	430
17	Quora	300

Source: *Statista*

(325) The *Digital 2021 Global Overview Report*²⁶⁷, which summarizes digital platforms' user numbers as well as the usage habits of platform users, states that according to the calculations based on the number of active users, *Facebook* is the most widely used social networking platform worldwide. In that calculation, *Instagram* ranks fifth. Below is the chart showing the rankings of the most widely used social networking services worldwide, according to the calculation based on the number of active users:

Chart 3: The Most Used Social Media Platforms in the World (based on the number of active users)



²⁶⁶ "Most popular social networks worldwide as of October 2021, ranked by number of active users" <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>, Accessed: 17.11.2021.

²⁶⁷ <https://datareportal.com/reports/digital-2021-global-overview-report>, Accessed: 16.12.2021.

Source: Digital 2021: Turkey Report²⁶⁸

- (326) According to another statistics in *Digital 2021 Global Overview*, *Facebook* is again on the first place and *Instagram* is on the fourth place in the ranking about the most used mobile application. FACEBOOK announced that its revenues in 2020 were totally 28.072 billion USD. Depending on the said data and explanations, it is seen that FACEBOOK has generally a high global power among digital platforms and in particular in the social networks market.
- (327) It is certain that *Facebook* is a very important and huge market player in terms of the EU market. The table below shows the number of monthly active users of *Facebook* and other undertakings in the market in EU whereas the subsequent table shows the market shares calculated on the basis of those numbers of users:

²⁶⁸ https://datareportal.com/reports/digital-2021-turkey_ Accessed: 16.12.2021.

Chart 4: The development of the number of monthly active users of Facebook and other undertakings in social media market

(.....TRADE SECRET.....)

Source: The calculations made on the basis of the data acquired from undertakings.

Table-6: The number of monthly active users in EU in years

Undertaking	2015	2016	2017	2018	2019	2020	2021	OVERALL TOTAL
Facebook and Instagram				(.....)	(.....)	(.....)		14.740.112.4
Pinterest	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	3.267.700.1
Snapchat			(.....)	(.....)	(.....)	(.....)	(.....)	3.567.895.0
Tiktok				(.....)	(.....)	(.....)	(.....)	2.035.588.3
Twitter	(.....)	(.....)	(.....)	(.....)				2.459.420.0
Youtube					(.....)	(.....)	(.....)	6.772.336.5
Overall Total	761.619.495	873.479.967	1.718.487.264	6.472.554.350	8.357.098.917	11.693.383.282	2.966.429.277	32.843.052.5

Source: Data acquired from the undertakings.

Table -7: Undertakings' market shares in EU (%)

Undertaking	2018	2019	2020
Facebook and Instagram	(.....)	(.....)	(.....)
Pinterest	(.....)	(.....)	(.....)
Snapchat	(.....)	(.....)	(.....)
Tiktok	(.....)	(.....)	(.....)
Twitter	(.....)	(.....)	(.....)
YouTube	(.....)	(.....)	(.....)
Total	100.00	100.00	100.00

Source: The calculations made by the rapporteurs on the basis of the data acquired from undertakings.

- (328) It is seen on the data shown by the table and charts that the number of FACEBOOK's active users is much higher than the number of its competitors' active users. Based on the market shares calculated accordingly, although FACEBOOK has lost market shares, its market share has been over 40% consistently.
- (329) In respect of FACEBOOK's market position in Türkiye, it is understood that its market power is neither different nor independent from its position and power in the global market. It is explained in *Digital 2021 Türkiye Report* that²⁶⁹ 70.08% of the total population is social media user, corresponding to 60 million users. It is understood that of the social media users aged between 16 and 64, 89.5% have used *Instagram* whereas 79% have used *Facebook* in the last month. When social media platforms are ranked according to usage rates, *Instagram* is the second and *Facebook* is the fourth. In addition, it is seen that *Instagram* ranks the second and *Facebook* ranks the third in the mobile app preferences ranking based on the number of monthly active users.
- (330) A similar study on user preferences was made within the framework of the consumer survey conducted under the scope of Online Advertising Sector Inquiry. The survey looked into widely used social media applications and in the ranking made on the basis of this, *Facebook* is the first with 55.1% followed by *YouTube* with 46.7% and *Facebook* with 44.5% usage rate. The survey also examined social network usage time. It is seen that *Facebook* has the longest average usage period, followed by *YouTube* and *Instagram*. 33.5% of *Facebook* users state that they use *Facebook* more than 10 years whereas 54.8% of *Facebook* users state that they have been using it for 5 to 10 years. 56.3% of *Instagram* users state that they have been using *Instagram* for 5 to 10 years.
- (331) The said data show *Facebook and Instagram's* incumbent and strong position in social networking services in Türkiye. However, in order to determine dominant position, it is necessary that positions of other undertakings in the market be analyzed in addition to the undertaking concerned. Although the most important indication in this analysis is the market shares of the undertaking examined and its competitors, the data that form the basis of the market share analysis might differ in markets characterized by free services. Thus, the method of taking into account the trading volume regarding amount or price in order to determine the market power does not apply to markets where services are offered for free to one or more than one party of a platform like social networking services. In such markets, market shares are calculated on the basis of the number of users.
- (332) It is possible to categorize the number of users as total number of users and the number of active users. The number of active users can be calculated as monthly and daily. Although the total number of users is an indicator about the undertaking's scale and existence in the market, it may be inadequate to show the group which really makes use of the service in question and may show it larger than it is. Unlike traditional

²⁶⁹ <https://datareportal.com/reports/digital-2020-turkey>, Accessed: 16.12.2021.

markets, persons who signed up to a social network may not always use that service actively and benefit from the service themselves. Therefore, the number of active users can be a more accurate criterion to measure and evaluate the scope of the activities of undertakings in the social network market. Which time interval will be taken as a basis for the calculation of the number of active users is disputable. It is understood that statistics and indicators related to the sector are calculated on the basis of the number of monthly active users and in this respect, the number of monthly active users is preferred. However, it is said that the number of daily active users is a more important indicator in meeting typical needs compared to the number of monthly active users.²⁷⁰ Consequently, the market shares calculated on the basis of both the number of monthly active users and the number of daily active users are analyzed and assessed.

- (333) The chart below shows *Facebook's* and *Instagram's*²⁷¹ number of active users in Türkiye as well as the monthly change in both platforms' total number of active users in Türkiye between 2015 August and 2021 April: ²⁷²

²⁷⁰ Bundeskartellamt, B6-22/16, p. 115

²⁷¹ The party to the investigation stated that the number *Instagram's* monthly active users is not available from January 2017 to February 2017 because of a problem in data recording.

²⁷² Monthly active user refers to a user who uses the service in question at least once a month.

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Chart-5: *The change in the total number of Facebook, Instagram and FACEBOOK's active users regarding their services in the social network market in years*
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(.....TRADE SECRET.....)

Source: The calculations made by rapporteurs on the basis of the data acquired from FACEBOOK.

- (334) It is seen on the chart above that the number *Facebook's* monthly active users in Türkiye has been stable and balanced in years whereas the number of *Instagram's* monthly active users in the same period has increased regularly. The total number of monthly active users of the entity composed of *Facebook* and *Instagram*, which makes up the activities of FACEBOOK in the social network market, has increased regularly parallel to the increase in the number of *Instagram's* monthly active users.
- (335) The next stage in determining a dominant position is comparing the number of the undertaking's and its competitors' users and their market shares calculated depending on those as well as the change in those market shares. First, it is necessary to determine the services/competitors, which are present in the same market as *Facebook* and *Instagram*, in other words, which compete with them. It is understood that undertakings which operate in social networking services in Türkiye and which are used the most are *Twitter, Snapchat, Pinterest, Youtube and Tiktok*. *LinkedIn* is not considered a competitor to *Facebook* and *Instagram*, as it is a professional social network service.
- (336) As stated in the relevant section, there are not any products or services that fully compete with FACEBOOK's products, instead there are competitors which provide one or several more specialized service/services that compete with certain aspects of the FACEBOOK services; therefore the products and services in the market partially overlap with FACEBOOK's services and in that sense compete partially with *Facebook* and *Instagram*. This finding alone shows that FACEBOOK has the power to determine competitive parameters independently from its users and competitors in the social networking services market.
- (337) Of the undertakings operating in the social networking services market about which detailed information is given above, *Twitter's* and *Snapchat's* activities overlap with FACEBOOK's activities most closely. In other words, those services compete more closely with FACEBOOK's products. However, it is known that the said services do not offer user experience as wide as FACEBOOK. While FACEBOOK's products fulfill all the functions of social media services, *Twitter* and *Snapchat* offer only some of those functions to users.
- (338) A different assessment should be made for *Facebook* and *YouTube*. *Facebook, Instagram* and *YouTube* offer video watching experience to users. Video sharing is the main function of *YouTube*; however, it is only one of the functions offered by *Facebook* and *Instagram*. At the same time, it is seen that video sharing functions provided by the compared products are different in terms of their target audience. Video sharing on *Facebook* provides social user experience only to a specific friend group whereas it is possible to share a video publicly, accessible by all users of the application beyond the group of friends under a public profile via *Instagram* and *YouTube*.
- (339) Although photo-sharing service provided by *Pinterest* is similar to *Instagram's* functions, the two products are different in that *Pinterest* does not provide friend interactions, sharing stories, which is one of the most used features of *Instagram* or in-platform messaging feature. Therefore, *Pinterest* and *Instagram* only compete with each other in terms of photo/video sharing feature. Similarly, *TikTok* stands out as a social network service that allows rather shorter videos. The said service overlaps only with *Instagram's* story feature.
- (340) All these explanations show that the services in question in the social networking services market compete with FACEBOOK's product *Facebook* and *Instagram* in a limited manner. In the analysis, comparative market shares are calculated based on

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the number of users of the undertakings that are considered to be in competition with FACEBOOK products in a limited manner. The aim is to determine FACEBOOK's position and the extent of its power in the market when the market is defined in the widest sense. Since this method will lead to widening the range of actors in the market, it may reflect FACEBOOK's market power lower than it really is. The chart below shows the number of monthly active users of FACEBOOK and other players in the market in Türkiye:

Chart -6: The development of the number of monthly active users of FACEBOOK and other undertakings in social media market in Türkiye

(.....TRADE SECRET.....)

Source: The calculations made by the rapporteurs on the basis of the data acquired from undertakings.

Table -8: The number of undertakings' monthly active users in Türkiye

Undertaking	2015	2016	2017	2018	2019	2020	2021 ²⁷⁴	OVERALL TOTAL
Facebook and Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	6.022.409.8
Pinterest	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	339.907.4
Snapchat			(.....)	(.....)	(.....)	(.....)	(.....)	472.470.4
Tiktok				(.....)	(.....)	(.....)	(.....)	538.640.1
Twitter	(.....)	(.....)	(.....)	(.....)				514.730.0
Youtube					(.....)	(.....)	(.....)	13327589
Overall Total	426.408.960	948.034.622	1.159.736.085	1.436.172.951	1.790.022.146	2.440.719.750	1.019.822.240	9.220.916.7
Source: Data acquired from the undertakings.								

²⁷⁴ Covers the period between February-April.

- (341) According to the chart above, no undertaking could reach 20 million monthly active users, except (.....) and (.....), which operate in social media market. The number of Facebook's active users is (.....), whereas the number of Instagram's active users is (.....) and the total number of monthly active users of both platforms is (.....) as of April 2021. Those findings show the long lasting disproportionality between FACEBOOK's and its competitors' market shares.
- (342) The table below shows market share calculation based on the said data. Since undertakings could not provide data pertaining to certain periods, market shares are calculated by taking into account undertakings that could provide data on a yearly basis. Therefore, although the data in the table show FACEBOOK's high market share in the relevant market, they are not meaningful indicators in terms of the course of market shares since the total number of users changed every year. Undertakings' market shares seem to be fluctuating every year because the total number of users is calculated by adding the total number of users of the undertakings that could provide data for the relevant year. Therefore, reading the table for assessing the undertakings' position in a specific year will produce more accurate results. Accordingly, FACEBOOK is the market leader in each year between 2015 and 2021 and FACEBOOK's market share is at least (.....) times higher than its closest competitor in each year.

Table -9: Undertakings' Market Shares in Türkiye (%)

Undertaking	2015	2016	2017	2018	2019	2020	2021
Pinterest	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Snapchat			(.....)	(.....)	(.....)	(.....)	(.....)
Tiktok				(.....)	(.....)	(.....)	(.....)
Facebook and Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Twitter	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Youtube					(.....)	(.....)	(.....)
Total	100.00	100.00	100.00	100.00	100.00	100.00	100.00

Source: The calculations made by the rapporteurs on the basis of the data acquired from undertakings.

- (343) Following the assessments made depending on the number of monthly active users, the chart below shows the number of daily active users on the basis of each undertaking:

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Chart -7: The development of the number of daily active users of FACEBOOK and other undertakings in social media market in Türkiye

(.....TRADE SECRET.....)

Source: The calculations made by the rapporteurs on the basis of the data acquired from undertakings.

- (344) As seen from the chart above, assessments based on daily active users are similar to the assessments based on monthly active users in essence. It is seen that the number of *Facebook's* daily active users decreased in 2018 and followed a stable course afterwards whereas the number of *Instagram's* daily active users has increased stably. The sum of the number of *Facebook's* and *Instagram's* daily active users is nearly (.....) in April 2020; the number of daily active users of the closest competitor is hardly (.....) even when (.....) and (.....) are included.
- (345) As stated above, although market share is an important indicator of dominant position, market shares in question should be evaluated together with other features of the market, entry barriers and buyer power. In this respect, economies of scale and scope, network effects and switching costs are market features that create entry barriers and strengthen the position of incumbent undertakings or otherwise weaken the position of undertakings that try to be incumbent in the market. Network externalities form the basis of platform economies; besides, they require that undertakings should carry out activities at a certain scale in order to provide services in an economically efficient way. This fact can be regarded as an installed base of a network and it is an important indicator affecting the results of network effects or the value of the relevant network together with other factors. The installed base is evaluated according to the number of users of a specific product and the ability of users to switch to a different product or service.²⁷⁵
- (346) To explain the issue on the basis of social network platforms, in order for users to sign up to and use a certain social network platform, there should be adequate number of users that they can interact with. Although the necessary software costs to develop a new social network service for a new entry are not too high, in order for the services to become attractive for consumers or to be an alternative for existing services, there should be a certain number of friends or other users with whom the user can interact. This is a factor that complicates potential players' entry to the market. The researches show that the main reason of social media usage is communication with family and friends.²⁷⁶ Moreover, after the platform has reached a certain scale, the cost of adding a new member to the platform is very few, which makes it easy for incumbent undertakings in the market to expand their user base easily, complicating new entries' obtaining customer base and thus creating an entry barrier.
- (347) It is understood from the data concerning the number of active users, the number of FACEBOOK's active users is (.....) times more than its closest competitor. Those active users' frequency of use for *Facebook* is on average between 3.3 and 3.7 times for all age groups. The frequency of use for *Instagram* is between 4 and 4.6 times for the age group between 18 and 49 and 3.7 times for the age group over 50. In light of those explanations, it is thought that network effects in social networking services feed and help the continuity of FACEBOOK's strong position in the relevant market.
- (348) It is also necessary to analyze indirect network externalities in terms of social networking services. FACEBOOK has large and diverse user bases as well as users of all ages, which makes it attractive for also advertisers. At present, an advertisement given by an undertaking to Facebook potentially reaches to 38 million people, corresponding to 56.5% of the population over the age of 13. Similarly, an

²⁷⁵ German Competition Authority states in *Facebook* decision that the installed base of the network is important for market power and tipping effect. Bundeskartellamt, B6-22/16, p. 114

²⁷⁶ <https://www.statista.com/statistics/715449/social-media-usage-reasons-worldwide/>, Accessed: 23.12.2021.

advertisement given by an undertaking to Instagram potentially reaches to 46 million people, corresponding to 68.4 % of the population over the age of 13.²⁷⁷ Advertisers prefer FACEBOOK products because of its customer portfolio. As a result, in addition to earning more revenues and allocating more resources to service development, FACEBOOK complicates its competitors' access to advertisers, thus to financial resources. Consequently, the indirect network effects constitute an entry barrier by making it difficult for potential competitors which will enter social networking services market to attract advertisers to finance their services.

(349) Features such as the ability to access key inputs, wide product portfolio, high brand recognition, financial and economic power can be listed as entry barriers stemming from undertakings. At this point, the importance of data for social networking services market should be explained. Platform economies are also defined as data-based economies. The data collected by platforms are used to develop business and services. Besides, it is important for the services provided by the relevant undertaking in the related markets and more importantly, data allow platforms offering "zero price" services to obtain revenues by means of targeted advertising. Thus, data is the basic input for digital markets. It is expected that access to and use of data will affect undertakings' competitiveness more and more.²⁷⁸ The competitive power of undertakings is measured according to the amount, variety and quality of the data which they own.²⁷⁹ Looking from this point of view, as a player, which has been active in the market for long years, FACEBOOK owns large, comprehensive and detailed data. To sum up, in addition to profile information, FACEBOOK has a very comprehensive and detailed data about social media users' activities on the social network app such as how frequent they use the apps, especially at what time, on which posts they spend more time, which friends they interact with more, etc. Moreover, it is understood from the results of the survey, which was made within the scope of the Online Advertising Sector Inquiry, that 88.3% of Facebook users and 56.3% of Instagram users have been using those services for more than five years. The detailed information about the wide user base owned by FACEBOOK also covers a long period of time. All these findings show the value of FACEBOOK's data set. The value of the data set gives FACEBOOK data power and this power reinforces FACEBOOK's market power by enabling FACEBOOK to not only follow users' preferences and demands at the right time but also develop and design its products and services in line with user preferences. By delivering ads to consumers who attributes the highest value, this power also makes FACEBOOK more attractive and other channels less attractive for advertisers. Thus, data power, which gives an important advantage to FACEBOOK in factors such as obtaining advertisement revenues, which are vital for undertakings wishing to enter social networking services market, assessment of consumer needs and developing products according to those needs, constitutes an important barrier to entry/expansion in terms of actual or potential competitors.

(350) Another issue that needs to be assessed together with FACEBOOK's data power is FACEBOOK's financial power. In 2020, FACEBOOK announced that its revenues were 85.9 USD and its market value was calculated as 870 billion USD for 2021.²⁸⁰

²⁷⁷ <https://datareportal.com/reports/digital-2021-turkey>, Accessed: 10.11.2021.

²⁷⁸ European Commission (2019), "Competition Policy For The Digital Era", p. 7, 16.

²⁷⁹ GRAEF, I (2016), "Data as Essential Facility"; LANDE, R. H. (2008), "The Microsoft-Yahoo Merger: Yes, Privacy is an Antitrust Concern"; JUST, N. (2018), "Governing Online Platforms: Competition Policy in Times of Platformization", p.386-394.

²⁸⁰ <https://www.statista.com/statistics/263264/top-companies-in-the-world-by-market-capitalization/>, Accessed: 24.12.2021.

With that market value, FACEBOOK is the sixth most valuable company in the world. Certainly, this global financial power supports its power in the relevant market.

- (351) In addition, it should be noted that *Facebook* was first used by especially young users, however, in time it has reached a much wider user group since 2007. It is one of the oldest social networks that are still used in our country. In other words, it benefits from an important brand recognition. After *Instagram* takeover in 2012, FACEBOOK made product diversification and product differentiation, increased its recognition in the market and further strengthened its position in the market.
- (352) In addition to all those, FACEBOOK 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 accumulation in one service to another. As a result, FACEBOOK feeds its position and power in the market in terms of each service it provides.
- (353) Lastly, buyer power should be addressed for dominant position assessment. In case the undertaking concerned is sufficiently informed about its customers' alternative sources of supply and is capable of switching to another supplier or creating its own supply within a reasonable period of time, then this undertaking may be said to buyer power. However FACEBOOK's services address scattered consumers who cannot act in an organized manner rather than a few big buyer groups. Similarly, advertisers, who constitute the other buyer group for FACEBOOK's services, do not have a significant buyer power against FACEBOOOK. For those reasons, it is concluded that there is not a buyer power in social networking services market.
- (354) In light of the explanations and assessments above, it is concluded that FACEBOOK is dominant in social networking services market.

I.4.3.2. Assessment of Dominant Position in the Market for Consumer Communication Services

- (355) FACEBOOK started to provide services with Messenger in unnumbered communication services market. *Messenger* was developed as an instant messaging app in 2011. In years, it has gained functions in addition to messaging such as sending stickers, voice records, photos and videos, live calls, live video calls, creating chat groups and *Messenger Day*. By acquiring *WhatsApp* in 2014, FACEBOOK diversified its services in this market. Similar to *Messenger*, *WhatsApp* was designed as an instant messaging service and established in 2009. Features such as sharing photos/videos, group chat and voice messaging have been added later. In addition, *WhatsApp* introduced "read double blue check marks" and "end to end encryption" features in 2014, voice call in 2015 and "stories" in 2017.
- (356) According to *Statista*, while the number of *WhatsApp*'s active users in 2013 was 200 million, the number of its active users rose up to 2 billion in 2020. The number of active users of *Messenger* is 1.3 billion. The table below shows the ranking of most preferred messaging apps throughout the world according to the number of their monthly active users. According to those data, total number of *WhatsApp*'s and *Messenger*'s active users is well above that of the closest competitor.

Table -10: The number of active users of mobile messaging apps throughout the world

	Social Network	The number of active users (million)
1	WhatsApp	2,000
2	Messenger	1,300
3	Weixin/WeChat	1,251
4	QQ	591
5	Telegram	550
6	Snapchat	538
Source: <i>Statista</i>		

- (357) In addition, *WhatsApp* and *Messenger* follows *Facebook* on the second and third rank in “the most used apps” list in *Digital 2021 Global Overview Report*²⁸¹.
- (358) The chart below shows FACEBOOK’s position in the EU in terms of unnumbered communication services market. It is understood from the chart that WhatsApp has much more monthly active users compared to its competitors.

²⁸¹ <https://datareportal.com/reports/digital-2021-global-overview-report>, Accessed: 16.12.2021.

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Chart-8: The number of undertakings' active users in EU

(.....TRADE SECRET.....)

Source: The calculations made by the rapporteurs on the basis of the data acquired from undertakings.

- (359) In Turkish market also, *WhatsApp* and *Messenger* are among the most used apps. According to *Digital 2021 Turkey Report*²⁸², the third most used social media platform in our country is *WhatsApp* with 87.5% usage rate while *Messenger* is the sixth one with 54.2%. In the most used mobile applications ranking in 2020, based on the number of monthly active users, *WhatsApp* is the first and *Messenger* is the fourth according to *Digital 2021 Turkey Report*.
- (360) According to the results of the consumer survey made within the scope of Online Advertising Sector Inquiry, 61.9% of the users in Türkiye use *WhatsApp* whereas 21.3% of the users use *Messenger*. The said two applications are among the most used online consumer communication services. According to the same study, *WhatsApp* and *Messenger* surpass their competitors in the ranking based on the frequency of use. 48.1% of *WhatsApp* users and 21.7% of *Messenger* users state that they use the app more than six times a day. Only 15% of the total users of *Bip*, which is the closest competitor of *WhatsApp* and *Messenger* state that they use the app more than six times a day.
- (361) Those data show *WhatsApp*'s and *Messenger*'s power in consumer communication services. In order to show their positions in the market more clearly, the number of the users of the undertakings concerned is used in a similar way to the analysis made for the previous market. As stated in the dominant position assessment for the previous market, this assessment also takes into account the number of both monthly and daily active users. The chart below shows the monthly changes in the number of *WhatsApp*'s and *Messenger*'s active users in Türkiye between August 2015 and April 2021:

²⁸² <https://datareportal.com/reports/digital-2021-turkey>, p. 47, Accessed: 10.11.2021.

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Chart -9: The number of undertakings' monthly active users in Türkiye

(.....TRADE SECRET.....)

Source: The calculations made by the rapporteurs on the basis of the data acquired from undertakings.

- (362) The chart above shows that the number of *Messenger's* users increased until mid-2016 but afterwards the number of users decreased and afterwards the number of users was (.....) level and fell to (.....) in 2021. However, the number of *WhatsApp* users increased in a steady way. While the number of users was (.....) at the beginning of 2016, it went beyond (.....) in 2021.
- (363) In addition to the number of *WhatsApp* and *Messenger* users, it is necessary to analyze the number of their competitors' users. At this point, the competitors of the undertakings should be determined. In the section where the relevant market was defined, it is stated that different consumer communication services have different features such as instant messaging, voice call and video call; however, it is not necessary to sub-categorize the relevant market on the basis of the said functions. Therefore, apps that are known for especially video call or teleconference features such as *Google Meets* and apps enabling instant messaging services such as *Turkcell Bip* are regarded in the same market.²⁸³
- (364) The chart below shows the change in the number of *WhatsApp's*, *Messenger's* and their competitors' users in consumer communication services. It is observed that the number of *WhatsApp* and *Messenger's* users is well above those of their competitors. In line with this, the total number of active users of those two services in 2021 is about (.....) but none of the competitors' active users reached even (.....). Moreover, at the beginning of 2021, *Turkcell Bip* had (.....) users. It increased its number of active users to (.....) but that increasing trend was not permanent its number of users fell to (.....) in April 2021. It is estimated that this is because of users' searching for an alternative after *WhatsApp* UPDATE. This will be explained in detail below.

²⁸³ Although there are services such as *Zoom*, *Signal*, *Telegram*, *Line*, *Tango Live*, as the headquarters of the said undertakings are abroad, there were problems with the notification of the information requested and thus it was not possible to obtain information about the number of users of those undertakings during the investigation process.

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Chart -10: The number of undertakings' monthly active users in Türkiye

(.....TRADE SECRET.....)

Source: The calculations made by the rapporteurs on the basis of the data acquired from undertakings.

- (365) The number of users and the market shares calculated depending on the number of users given above show that FACEBOOK has significant market power compared to its competitors in consumer communication services market.
- (366) In order to determine dominant position in the relevant market, barriers to entry as well as buyer power were considered. Within the scope of barriers to entry, first network externalities are considered. The explanations about network externalities in terms of social networking services also apply for the platforms providing consumer communication services. In consumer communication services market also, network externalities are market features that create entry barriers and strengthen the position of incumbent undertakings or otherwise weaken the position of undertakings that try to be incumbent in the market. In order for users to use a certain consumer communication service platform, there should be adequate number of users whom they can interact with.
- (367) In the survey made within the scope of Online Advertising Sector Inquiry, it is observed that the following factors affect users' preferences about online communication applications: being used by friends and family 40.1%, being user-friendly 16% and being widely preferred 16.5%. When the said preferences are examined on the basis of services, it is seen that 55.6% of *WhatsApp* users and 50.4% of *Messenger* users answer that the reason why they use the said service is "being used by friends and family".
- (368) As stated before, in markets where network externalities have an impact, a competing service that has entered the market must reach a certain scale to attract users and operate effectively. However, since the network effects are in favor of the incumbent undertakings in the market, it is not easily or quickly possible for new entries to reach such scope. In terms of consumer communication services, after the platform has reached a certain scale, the cost of adding a new member to the platform is very low, which makes it easy for incumbent undertakings in the market to expand their user base easily, creating a barrier to entry and expansion for new entries. The number of users in consumer communication services market, which is shown in the charts above support the finding that network effects function in favor of incumbent firms.
- (369) In addition to the direct network effects, it is necessary to analyze indirect network externalities about *Messenger*. While *WhatsApp* is addressing a single user group, there are two different user groups in the platform in *WhatsApp Business* and *Messenger*. *Messenger* is also an advertisement publisher. The fact that it has a higher number of users increases its value in the eye of advertisers. An advertisement given by an undertaking to *Messenger* is seen potentially by 21 million people, corresponding to 31.2% of the population over the age of 13. Therefore, *Messenger* is among the most effective and preferred channels for advertisers for reaching customer bases. Similarly, due to the width of its user base, *WhatsApp Business* is preferred more by businesses wishing to reach as many customer groups as possible. Therefore, when an undertaking providing services in markets with network effects reaches the said efficient scale, can gain new customers again because of network effects easily, at no or very low costs and every new user potentially promises more users for the platform. While this situation is a huge advantage for incumbent undertakings in the market, it is discouraging for new entries.
- (370) In addition to the network effects, consumers' single homing, in another word, the lock-in effect in the market is another important entry barrier. The lock-in effect stems from

facts such as user inertia or habits.²⁸⁴ The developments in the market after *WhatsApp* UPDATE, which was announced at the beginning of 2021, made it possible to observe the lock-in effect in the market. After the said update which forced users to consent to data sharing, the number of users who uninstalled *WhatsApp* in January 2021 is (.....). To put it in a different way, the number of users who uninstalled the app after the UPDATE corresponds to only (.....)% of monthly active *WhatsApp* users at that time. Those users signed up to apps such as *Bip*, *Telegram* and *Signal*. This is observed at the change in number of *Bip*'s users as highlighted above. However, the fast increases in the numbers of said app's users were not permanent. *WhatsApp* was not able to provide information about how many of the users who signed up in the following period used to be *WhatsApp* users before. Other applications lost the users they gained following the UPDATE gradually after *WhatsApp* UPDATE was postponed, which leads to the conclusion that the said users might start to use *WhatsApp* again. However, it is not possible to find accurately how many of the users who uninstalled their accounts in the said period started to use it again. Despite a clear deterioration in the service quality, the number of users who uninstall *WhatsApp* is very limited, which shows the lock-in effect in this market obviously.

- (371) It is also possible to evaluate the changes during the said period on the basis of the number of users. The number of daily active *WhatsApp* users fell (.....)% during January 4 and January 13 in 2021. However, *WhatsApp* compensated for the number of users it lost in a very short time. The table below shows the number of monthly active *WhatsApp* users between January and April 2021. According to the table, the number of monthly active *WhatsApp* users increased (.....) % in February, (.....)% in March and (.....)% in April.

Table -11: *The number of monthly active WhatsApp users*

Month	The number of monthly active users	Change
January	(.....)	(.....)
February	(.....)	(.....)
March	(.....)	(.....)
April	(.....)	(.....)

Source: Information Submitted by the Undertaking

- (372) It is understood from the table that *WhatsApp* users continued to use the application despite the deterioration in the service quality and concerns about data security and thus, there is lock-in effect in the market. Moreover, during that period, *WhatsApp* made up for the loss of the limited number of users who uninstalled *WhatsApp* in a short time, which shows that *WhatsApp* (or FACEBOOK) can easily increase the number of their users and has a strong power and advantage in the market.
- (373) Beside the market features, the first factor to be mentioned among barriers to entry stemming from undertakings is "data power". It is known that *WhatsApp* and *Messenger* are among the oldest services that are still used in the market. The number of their users is well above their competitors. By means of the said services, FACEBOOK holds a comprehensive data set covering a much larger amount of user data over a longer time compared to its competitors. This data set includes the data which users give while they are signing up such as phone number, name, device information as well as activity data which they produce while using the application such as frequency, duration and time of use. Those data are critical for designing the service according to user preferences. Thus, such data power can enable FACEBOOK services to surpass competing services in terms of improvement and quality of the services.

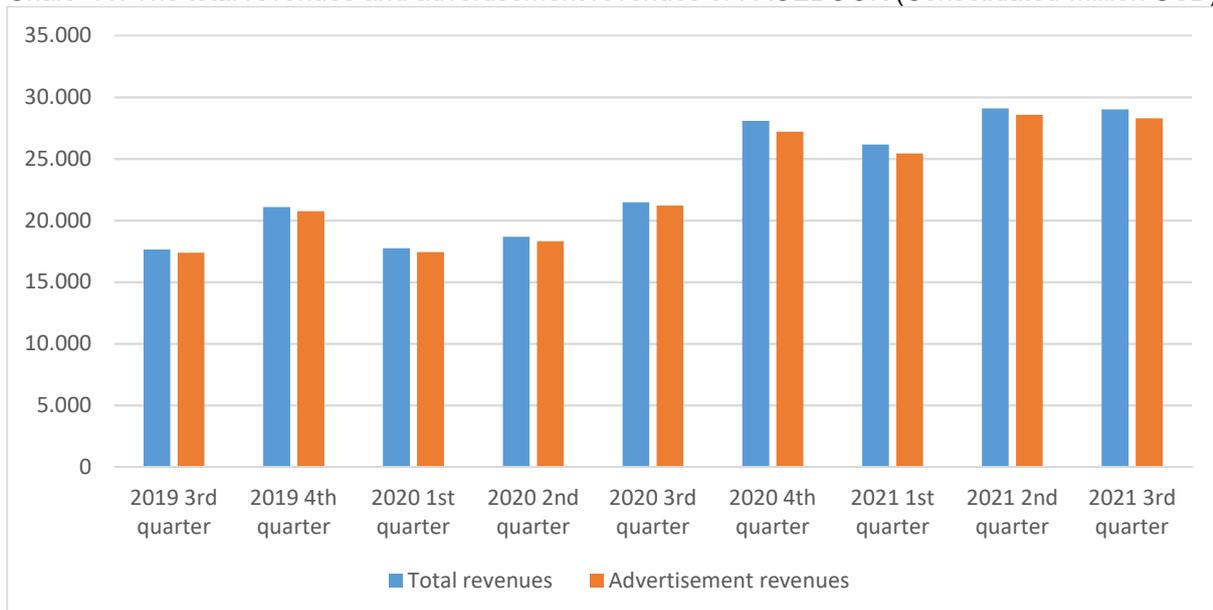
²⁸⁴ Competition Authority (2021), "E-Marketplace Platforms Sector Inquiry Preliminary Report", para. 379

- (374) Moreover, although *WhatsApp* does not display advertisements, *Messenger* does. The data set allows displaying ads to the users who are interested in the subject of the advertisement the most, which makes *Messenger* more attractive for advertisers compared to other platforms.
- (375) FACEBOOK’s financial power is an important indicator for dominant position assessment in consumer communication services market. Details about FACEBOOK’s financial indicators are given under the dominant position assessment title above. The fact that FACEBOOK is among the biggest companies in the world naturally supports its power in consumer communication services market and the power of its goods and services in that market. As stated above, the ecosystem where *WhatsApp* ve *Messenger* are located strengthens the power of those services in consumer communication services market.
- (376) The last criterion in dominant position assessment is the buyer power. It should be noted that the abovementioned findings about buyer power in the dominant position assessment for social networking services market apply for also this market. FACEBOOK’s services in this market address scattered users who cannot act in an organized way. Similar to social networking services market, advertisers do not have significant bargaining power against FACEBOOK. As a result, it can be said that there is not a buyer power in the market concerned.
- (377) In light of all explanations and findings, it is concluded that FACEBOOK is dominant in consumer communication services market.

1.4.3.3. Dominant Position Assessment in Online Advertising Market

- (378) The services provided by FACEBOOK to users free of charge are essentially financed with displaying advertisements on those services. FACEBOOK gains revenues by means of ad inventories on *Instagram* and *Facebook Messenger* services but does not show ads over *WhatsApp*. Since the said services can be accessed on both mobile and fixed channels, FACEBOOK provides ads to users on both mobile and fixed channels.
- (379) The chart below shows the course of FACEBOOK’s total revenues and advertisement revenues in time. As understood from the chart, almost all of the revenues consist of advertisement revenues.

Chart -11: The total revenues and advertisement revenues of FACEBOOK (Consolidated-Million USD)



Source: FB Earnings Presentation Q3 2021

- (380) FACEBOOK's financial power stems almost entirely from advertisement revenues, which makes it one of the biggest and significant players in online advertising market. In line with this, many reports on online advertising sector indicates FACEBOOK's disproportional power against its competitors in online display advertising market.
- (381) For instance, in *Online Platforms and Digital Advertising*²⁸⁵, which was published in June 2020, CMA finds that GOOGLE's and FACEBOOK's market power in advertising market have significant impact on ad fees and ad revenues. The report also states that big advertisers are more likely to multi-home in buying advertisement inventory but smaller advertisers generally prefer GOOGLE and FACEBOOK due to operation costs. One of the findings about undertakings' market power is that GOOGLE and FACEBOOK benefit from an important competitive advantage in terms of both ad targeting and ad measuring thanks to their comprehensive access to user data.
- (382) It is necessary to calculate FACEBOOK's ad revenues or expenditures in display advertising market in Türkiye in order to assess its share in that market. According to "Estimated Media and Advertising Investments in Türkiye 2020 Report"²⁸⁶, the expenditures to online advertising in 2020 correspond to 7.5 billion TL. Of the digital channels categorized as display, video, search engine, post, influencer and other²⁸⁷ in the report, display, video and influencer categories can be included in online display advertising market, which is defined in the file. The relevant report concludes that the size of the advertisement expenditures to the said categories correspond to 4,430 million TL in 2020. FACEBOOK informed that its ad revenues in Türkiye in the said year were (.....) TL. The ad revenues submitted by FACEBOOK correspond to (.....)% of the total expenditures in online display advertising market, which means that FACEBOOK has (.....)% shares in the market.
- (383) At this point, the position of FACEBOOK's competitors in the market should also be analyzed. FACEBOOK's revenues in display advertising market are compared with the revenues of social networking services operating in display advertising market first and then with the revenues of media organizations and websites active in the market. Then, the positions of the undertakings in the market are assessed.

²⁸⁵https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf, Accessed: 27.12.2021.

²⁸⁶<https://www2.deloitte.com/tr/tr/pages/technology-media-and-telecommunications/articles/medya-yatirimlari-2020-raporu.html>, Accessed: 27.12.2021.

²⁸⁷ Covers in-game ads, digital voice ads, connected TV ads and e-mail ads.

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Table -12: Advertisement revenues of the undertakings operating in social networking services market²⁸⁸

Undertaking	2015	2016	2017	2018	2019	2020
FACEBOOK Total ²⁸⁹	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YOUTUBE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LINKEDIN ²⁹⁰	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TWITTER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TIKTOK ²⁹¹	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SNAPCHAT ²⁹²	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TOTAL	504.952.824	743.875.935	1.185.289.456	1.956.844.134	2.668.334.591	4.471.732.862

Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.

Table -13: Market shares of the undertakings operating in social networking services calculated on the basis of advertisement revenues

Undertaking	2015	2016	2017	2018	2019	2020
FACEBOOK Total	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YOUTUBE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LINKEDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TWITTER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TIKTOK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SNAPCHAT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TOTAL	100.00	100.00	100.00	100.00	100.00	100.00

Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.

²⁸⁸ (.....).

²⁸⁹ Facebook Messenger is not added to the table as it operates in “consumer communication services” market.

²⁹⁰ LINKEDIN stated that (.....) . In case the Authority’s market share calculation depends on advertisement revenues based on member/user location, LinkedIn stated that (.....). Thus, although in the relevant table, *LinkedIn’s* advertisement revenues and in the following tables, market share information are given, in accordance with the explanations made by the undertaking, it should be noted that *LinkedIn’s* market shares may seem higher than they are.

²⁹¹ The undertaking stated that *TikTok* was launched in Türkiye in (.....) and started to gain advertisement revenues in (.....).

²⁹² The undertaking stated that it started to gain advertisement revenues in (.....).

- (384) Before the interpretation of the tables above, it should be emphasized that total advertisement revenues in the tables and the total amounts concerning the market indicated in “Estimated Media and Advertising Investments in Türkiye 2020 Report”, which is referred, are inconsistent. The Report states that the size of the online display advertising market in 2020 is 4,430 million TL whereas depending on the data obtained within the scope of the investigation the total of online advertising revenues only in social networking services market is calculated as 4,472 million TL. The total revenues of online display advertising market, where other publishers are included, are calculated as (.....) TL. The details are given below. It is thought that the differences between the data in the report and the data obtained during the investigation stem from the methodology of the report. It is stated in the Report that data were collected from all of the shareholders with different dynamics (Advertisers Association, IAB, agencies that are members to Mobile Marketing Association, publishers, advertisers), which operate in ecosystems including digital advertisements, in order to measure digital media investments more accurately. Consequently, the differences in data stem from the fact that the companies on which the estimation is based in the report and companies from which information was gathered during the investigation are different. During the investigation, data were obtained from undertakings which do not have a representative office in Türkiye.
- (385) As understood from the tables above, which were prepared with the data obtained from undertakings during the investigation, FACEBOOOK was the market leader throughout the period between 2015 and 2020 in the provision of display advertising over social networking services. Its market share was above (.....) in each year examined. During the period examined, although there was a decrease in *Facebook*'s market shares, this decrease was compensated with the increase in *Instagram*'s market shares. During the same period, FACEBOOK was followed by *YouTube*, which is under GOOGLE economic unity. *YouTube*'s market share was around (.....)%. FACEBOOK's market shares were respectively (.....); (.....); (.....); (.....); (.....) and (.....) times more than its closest competitor *YouTube*'s market shares during the period between 2015 and 2021.
- (386) Secondly, market shares are analyzed by adding smaller publishers such as media organizations, websites and news websites and app providers, which are operating in display advertising area. The table below shows advertisement revenues in online display advertising market of publishers of different sizes:

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Table -14: Advertisement revenues of undertakings operating in online display advertising between 2015 and 2020 (TL)

Undertaking	2015	2016	2017	2018	2019	2020
FACEBOOK Total	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook Messenger	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GOOGLE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GOOGLE DISCOVER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GMAIL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PLAY STORE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YOUTUBE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LINKEDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DEMİRÖREN ²⁹³	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TWITTER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TIKTOK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURKUVAZ ²⁹⁴	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
CİNER ²⁹⁵	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MYNET	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SAHİBİNDEN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ONEDİO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ ²⁹⁶	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
İLAB HOLDİNG ²⁹⁷	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
KREA ²⁹⁸	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

²⁹³ Covers advertising revenues from (.....) websites.

²⁹⁴ Covers advertising revenues from (.....) websites.

²⁹⁵ (.....) represents revenues from online channels .

²⁹⁶ Belongs to (.....). It is stated that it is not possible to provide data for the period before 2018.

²⁹⁷ Represents advertising revenues from (.....) . (.....) could not provide data for the period before 2018. Therefore, data belonging to the years 2015, 2016 and 2017 are about (.....) website's ad revenues.

²⁹⁸ The undertaking stated that there were not data pertaining to the period before 2016.

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FOX NETWORKS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NOKTA ²⁹⁹	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SNAPCHAT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LETGO ³⁰⁰	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
EKŞİ SÖZLÜK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURKCELL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MEMURLAR.NET	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
HEPSİ EMLAK ³⁰¹	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total (TL)	726.505.374	1.021.326.764	1.524.728.648	2.406.114.915	3.223.902.643	5.281.135.907
Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.						

²⁹⁹ Represents advertising revenues from (.....) .

³⁰⁰ The undertaking stated that it started its activities in Türkiye in 2018.

³⁰¹ The undertaking stated that they could not reach sound data for the period before 2017.

Table -15: Market shares of the undertakings operating in online display advertising market (%)

Undertaking	2015	2016	2017	2018	2019	2020
FACEBOOK Total	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook Messenger	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GOOGLE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GOOGLE DISCOVER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GMAIL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PLAY STORE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YOUTUBE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LINKEDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DEMİRÖREN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TWITTER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TIKTOK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURKUVAZ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
CİNER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MYNET	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SAHİBİNDEN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ONEDİO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
İLAB HOLDİNG	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
KREA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
FOX NETWORKS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NOKTA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SNAPCHAT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LETGO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
EKŞİ SÖZLÜK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURKCELL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MEMURLAR.NET	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
HEPSİ EMLAK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total	100.00	100.00	100.00	100.00	100.00	100.00
Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.						

(387) As understood from the table, FACEBOOK has a significant market power in the market where other advertisement publishers operating in display advertising market are included in addition to social networking services. During the period examined, FACEBOOK's market share was constantly above (.....)% and reached about (.....)%.

The market share of GOOGLE economic unity, which includes *Gmail*, *Google Discover* and *Play Store* in addition to FACEBOOK's closest competitor YouTube, was only (.....)% in 2020.

- (388) The said market shares show FACEBOOK's power in the display advertising market to a significant extent. At this point, factors which feed this position and at the same time which constitute a barrier to entry such as data power, ecosystem approach and vertically integrated structure are also discussed. The first reason why advertisers prefer an undertaking in online advertising market is the amount of the users to whom they can display the ad. In other words, the width of the user base is an important criterion for online advertising market. The second reason for advertisers is the effectiveness of a publisher's ad targeting. Advertisers want advertisements to be shown to users who are interested the most and who can interact the most. In this case, factors such as the scope, size and variety of channel provider's data set are relevant. Collecting not only directly the data of its users, which correspond to (.....)³⁰² in Türkiye but also third party data with tools whose details are given below, FACEBOOK owns a huge data set. The data set in question is one of the most important reason for FACEBOOK's market power in online display advertising market. In addition, it is a barrier to entry since it is too big to be obtained by undertakings wishing to enter the market.
- (389) Moreover, FACEBOOK has advertisement intermediary activities; thus, it is active in more than one level of the advertising chain, which increases FACEBOOK's impact in advertisement pricing and further supports its power in the market. FACEBOOK's related services in digital markets, that is to mean its ecosystem, allows it to carry out activities in all markets in a more efficient and stronger manner.
- (390) Lastly, buyer power should be considered in dominant position assessment. It is obvious that consumers to whom advertisements are shown do not have any buyer power. In order to see whether advertisers have buyer power against FACEBOOK, the table below shows the share of FACEBOOK's advertisement revenues from the biggest five advertisers in each service type in the total advertisement revenues. Although they vary on the basis of each service, advertisement revenues of FACEBOOK economic unity from the biggest advertisers correspond to (.....)% of its total advertisement revenues at the most. These rates increase with *Facebook*, being about (.....)% but decreases under (.....)% in *Instagram*. Depending on those rates, it is concluded that advertisers do not have adequate power to make pressure on FACEBOOK. As stated in the sections above, the potential user groups for showing advertisements are above (.....)% for each service. As a result, FACEBOOK is a critical publisher for advertisers.

³⁰² (.....) users are the sum of the number of all services' users. Thus, it should be noted that there are duplicate users, for instance if one user has an account related to four core services, this is counted as four users.

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Table -16: The share of FACEBOOK's advertisement revenues from the biggest five advertisers in its total advertisement revenues

Year	<i>Facebook</i>			<i>Instagram</i>			<i>Messenger</i>			FACEBOOOK		
	First five Advertisers	Total	(%)	First five Advertisers	Total	(%)	First five Advertisers	Total	(%)	First five Advertisers	Total	(%)
2015	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
2016	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
2017	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

Source: The calculations made by the rapporteurs on the basis of the data acquired from undertakings.

(391) As a result of all those explanations, it is concluded that FACEBOOK is also dominant in online display advertising market.

I.4.4. Assessment of FACEBOOK's Actions according to Article 6 of the Act no 4054

(392) The current investigation is about the assessment of FACEBOOK UPDATE, which requires that WHATSAPP users in Türkiye consent to the use of their data in other FACEBOOK services and which was planned to be implemented on 08.02.2021 within the scope of article 6 of the Act no 4054. However, following the decision to initiate an investigation, in accordance with the information obtained from the parties to the investigation, it was understood that the said data sharing had continued since 2016 and the said UPDATE would not change the nature or scope of the data sharing in question.

(393) Then, with the Board decision dated 11.03.2021 and numbered 21-13/162-M, the scope of the investigation was extended to *"determine whether the use of the data obtained by Facebook Inc., WhatsApp LLC, Facebook Ireland Limited, Madoka Turkey Bilişim Hizmetleri Ltd. Şti on the basis of each product and service offered in Türkiye within the scope of Facebook group companies included the aforementioned ones has violated article 6 of the Act no 4054."*

I.4.4.1. Assessment of FACEBOOK's Data Sharing and Data Combination among Its Subsidiaries under the Scope of Article 6 of the Act no 4054

(394) As stated above, FACEBOOK collects data from its products *Facebook, Messenger, Instagram* and *WhatsApp* and from third parties and advertisers through FACEBOOK Business Tools. The data pool created with the data obtained from different sources is used for the development of both current services and the activities in online advertising services.

(395) During collecting and combining the said data and using those in the improvement and development of other services or advertising activities, if users are not adequately informed about the collection of data or users' consent is not taken with their free will, this may lead to competitive concerns. The actions examined under the scope of the case may lead to concerns that data collection and combination may lead to exploitative abuse in digital markets. Since it is difficult and even impossible for users to give up FACEBOOK's products, users directly allow data policies or do not take any actions against decreasing privacy protection. This is because there is an imbalance between the powers of the parties. Due to this disproportionality, FACEBOOK may impose conditions that do not accord with the requirement of its services.

(396) Discussions and challenges about the difficulties in measuring data, whether data protection law regulations can be taken as a reference in terms of competition law literature and enforcement, if so, whether it is a correct method for the interaction between two legal disciplines³⁰³ in assessing whether the actions in question constitute exploitative abuse. Moreover, consumer losses stemming from the said exploitative actions can be solved with tools such as informing the consumers and strengthening data protection policies in addition to competition law tools. The collection of user data by taking advantage of the power imbalance lead to direct impacts on the functioning of competition such as complicating competitors' activities in the market or creating

³⁰³ PODSZUN R. (2021), Should Gatekeepers Be Allowed to Combine Data? Ideas for Art. 5(a) of the Draft Digital Markets Act, p. 3

barriers to entry for potential competitors. Theoretical explanations about the occurrence and assessment of such exclusionary effects were given before.

- (397) Within the scope of this case, it would be convenient to address the results of FACEBOOK's ongoing data collection and combination, which concern the exclusion of competitors or complicating the entry of its competitors. Those effects are discussed separately in terms of online advertising market and social network market.

I.4.4.1.1. Assessment of the Exclusionary Effects of FACEBOOK's Actions in Online Advertising Market

- (398) As stated several times in the previous sections, within the scope of the theories of harm concerning data combination, it is possible that data combination may create barriers to entry or increase the barriers to entry, prevent competitors from equivalent data or that the data may lead to leverage effects.
- (399) It is possible that FACEBOOK may combine the data it collected in "social networking services" and "consumer communication services" market, take advantage of those data sets by using them in display advertising markets and exclude its competitors in this market. It is necessary to examine (possible) effects of those practices in the market to consider whether the action in question has violated the Act no 4054. According to the Guidelines, the basis of an evaluation on exclusionary conduct is the examination of whether the behavior of the dominant undertaking leads to actual or potential anticompetitive foreclosure.
- (400) It should be noted that in order for an action to be considered as abuse of dominant position, it is not necessary that the anticompetitive effects actually occur. Proving the effect should be read as the assessment of actual or potential effects on actual and potential competitors. In a contrary scenario, competition authorities and courts would have to wait for obvious anticompetitive effects, which would result in a very retarded and inefficient intervention in most of the cases³⁰⁴. In certain situations, the impact may extend over a long time and is not measurable at the time of investigation. In order to prevent negative consequences of this fact, possible effect is also considered in dominant position assessment. The action is considered as abuse if the possible effect of the action is anticompetitive foreclosure.
- (401) The Guidelines explain that anti-competitive foreclosure is the obstruction or prevention of access to sources of supply or markets for actual or potential competitors as a result of the conduct of the dominant undertaking, to the detriment of the consumers. Consumer harm may occur in the form of increased prices, decreased product quality and level of innovation, and reduced variety of goods and services. The Guidelines lists the points to be taken into account when examining the presence of anti-competitive foreclosure:
- The position of the dominant undertaking,
 - The conditions in the relevant market,
 - The position of the dominant undertaking's competitors,
 - The position of the customers or suppliers,
 - The scope and duration of the conduct examined,

³⁰⁴ O' DONOGHUE, R. and PADILLA, J. (2013), *The Law and Economics of Article 102 TFEU*, Second Edition, p. 269

- Possible evidence of actual foreclosure,
- Direct or indirect evidence of exclusionary strategy.

(402) The first three points are mentioned in the section on dominant position assessment. It is stated in the Guidelines that the stronger is the dominant position, the more likely is the anticompetitive foreclosure effect. Accordingly, in the three markets examined, it is found that the number of FACEBOOK's users or its revenues are obviously higher than its competitors and FACEBOOK has a quite significant market power in the relevant markets. The calculated market shares of FACEBOOK, which is dominant in the said markets, are above (.....) % in each market. Especially, in the display advertising market, where market foreclosure effect is analyzed, FACEBOOK is a leadin player nationally and globally. Even the market is defined in the most extensive sense, FACEBOOK's market share is about (.....)%. The existence of dominant position in social networks, consumer communication and online advertising markets, which are related to each other, strengthens foreclosing effects. On the other hand, the positions of the dominant undertaking's competitors, whether they can exert competitive pressure or whether they can develop strategies against the dominant undertaking to overcome its practices should be taken into account. In online display advertising market, FACEBOOK's strongest competitor is *YouTube*, which is under GOOGLE's economic entity. However *YouTube*'s market share is (.....)% in online display advertising market. Other competitors' ability to pressure FACEBOOK is very limited. In addition, it is stated in the previous sections that the said markets are characterized with high network effects, economies of scope and barriers to entry stemming from those. These characteristics can strengthen the anticompetitive effects of the conduct in question.

(403) In terms of an assessment of the duration and the scope of the conduct, it should be noted that FACEBOOK has been sharing data with its subsidiaries and combining data for longer than five years. The combined data belong to the biggest companies operating in social networking services and consumer communication services, in other words, the companies that have the highest number of users in those markets. It is considered that the duration and the scope will strengthen the actual and potential effects of the conduct in question.

(404) In line with the data and information obtained during the investigation, the actual and potential effects of FACEBOOK's conduct under investigation in online display advertising are analyzed in terms of barriers to entry, advertisers' expenditures and the comparison of FACEBOOK's and its competitors' advertisement revenues as well as revenues per user.

The Impact on Barriers to Entry

(405) The first factor to be considered in the assessment whether FACEBOOK abuses its dominant position is barriers to entry because depending on the market structure, access to large or different kinds of data may be important to ensure competitiveness. Thus, collecting data may crate entry barriers by means of leading to inability of new entries to collect data or to access the same type or size of data as the incumbents³⁰⁵. The effect of FACEBOOK's data combining on barriers to entry should be considered together with other characteristics of the market.

(406) As known, advertiser's priority is to reach a large group to increase the effectiveness of their ad campaigns. Because of this, they tend to prefer platforms with more users. Thus,

³⁰⁵ Bundeskartellamt and Autorite de la Concurrence (2016), "Competition Law and Data", p. 11

undertakings wishing to operate in online display advertising market have to enlarge their user base at first to take the attention of users and access their data. This means that the most important barrier to entry in front of publishers is on user side. The way to attract users' attention is to offer an innovative or interesting product at first. Then, improvements in a product or service or showing customized content to consumers are important. Social network platforms are closely related to online display advertising and take a significant share. Those platforms are characterized with strong network effects. Consequently, barriers to entry stemming from network effects in social networks market lead to high barriers to entry in online display advertising market at the same time³⁰⁶.

(407) Most of the advertisers who are asked for opinion stated the following issues:

- A competitor that wants to enter or expand in online advertising market should reach users first in order to develop similar products and services. This is possible only by providing the user with an experience and/or meeting a need of the user. While platforms such as *Twitter*, *Snapchat* and *Clubhouse* can survive, applications that provide the same service without differentiation such as *Yaay* are not permanent in the market.
- The most important factors that direct advertisement investments are unit cost and the number of users in a platform. It is difficult for new entries to get advertisements without reaching a certain group and decrease unit costs. Since its advertisement performance is good and it has cost advantage, FACEBOOK is indispensable for advertisers. It is very difficult for new entries and competitors to persuade advertisers and get advertisements.
- Network effects are structural barriers to entry. Advertisers prefer FACEBOOK because it has more users than its competitors and it is the most popular social media platform, which is a factor being a barrier to or complicating entry.
- Since FACEBOOK dominates the market, it is very difficult for a new player to enter the sector or expand in the market. Undertakings in the market should be user-friendly and have a technical infrastructure that is compatible with all the existing technologies.
- Although other undertakings provide services with the same quality as FACEBOOK, it is difficult for them to have as many users as FACEBOOK. In order to reach such number of users, they must provide a user experience beyond FACEBOOK. Even market leaders such as Google had to close their platforms.

(408) Some of the undertakings that were asked for opinion stated the following: Online advertising market is open to all kinds of firms and technologies. Although network effects may complicate entry, this can be overcome by innovative products with higher quality. Applications such as *TikTok* and *Snapchat* can compete with FACEBOOK and GOOGLE. Undertakings that produce goods with higher quality can be successful because technology markets are dynamic and users can switch to new applications, products and services rapidly.

(409) In light of the opinions above, it is understood that one of the most important reasons why advertisers prefer FACEBOOK is that it can reach a large group due to its user base volume. It is possible to obtain more accesses and displays with the same budget

³⁰⁶ CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 252; CMA *Facebook/Giphy* para. 5.192; Autorité de la concurrence, "Opinion no. 18-A-03 of 6 March 2018 on data processing in the online advertising sector", p. 88-89.

by giving advertisements to a platform with a broader user group rather than giving advertisements to platforms with less users. It is also seen that FACEBOOK's argument that undertakings that provide innovative products and services can enter the market is also stated by a group of advertisers. Accordingly, *Snapchat* started to gain advertisement revenues in 2016 whereas *TikTok* started to gain advertisement revenues in 2019. *Snapchat* has been in the market for five years, however its market share has not reached even (.....)%. Although *TikTok*'s advertisement revenues increased significantly in 2020 compared to the previous year, its market share is only (.....)%. Again, it is seen that *Twitter*'s and *LinkedIn*'s market shares have not reached even (.....)%. Although there are undertakings that have taken the attention of users and have entered the market, they have not been able to show a noticeable growth. Even GOOGLE, one of the strongest competitors, has market share corresponding to (.....) of FACEBOOK's.

- (410) It is necessary to make technological investments such as developing a website or application and ensure the platform's and server's functionality to support a display advertising platform. Several marketing campaigns are also needed to increase brand recognition. This investments and fixed costs lead to economies of scope, creating advantages for larger platforms and complicating entry for smaller platforms.³⁰⁷
- (411) In addition, data in digital platforms allows providing targeted advertising; thus, it plays a much more critical role in online display advertising. Therefore, being unable to access data is an important barrier to entry.
- (412) On the other hand, FACEBOOK pointed out the following: Generally, barriers to entry and expansion are low in digital markets. User data is non-rivalrous and ubiquitous. User data can be obtained from a series of third party providers. In case a valuable service is provided, user data can be obtained directly from users. For those reasons, access to data is not a barrier to entry or expansion. FACEBOOK emphasizes especially that (i) consumers share exactly the same data with countless services and (ii) any company can license and buy the relevant data from a series of third parties.
- (413) According to the factors discussed above, for assessing the effect of FACEBOOK's data combination in respect of barriers to entry, it is important to consider whether competitors can match FACEBOOK's data set and whether it can be obtained from third party providers.
- (414) The commercial and therefore competitive importance of big data sets are characterized as "4V" being variety, velocity, volume and value. Feeding on many different sources, these data sets are produced at high speed and require powerful algorithms to be analyzed³⁰⁸. Consequently, FACEBOOK's data set are analyzed according to 4V criteria.

³⁰⁷CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 253-254, Autorité de la concurrence, "Opinion no. 18-A-03 of 6 March 2018 on data processing in the online advertising sector", p. 88-89.

³⁰⁸ Autorité de la concurrence and Bundeskartellamt (2016) "Competition Law and Data" p. 4; GRUNES, A. P. and STUCKE, M. E. (2015), "No Mistake About It: The Important Role of Antitrust in The Era Of Big Data", University of Tennessee Legal Studies Research Paper no. 269, p. 3-4; OECD (2013), "Exploring Data-Driven Innovation as a New Source of Growth: Mapping the Policy Issues Raised by "Big Data", p. 11.

- (415) “Variety” is explained with the number of different sources from which data is collected, at the same time it may be related to the time period the data covers.³⁰⁹ FACEBOOK collects data from its services especially *Facebook, WhatsApp, Instagram* and *Facebook Messenger* as well as third parties and attributes those data with user account by combining those. Under the scope of personal social networking services, user name, password, e-mail address, phone number, device information, account information used in financial transactions, usage habits, post contents and similar information is collected. Especially usage habits and post contents are critical for online advertising market. Under the scope of consumer communication services, FACEBOOK collects information such as user name, password, phone number, profile picture, profile information, location, device information, account information used in financial transactions, the persons in user’s contact list and usage habits. Apart from those, FACEBOOK collects data from advertisers and by means of add-ins such as *Pixel, API, SDK, Login, Social Plugins* which it provides to third party business partners. It collects and matches all those data.
- (416) In a study made in 2021, where terms and conditions offered by 58 popular applications to users are analyzed, the applications are listed according to different types of personal data they collect from users. The results of the study show that *Facebook* is the first by collecting 79.49% of personal data that are the subject of the study, followed by *Instagram* with 69.23%. Moreover, *Facebook’s* competitors in social media, *TikTok* is on the sixth place with 46.15%, *Twitter* is on the 14th place with 33.33%, *YouTube* is on the 28th place with 23.08%. Its competitors in consumer communication services, *WhatsApp* is on 35th place and *Zoom* is on the 36th place with 20.51%.³¹⁰
- (417) “Velocity” variable is associated with the speed of data creation, access, processing and analysis.³¹¹ Therefore, data’s time value is important and the older the data is, the less valuable it will be. For instance, location data may be very important to learn about the ways where the traffic is less heavy.³¹² Firstly, the frequency of use for each social network service and consumer communication service and the time spent in those platforms in terms of users in Türkiye can be a reference for measuring FACEBOOK’s data velocity. The table below show the data obtained about the frequency of use regarding social media applications for users in Türkiye according to the survey made under the scope of Online Advertising Sector Inquiry.

Table -17: The frequency of use regarding social media applications (%)

Time intervals	Instagram	Facebook	Youtube	Twitter	Tiktok	Snapchat	LinkedIn
5-6 days weekly and less	1.9	7.1	3.9	7	2.2	25	27.3
Once a day	6.8	14.5	15.9	16.4	15.7	22.7	13.6
2 - 3 times a day	22.8	25.9	28.2	29.9	36	15.9	31.8
4 - 5 times a day	35.3	28.5	27.1	25.8	23.6	22.7	18.2
6 times a day or more	33.2	24	24.8	20.9	22.5	13.6	9.1

Source: Online Advertising Sector Inquiry Consumer Survey

³⁰⁹ RUBINFELD, D. L. and GAL, M. S. (2017), “Access Barriers to Big Data”, *Arizona Law Review*, Vol: 59-339, p. 347.

³¹⁰ <https://clario.co/blog/which-company-uses-most-data/>, Accessed: 20.12.2021.

³¹¹ OECD (2013), “Exploring Data-Driven Innovation as a New Source of Growth: Mapping the Policy Issues Raised by “Big Data”, p. 11

³¹² STUCKE M. E. and GRUNES A. P. (2016), “Big Data and Competition Policy”, p. 19, 21.

- (418) According to the table above, the most frequently used application in a day is *Instagram* followed by *YouTube* and *Facebook*. This means that two of the three most used social platforms belong to FACEBOOK economic unity. Daily time spent on those social media applications is given in the table below:

Table -18: Daily time spent on social media applications (%)

Time intervals	Instagram	Facebook	Youtube	Twitter	Tiktok	Snapchat	LinkedIn
Less than 1 hour	10.2	19.2	13.9	20.9	21.3	47.7	50
Less than one hour	35.9	37.7	46.2	50.8	39.3	43.2	22.7
2 - 3 hours	36.1	25.9	27.1	13.5	30.3	4.5	9.1
More than 4 hours	17.8	17.2	12.8	14.8	9.1	4.6	18.2

Source: Online Advertising Sector Inquiry Consumer Survey

- (419) It is seen that the situation is similar in terms of the frequency of use because users spend the most time on *Instagram* followed by *YouTube* and *Facebook* daily. About 20% of *Facebook* and *Instagram* users spend 25% and more time on those applications daily.
- (420) In addition, it is known that one of the indicators measuring a user's dependency on the platform is the proportion of daily active users to monthly active users.³¹³ A 100% ratio means that each user who visits an application monthly also visits the application daily. In other words, the closer the DAU/MAU is to 100%, the higher the user's dependency on the platform and interaction with the platform is. Taken undertakings' DAU and MAU in 2020 as a basis, DAU/MAU is (.....)% for *Facebook* and (.....)% for *Instagram*. The same rates for *YouTube*, *Twitter*, *TikTok* and *Snapchat*, which follow FACEBOOK group in terms of daily frequency and duration of use are respectively as follows: (.....)%, (.....)% and (.....)%.³¹⁴ It is understood that *Facebook's* and *Instagram's* monthly active users interact more with platforms daily and their dependency on platforms are higher compared to other applications. This means that *Facebook's* and *Instagram's* new data collection speed is higher than other platforms.
- (421) Statistics about *WhatsApp* and *Messenger* channels, which are among FACEBOOK's consumer communication services are also analyzed. Again within the framework of the survey made within the scope of Online Advertising Sector Inquiry, users are asked "which messaging/video call applications they use". The answers are as follows: *WhatsApp* with 61.9%, *Messenger* with 21.3%, *Telegram* with 3.6%, *Zoom* with 2.2%, *BİP* with 2.2% and *Skype* with 2.2%. The remaining participants responded *Google Meets*, *Teams*, *Viber*, *Line* and *WeChat*." Those results show that the two most used consumer communication service applications belong to FACEBOOK and the usage rates of those two applications are far beyond their competitors. The table below shows the frequency of use regarding consumer communication service apps in terms of users in Türkiye.

³¹³ CMA *Facebook/Giphy*, para. 4.55

³¹⁴ Undertaking's average DAU and MAU in 2020 are calculated by taking the means of DAU and MAU in January, April, August and December.

Table -19: The frequency of use regarding consumer communication services applications

Time intervals	WhatsApp	Messenger	Telegram	Zoom	BİP	Skype	Google Meets
3-4 days weekly and less	3.5	6.4	6.5	21.5	30.8	25.7	9.1
5-6 days weekly		8.4	16.1	21.4	5.1	12.8	-
Once a day		14.1	29	8.9	10.3	17.9	54.5
2 - 3 times a day	15.1	22.8	37.1	12.5	20.5	23.1	18.2
4 - 5 times a day	33.3	26.6	9.7	23.2	17.9	12.8	9.1
6 times a day or more	48.1	21.7	1.6	12.5	15.4	7.7	9.1
Source: Online Advertising Sector Inquiry Consumer Survey							

- (422) It is understood that about half of the users in Türkiye use *WhatsApp* six times or more daily and one fifth of the users use *Messenger* six times or more daily. *BİP* follows the said apps in terms of the duration of use. The daily time spent by the survey respondents on consumer communication services applications is given in the table below:

Table -20: Daily time spent on consumer communication services applications (%)

Time intervals	WhatsApp	Messenger	Telegram	Zoom	BİP	Skype	Google Meets
Less than 1 hour	5.4	27.6	56.5	23.2	20.6	25.6	54.5
Less than one hour	31.8	36	35.5	32.1	12.8	46.2	36.4
2 hours	24.3	10.3	3.2	16.1	7.7	7.7	-
3 - 4 hours	22	15.2	3.2	21.4	41	17.9	-
More than 5 hours	16.5	10.9	0.8	7.2	17.9	2.6	9.1
Source: Online Advertising Sector Inquiry Consumer Survey							

- (423) It is seen in the table above that the application where users spend daily time at the most is *BİP*, followed by *WhatsApp*, and *Messenger* follows *WhatsApp*. Regarding the assessment about the velocity of the data obtained, as understood from the data about the number of users given under the section about dominant position, the number of *BİP*'s MAU is (.....) compared to that of *WhatsApp*.
- (424) The results of the survey made under the scope of Online Advertising Sector Inquiry are useful for the assessment about the data collecting velocity of other publishers, which include news website, forums and blogs. The table below shows how frequent the respondents to the survey visit news websites, forums and blogs:

Table -21: The frequency of visiting news websites, forums and blogs (%)

News websites		Forums and blogs	
Time intervals	Average (%)	Time intervals	Average (%)
5-6 days weekly and less	17.9	3-6 days weekly	10.9
Once a day	27.9	Once a day	19.8
2 - 3 times a day	27.8	2 - 3 times a day	25.7
4 - 5 times a day	16.8	4 - 5 times a day	12.9
6 times a day or more	9.5	6 times a day or more	11.5

Source: Online Advertising Sector Inquiry Consumer Survey

- (425) When we compare the tables with each other, the frequency of use for social media apps and consumer communication services apps, especially *Facebook*, *Instagram*, *WhatsApp* and *Messenger*, which are under FACEBOOK economic unity are much higher than the frequency of visits to news websites, forums and blogs. The table above draws an overall picture about news websites, forums and blogs. It is estimated that those rates will be lower when each news website, forum and blog is considered.
- (426) “Volume” of the data means the amount of the data processed. The amount of the data processed increases when the number of users and those users’ interaction with the platform increase. The table below shows average number of MAU pertaining to FACEBOOK’s competitors in social media market and consumer communication services market in 2020:

Table -22: Average number of MAU pertaining to social media market and consumer communication apps in 2020

Social media platform	Facebook	Instagram	Twitter	Youtube	LinkedIn	Snapchat	Tiktok
	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Consumer communication services ³¹⁵	WhatsApp	Messenger	Telegram	Zoom	BIP	Skype	Google Meets
	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.

- (427) As seen in the table above, *Instagram*, which is under FACEBOOK economic entity, has the highest number of users in “social media platform” field in 2020. Instagram is followed by *YouTube* and *Facebook*. The data about the frequency of use and the time spent regarding those platforms indicate a similar conclusion. *WhatsApp* and *Messenger* are among the apps with the highest number of users and they are ahead of their competitors. In addition to the assessment about the velocity of data, FACEBOOK collects more varied data about the usage habits of a vast amount of users compared to its competitors because users use those services actively for a longer time and more often. Consequently, this increases the volume of the data obtained.
- (428) Other publishers including news websites, forums and blogs generally collect less varied data. Moreover, the services provided by those publishers do not require membership.

³¹⁵ The number of *Telegram* and *Zoom*’s users in Türkiye could not be obtained. However, according to Statista data, while *WhatsApp* has 2 billion MAU in March 2020, *Telegram* has 550 million MAU. Moreover, it is stated that *Zoom* has 300 million daily meeting participants in April 2020. (See: <https://www.theverge.com/2020/4/30/21242421/zoom-300-million-users-incorrect-meeting-participants-statement>). It is estimated that the number of users of the said applications in Türkiye is similar to the global overview and below *WhatsApp*.

Even if the number of visitors is high, data collected from those visitors are not as detailed as the data collected while users are signing up. Users do not spend as much time on such websites as they do on social media platforms as a result of which the volume of data collected is smaller. For instance the monthly average number of visitors of (.....), which is under the body of (.....) is (.....) in 2020, monthly average duration of visits is (.....) during the same period. Similarly monthly average number of visitors of (.....), which is under (.....) economic unity and which is said by the undertaking to be one of the products receiving the highest traffic, is (.....); nevertheless, monthly average duration of visits was (.....) in the same year.

- (429) “Value” criterion means creating “value” from the data collected at a high volume, velocity and variety. It is associated with data analytics. Data analytics can be defined as processing data with different technical tools, interpreting undertakings’ organizational action processes and creating values in relation with the affected decision making processes. Data and data analytics have a mutually feeding loop. If undertakings fail to analyze data and take actions rapidly, they will have a less valuable data. In this sense, the value of the data is regarded as both a cause and an effect of the increase in volume, variety and velocity.³¹⁶
- (430) According to the data provided by FACEBOOK, the signals that FACEBOOK receives from different sources (*including those received over Facebook Business Tools and Facebook Login*) are aggregated and those signals are analyzed by FACEBOOK’s machine learning models to determine connections and obtain insights from basic data. Outputs of those models are used for different purposes in FACEBOOK services including showing organic contents and ads to users. According to the information provided by one of the players in the sector, thanks to its machine learning approaches with advanced features, FACEBOOK can use its data set to detect trends and connections, which would be overlooked otherwise.
- (431) It is stated that thanks to its ability to aggregate data obtained from services other than its own and unique data obtained by means of users’ interaction, FACEBOOK draws an elaborated user picture that it can follow on both its applications as well as many other websites and applications; even if other undertakings collect high quality data, FACEBOOK’s data set is characterized with a huge amount of high-quality data and therefore is very valuable, it is not likely that any other publisher or website, except GOOGLE can keep data as comprehensive as FACEBOOK³¹⁷.
- (432) Within the framework of the information and opinions given above, when the variety, volume and velocity of data collected by undertakings operating in the online display advertising market and the ability of creating value from the data collected by making them meaningful through technical tools are considered. It is understood that GOOGLE is the only competitor, who is likely to have a data set similar to FACEBOOK, other competitors are not capable of competing with FACEBOOK, it is currently impossible that they can produce an equal even a similar data set.
- (433) During the investigation, certain advertisers and publishers requested information about “*whether the data set in question can be produced or reached through a different*

³¹⁶ STUCKE M. E. and GRUNES A. P. (2016), “Big Data and Competition Policy”; CAVANILLAS, J. M. and WAHLSTER, W. (2016), “New Horizons for a Data-Driven Economy, A Roadmap for Usage and Exploitation of Big Data in Europe”, p. 30; OECD (2016), “Big Data: Bringing Competition Policy To The Digital Era”, p. 5-6; GAMBARO, M. (2018), “Big Data Competition and Market Power, Market and Competition Law Review”, Vol: 11, No: 2, p. 104

³¹⁷ACCC (2019), “Digital Platforms Inquiry - Final Report”, p. 86-87.

channel, considering the amount of the total data owned by Facebook, Instagram and Facebook Messenger". FACEBOOK's competitors in the social networking services and/or consumer communication services state the following:

- They do not have detailed information about the scope and details of the data collected by FACEBOOK. Generally, data collected by social networks vary in terms of content and nature. FACEBOOK and GOOGLE have an unreachable advantage in terms of access, scope, amount, audience attention and value measurement and indication for advertisers.
- It is not possible to say that owning data alone gives competitive advantage. However barriers to entry may rise when a dominant company has an exceptionally huge amount of data with which its competitors cannot keep up and advertisers are almost obliged to give ads to the firm for reaching potential customers properly. Consolidated data collected and shared with subsidiaries/affiliated companies offering different services can lead to concentration/dominant position as well as barriers to entry in the market. Generally, it will be difficult for competitors lacking so huge data to compete.
- Increase in the amount and variety of data will generally improve results. FACEBOOK and GOOGLE have much bigger data pool to use in ad targeting process, as they have been active for a long time and have more users. In addition to the amount, the data obtained by the said undertakings are varied. A data set with more variety allows more targeted ads and thus it is more attractive for an advertiser. FACEBOOK collects more detailed demographic data compared to (.....) including relationship, event, photos, etc. Even if it is likely that GOOGLE can collect data at a similar scale as FACEBOOK, the nature of the data collected by companies may differ. Therefore, (.....) is at a disadvantageous position since it does not collect and combine data from various and widespread products. It is not possible to recreate so huge and detailed data sets easily.
- In general, they have competitive concerns because of the big data advantage that the market players have. Digital leaders with high market shares dominate digital advertising area. Certain authorities, especially the Commission and CMA make investigations into possible anticompetitive conduct by those players. Due to the considerable data advantage of market players, they have concerns about the power to compete. Network effects strengthen this data advantage. Therefore it is difficult for companies like (.....) to compete for advertisement expenditures. Digital leaders currently have too many users and data. Advertisers do not regard (.....) and other smaller companies as valuable as those digital leaders.
- FACEBOOK's scale is self-reinforcing and makes FACEBOOK indispensable for advertisers. This dynamic allows FACEBOOK to collect more and more data, strengthens its position in the online advertising market to the detriment of new entries, small and medium sized platforms. FACEBOOK's platform family and services have a very large capacity in terms of collecting data directly. User base can prove this alone. FACEBOOK has created a data set to which any company other than GOOGLE can reach in terms of scope and detail.
- Thinking all the services given under FACEBOOK's umbrella together, it is not possible to reach, in any other ways, the meaningful data sets about users which are created by aggregating the data processed from different services (*followed pages and contents on Facebook, information given by the user directly, information about other apps which the user signs in through Facebook, content which the user*

likes or follows on Instagram, texting and contacts on WhatsApp).

(434) Advertisers state the following in general:

- Although they do not have detailed information about the data collected by FACEBOOK, FACEBOOK's user data are very comprehensive.
- FACEBOOK can categorize users according to their habits. It is not possible to reach those data when they take into account the nature of the service provided and the type, scope and amount of the data collected.
- FACEBOOK has more users and its advertisement results are more successful compared to other channels, so, it is difficult for its competitors to reach the type and amount of the data which FACEBOOK has or it is difficult to reach such data in other ways. As a result, undertakings are dependent on those channels.
- Competitors cannot provide exactly the same data because FACEBOOK data are created through user behavior in FACEBOOK inventory. For instance, targeting can be made on the basis of interest for a user who interacts with a specific content category in FACEBOOK inventory. Similarly, FACEBOOK can offer similar targeting options over the content which users interact with in other platforms.

(435) Some of the advertisers stated that the data collected by companies such as GOOGLE and Twitter are similar to those owned by FACEBOOK in terms of amount and type although they are not identical. However, it is not possible to reach a certain conclusion. Some of the advertisers stated that online display advertising companies can obtain similar data from different applications anonymously. That is to say, undertakings in digital advertising market not only offer targeting through their applications' data but also provide data from third party sources. Investment costs for purchasing is not high compared to the investment cost in ordinary markets.

(436) "Obtaining data from third parties" should also be mentioned. Both FACEBOOK and some advertisers indicated this point. One advantage of third party data is that undertakings can buy data in the size and variety they want. However, third party data must be purchased periodically, which creates variable costs. Third party data is limited in the sense of the capacity of accessible data. For instance, it is not possible to talk about a substitution relation between behavioral data collected through cookies and pixels and the data given by the user while using the platform. Cookies give information about websites which only one user visits; however, they do not allow the collection of socio-demographic data, which are regarded valuable. FACEBOOK creates detailed profiles based on users' very sensitive personal information such as family, education, profession, political interest and hobbies.³¹⁸

(437) In addition, FACEBOOK manages a walled garden on user data. The complete and accurate data set about the users of its services grants FACEBOOK a great advantage to impress advertisers. In addition, it helps advertisers to understand and measure their campaign's performance with metric and measurement tools depending on the data in its walled garden.³¹⁹ FACEBOOK's tracking tools it places on advertisers' websites make it possible to track the user's all way through the internet and measure the

³¹⁸ Competition Law and Data, p. 12, 39-40.

³¹⁹ Certain advertisers can reach the large part of internet users through large media groups. Since they are different media groups and their inventories are independent, single homing cannot be measured; more advertisement frequencies are needed to have the same amount of access, leading to a higher budget. Facebook has access control without facing such challenges and can reach the desired access with reasonable budgets.

association at a high level. It should be noted that the scenario where data advantage provided efficiently by third parties such as data brokers will allow new entrants to overcome Facebook's data advantage is unlikely³²⁰.

- (438) In light of the information above, it is not possible to agree with FACEBOOK's argument that data is not a barrier to entry in online display advertising market and can be obtained from third parties. Subcommittee Report indicates that FACEBOOK's data dominance creates feedback loop. First, FACEBOOK accesses and collects more user data compared to its competitors thanks to the significant number of users. FACEBOOK uses those data to make a more targeted user experience, which attracts more users and makes users to spend more time on the platform. On the other hand, small platforms with access to fewer data has to compete by providing a different user experience with smaller targeting capacity. Therefore, FACEBOOK's data advantage strengthens its position in the market and makes it more difficult for new platforms to offer competitive user experience. Secondly, FACEBOOK's data advantage provides a feedback loop in terms of monetization of the service. The revenues from showing targeted advertising are invested to the platform and more users are attracted.³²¹ FACEBOOK's ability to provide targeted advertisement is very valuable for advertisers. New entries do not have access to data with volume or quality like FACEBOOK. Thus, such platforms are less attractive for advertisers.
- (439) As a result, even if social media platforms except GOOGLE, collects data as various as FACEBOOK, considering volume and velocity criteria, the data collected by those platforms cannot be matched with the data collected by FACEBOOK. In addition, it is not possible to reach the data having the same nature with the said data through third parties at reasonable conditions.
- (440) At this point, it is necessary to make a separate assessment about the impact of FACEBOOK's data combination on barriers to entry. FACEBOOK's each application (*Facebook, Instagram, WhatsApp and Messenger*) has the highest number of users, has the highest user dependency and highest user interaction. They are at higher ranks in their respective areas. This means that the data, which FACEBOOK economic unity collects and processes from each application, are superior to its competitors in each respective category. FACEBOOK creates "super profiles" by combining the data in a single pool and processing them. This fact can be advantageous for the party getting the advertisement service as it allows displaying ads to "big data" inventory and optimization at reasonable costs, as said by the advertisers. However, it also makes FACEBOOK an "indispensable partner" for advertisers. Some advertisers highlighted that FACEBOOK's enlarging its data pool and making the data processable in different channels may affect competition adversely because FACEBOOK is ahead of the undertakings providing the same services; thus there will be fewer alternatives for advertisers and advertisement costs will increase as competition will be reduced in the market. Creating an adequate user base, access to data and economies of scope are already barriers to entry and expanse in the market. FACEBOOK's data combination strengthens those barriers to entry and expanse.

³²⁰ MORTON, F. S. and DINIELLI, D. C. (2020), "Roadmap for an Antitrust Case Against Facebook", <https://www.omidyar.com/wp-content/uploads/2020/06/Roadmap-for-an-Antitrust-Case-Against-Facebook.pdf>, Accessed: 21.12.2021.

³²¹ (.....)

Advertisers' Expenditure Preferences

(441) As stated above, “super profiles” created by FACEBOOK with its data combination makes it more indispensable for advertisers. In order to analyze the effects of FACEBOOK’s data combination in online display advertising market, it is important to look into the share of publishers in advertisers’ budget. Thus, 26 undertakings selected among the biggest advertisers of FACEBOOK and other platforms were requested to provide information about the expenditures to each social media platform and other publishers during the period between 2013 and 2021. Depending on the information obtained from undertakings, the chart showing the expenditures of advertisers to each social media platform and other publishers on an annual basis during the relevant period is given below. That chart is followed by a table showing the shares of each social media platform and other publishers³²² in advertisers’ total online display advertising expenditures in the relevant years³²³.

³²² FACEBOOK economic unity is given as a whole since some undertakings cannot separate their expenditures in terms of *Facebook*, *Instagram* and *Messenger*.

³²³ The period for which undertakings can provide consistent data are taken as a basis for preparing the chart and tables. In addition, data pertaining to 2021 are given by some undertakings as of 9th month, 10th month and 11th month. In order to ensure unity and make a proper comparison with previous years, the rapporteurs proportioned undertakings’ expenditures to each platform in 2021 to the number of months for which data were provided and multiplied those by 12.

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Chart -12: Distribution of advertisers' advertisement expenditures on a publisher base

(.....TRADE SECRET.....)

Source: The calculations made by the rapporteurs on the basis of the data acquired from undertakings.

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Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
FUGO	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
FUGO	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
FUGO	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
GETİR	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GETİR	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GETİR	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GETİR	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
GİTTİ GİDİYOR	2014	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GİTTİ GİDİYOR	2015	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GİTTİ GİDİYOR	2016	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GİTTİ GİDİYOR	2017	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GİTTİ GİDİYOR	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GİTTİ GİDİYOR	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GİTTİ GİDİYOR	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GİTTİ GİDİYOR	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
ING BANK	2013	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ING BANK	2014	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ING BANK	2015	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ING BANK	2016	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ING BANK	2017	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ING BANK	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ING BANK	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ING BANK	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ING BANK	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
LCW	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LCW	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LCW	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
LETGO	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LETGO	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LETGO	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
LOREAL	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LOREAL	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LOREAL	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
MİGROS	2016	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MİGROS	2017	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MİGROS	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MİGROS	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MİGROS	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MİGROS	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other

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Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
VIVENSE	2016	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VIVENSE	2017	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VIVENSE	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VIVENSE	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VIVENSE	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VIVENSE	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
VODAFONE	2015	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VODAFONE	2016	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VODAFONE	2017	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VODAFONE	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VODAFONE	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VODAFONE	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
VODAFONE	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
YAPI KREDİ	2014	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YAPI KREDİ	2015	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YAPI KREDİ	2016	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YAPI KREDİ	2017	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YAPI KREDİ	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YAPI KREDİ	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YAPI KREDİ	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YAPI KREDİ	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Undertaking	Year	Facebook/Instagram/Messenger	YouTube	Snapchat	Twitter	Tiktok	LinkedIn	Other
YEMEK SEPETİ	2018	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YEMEK SEPETİ	2019	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YEMEK SEPETİ	2020	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YEMEK SEPETİ	2021	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.

(442) Depending on the tables and charts above, it is understood that

- ✓ (.....)'s all advertisement expenditures in 2020 and 2021 were made to FACEBOOK economic unity.
- ✓ A small part of (.....)'s display advertising expenditures were made to *YouTube* during 2016 and 2021 period but as of 2021, the share of FACEBOOK economic unity in display advertising expenditures reached (.....)%.
- ✓ The share of FACEBOOK in (.....)'s and (.....)'s advertising expenditures in the period examined increased. As of 2021, FACEBOOK has the highest share in (.....)'s and (.....)'s advertising expenditures. For (.....) and (.....) FACEBOOK follows "other" channel.
- ✓ (.....)'s and (.....)'s advertising expenditures to FACEBOOK has an upward trend in in the period examined. FACEBOOK's share in undertakings' online display advertising expenditures has a fluctuating course in terms of its share, but as of 2021 FACEBOOK is the channel with the highest share.
- ✓ (.....)'s and (.....)'s advertising expenditures to FACEBOOK has an upward trend in the period examined. FACEBOOK's share in undertakings' online display advertising expenditures has a fluctuating course in terms of its share but FACEBOOK is an important channel for the three undertakings. As of 2021, its shares in undertakings' total online display advertising expenditures are (.....) %, (.....) % and (.....)%
- ✓ (.....)'s advertising expenditures to FACEBOOK has an upward trend in the period examined. Although a small part of (.....)'s display advertising expenditures were made to *YouTube* in 2021, FACEBOOK's share in the undertaking's total expenditures is (.....)%.
- ✓ FACEBOOK's share in (.....)'s and (.....)'s advertising expenditures has a downward trend in the period examined generally. Although FACEBOOK is an important channel for the said undertakings, *YouTube* has a higher share in (.....) and "other channels" have a higher share in (.....).

(443) It is necessary to highlight a specific issue regarding "Other" column in the table. The demand party in the online display advertising market - advertisers - have different methods to purchase advertisement area and the supply party - publishers - have different methods to provide advertisement areas. In the distribution channel called "direct sales" there is a direct contract between advertisers and publishers. The advertisement areas, which are called "*premium advertisement area*" on the most visited pages such as home pages, are sold by publishers in line with their importance. In the "indirect sales channel" the process works through advertisement intermediaries. Advertisers and publishers come together in an online environment. The advertisement inventories, which the publishers do not prefer to sell directly, are marketed through software tenders.

(444) "Other" column in the tables and charts above represents advertisers' expenditures to "direct" and "indirect" sales channels but does not represent the net revenues of publishers that are outside the social media platforms. The commissions of intermediary undertakings are included in the amount. On the other hand, there is not any clear information about intermediary undertakings' commission rate. The sector inquiries about online advertising sector indicate that the lack of transparency in commission rates is one of the competitive problems. CMA Report finds that 35% of the revenues obtained from

the sales through intermediary channel may belong to intermediaries.³²⁴ ACCC Report states that there are various estimates about the share of the revenues which publishers obtain from advertisers' expenditures. According to different resources, there are different estimates about the rate that publishers obtain from the total expenditures being 40%, 29-30% or 70%. In some sources, those rates vary between 45% and 63%.³²⁵ There are not any studies about commission rates in this file. Taking into account the said studies, it is possible to say that an important part of the total expenditures in "Other" channel is obtained by intermediaries; therefore, the amounts under the said channel are not paid totally to publishers.

- (445) In addition, 16 publishers apart from "social media platforms" were asked for information. Therefore, "Other" channel shows the shares of the said 16 publishers and more. Given the high commission rates and the number of publishers, the share which each publisher takes from advertisers' expenditures will be low. As stated in the table on market shares, the market shares of publishers apart from social media platforms are decreasing gradually, which is the most important indicator of this fact.
- (446) Within the framework of the information and evaluations given above, it is seen that as of 2021, FACEBOOK has the highest share in the total display advertisement expenditures belonging to 17 undertakings out of 26 undertakings, which were asked for information. Although "Other" channel has a slightly higher share than FACEBOOK economic unity in 2021 for (.....) and (.....), this channel includes a lot of publishers; thus it is likely that FACEBOOK economic unity is the most important channel for the said four advertisers. Concerning the five remaining undertakings, *YouTUBE*, which is FACEBOOK's closest competitor, is the leading channel only for (.....), for (.....), (.....), (.....) and (.....) "Other" channel is more important. Another remarkable point in the table is that the advertising expenditures to *TikTok* of (.....) have increased significantly in the last three years and of (.....) in 2021 have risen considerably. Even if *TikTok* has entered to and expanded in the market, it uses niche strategies at different degrees and has much less user participation, attention and fewer data and advertisement revenues compared to Facebook.³²⁶ Therefore, it is possible to conclude that FACEBOOK has the highest share in the online display advertising expenditures for 21 out of 26 undertakings which were asked for information.
- (447) It should also be noted that advertisers who were asked for information are mostly big advertisers. Big advertisers usually work with media agencies to control their budgets and ad campaigns. The said media agencies distribute the advertisers' budgets among several channels according to the target of ad campaigns. (.....) stated that giving advertisements through *Facebook*, *Instagram* and *Facebook Messenger* is sufficient to reach their target to a large extent; however, new social media platforms and similar channels cannot be ignored. Most of other advertisers stated that *Facebook*, *Instagram* and *Facebook Messenger* are important channels for advertisers to reach their targets due to the groups they reach; however, different channels are used as complementary because there are groups which cannot be reached through those channels. (.....) made the following explanations: For undertakings with high budgets, sparing the entire budget to a single channel will increase the unit cost per conversion incrementally. Each advertisement channel has a saturation point in terms of the budget, although it changes from firm to firm. After that point, the cost of conversion to be gained in return for each

³²⁴CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 211

³²⁵ACCC (2019), "Digital Platforms Inquiry - Final Report", p. 152-153.

³²⁶ Subcommittee on Antitrust (2020), "Commercial and Administrative Law of the Committee on the Judiciary, Investigation of Competition in Digital Markets", p. 90

additional investment can be high. In light of this information, it is concluded that big advertisers tend to work with more than one platform. In spite of this tendency, it is inferred from the data above that FACEBOOK is almost the most important advertisement channel among online display advertising channels even for the big advertisers. In other words, although big advertisers tend to work with more than one platform, most of them direct the largest share in total advertisement to FACEBOOK economic unity and the remaining part is shared among social media platforms and “Other” publishers.

- (448) CMA Report points out that although big advertisers tend to work with more than one platform; this is not the case for small advertisers. Those advertisers prefer GOOGLE and FACEBOOK because they can reach large groups and their interfaces are easier to use. Small advertisers, for instance, local businesses do not manage advertisement budgets through professional agencies or units. Giving advertisements to more than one channel may increase advertisement expenditures and thus transaction costs. Therefore, the most important variable in choosing a channel while making expenditures to advertisement is increasing the number of users/persons to whom the ad will be shown. The table below shows the number of undertakings which certain social media platforms provided services to between 2015 and 2020³²⁷.

Table -24: The number of undertakings to which social media platforms provided services in years³²⁸

Undertaking	2015	2016	2017	2018	2019	2020
FACEBOOOK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
INSTAGRAM	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MESSENGER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YOUTUBE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TWITTER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TIKTOK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.

- (449) The number of undertakings to which (.....) provides services is low. It should be noted that its only customer in 2019 and one of its customers in 2020 is a media agency. As stated above, media agencies provide services to many advertisers. Therefore, it is estimated that the real number of advertisers which (.....) provides services to is higher than the number indicated in the table. On the other hand, it is obvious that FACEBOOK has much more advertisers even the said fact is taken into account. The difference between FACEBOOK economic unity and its closest competitor YouTube, which are accepted to provide similar interfaces in user friendliness is about (.....) in terms of the number of undertakings which they provide services to.
- (450) However, making an absolute conclusion by comparing competitors depending on only the number of advertisers may lead to erroneous results. During the investigation, FACEBOOK was asked to provide information about advertisers from which it receives the highest income and median income in terms of *Facebook*, *Instagram* and *Messenger* services as well as information about the maximum income, median income and minimum income. Depending on the information, Facebook gains (.....) TL and Instagram receives

³²⁷ The possibility that “Other publishers” may not know the exact number of undertakings to whom they provided services as they use both direct and indirect sales channel in inventory sales and get intermediary services in “indirect sales” channel.

³²⁸ *Snapchat* is not included in the table as it stated that it does not own reliable data.

(.....) TL income from each of 30 advertisers of median size. In addition, FACEBOOK stated that the minimum advertisement income is (.....) in some years because it is possible to give ads to FACEBOOK at even small costs. It is possible to infer from the said information that there are many advertisers with small budgets among FACEBOOK's advertisers. Therefore, small advertisers with small budgets prefer to show ads over FACEBOOK especially when compared to all other channels. It is thought that this preference is based on the following facts: The number of users to whom the advertisements displayed through FACEBOOK is very high compared to other channels. FACEBOOK's interface is easy to use. FACEBOOK's targeting is more accurate thanks to the data it uses.

- (451) In light of all this information, it is understood that as a result of FACEBOOK's data set which is said to be unattainable by its competitors, FACEBOOK is the most important advertisement channel that means the most important online ad publisher for advertisers. FACEBOOK is an indispensable and for most of the time the single advertisement channel for small advertisers for whom variables such as transaction costs, user friendliness and the ability to reach large groups are critical. In terms of even big advertisers who display many ads, FACEBOOK has turned into the most important online advertising channel thanks to the number of users and data power advantage. Thus, FACEBOOK's combination of data obtained from different services and third parties will increase the single-homing tendency, which is currently in favor of FACEBOOK, and decrease the possibility of advertisers to choose a competing ad publisher. As a result of this, switching to competitors will be limited. It will be difficult for the competitors to survive in the market and they will have to leave the market. This may also constitute a signal preventing competitors to enter the market, supporting the tipping and growth in market power in favor of FACEBOOK. Consequently, it is concluded that FACEBOOK's being the single channel for advertisers will reduce competition in online advertising market and lead to consumer harm because the cost increases stemming from reduced competition will be reflected to consumers.

Comparison of the Revenues of Facebook and Its Competitors

- (452) In order to evaluate the impact of data sharing between FACEBOOK's group companies on online display advertising market, the change in FACEBOOK's and its competitors' advertisement revenues in years is analyzed. FACEBOOK gains revenues from *Instagram* and *Facebook Messenger* channels, which are called "Core Services" within the scope of the file. It does not show ads over *WhatsApp*. Thanks to the ability to access ad displaying services through both mobile and desktop devices, it is possible to show ads to users on both channels. In addition, according to the information provided by FACEBOOK, the revenues obtained from mobile channel in 2016 constitute (.....)% of FACEBOOK's total revenues. This rate is (.....)%, (.....)%, (.....)% and finally (.....)% in 2020.
- (453) The table below and the following chart show FACEBOOK's advertisement revenues between 2015 and 2020³²⁹ earned by means of *Facebook*, *Instagram* and *Messenger* in Türkiye.

³²⁹ FACEBOOK stated that it could not provide data for the period before 2015. Therefore, data pertaining to 2015-2020 period are given in the table and afterwards.

Table -25: FACEBOOK's advertisement revenues between 2015 and 2020 (TL)³³⁰

Core Services	2015	2016	2017	2018	2019	2020
<i>Facebook</i>	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
<i>Instagram</i>	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
<i>Facebook Messenger</i>	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
FACEBOOK TOTAL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: Information provided by FACEBOOOK						

Chart -13: FACEBOOK's advertisement revenues between 2015 and 2020 (TL)

(.....TRADE SECRET.....)

Source: Information provided by FACEBOOOK

(454) As understood from the table and the chart above, FACEBOOK's total revenues increased constantly during the period analyzed. From 2015 to 2020, *Facebook's* advertisement revenues increased by (.....), *Instagram's* advertisement revenues increased by (.....) fold and *Facebook Messenger's* advertisement revenues increased by (.....) fold and FACEBOOK's total advertisement revenues increased by (.....) fold. Of the core services only (.....) however (.....). It should be emphasized that (.....). Another remarkable point is that (.....). In order to be visually observable, the chart below shows the change in the share of FACEBOOK's advertisement revenues from its three core services in its total advertisement revenues:

Chart -14: *The share of Facebook, Instagram and Facebook Messenger in FACEBOOK's total advertisement revenues during 2015-2020 period (%)*

(.....TRADE SECRET.....)

Source: Information provided by FACEBOOOK

(455) The table below shows the growth rates of FACEBOOK's advertisement revenues gained from each core service and the growth rate of FACEBOOK's total revenues in years.

³³⁰ The undertaking submitted its advertisement revenues in USD. For 2015-2020 period, the revenues are converted to TL according to the following average buying exchange rate of TCMB respectively: 1 USD = 2.72 TL; 1 USD= 3.02 TL; 1 USD= 3.65 TL; 1 USD= 4.81 TL; 1 USD = 5.67 TL and 1 USD=7.01 TL

Table -261: The growth rate of FACEBOOK's advertisement revenues between 2016 and 2020 (%)

Core Services	2016	2017	2018	2019	2020	2016-2020 Cumulative
<i>Facebook</i>	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
<i>Instagram</i>	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
<i>Facebook Messenger</i>	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
FACEBOOK TOTAL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: Information provided by FACEBOOOK						

- (456) The table shows that during 2016-2020 period, *Facebook's* advertisement revenues increased by (.....)%, (.....)%, (.....)%, (.....)% and (.....)% whereas *Instagram's* advertisement revenues increased by (.....)%, (.....)%, (.....)%, (.....)% and (.....)% respectively in comparison with the previous year. While *Facebook's* cumulative growth rate in the relevant period was (.....)%, *Instagram's* growth rate was (.....)%. *Facebook Messenger* had a share under (.....)% during almost the entire period. Its advertisement revenues decreased (.....)% and (.....)% in 2016 and 2019 compared to the previous year but it had a growth rate over (.....)% in 2017 and 2018 and a cumulative growth rate of (.....)%. It is understood from the data above that after *Instagram* was taken over by FACEBOOK, it advanced in terms of monetization and went beyond even *Facebook*, which grew to a to a considerable extent in time.³³¹
- (457) As stated under the section on "Relevant Product Market", the relevant product market where FACEBOOK operates in terms of advertisement services is defined as "online display advertising" market. On the other hand, although a net market definition is not made, in light of the literature, case law and undertakings' opinions, it is possible to define a downstream market as "*online display advertising through social media channels*". The table below and the following chart shows the course of the advertisement revenues gained by undertakings regarded as "social media platforms" in the widest sense during 2015-2020 period.

³³¹ The effects of data combination in the market were analyzed for 2015-2020 period, for which undertakings provided data.

Table -27: Advertisement revenues of social media platforms (TL)³³²

Undertaking	2015	2016	2017	2018	2019	2020
FACEBOOK Total ³³³	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YOUTUBE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LINKEDIN ³³⁴	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TWITTER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TIKTOK ³³⁵	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SNAPCHAT ³³⁶	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TOTAL	504.952.824	743.875.935	1.185.289.456	1.956.844.134	2.668.334.591	4.471.732.862
Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.						

Chart -15: Advertisement revenues of social media platforms (thousand TL)

(.....TRADE SECRET.....)

Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.

- (458) As understood from the table and the chart, FACEBOOK was the market leader in “*online display advertising market through social media channels*” during the entire 2015-2020 period. FACEBOOK is followed by *YouTube*, which is under GOOGLE economic unity. It is also seen that *Facebook*’s revenues were always higher than *YouTube* during the entire period in question. *Instagram*’s revenues are below *YouTube* in 2015 and 2016 but the situation changed in 2017 to the contrary and the difference got bigger later on. In 2017, *Instagram*’s revenues were (.....) times higher than *YouTube*. This rate increased by (.....), (.....) and (.....) fold. Considering the whole FACEBOOK economic unity, advertisement revenues gained during 2015-2020 period were (.....), (.....), (.....), (.....), (.....) and (.....) times higher than *YouTube* respectively.
- (459) Another important point in the table and chart is that the revenues of competitors other than *YouTube* are much lower than *Facebook* and *Instagram*. Even if *LinkedIn* and *Twitter* have been active in the market since 2015, as of 2020, FACEBOOK economic unity has gained (....) times more revenues than *LinkedIn* and (.....) times more than *Twitter*. In

³³² (.....)

³³³ *Facebook Messenger* is not added to the table as it operates in “consumer communication services” market.

³³⁴ LINKEDIN stated that (.....). In addition, if market share calculation depends on advertisement revenues based on member/user location, *LinkedIn* stated that (.....) may not submit correct market share information and may cause that *LinkedIn*’s market share may be calculated higher than it is. Thus, although *LinkedIn*’s advertisement revenues and, in the following tables, market share information are given, in accordance with the explanations made by the undertaking, it should be noted that *LinkedIn*’s market shares may seem higher than they are.

³³⁵ It is stated that *TikTok* was launched in Türkiye in (.....) and started to gain advertisement revenues in (.....).

³³⁶It is stated that it started to gain advertisement revenues in Türkiye since (.....).

addition, respectively (.....)%, (.....)%, (.....)%, (.....)% and (.....)% of the annual growth between 2016 and 2020 belonged to FACEBOOK economic unity. The table below and the following chart show the market shares of undertakings:

Table -28: Market shares of social media platforms in terms of advertisement revenues (%)

Undertaking	2015	2016	2017	2018	2019	2020
FACEBOOK Total	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YOUTUBE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LINKEDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TWITTER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TIKTOK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SNAPCHAT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TOTAL	100.00	100.00	100.00	100.00	100.00	100.00

Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.

Chart -16: The course of market shares of social media platforms in terms of advertisement revenues during 2015-2020 period (%)

(.....TRADE SECRET.....)

Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.

- (460) The market share of FACEBOOK is above (.....)% in the market for “*online display advertising through social media channels*” during the entire 2015-2020 period according to table and the chart above. During the said period, although there was a fall in *Facebook’s* market share, this fall was compensated by the increase in *Instagram’s* market share. Moreover FACEBOOK’s market share was (.....) times larger than *YouTube* - its closest competitor. At this point, there is an overall fall in *Twitter’s* market share. Although there is a slight increase in the market shares of *LinkedIn*, *Snapchat* and *TikTok*, the said increase is ignorable because they could not reach even (.....) market share. FACEBOOK economic unity protected its market share in the examined period. The said platforms could not gain the power to make sufficient competitive pressure. Although competitors have increased their advertisement revenues considerably, the revenues of each competitor cannot reach even (.....) of the total revenues gained by FACEBOOK.
- (461) International reports also highlight a similar issue. It is stated that competing social media platforms are not a significant threat against *Facebook’s* position. Even if they are able to develop a significant user base, they have to earn revenues to be sustainable in the long term. However, they could not reach an important scale in online display advertising market despite their efforts in the last decade.³³⁷
- (462) On the other hand, online display advertising plays an important role for not only platforms but also small publishers such as news websites and application providers for financing

³³⁷CMA (2020), “Online Platforms and Digital Advertising”, Market Study Final Report, p. 12- 13 and 252

the online content.³³⁸ Thus, it is important to specify FACEBOOK's market position by taking into account the said competitors. The table below shows advertisement revenues of social media platforms as well as publishers of different size apart from social media platforms in the area of online display advertising.

³³⁸ Ibid., p. 212

Table -292: Advertisement revenues of the undertakings operating in online display advertising market (TL)

Undertaking	2015	2016	2017	2018	2019	2020
FACEBOOK Total	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook Messenger	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GOOGLE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GOOGLE DISCOVER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GMAIL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PLAY STORE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YOUTUBE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LINKEDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DEMİRÖREN ³³⁹	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TWITTER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TIKTOK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURKUVAZ ³⁴⁰	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
CİNER ³⁴¹	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MYNET	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SAHİBİNDEN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ONEDİO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ ³⁴²	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
İLAB HOLDİNG ³⁴³	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
KREA ³⁴⁴	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
FOX NETWORKS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)

³³⁹ Covers advertising revenues from (.....) websites.

³⁴⁰ Covers advertising revenues from (.....) websites.

³⁴¹ Covers advertising revenues from (.....) websites.

³⁴² includes (.....)'s data. The undertaking stated that it was not possible to provide data for the period before 2018.

³⁴³ Represents advertising revenues from (.....) . (.....) and (.....) could not provide data for the period before 2018. Therefore, data belonging to the years 2015, 2016 and 2017 are only (.....) website's advertisement revenues.

³⁴⁴ The undertaking stated that there were not data pertaining to the period before 2016.

NOKTA ³⁴⁵	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SNAPCHAT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LETGO ³⁴⁶	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
EKŞİ SÖZLÜK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURKCELL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MEMURLAR.NET	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
HEPSİ EMLAK ³⁴⁷	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total (TL)	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.						

³⁴⁵ Represents advertising revenues from (.....) .

³⁴⁶ The undertaking stated that it started its activities in Türkiye in 2018.

³⁴⁷ The undertaking stated that they could not reach sound data for the period before 2017.

- (463) As understood from the table, FACEBOOK keeps its leader position in the overall online display advertisement market. In line with the findings about “*the market for online display advertising through social media platforms*”, FACEBOOK is followed by GOOGLE economic unity, which is composed of *Gmail, Play Store and Google Discover* in addition to *YouTube*.
- (464) According to “Estimated Media and Advertisement Investments in Türkiye” reports, which were prepared by IAB, Advertisers’ Association, Advertising Agencies’ Association, Outdoor Advertising Agencies Association, National Radio Broadcasters’ Association, Mobile Marketing Association and Deloitte, the distribution of digital advertisement expenditures between 2015 and 2020 among various channels are shown below:

Table -303: Estimated Media and Advertisement Investments Reports Data (million TL)³⁴⁸

Types of Digital Advertising	2015	2016	2017	2018	2019	2020
Search	814	862	812	918	1110	2849
Display	600	738	1265	1467	1680	2649
Mobile	70	136	-	-	-	-
Video	-	-	-	-	-	1,541
Influencer	-	-	-	-	-	240
Posting	-	-	-	-	125	138
Other	-	-	-	-	26	110
TOTAL	1484	1736	2077	2385	2941	7527

- (465) It is seen that there is a huge difference between the total market size in the table and the total market size calculated on the basis of the data which were obtained from different publishers during the investigation. For instance, according to 2020 data of “Estimated Media and Advertisement Investment in Türkiye” report, the total of display advertisement category and video category, which is also a type of display advertising, corresponds to 4,190 million TL. However, according to the information given by FACEBOOK and GOOGLE, they alone gained 4,465 million TL advertisement revenues. The case is similar for other periods examined. In addition, the table above shows that digital advertisement investments increased considerably in 2020 compared to previous periods. 2020 interim report states that this is because of a change in methodology. Data were collected from a wide range of shareholders in the sector such as member agencies, different types of publishers and advertisers. Therefore, the data in 2020 should not be compared to previous years in terms of total size and growth rate³⁴⁹.

³⁴⁸The amounts are taken from the reports on the following websites

http://rd.org.tr/www/rd/assets/doc/RD_TABLO_2016_MART.pdf,

http://rd.org.tr/www/rd/assets/doc/RD_TABLO_2016_MART.pdf, <http://rd.org.tr/www/rd/assets/doc/RD-medya-ve-reklam-yatirimlari-2017-Raporu.pdf>,

<http://rd.org.tr/Assets/uploads/bf6ab5b5-0d86-4bc3-92a7-da47c165cb61.pdf>,

http://rd.org.tr/assets/uploads/medya_yatirimlari_2019_.pdf, <http://rd.org.tr/Assets/uploads/1cc3c0b2-236d-4ada-9cbe-8a24420611c5.pdf>

³⁴⁹<https://iabtr.org/UploadFiles/PageFiles/2020%20Yar%C4%B1y%C4%B1%20Medya%20ve%20Reklam%20Yat%C4%B1r%C4%B1mlar%C4%B1%20Raporu1952021171553.pdf>,

Accessed: 27.02.2023, p. 5

(466) Due to the facts above, it is concluded that depending on the market size given in “Estimated Media and Advertisement Investments in Türkiye” to show FACEBOOK’s and its competitors’ market position may lead to incorrect evaluations. If the said amounts are taken as a basis, FACEBOOK’s market share is over 100% in 2018 and 2019. Consequently, the amounts calculated in line with the data obtained from various publishers during the investigation are taken as a basis. The said market size cover the data concerning a very large part of the market as it includes both social media platforms and other big-sized publishers. The table below shows the market shares calculated accordingly:

Table -31: Market shares of the undertakings operating in online display advertising (%)

Undertaking	2015	2016	2017	2018	2019	2020
FACEBOOK Total	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Instagram	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Facebook Messenger	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GOOGLE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GOOGLE DISCOVER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
GMAIL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
PLAY STORE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
YOUTUBE	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LINKEDIN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DEMİRÖREN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TWITTER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TIKTOK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURKUVAZ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
CİNER	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MYNET	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SAHİBİNDEN	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
ONEDİO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
DOĞUŞ	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
İLAB HOLDİNG	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
KREA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
FOX NETWORKS	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
NOKTA	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
SNAPCHAT	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
LETGO	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
EKŞİ SÖZLÜK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
TURKCELL	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
MEMURLAR.NET	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
HEPSİ EMLAK	(.....)	(.....)	(.....)	(.....)	(.....)	(.....)
Total	100.00	100.00	100.00	100.00	100.00	100.00
Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.						

(467) The first point to be noted in the table above is that although there are many players in “*online display advertising market*”, it is very concentrated. FACEBOOK and GOOGLE hold a considerable part of the market. The total market shares of the two

undertakings raised from (.....)% to (.....)%. Another point to be noted is that FACEBOOK's market share is (.....) times more than its closest competitor GOOGLE and (.....) times more than its second closest competitor after GOOGLE, *LinkedIn*. The most outstanding conclusion based on the table is that social media platforms such as *LinkedIn*, *YouTube*, *Snapchat* and *TikTok* were able to increase its market shares although in a limited manner. However, the market shares of competitors apart from social media platforms have a tendency to decrease. Although online display advertising market is growing, the said competitors cannot get enough share from the market growth and lose market shares. Contrarily, during 2015-2020 period, FACEBOOK were able to increase its already high market share. Online display advertising market has grown by (.....)%, (.....)%, (.....)%, (.....)%, and (.....)%. FACEBOOK economic unity has grown by (.....)%, (.....)%, (.....)%, (.....)%, and (.....)%. Therefore, during a part of the period examined, FACEBOOK's growth was beyond the growth of the market. The advertisement revenues of content producers operating outside the social media market -especially the media sector- increased below the average growth rates in the sector. The advertisement revenues of even players such as MYNET, DOĞUŞ, FOX, MEMURLAR and HEPSİEMLAK decreased in 2020 whereas the increase in advertisement revenues of players such as DEMİRÖREN, CİNER, SAHİBİNDEN, ONEDİO, KREA and TURKCELL was below (.....)%. Similarly, DEMİRÖREN group, which increased its advertisement revenues by (.....)% in 2020, had a growth rate of (.....)% and (.....)% of the sector but there was a fall in their advertisement revenues in 2018 and 2019.

- (468) The data above show the reflection of FACEBOOK's position in "social networking services" and "consumer communication services", the data set it owns depending on this position and its policies concerning the processing of the data it obtains from those services on online display advertising market, which is a market connected to those markets. The value of a platform for advertisers increases in line with its ability to process user data in detail. This is especially important in terms of online display advertising market. Search advertising is preferred for a user who is already interested in buying the product whereas display advertising is used for increasing brand recognition. This difference between those two online advertising types significantly affects the data attributed to the market in each of the markets. Access to user data plays a more important role in display advertising compared to search advertising because it enables advertisers to target the groups who might be interested in the content of their advertisements. Thus, access to valuable user data, which allows a more detailed targeting, makes up an important dimension of competition in display advertising services market.³⁵⁰
- (469) As seen from the data above, advertisement revenues of advertisement publishers who do not have the capability to access such amount of data decreased or the increase in their advertisement revenues were below the sector average. Moreover, even the share of its closest competitor is well below FACEBOOK's market share. Some of the advertisers indicated the following points: Access to data has a determinant role in online display advertising. Big platforms have advantages because they combine access and data depth. Moreover, users do not want or hesitate to share data with a new channel nowadays, which makes it more difficult for new entries to obtain data. FACEBOOK benefits from an important advantage to the detriment of its competitors because it is preferred more by advertisers since it has a wide user base

³⁵⁰CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p. 243 and 245; CMA *Facebook/Giphy* para. 5,168.

as well as a very detailed data set and it creates very detailed user profiles by combining those data. This is reflected to the change in the market shares and ad revenues of FACEBOOK and its competitors.

Comparison of Revenue per User

(470) Revenue per user is an important variable to show the value obtained from users who spend time on the services of digital platforms, which gain most of their revenues from online advertising. In fact, the value of users for digital platforms depends on the time spent on the platform and their data that allow offering targeted ads. Revenue per user does not make a distinction between the value obtained from users' attention and the value obtained from the data which the user provides to the platform/which the platform extract from user activity. However, it is accepted that since advertisers attribute great importance to data ownership, a significant portion of the value of consumers to digital platforms is likely to come from their user data.³⁵¹ Thus, revenue per user is a convenient criterion to reflect the two-sided structure of the platform markets. It is possible to show the users' contribution to the platform in this way. The chart below shows social media platforms' revenues per user between 2015 and 2020³⁵².

Chart -17: Social media platforms' revenues per user (TL)^{353,354,355}

(.....TRADE SECRET.....)

Source: The calculations made by the rapporteurs on the basis of the information acquired from undertakings.

(471) The chart above shows that *Facebook's* and *Instagram's* revenues per user increased constantly during 2015-2020 period and were considerably higher than their competitors. *Facebook's* revenue per user was (.....) TL in 2015 and increased by (.....) to (.....)TL in 2020. During the same period, *Instagram's* revenue per user was (.....) TL in 2015 and increased considerably by (.....) to (.....)TL in 2020. *Twitter's* revenue per user rose from (.....) TL to (.....) TL, with an increase rate of (.....). The revenue per user of *Snapchat*, which started its activities in the market in 2017, is well below its competitors, increasing by (.....) fold from (.....) TL to (.....) TL during 2017-2020 period. *Tiktok's* revenue per user rose from (.....) TL to (.....) TL depending on the increase rate in its advertisement revenues between 2019 and 2020, which means an increase by

³⁵¹ACCC (2019), "Digital Platforms Inquiry - Final Report", p. 50-51.

³⁵² The chart does not include the publishers apart from social media platforms, as their services do not require membership.

³⁵³ Calculated by proportioning the total ad revenues of undertakings to average number of MAU for each year.

³⁵⁴ (.....) stated that they can only find the number of MAU after 2019.

³⁵⁵ Information about (.....)'s revenue per user is not included because undertaking's ad revenues may not be accurate. It is seen in CMA report that *LinkedIn* and *Twitter* are not included in the comparison of revenue per user because they make a different distinction between advertiser and user positions. (CMA (2020), "Online Platforms and Digital Advertising", Market Study Final Report, p.258). (.....) is not included in the calculations as (.....) did not point out a similar issue.

(.....) fold. However, *Snapchat's* and *TikTok's* revenues per user are too much below *Facebook* and *Instagram*. Revenue per user of *YouTube*, which is under the body of FACEBOOK's closest competitor GOOGLE goes up from (.....) TL to (.....) TL during 2019-2020 period however, in 2020, *Facebook's* revenue per user is (.....) times more and *Instagram's* revenue per user is (.....) times more than *YouTube*. In light of this information, it is concluded that advertisers attribute more value to working with FACEBOOK than working with its competitors and an important part of this value stems from the data owned by FACEBOOK.

- (472) In light of the information and evaluation given above, it is understood that FACEBOOK's data combination strengthens barriers to entry and complicates competitors' activities in online advertising market. In order to examine FACEBOOK's said practices under article 6 of the Act no 4054, consumer harm should also be discussed. As stated in the guidelines, consumer harm may occur in the form of increased prices, decreased product quality and level of innovation, and reduced variety of goods and services. Since digital markets are established on a data-based system, consumer harm is related to decreased service quality rather than price-based indicators. It is concluded in the file that advertisers prefer to work with FACEBOOK more because of its data combining behavior. Therefore, FACEBOOK's position in online display advertising market is getting stronger, as a result of this tipping in the market, consumers are obliged to see as many ads as FACEBOOK wants.
- (473) According to the information given by FACEBOOK within the scope of the file, in the mobile channel, where FACEBOOK earns most part of its income, in 2016 the number of ads that consumers see every hour was (.....) whereas this number was (.....) in 2020 on *Facebook*. In terms of *Instagram* the number of ads that consumers see every hour was (.....) in 2016 whereas this number was (.....) in 2020. Considering that FACEBOOK has a high level of user dependency, users who benefit from the service are increasingly exposed to more ads depending on FACEBOOK's position in both markets, which results in a deterioration in service quality as well as costs related to time, creating consumer harm. In addition, it is expected that the fact that advertisers prefer FACEBOOK more and more will lead to consumer harm by price increases due to the following reasons: The tipping in the market may lead to a fall in the number of publishers who provide ad inventory in the market. In a less competitive environment. FACEBOOK may change its pricing policy for advertisers and increase the costs for them. These costs may be reflected to consumers and prices may increase. Finally, consumer welfare may be reduced in this way. Some advertisers mentioned about their concerns that ad costs might increase.
- (474) Depending on all these evaluations, it is concluded that FACEBOOK's data combining behavior complicates the activities of competitors and restricts competition by discouraging new entries; thus, FACEBOOK has abused its dominant position under article 6 of the Act no 4054.

I.4.4.1.2. Assessment of the Exclusionary Effects of Facebook's Actions in Social Networks Market

- (475) Exclusionary effects stemming from data combination in social networking services market occur in two forms. Since platform economies are data-based, user data is crucial to survive and expand in social networking services market. Having knowledge about users' preferences, likes, habits, locations, timing and frequency of use is important for improving the services provided to consumers. The said data give advantage to the data owner by enabling it to customize the service for each user.

Undertakings which do not have such data cannot make their services user-friendly or customize their services according to user preferences; thus, they are preferred less. It is not possible that the “super profiles” created by FACEBOOK by combining the data it obtains from certain services related to user behavior, habits and preferences can be recreated or obtained by competitors. This fact significantly weakens rivals’ ability to compete and complicates their activities.

- (476) As stated in the section on market definition, the products of competitors operating in social network market compete with only certain functionalities of FACEBOOK products. They do not offer services that fully compete with *Facebook* or *Instagram*. In the market’s widest sense regarding the said products as *Facebook’s* and *Instagram’s* competitors, FACEBOOK is found to be dominant. However, it should be highlighted that there are no product and service which closely competes with FACEBOOK in the assessment of the competition level in the said market. Although *Snapchat* and *Tiktok* have attained a place in the market, their market shares are (.....) level. The number of *Facebook’s* active users is (.....) times more than *Tiktok* and (.....) times more than *Snapchat*. The number of *Instagram’s* active users is (.....) times more than *Tiktok* and (.....) times more than *Snapchat*. Undertakings in the relevant market were asked for their opinion about FACEBOOK’s data combining. (.....) answered that it has disadvantages because it does not collect data from prevalent products and combine them, besides, it is not possible to recreate such a big and detailed data set. (.....) stated that it has concerns about its competitive power because of the considerable data advantage of market players and network effects strengthen this data advantage.
- (477) Other undertakings in the market made similar assessments. (.....) stated that although they do not have detailed information about which types of data are collected and combined, the consolidated data, which FACEBOOK collects and shares with subsidiaries/affiliated companies offering different services, can lead to concentration/dominant position as well as barriers to entry in market. Generally, it will be difficult for competitors to compete without so huge data. (.....) argued that FACEBOOK created a data set, which is unattainable for any company, other than GOOGLE, in terms of scope and detail. In addition, FACEBOOK can use this data set with advanced machine learning approaches to detect trends and connections which would otherwise be overlooked.
- (478) The data combining behavior in question complicates the activities of undertakings in the market, which strengthens the lock-in effect, limits the ability of competitors to develop alternative products and offer those to competitors and increases consumers’ dependency on FACEBOOK and deteriorates consumer welfare, obliging consumers to use the services even if they are not content.
- (479) The second exclusionary effect in terms of social networking services occurs in connection with the abovementioned exclusionary effects in online advertising market. Undertakings in the social networking services market operate as ad inventory providers, in other words, as publishers at the same time. The only way for those undertakings to finance the services offered to consumers for free is the marketing of their ad inventories. Within this framework, limiting the ability of those undertakings to reach advertisers complicate and even make their activities impossible. In the previous section, it is concluded that FACEBOOK’s data combining complicates its competitors’ activities and creates barriers to entry since competitors cannot own data in such size and detail. In addition, it is understood that advertisers prefer to work with FACEBOOK more due the practice in question. As a result of this, the revenues of competing social

networking services, which cannot find adequate demand for their ad inventory and therefore gain advertisement revenues, are decreasing. Similarly, the concerns about not being able to reach advertisers are discouraging undertakings from entering the market, which increases the tipping tendency in the market, limits the number of undertakings in the market and deters new entries. The reduced competition in the market ultimately results in reduced alternative for consumers and deteriorates the balance of power in favor of undertakings from which they receive services, lessening consumer welfare. Reduced competition also increases ad costs and thus advertisers' costs. Advertisers reflect those costs to consumers. Consequently, prices may arise. One of the big advertisers, (.....), estimates that the costs of personalized ads will increase in the future because there are no alternatives for FACEBOOK group's products in terms of social media tools.

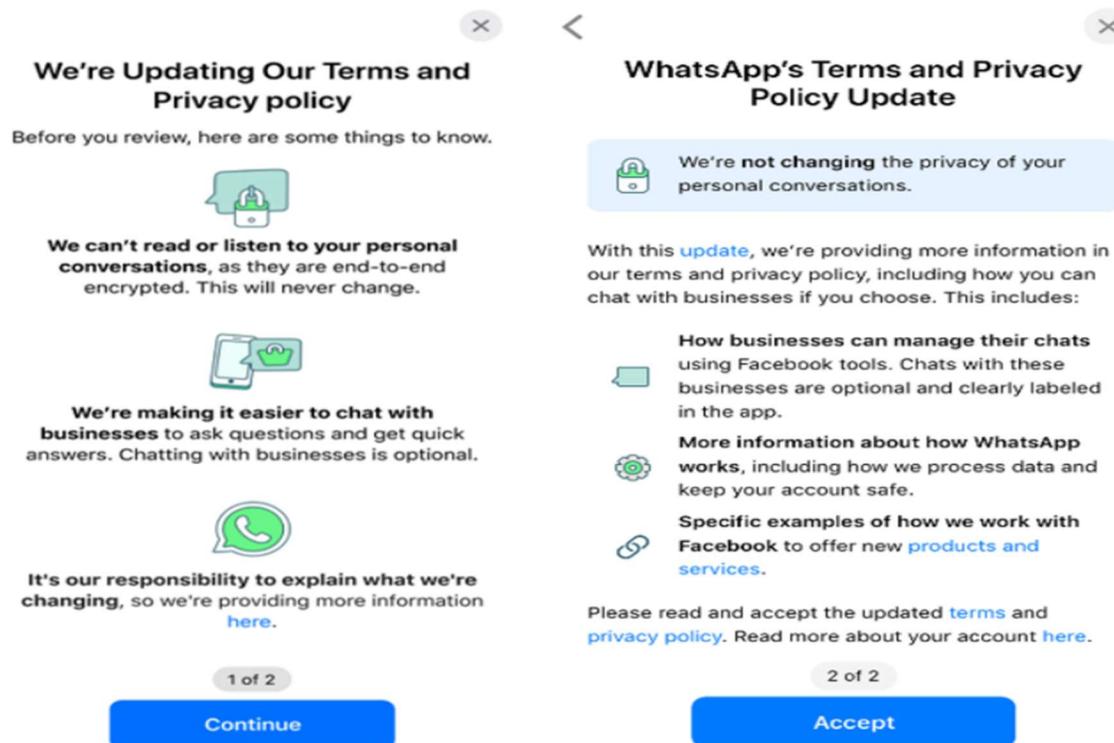
- (480) Depending on all these explanations, it is concluded that FACEBOOK's data combining behavior complicates the activities of competitors and restricts competition by discouraging new entries; thus, reduces consumer welfare; therefore FACEBOOK has abused its dominant position under article 6 of the Act no 4054.

I.4.4.2. Assessment of the UPDATE according to Article 6 of the Act no 4054

- (481) In January 2021, when WhatsApp users in Türkiye open the app, they saw an information text stating that WhatsApp terms and privacy policies would be updated (UPDATE). According to the said information text, users had to accept the update that requires consent to data processing policies to continue using *WhatsApp* after 08.02.2021. In other words, users had to accept sharing *WhatsApp* data with Facebook Inc. and its subsidiaries to continue using *WhatsApp*.
- (482) When users wanted to use *WhatsApp* app, the information text was displayed on the main screen before they saw their messages. The text implied a countdown and a threat to deprive from the service. This situation was interpreted as a dictation by FACEBOOK on *WhatsApp* users to open their data to Facebook Inc.'s and its subsidiaries' use with the said UPDATE. As seen clearly in the information text, the option offered by FACEBOOK to users was formulated as "take it or leave it" and essentially did not give *WhatsApp* users freedom to choose. It was understood that the UPDATE and data sharing among FACEBOOK products and services aimed at collecting, processing and using more user data. According to Article 9(4) of the Act no 4054, it was decided that "*Facebook shall cease the conditions that the data of WhatsApp users will be used for other services as of 08.02. 2021 and Facebook shall inform, until the said date, all users who have accepted those conditions or who have received the information but have not accepted the conditions that it has ceased the new conditions regarding data sharing.*"
- (483) Afterwards, representatives of the investigation party submitted petitions about the UPDATE's content and the planned changes. The application which was submitted to the Authority's registry on 04.02.2021 with the number 14892 briefly included the following issues: WHATSAPP postponed the UPDATE about *WhatsApp* Terms of Service and Privacy Policy, which was planned to be implemented on 08.02.2021 until 15.05.2021 worldwide. WHATSAPP made a public announcement on this issue on 15.01.2021. In line with this, INTERIM MEASURE DECISION did not have a basis. Without prejudice to the opinion that there was no need for INTERIM MEASURE DECISION, WHATSAPP requested that the Board shall take a decision that WHATSAPP complied with the INTERIM MEASURE DECISION. The second petition, which was submitted on behalf of FACEBOOK to the Authority's registry on 10.02.2021

and with the number 15004, included the following statements: INTERIM MEASURE DECISION was contrary to the Act no 405 4 and the established case law of the Board as well as of the administrative justice. Article 9(4) of the Act does not give the Board to intervene in an action which has not been taken in the market yet. In case FACEBOOK was imposed fines although the UPDATE was postponed before 08.02.2021, the illegal nature of the INTERIM MEASURE DECISION would be aggravated with an improper practice.

- (484) It was found that there was no difference from the conditions before the UPDATE in the scope, nature and field of use in terms of the data of users who accepted or did not accept the UPDATE. The data in question continued to be collected and shared in the same way. In addition, it was stated that the undertaking did not intend to request consent from users who gave consent or who did not give consent; however, the undertaking wanted to contact the Board before implementing the UPDATE on 15.05.2021, during that period, consumers could continue to use WhatsApp but those who did not give consent would not be able to use WhatsApp after 15.05.2021. On a date close to the new implementation date, the parties to the investigation made the following statements in their letters, which were saved in the Authority's registry on 12.05.2021 with the number 17834: The UPDATE will not be implemented in Türkiye. There is no agreed implementation date for Türkiye. All users including those who accepted the UPDATE can continue to use *WhatsApp* with its full functions. In other words "*WhatsApp* Terms of Service and Privacy Policy" will continue to be in effect. The users in Türkiye will not receive notifications requesting consent for the UPDATE.
- (485) The petition which entered the Authority's registry on 22.06.2021 with the number 18814 includes an information about the rolling out of the UPDATE in regions where it was implemented, the recent changes made in the implementation plan and a request to withdraw INTERIM MEASURE DECISION. FACEBOOK stated the following: WHATSAPP has recently confirmed that it will not limit the existing functionality of *WhatsApp* for users who have not accepted the UPDATE yet. Users who have not accepted the UPDATE will continue to use *WhatsApp* without losing its existing functions. WHATSAPP will continue to remind the said UPDATE and give users the opportunity to accept the UPDATE under certain conditions at times. In addition, parties to the investigation requested that INTERIM MEASURE DECISION be withdrawn and an approval be granted to the implementation of the UPDATE in its new form in Türkiye according to the aforementioned plan.
- (486) It is understood from the information submitted by the parties to the investigation that the UPDATE will be implemented in its new form according to the terms given below:
- ✓ The consents of users who approved the UPDATE will be valid and a new request for consent will not be made.
 - ✓ *WhatsApp* functionality will not be limited or prevented for users who did not accept the UPDATE and closed/continue to close the notification.
 - ✓ A notification about the UPDATE will be sent to users who have not accepted the UPDATE every 48 hours. The screenshot of the notification is as follows:

Figure -1: The notification about the update after postponing to be shown to users³⁵⁶

- ✓ In order to provide additional transparency to the users in Türkiye, FAQ will be published. The FAQ page will make it clear that even if users do not consent to the UPDATE, they can continue to use *WhatsApp* and *WhatsApp* will not lose its functionality.
- ✓ If users want to use optional services for the first time (*such as messaging with a business which uses FACEBOOK's hosting services*) or use the app on a new device, they have to accept the UPDATE.

(487) As seen, changes were made to the UPDATE in the course of time. According to the first announcement, users who did not accept the UPDATE could not access *WhatsApp* service. According to the letter saved in the Authority's registry, users who do not accept the UPDATE can access the service but FACEBOOK wants to show the notification about the UPDATE to users periodically.

(488) The sections above show how much user data FACEBOOK obtains from different sources in terms of method and scope in detail. The UPDATE, about which FACEBOOK took a decision to postpone after the INTERIM MEASURE DECISION, led to anxiety among *WhatsApp* users about being unable to use the app and data security due to "take it or leave it" condition. In line with this, competition law enforcement should take into account quality in a general sense or specifically security, in addition to price-based quantitative parameters, in terms of developing and diversifying data-oriented economy and business models.

(489) End-users became more anxious about security after the UPDATE was announced. The issue had a wide media coverage. It is understood that these concerns are based

³⁵⁶The statements were translated into Turkish by the rapporteurs in the original decision.

on the fact that users do not really have discretion on privacy options while using the app and they are obliged to consent to data sharing to continue to use the said service. Consent given by users who think that the only way to use *WhatsApp* is to give consent to FACEBOOK's data practices is not voluntary but it is a declaration of intention which is obtained obligatorily.

- (490) It is understood that this situation will not change after the UPDATE is amended. Although it is stated that users who do not accept the UPDATE will continue to access *WhatsApp*, users will have the options to accept the UPDATE or close the notification screen but there will not be a button to reject the UPDATE. In addition, according to the existing plan, users will continue to see the notification to accept the UPDATE "every other day in the foreseeable future. Displaying the UPDATE notification to users frequently and not offering an option to reject it is regarded as a coercion to accept the UPDATE.
- (491) Initially, the investigation was opened about the notification of the UPDATE stating that *WhatsApp* users must give consent to sharing *WhatsApp* data with Facebook Inc. and its subsidiaries in order to continue to use *WhatsApp*; otherwise they will not be able to use *WhatsApp* as of 08.02.2021. Later, it was understood that data obtained through *WhatsApp* had been shared with other Facebook Inc. companies since 2016 and the said data sharing was not limited to transferring data from *WhatsApp* to other Facebook Inc. companies but data sharing was bilateral and even multilateral. As a result, the investigation was expanded to include cross-use of data obtained by FACEBOOK among its subsidiaries. It is obvious that the UPDATE, which could not be implemented as a result of the INTERIM MEASURE DECISION, cannot be considered as a practice independent from data sharing and data combination which are the subject of the investigation.
- (492) As stated in the previous sections, as a result of the assessments made under the scope of the file, it is concluded that FACEBOOK 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 *Facebook*, *Instagram* and *WhatsApp* services that are called core services and violated Article 6 of the Act no 4054.
- (493) Although the changes to the UPDATE build a structure where users give consent with their free will without an obligation, this will not change the anticompetitive situation created by using *WhatsApp* data in other FACEBOOK services. In other words, it is concluded that whether users consent to data sharing with their free will or whether users who do not accept the UPDATE will continue to use the service will not change the exclusionary effects of cross-using data among FACEBOOK companies and is not important for the assessments to be made within the scope of the Act no 4054.

I.5. Assessments about written pleas

I.5.1. Facebook's plea

Arguments related to market definition

The argument that the relevant market to be addressed under the scope of the investigation is the global market for user attention:

- (494) The argument in the plea is as follows: *FACEBOOK is operating in the global market for user attention and all Core Services compete in this market. The global and innovative feature of the market where FACEBOOK is operating is ignored. There are*

lots of online services including social networks, video sharing services, messaging services, media playing services, games, digital music platforms and increasing digital services of traditional “offline” players. Those services compete at different degrees to meet users’ preferences and catch users’ attention and interaction. The relevant market should be defined correctly.

- (495) The relevant product market covers markets composed of all goods and services which are regarded, by consumers, as substitutes by reason of price, intended use and characteristics is(are) cover the. In this context, in order to be in the same market with another product, the products in question should be identical in the eye of consumers in terms of their characteristics, intended use and prices and they should be substitutable. Accordingly, each core service provided by FACEBOOK is compared with all competing products and services, which can be regarded as substitutes by consumers, comprehensively and in detail as much as possible. To what extent the products and services in question converge or differ is considered. Which player makes how much pressure is analyzed. The assessments about the said substitute products and services are made on the basis of each competing product and service in detail. Finally, the relevant markets are defined in the widest sense possible, including even the competitors who converge to a certain extent.

The Argument that FACEBOOK faces strong competitive constraints:

- (496) The argument is as follows: *“FACEBOOK faces intensive competition from a wide variety of players. New entries such as Zoom or Clubhouse are ignored. In addition to various players such as YouTube, TikTok, Twitter, LinkedIn, Snapchat, WeChat, Netflix, Telegram and BiP, FACEBOOK faces intensive competition from Vodafone, Turkcell; newspapers such as Sözcü and Sabah as well as channels such as TV8. Online services including Core Services are directly substitutable. The market should not be divided depending on core or original functionalities. In terms of demand substitution, while using online services, users do not seek to meet the demands that are clearly defined but they decide according to how attractive a service is at a certain point of time. In terms of supply substitution, since applications are free, competition is driven by improvement and especially the differences in user experience. Innovation cycles are short and innovative services reach consumers rapidly, thus, services do not limit themselves to a certain use, certain group features or a consumer group. Since FACEBOOK directly competes for advertiser revenues with various digital services with different functionalities, the same intense competitive structure is found in FACEBOOK’s activities aimed at advertisers. Independent of how they attract the attention of users exactly, service or content providers are competitors as long as they are trying to catch the limited time of consumers and thus advertisers expenditures. Dividing the market into segments is artificial.*
- (497) In order to make a demand substitution assessment, it is necessary to define other products which substitute the relevant product in the eye of the consumers. In order to analyze whether consumers see different social networking services as substitutes, services which FACEBOOK regards as competitors and which are used the most in Türkiye are analyzed by showing their different intended uses and functionalities. Although there are common functionalities, undertakings that are analyzed are different in especially user needs they are interested in/they target and the design of the features and/or functions they offer. However, the Investigation Report does not define a market only on the basis of functionality. It is stated that the level of competition between different social media platforms depends on to what extent users see the relevant platforms as substitutes not on the degree that they share common functions.

In line with this, whether consumers see the said services as substitutes, the purpose of using the said services and the needs that are met with the services are analyzed. In terms of social networking services, it is possible to define the market narrowly by taking into account each functionality and purpose of using. The market is defined in wide sense as “social networking services market”, considering the on-going discussion about the definition of the said market. A similar approach is adopted in terms of the analysis concerning consumer communication services market. In terms of online advertising market, a definition is made on the basis of an analysis about whether different advertising types are constitutes. The analysis is not based on only functionality but on a very detailed meticulous work. However, functionality is an important criterion in defining relevant markets and evaluating relevant services from consumers’ perspectives. Therefore, relevant markets are defined by using a demand-supply analysis, one dimension of which is functionality.

The argument that market has a global scope in terms of user attention and it is not limited to Türkiye:

- (498) The argument in the plea is as follows: *FACEBOOK and most of its competitors operate globally. The decisions about products are taken on a global level. The fact that a service is not offered in Türkiye or is not popular in Türkiye as other countries does not mean that it does not make competitive pressure. In line with this, the Investigation Report limits its analysis to Türkiye; thus, it ignores the possibility that services which do not operate in Türkiye may enter the Turkish market. This is contrary to applicable law.*
- (499) In the geographic market definition made within the scope of the investigation, it is stated that the geographic limits of the services offered are essential. In terms of the services provided by FACEBOOK, social networking services, which exhibit the nature of multi-sided markets, are taken as a basis. Possible limits of geographic markets in terms of each user are analyzed. First, when consumers are taken as a basis, it is found that access is possible worldwide for both sides of the market technically and theoretically and within these geographical limits, there are not any differences that require distinction between regions in terms of services provided to different user groups. As a result of the assessments made concerning the user group on advertiser side, it is found that the focus of the activities in terms of both advertisers and the services provided by the platform to advertisers is regional. The local communication units specific to online advertising, which are established by global firms with similar features support this fact. Although the geographic market is defined as Türkiye, it is stated that global market will be taken into account and issues concerning the global market are also included. Therefore, the argument that undertakings’ global competition level is not taken into account and the analyses are limited to Türkiye is not true.

The argument that social networking services and consumer communication services are not separate product markets; the distinction between those two markets is artificial:

- (500) The defense’s argument is as follows: *The distinction between “social networking services” and “consumer communication services” in the Investigation Report is an unduly narrow market segmentation which does not reflect the nature of the global market for user attention. There are many examples of services which started their activities as consumer communication services but now provide social network service at the same time as a result of innovation based on consumer preferences. It is artificial*

to divide the market according to possible use. Categorization of digital services most of which include both messaging and social functionality in product markets as argued does not reflect the true competition in digital markets. The relevant market is user attention market. If this market definition is not accepted, at least the competitive pressure between consumer communication services and social networking services should be taken into account.

- (501) Depending on various information and documents, the assessments made show that the said services are different from the perspective of the consumers. As stated in the relevant section, the results of the survey made under the scope of the Online Advertising Sector Inquiry show that social networks offer an intensive social experience to users such as following a wider group of people including celebrities, keeping up with news, posting their contents and being liked and displaying entertaining content. The main purpose of social network users is not basically communication. Similarly, other authorities have accepted several times that the two services are different.
- (502) When asked, under the scope of the file, whether social networking services and consumer communication services are substitutes, most of the undertakings answered that social networking services and different types of consumer communication services could not be regarded as substitutes in terms of either their intended use or their functions; however, many users could use both social networking services and consumer communication services at the same time but for different purposes. Moreover, a social networking services provider like FACEBOOK offers a messaging service (*Facebook Messenger*) in addition to its core services, which shows that the two services are not substitutes. In light of those explanations, the argument that social networking services and consumer communication services constitute the same relevant product market is baseless.

The argument that the hypothetical market about consumer communication services should not be divided into breakdowns:

- (503) The argument of the defense is as follows: *social networking services and consumer communication services are not different product markets and those hypothetical markets should not be divided into breakdowns. Any perceived distinction between “consumer” and “corporate” communication tools is not meaningful with respect to competition. Irrespective of whether communication is between individual users or between a consumer and a business, users do not comply with categories while deciding about which service to use. This applies to the distinction, which the Investigation Report intends to make between SMS and MMS providers and “consumer communication services”. The Investigation Report should not ignore the competitive pressure made by iMessage. Users communicate through iMessage intensely in a manner functionally similar to their communication through so-called consumer communication services such as Messenger and Instagram Direct.*
- (504) The aforementioned Commission decision and a lot of empirical studies on the subject show that SMS and MMS providers and consumer communication services are not substitutes. Moreover, while consumer communication services can make competitive pressure on traditional electronic communication services, otherwise is not observed. The finding that traditional electronic communication services are being used less whereas the number of consumer communication services is increasing, which shows that user demand is changing unilaterally. In this way, while the focus market can make competitive pressure on other markets, other markets cannot make competitive

pressure to the focus market. Therefore, it is concluded that those markets can be defined as different relevant products market.

- (505) Another point in the argument is that *iMessage*'s competitive pressure is ignored. Although it is concluded that it is not necessary to make a separate market definition on the basis of operating system, it is understood that for nearly 83% of the users in the market, *iMessage* is not an important alternative to *WhatsApp* or other consumer communication services. In addition, it is not possible to obtain sound data about what percent of iPhone users use *iMessage*; thus, the number of *iMessage* users is ignored. Even if it is assumed that all iPhone users use *iMessage* service, it is estimated that the number of *iMessage* users is (.....). Given that the number of monthly active *WhatsApp* users in April 2021 is (.....), the number of *WhatsApp* users is (.....) times more than Apple's *iMessage*. In light of all these assessments, FACEBOOK's arguments about consumer communication services market are not acceptable.

The argument that social networking services must not be divided into sub-categories as personal and professional social networks:

- (506) The argument of the defense is as follows: *The Investigation Report divided those services in a wrong way into personal network services and professional network services and into consumer and corporate communication services. Those hypothetical markets must not be divided into sub-categories. The reasons why a user uses professional social networks are getting more and more similar to the reasons of using personal social networks. This is reflected to innovations based on user preferences.*
- (507) During the investigation process, in the assessment about the said market definition, the literature as well as the decisions of the foreign authorities were scanned. Many undertakings in the market were asked to provide opinion. Survey results are given to show the behavior structures and preferences of the users in Türkiye. Accordingly, the following conclusions are made: While personal social networks serve for communication personal connections, professional social networks are used to support users' career and build a professional network. Beside the purposes of using, contents of the profiles, information given to create profiles and pricing policies are different. Therefore, personal social networks and professional social networks are not substitutes. It is not acceptable that the findings in the file depend on only observations which are not based on concrete evidence.
- (508) It is argued also in the plea that the reason why users use professional social networks are getting more and more similar to the reasons of using personal networks. *LinkedIn*'s "creator fund" to encourage users to publish more content and work on Content Creator Development Program as well as a short video format feature is given as an example. However, creating and sharing content is an important feature of many social network platforms regardless of users' purpose. Therefore, *LinkedIn*'s effort to encourage users to publish more contents or to offer short video services is the result of being a social network platform. Those general features of social networking services do not make *LinkedIn* a part of social networking services. As a result, the aforementioned features do not support the argument that personal and professional social networking services are in the same markets.

The argument that the distinction between “online” and “offline” advertising services is artificial:

- (509) The argument in the plea is as follows: *Dividing different ad types into breakdowns means a misinterpretation of the market. Online services offering ads compete with offline advertising channels. In case advertisers gain high investment revenues, they can carry their expenditures from any platform to other online and offline advertisement channels easily. Traditional advertisement channels have increased. Online channels are able to offer tools to provide more targeted ads and ad measurement. The Authority must make “a clear and precise assessment in a way that leaves no doubt” and must support its claims with “objective and error-free evidence” instead of depending on only third party statements.*
- (510) As a result of the nature of online ads, online advertising have advantages in targeting and measuring ad performance due to its features such as the ability to interact with users individually and track users more easily. Thanks to the said data, while online ads can be filtered according to many criteria such as whom the online ads will be displayed or not, age, location, profession, language, etc., in offline advertising the ability to determine the target is very limited. This is the most important difference between online ads and offline ads. As stated above, the file includes the following findings: (i) Online advertising facilitates reacting directly to the ad campaign by encouraging consumers to click on the advertised products and/or to buy the product; however offline advertising is less convenient to react directly. (ii) The difference between pricing mechanisms is also distinctive between the two types of ads. Again as stated in the reports and decisions given in the relevant section, it is accepted that traditional advertising and online advertising are different markets. Many advertisers were asked to provide their opinions about whether they see online and offline advertisers are substitutes. A large part of the undertakings answered that the two advertising types are different in targeting, the way of functioning and measuring mechanisms. There is a complementary relation rather than substitution between the two types. Consequently, the argument in the plea is baseless.

The distinction between “search”, “non-search/display” and “listing” advertising is artificial.

- (511) The argument in the plea is as follows: *All advertisement platforms which focus on search or display advertising aim to reach an interested user base and take the attention of those users when they are online. Thus, the distinction between search and display advertising is not valid. Advertisers’ ability to change their demands about advertising without bearing important additional costs in short term should be taken into account. For advertisers, online channels may replace each other. Even if advertisers compare the features of different advertising formats and channels, they make their ultimate decisions about where to show their ads and the degree of showing ads based on their estimated revenues and investment returns. Apple’s AppTrackingTransparency and Google’s Performance Max Tool shows that the conclusion that “search” and “display” advertising services are different markets is wrong. Excluding search advertising services only because it depends on a different business model does not reflect the real nature of competition. This leads to a very narrow market definition and thus GOOGLE, one of the most important competitors of FACEBOOK is ignored.*
- (512) Since FACEBOOK provides display advertising channels as a content provider via its social networks and listing advertising via *Marketplace*, whether it is necessary to

define downstream markets in terms of online advertising services is examined in the file. Accordingly, whether display advertising services, search advertising and listing advertising, which are subcategories of online advertising services, are substitutes is examined. For this purpose, the literature and decisions of competition authorities were scanned, many undertakings were asked to provide information and documents to receive their opinions, all findings and opinions in favor of and against FACEBOOK were considered in a holistic approach. Opinions suggesting that search advertising and display advertising are substitutes and the two types are converging more and more are given above. However, those opinions constitute a small part. In market definition, not only the opinions of undertakings but also sector reports and decisions of different competition authorities as well as the results of a survey were considered to make a conclusion.

Arguments that FACEBOOK is not dominant

The argument that dominant position assessment does not meet the standard of proof. The conclusions are based on inadequate evidence, defective methodology and do not meet the standard of proof:

- (513) The argument in the plea is as follows: *Market share calculations show the number of FACEBOOOK's active users more than it is and depend on wrong criteria. Users are counted more than one time while comparing the number of users in core services. Since the term "user" corresponds to a single person, this approach cannot define single users properly; it is not appropriate since it increases the number of users in terms of individuals using more than one Core Service. The number of active users does not reflect user interaction level; the time spent may be a more informative indicator; however, the Authority did not prefer to use its power to request information from competitors about time metric. Dominant position analysis depends on inaccurate survey results. The meaning of being dominant in zero price markets and how FACEBOOK can use "market power" as a leverage, considering the alleged market powers in zero price markets are not considered. Economic parameters that indicate that FACEBOOK is dominant in the market are baseless. New entries, as shown by TikTok and Snapchat, which successfully entered the market, can reach critical groups rapidly. The Investigation Report fails to take into account short, medium and long term projections.*
- (514) It is stated that the dominant position assessment in digital markets should be made on the basis of different parameters compared to traditional markets. The most efficient parameter in calculating market shares in personal social network and consumer communication markets is the "number of users". While considering the number of users, the number of active users, which shows the interaction with the platform better, is preferred.
- (515) On the other hand, market share calculation stage did not involve adding the number of users of FACEBOOK's each service and thus for instance counting users with both *Instagram* and *Messenger* account repeatedly but those were the steps taken to show the data power, which is important in terms of online advertising market Emphasizing that FACEBOOK can obtain a large data set, the Report states that this is the most important reason of its power in online advertising market. Moreover, even if there is one single user, the data which are provided by and obtained from the user while using each service are different. Therefore, counting that user as many as the number of the services used does not lead to assessing FACEBOOK's market power in online advertising market more than it really is. Since, FACEBOOK's market share is

calculated by considering the market in the widest manner, it is possible that it may be calculated lower not higher. Even in that case, its market share is well above than its competitors.

- (516) Entry and expanse performances of FACEBOOK's competitors *TikTok* and *Snapchat* are considered in dominant position assessment. It is understood that those services' positions in display advertising and social networking services markets have not reached a size to restrict FACEBOOK's dominant position in the market. Unlike other competing social network platforms, which offer certain one or more specific services that compete with FACEBOOK's services, FACEBOOK has a varied application portfolio and takes precedence over others. Therefore, even if there are no products that compete directly with FACEBOOK, market shares of all undertakings and their positions in the market are considered. In this way, all variables are taken into account in the dominant position assessment.
- (517) The argument In the plea is as follows: *One of the main factors increasing strong competition is the ability of users to multi-home easily without costs. Users can choose instantly the service they will use depending on which offer is the most attractive and convenient one. It is easy to "switch" between the services on a device, most of those services are free. There is more than one communication service on a user's device. Turkish users have 9.1 social media accounts on average, which is ignored in the Investigation Report in terms of FACEBOOK's market power. Multi-homing has competitive impacts which prevent FACEBOOK from acting independently from its customers or competitors and disciplines FACEBOOK. Multi-homing shows that the barriers to switching are low; this weakens network effects because as users quickly adopt new services, new players can increase their user base rapidly.*
- (518) Although it is accepted that a user can use more than one service technically at the same time and install other apps that offer the same services without costs, it is known that network effects in the market limits switching. It is found in the analysis made under the scope of the file that users' main purpose of using social networks and consumer communication services is to communicate with their social circles and switching to "an app without the social circle" is substantially a challenge and creates a barrier to entry. Therefore, unlike the advantage that the incumbents have, new entries must have a user base with a certain number of users with whom consumers can communicate. The financial power obtained as a result of the data power gained thanks to the existing user base creates a driving market power. Therefore, user habits should not be ignored. It is found that despite the update notification urging *WhatsApp* users to consent to data sharing at the beginning of the year 2021 and the public debates thereon, the number of users who uninstalled *WhatsApp* corresponds to only (.....)% of its monthly active users. On the other hand, the number of active users who simultaneously use services competing with FACEBOOK is included in the number of active users calculated in relation to the competing service concerned. Therefore, the results of multi-homing are already taken into account.
- (519) The argument of the defense is as follows: *A lot of successful new entries have proven that barriers to entry and expand are low in the digital sector. The basic factor that affects the success of a service is creating an idea that can attract user groups. Access to data is not a barrier to entry, user data can be accessed everywhere and can be obtained directly from users. Services do not compete for user data because consumers may prefer to share the same data with infinite number of services. The only factor that can limit consumers' multi-homing is time. There are no structural or*

technological barriers to companies' collecting data, which means that generally most of the competitors own the data collected by FACEBOOK. A wide range of companies have been collecting considerable amount of user data. Since the costs of accessing technology have decreased, a market participant can easily start a new digital service. Existing market participants with more data volume do not have a meaningful competitive advantage. Given the rapid and dynamic market structure, first mover success is not for sure.

- (520) The main point in the findings and observations in the file regarding data power is not the fact that a user's data are held by only one undertaking but that there is a big data set created by accumulating the data of many users. Therefore, the pool made up of the same type of data coming from millions of active users in a platform creates a commercial value rather than the same users giving the same data to more than one platform. Consequently, FACEBOOK, which owns a qualified and large data set that has been accumulated over a long time due to its stable position in the market and that have been fed from different apps, is more attractive for advertisers.
- (521) Advertisers make their choices on the basis of the efficiency of publishers' targeting according to user preferences. When advertisement revenues of the undertakings operating in social networking services market are analyzed, it is seen that there is a parallel relation between the amount of advertisement revenues and the number of the platform's active users. What is important is that FACEBOOK has continuous access to user data; thus it has a dynamic structure that is able to show the change in consumer habits and preferences in time in addition to showing an instant picture of data. FACEBOOK accesses the said data for free. The scope of the data which competing undertakings will take from data processing companies is not equal to that of the data owned by FACEBOOK. Besides, competing undertakings have to pay for accessing the said data. Thus, FACEBOOK's data power strengthens its dominant position in the market.

The argument that there is no dominant position according to any possible market definition:

- (522) The argument of the defense is as follows: *FACEBOOK is not dominant in any market. In all hypothetical markets, commercial activities are limited to a large extent by efficient competition and low entry barriers or strong buyer power. While evaluating FACEBOOK's market power, wrong data criteria are used. The number of active users does not reflect the level of each user's interaction level as frequency of use is different for each user. The rapid nature of the market should be taken into account. The Investigation Report compares FACEBOOK with very few competitors. FACEBOOK's global market share has fallen steeply. Tiktok's rapid rise and the decrease in Instagram's and Facebook's market shares show that the consumers are not locked-in. The Report depends on the misinterpretation that advertisers are locked in Core Services. FACEBOOK's financial power is comparable with those of its competitors. As seen from TikTok example, new competitors can easily obtain financial power. Google's financial power is stronger. While the revenues and market values of TikTok, Snapchat and LinkedIn are increasing, FACEBOOK's revenues and share prices are decreasing. End users have buyer power. When users use other services more, advertisers will follow them.*
- (523) The examination in the file includes the apps owned by undertakings regarded as competitors in terms of the defined markets although they are different in features and

functions and makes limited competitive pressure on FACEBOOK. As a result of even this method, FACEBOOK reaches digital data more than its competitors do.

- (524) One of the reasons why the number of active users is taken as a basis while calculating the market share of the party to the investigation is that the user type concerned is more interacted with the platform. Although it is accepted that *Facebook's* market shares are decreasing, this does not invalidate dominant position held by the party to the investigation, FACEBOOK. Presentation by the party to the investigation that multi-homing is possible in the relevant market and users actively benefit from that does not change the conclusions. The fact that users' ability to multi-home is not restricted does not mean that any undertaking cannot be dominant in the relevant market.
- (525) In the examination made within the scope of the file, the dynamics of the relevant market are addressed in terms of every criteria and feature suggested in current competition law literature. On the basis of consumer communication services market, the number of users is an important criterion and it is convenient to apply this criterion for dominant position assessment in this case. Although the plea argues that barriers to entry are low by taking attention to the ability of multi-homing, for every new entry, it is important to reach a scale as efficient as FACEBOOK's.
- (526) The argument of the defense is as follows: *FACEBOOK is not dominant in the hypothetical online display advertising. The dominant position analysis depends on attributions to out of date reports of competition authorities. The total advertising revenues or expenditures in the market are not calculated accurately. FACEBOOK's competitors such as Pinterest and Reddit do not show advertisements in Türkiye and do not have market shares but there is global competition. Competitors who are not showing advertisements in Türkiye currently can easily expand their advertising activities in Türkiye. The Investigation Report ignores Premium services which decrease platforms' advertising revenues while addressing market shares in terms of revenues and assumes that digital advertising is the only income source. In order to calculate FACEBOOK's market share, market share should be calculated by taking into account the revenues that YouTube and LinkedIn obtains from the payments of their subscribers. The market to be defined correctly in terms of FACEBOOK's activities concerning advertisers includes both online and offline channels. The Investigation Report includes advertisement revenues obtained by "smaller publishers such as media organizations, websites and news websites and application providers" while calculating the total market size. The Investigation Report ignores the importance of supply side participants and shows FACEBOOK's market share higher than it is. The Report does not make a distinction between platforms offering integrated services and open display channels. Advertisers' responds show that only FACEBOOK is not sufficient for advertisers to reach consumers. Responds prove that FACEBOOK and competitors compete strongly to obtain more shares from advertisers' advertising budgets. The facts of the market verify that there are no barriers to entry. FACEBOOK's limited activities in advertisement technologies do not contribute to its market power. FACEBOOK obtains almost all of its global revenues from advertising. Advertisers are well informed about alternative advertising channels and they can switch their expenditures from any platform to another online or offline advertisement channel if they will have a higher investment return.*
- (527) In the abovementioned assessments made within the scope of the file, decisions of foreign competition authorities and sector inquiry reports are used as supportive facts. The parts where relevant markets defined are different from Türkiye are separately

indicated. The decisions or reports are not used alone as a basis for the findings in the file. There are detailed explanations and information about the importance of data in digital markets.

- (528) In relation to the claim that user data are endless and accessible everywhere, due to 4V rule in digital markets, the entity formed as a result of the data accessible by FACEBOOK is more valuable. It is obvious that the difficulty to reach a data set with the same quality and quantity can be considered as a barrier to entry. FACEBOOOK was the market leader throughout the period between 2015 and 2020 in terms of display advertising over social network channels. Its market share was above (.....)% in each year examined. In addition, FACEBOOK has a significant market power in the market, where other advertisement publishers operating in display advertising market in addition to social networking services are included.
- (529) Since undertakings such as *Reddit* and *Pinterest*, which are said to make strong competitive pressure, are not providing ad services in Türkiye during the period which the Investigation Period analyzed and the infringement was found; not including those to calculations and assessments in order to make updated and correct analysis is a consistent approach. In the assessments concerning advertisers, not only FACEBOOK but also competing undertakings' advertisement revenues and advertisers' expenditures in alternative platforms are examined. FACEBOOK's claim is refuted by the following facts: Advertisers use online advertising channels. They mostly work with FACEBOOK due to indirect network effects. There are no technical or legal limitations to benefit from alternative channels and advertisers are currently investing in other advertising channels. Moreover, it is seen that advertisers who invest in alternative channels other than FACEBOOK spare and use the economically largest part for FACEBOOK. The digital data support the fact that when advertisers are not present in FACEBOOK's advertisement areas, they think that they cannot reach many users or consumers; thus, they continue to use FACEBOOK. In light of those explanations, it is not possible to agree with the arguments in the plea.

Arguments that there is no abuse

The arguments that data combination is not abuse and other authorities' decisions are irrelevant:

- (530) The argument of the defense is as follows: *"The Investigation Report makes an assessment according to 4V criteria. This test is not appropriate for digital markets. FACEBOOK's user data are obtained not within the scope of legal or other type of monopoly but as a result of providing innovative services. The combined data is not competitive; it is easily accessible. In investigations of dominant position, it is not sufficient to make a speculation about hypothetical future harm to competition to support the finding about abuse. It is necessary to collect evidence about the real harm and prove that the behavior examined is the cause of such harm. Foreign investigations do not suggest the same theory of harm as the Authority. As a result, the factors evaluated by the said authorities do not comply with the investigation of the Authority.*
- (531) As accepted in the decisions concerning digital markets and in the literature up to now, data combination leads to the risk of foreclosure in case it allows an undertaking to obtain data which competitors cannot copy or similar to which competitors cannot access or make the grounds for leveraging. Competitors and many advertisers of different sizes were asked to provide information for the examination made under the scope of the file to show the potential and actual effects of FACEBOOK's actions in

Türkiye. Comprehensive analyses were made depending on the information data obtained. In addition, the results of the survey which was made for online advertising sector inquiry by a firm that is competent, experienced and independent are included. Therefore, in order to understand and analyze the context of FACEBOOK's actions and their effects on competition in the market, in addition to competitors' and advertisers' data and information, a detailed and meticulous assessment was made including consumer surveys, sector reports, similar decisions and foreign authorities' decisions and reports. The conclusions in the file are made by handling all the information and data collected in a holistic approach, thus, it is not possible to agree with the undertaking's argument.

- (532) The assessments about the arguments related to the features of the user data obtained by FACEBOOK are discussed under "The Impact on Barriers to Entry" in the section on "1.4.4.1.1. Assessment of the exclusionary effects of FACEBOOK's actions in online advertising market" FACEBOOK's arguments totally ignore user dependency and network effects in the markets where it is operating. FACEBOOK's each application has the highest number of users, has the highest user dependency and highest user interaction. They are at higher ranks in their respective areas. Accordingly, it is not possible to agree with the arguments.

Arguments about the analysis made in the file:

- (533) The argument of the defense is as follows: *"The statement "As a result, even if social media platforms except GOOGLE, collects data as various as FACEBOOK" shows that competitors can reach the same data. It is not possible to conclude that if competitors collect similarly various data, they cannot reach the same data set as FACEBOOK's. The number of active users is inadequate to measure the volume of the data collected and created. Competitors also use technologies similar to FACEBOOK's machine learning models. 4V test does not have evidence value within the scope of the Act no 4054. Facebook, Instagram and WhatsApp have been developed and grown without access to the said data. The argument that "super profiles" are created is mere a speculation. Even if the said profiles exist, there is no evidence that data combination is abuse under article 6 of the Act no 4054 or gives competitive advantage.*
- (534) 4V is an established analysis in the literature, which characterizes commercial and thus competitive importance of data clusters with certain parameters. FACEBOOK collects data from the services it provides, third parties, advertisers and by means of add-ins such as Pixel, API, SDK, Login, Social Plugins, which it provides to third party business partners. Although it is accepted that competitors collect similarly various data, when other criteria are taken into account, FACEBOOK's data is unmatched for competitors other than GOOGLE. In addition, the volume criterion is not based on only the number of active users but the interaction of the user with the platform is also taken into account. Visiting time submitted by several undertakings who provided consistent data during the investigation process is also included. In terms of velocity, since it is thought that the data obtained may not allow a sound comparison and some competitors did not provide data, survey results are used. The survey provides data on the basis of subcategories concerning users' usage frequency and duration. This shows that it is possible to reach more detailed data about how much users interact with platforms than those provided by the undertakings in the sector. It is not possible to agree with the argument that the results of the survey, which made conclusions largely similar to Digital 2021 Report, are unreliable. In terms of velocity criterion, not only survey results are used but also calculations which proportion the number of active

users to the number of monthly active users and which measures the dependency of the user to the platform are used. This analysis shows that that FACEBOOK's data collection rate is higher than other platforms.

- (535) It is concluded that FACEBOOK creates super profiles depending on very detailed 4V analysis. According to the information, each application (*Facebook, Instagram, WhatsApp* and *Messenger*) has the highest number of users, has the highest user dependency and highest user interaction. They are at higher ranks in their respective areas. Creating super profiles is a positive situation for advertisers because of improved targeting ability. In addition, it makes FACEBOOK an indispensable business partner for advertisers. This is observed clearly in advertisers' online display advertising expenditure preferences.

The argument that the alleged theory of harm does not meet the standard of proof

The argument that FACEBOOK's internal decisions are not under the scope of article 6:

- (536) The argument of the defense is as follows: *In the context of exclusionary theory of harm includes all kind of practices that prevent competition in the amount of supply and/or prices and that are outside legitimate competition. To fall under article 6, a commercial decision of an undertaking must correspond to an action which is related to market transactions or which affects such transactions. According to the Investigation Report, the practice which constitutes an abuse of dominant position is not collection of data through the services but combination of those data. This assessment is wrong and baseless. Data combination is not "an action in the market". It only means distribution of resources within the body of an undertaking. Neither competitors nor customers are directly subject to/party to data combining behavior. Distribution of resources and combining inputs are prevalent practices in both digital economy and traditional markets.*
- (537) Although data combination is an internal decision/action, user profiling and the advertisement services made on the basis of this profiling are affecting the market directly. The examination made within the scope of the file looks into the concerns created by FACEBOOK's data combination in terms of exclusionary effects and its impact on the relevant markets in detail. It is shown that the conduct in question has resulted in exclusionary effects in social network market as well as online display advertising market. The fact that competitors and consumers are not subjected to FACEBOOK's data combination directly does not mean that they are not affected. Therefore, it is not possible to agree with the argument.

The argument that there is no causality link between the alleged practice and the alleged market power/practice/foreclosure:

- (538) It is argued in the plea that *FACEBOOK's ability to collect and combine data does not stem from its market power, small players also combine data, the conduct in question improve competition and efficiency; there is no evidence concerning the expected relation between the alleged conduct and the alleged foreclosure, FACEBOOK's data combination does not affect other undertakings' ability to collect and combine data.*
- (539) Abuse of dominant position requires a connection between explicit or implicit abuse and dominant position. Therefore, the fact that non-dominant undertakings also combine data does not prevent the dominant undertaking's said conduct from being regarded as an abuse. At this point, whether the effects of the conduct are restrictive

of competition is important. FACEBOOK is currently dominant in online display advertising market. FACEBOOK's data combination allows a detailed analysis of users. This makes FACEBOOK the most important channel for targeted advertising, which focuses on data. As seen clearly in advertisers' expenditure preferences, for most of the big advertisers who tend to work with more than one platform, FACEBOOK has the highest share in advertisement expenditures. In terms of small advertisers, FACEBOOK is the single display advertising channel. Therefore, it is not possible to argue that there is no causality link between data combination, which will increase single-homing and tipping that have already started to be in favor of dominant undertaking, and the exclusionary effects in the market.

The argument that there is no exclusionary abuse

The theory of harm related to the alleged exclusionary abuse is speculative and it does not meet standard of proof:

- (540) The argument of the defense is as follows: *In terms of exclusionary abuse, in order to show that the alleged anticompetitive practices lead to harm for consumers, it must be proven that the act has a negative effect on the competitive environment and competitors' ability to compete. There are no grounds about how FACEBOOK's data combination will lead to anticompetitive foreclosure and harm. There are only intangible speculations that competitors will be harmed without explanations about how and why data combination will lead to higher prices, lower quality or less innovation. An analysis about the actual effects of the conduct on the market was not made. In order to make a potential impact analysis, the Investigation Report must observe all the relevant conditions and apply equal competitor test to meet the valid standard of proof. Considering the duration of the behavior, the fact that the Authority could not collect evidence about actual and potential foreclosure effects confirms that the Authority does not have a valid ground to find that article 6 of the Act no 4054 is violated.*
- (541) The actual and/or potential effects of FACEBOOK's data combination are discussed in detail under the section "1.4.4. Assessment of FACEBOOK's actions according to article 6 of the Act no 4054". In addition, the theoretical basis showing under which conditions FACEBOOK's actions may lead to exclusionary effects is drawn by including academic literature and different decisions in detail under "1.4.1.4.2. Assessment of data combination as exclusionary abuse". Under each relevant title, academic literature, digital analysis, if any, and the statements of undertakings who were asked to provide opinion are included and consequently conclusions are made by considering all findings.

The arguments that the foreclosure effects in social networking services are not proven:

- (542) The arguments of the defense are as follows: *The finding that FACEBOOK complicates the activities of its competitors in the hypothetical social networking services market depends only on speculation. There is no single factual or numeric evidence showing that the conduct reduces the number of undertakings in the market or increases advertising costs or affects consumers or deteriorates consumer welfare. There is even no evidence showing that such results are more than theoretical possibilities. The hypothetical social networking services market is not foreclosed but new entries such as Snapchat and TikTok are expanding in the market. Market foreclosure analysis requires "at least an analysis of the conduct's internal capacity at foreclosing the market to equally efficient competitors". Even if it is assumed that FACEBOOK is*

dominant, it is not FACEBOOK's responsibility to resolve competitor's concerns or increase their market shares. Competition law does not protect competitor but competition.

- (543) Competitors in the social network market do not provide services that fully substitute FACEBOOK. However, the examination made in the file regards the undertakings concerned as competitors and adopts an approach in favor of the undertaking. Consequently, it was found that FACEBOOK is dominant. Data help undertakings operating in the social network market provide more personalized content and ensure that the user is more dependent on the platform; thus gives its owner a competitive advantage. On the other hand, undertakings which do not have such data are less attractive for consumers.
- (544) The effects of the actions under examination are directly related to the effects in online advertising market. As stated in many studies, social network platforms finance their services via advertisements. If they do not reach advertisers they cannot gain revenues, develop their services and may exit the market consequently. While examining the effects of the conduct in question in online advertising market, an examination is also made concerning only advertising services provided through social networking services and the effects are analyzed only in terms of the said services. As a result of the evaluations, it is concluded that there is not sufficient demand for the ad inventories of undertakings that are dependent on online display advertising market to finance their services because of FACEBOOK's detailed targeted ad services provided with data combination; therefore those undertakings cannot make sufficient investments to social network platforms.

The defense about foreclosure effects in online display advertising:

- (545) The arguments are as follows: *According to the Investigation Report's evaluations, "the tipping in the market may lead to a fall in the number of publishers who provide ad inventory in the market." "In a less competitive environment, FACEBOOOK may change its pricing policy for advertisers and increase the costs for them." "These costs may be reflected to consumers and prices may increase. Finally, consumer welfare may be reduced in this way." None of those assumptions is supported by evidence. There is no causality link between FACEBOOK's data combination and competitors' low advertisement revenues. There are limitless factors that affect an undertaking's ability to gain revenues. The fact that digital market is driven by predatory innovations that may occur rapidly and new entries can easily access the critical group is ignored. TikTok earned 1.2 billion TL revenues in 2021, which is above Facebook's Türkiye turnover in 2020. TikTok's ability to gain significant market share shows clearly that there are no exclusionary effects. FACEBOOK's market share is decreasing constantly and sharply. The finding that FACEBOOK's data combination creates barriers to entry to the hypothetical display advertising market depends on a wrong assumption.*
- (546) The effects on online display advertising are analyzed by considering the barriers to entry, the breakdown of advertisers' expenditure preferences among channels, comparison of the revenues of FACEBOOK and its competitors and comparison of revenue per user. The impact on barriers to entry is discussed together with the characteristics of online display advertising market. In addition, as a result of 4V analysis, it is concluded that data is an important barrier to entry in online display advertising market, no publisher except GOOGLE can own the data set with the same qualities as FACEBOOK's data set. Therefore, it is concluded that creating an adequate user base, access to data and economies of scope are already barriers to

entry and expanse in the market and FACEBOOK's data combination strengthens those barriers. This conclusion is justified by the comparison between advertisers' expenditure preferences and the comparison of FACEBOOK's and its competitors' advertising revenues.

- (547) As of 2020, TIKTOK's market share is below (.....)% in the market for "online display advertising through social media channels". According to the comparison of advertisement revenues during the same period provided by undertakings, it is understood that TIKTOK is not in a position to make pressure against FACEBOOK or limit its conduct. The data obtained during the investigation show that FACEBOOK gained (.....) times more revenues than TIKTOK. Table 15 above shows that social media platforms were able to increase their market shares although in a limited manner. However, the market shares of competitors apart from social media platforms have a tendency to decrease. Although online display advertising market is growing, the said competitors cannot get enough share from the market growth and lose market shares. Therefore, it is not possible to agree with the arguments in the plea.

Data combination is legitimate competition and provides financial benefits:

- (548) The arguments of the defense are as follows: *FACEBOOK's wide use in terms of users depends only on success and the investments to R&D. Data combination benefits consumers. It is important to provide safe and secure environment and platform for consumers. All digital platforms such as Google, Microsoft, Yahoo and LinkedIn allow data combination within the group.*
- (549) Although it is undeniable that data combination allows providing more personalized services to users, it makes the users who receive services from the platform more dependent on the platform and brings tipping risk. Therefore, by considering only efficiency gains, it is not possible to overlook competitive concerns. At this point, it is necessary to consider the alleged benefits and anticompetitive effects together. If the same efficiencies and benefits can be obtained through means less restrictive of competition, it is obvious that the alleged efficiency gains will not be a legitimate reason for the actions that are the subject of the violation.

There is no realistic possibility that competition or consumers will be harmed:

- (550) The defense argued that *the consumer harm analysis in the Investigation Report is not supported with evidence, there is only an attribution to some advertisers' concerns that "advertisement costs may increase", the evidence behind the Investigation Report's speculative harm theory depends only on three answers. There are also answers to the contrary.*
- (551) It is concluded that advertisers prefer to work with FACEBOOK more because of its data combination behavior. Therefore, FACEBOOK's position in online display advertising market is getting stronger, as a result of this tipping in the market, consumers are obliged to see as many ads as FACEBOOK wants. It is found that tipping in the market may lead to a fall in the number of publishers who provide ad inventory in the market. In a less competitive environment, FACEBOOK may change its pricing policy for advertisers and increase the costs for them. These costs may be reflected to consumers and prices may increase. Finally, consumer welfare may be reduced in this way. The increase in users' temporal costs, the actual effects of FACEBOOK's actions, the possible increase in costs are taken into account as the potential effects of FACEBOOK's actions. Thus, there is no finding that costs have

increased. However, the increase in users' ad burden and thus temporal costs depending thereon shows that consumer harm has already occurred. As a result, statements in favor of FACEBOOK do not change the conclusion. Depending on the information and documents obtained under the scope of the file, it is found that FACEBOOK is an indispensable and for most of the time the only advertisement channel for small advertisers and it is the most important channel even for big advertisers. Both likely positive and negative effects are discussed. In light of this information, it is not possible to agree with the argument.

I.5.2. Madoka's Plea

- (552) The first written plea submitted by MADOKA includes the following arguments: *MADOKA has had no commercial activities or revenues since 2014, when it was established. MADOKA is not involved in the provision of the services or commercial activities (including (Facebook, Messenger, Instagram or WhatsApp) provided by Facebook, Inc. or its subsidiaries in Türkiye or elsewhere. The main purpose of MADOKA is to act as the representative of Facebook, Inc. in Türkiye according to the Act no 5651. MADOKA did not play a role in the conduct under investigation (data sharing or launching the update). MADOKA should not be a party to the investigation.*
- (553) As a result of the assessment made, it is concluded that Madoka Turkey Bilişim Hizmetleri Ltd. Şti. under investigation does not have any role in the provision of the activities under investigation, therefore cannot be held responsible for the claims evaluated under the scope of the investigation.

I.6. General Assessment

- (554) In light of the information and documents in the file as well as the assessments given above, first, relevant markets are defined to address the claims in question. Accordingly, the fields of activities made by FACEBOOK's services - *Facebook, Instagram, Messenger* and *WhatsApp*- are taken into account and substitution relations between possible competing products are analyzed. As a result of the analyses, it is found that *Facebook* and *Instagram* are operating in the market for "*personal social networking services*". It is emphasized that the services provided by undertakings in this market do not compete directly with the services provided by FACEBOOK. It is found that *Messenger* and *WhatsApp* are operating in "*consumer communications market*"; although the said services have different functionalities such as instant messaging, video or voice calls, it is not necessary to define each functionality as a separate market for this case. In addition, since online advertisements are displayed in the provision of *Facebook, Instagram* and *Messenger* services, "*online display advertisement services*" are defined as a third relevant market. Whether it is necessary to define social media advertising as a separate relevant product market is also considered; however, it is concluded that it is not necessary to narrow the relevant market. In addition, online advertising activities through social media are considered separately in assessing the effects of the conduct. Global activities of undertakings and services are taken into account in the relevant sections of the file; however, the relevant geographic market is defined as "Türkiye".
- (555) Then, an examination was made about the positions of the undertakings in the relevant market and thus about whether FACEBOOK was dominant. In those assessments, the number of daily and monthly active users, the market shares calculated based on those numbers, the frequency of use and user preferences as well as barriers to entry and buyer power are taken into account. Network effects in the market, economies of scope and data power are addressed together with the characteristics of digital platform

economies. As a result of those assessments, it is concluded that FACEBOOK is dominant in personal social networking services and consumer communication services market. In terms of online display advertising market, dominant position assessment is made by considering market shares calculated on the basis of advertising revenues, FACEBOOK's position in the market compared to its competitors, barriers to entry and buyer power.

- (556) Afterwards, the position of data in platform economies is discussed. Competitive concerns stemming from data in those markets are addressed. With respect to the evaluation of data combination in question, the relevant legal framework and the studies in the literature on how to define such activities as abuse are examined. As a result of the assessments made, data combination can be regarded as exploitative abuse. It can also constitute exclusionary abuse by creating barriers to entry and complicating competitors' activities.
- (557) Depending on the information and documents in the file, it is understood that FACEBOOK collects information such as user name, password, date of birth, e-mail address, phone number, device information, account information used in financial transactions, usage habits, post contents under the scope of personal social networking services and collects information such as user name, password, phone number, profile picture, profile information, location, device information, account used in financial transactions, the persons in user's contact list and usage habits under the scope of consumer communication services. It is also understood that the undertaking use the said information obtained under the scope of core platform services in other services and combine information obtained from different services.
- (558) The said data combination behavior is regarded as exclusionary abuse and its effects on both social networking services and online display advertising services are examined. The said data are critical for the provision of activities in social network and online advertising services. It is understood that it is impossible for competitors to create or access a data set equal to FACEBOOK's combined data set. It is concluded that this constitutes a barrier to entry in both markets. Then, FACEBOOK's increasing importance for advertisers is shown by considering the distribution of advertisement expenditures. Due to FACEBOOK's data combination, advertisers prefer advertisement channels in FACEBOOK products more; the access of competing publishers including competing social network service providers is restricted. Analyses based on data and statements of competitors as well as advertisers are used. In relation with the assessments, it is found that FACEBOOK's advertisement revenues have increased and it has protected its position. As a result of those examinations and assessments, it is concluded that FACEBOOK abuses its dominant position because it restricts competition in social networking services and online advertising markets by means of data combination and leads to consumer harm.
- (559) The UPDATE, which is the subject of the INTERIM DECISION, and the amendment proposals about that are also examined. However, it is concluded that consumer consent will be meaningless because the practice infringes competition due to exclusionary effects, even if user consent is taken to resolve exploitative concerns, exclusionary concerns will not be solved and FACEBOOK should not combine the data it obtains from different services.
- (560) As a result of all explanations, analyses and evaluations, it is concluded that FACEBOOK's data combination is under the scope of article 6(2)(a) of the Act no 4054 concerning the acts "preventing, directly or indirectly, another undertaking from

entering into the area of commercial activity, or actions aimed at complicating the activities of competitors in the market” and thus violates article 6 of the Act no 4054. It is also concluded that Facebook Inc., Facebook Ireland Limited and WhatsApp LLC shall be imposed administrative fines per the provisions of article 16 of the Act and the Regulation on Fines to Apply in cases of Agreements, Concerted Practices and Decisions Limiting Competition and Abuse of Dominant Position. FACEBOOK should take the necessary measures terminate the infringement in question and to ensure the establishment of efficient competition in the market.

I.7. Assessment of Administrative Fines

- (561) Article 16(3) of the Act No. 4054 includes the provision that *“an administrative fine up to ten percent of annual gross revenues of undertakings and associations of undertakings or members of such associations to be imposed fines, which generate by the end of the financial year preceding the decision, or which generate by the end of the financial year closest to the date of the decision if it would not be possible to calculate it and which would be determined by the Board, will be imposed to those who committed behavior prohibited in Articles 4,6 and 7 of this Act.”* The Fines Regulation explains its purpose in Article 1 as follows *“to provide for the procedures and principles relating to setting fines to be given to those undertakings and associations of undertakings or the members of such associations, as well as managers and employees thereof, that engage in behaviors prohibited under Article 4 and 6 of the Act No. 4054 on the Protection of Competition, pursuant to Article 16 of the same Act.”*
- (562) In this context, since FACEBOOK is found to have violated article 6 of the Act no 4054, it is necessary to impose administrative fines to the said undertaking per article 16 of the Act no 4054 and the provisions of the Fines Regulation.
- (563) According to the Fines Regulation, first, the basic fine should be determined first and then the final fine should be calculated by applying aggravating and mitigating factors, if any. There is a distinction “cartels” and “other violations” regarding the calculation of the basic fine in article 5 of the Fines Regulation. According to the first paragraph of the same article, while base fine is being calculated, a rate between two percent and four percent for cartels, and between five per thousand and three percent for other violations of the annual gross revenue of the undertakings party to the violation, which is calculated by the Board, is taken as a basis . FACEBOOK’s practices contrary to article 6 of the Act no 4054 are under the category “other violations”. Per the second paragraph of article 5 of the Fines Regulation which stating *“in the determination of the rates written under paragraph one, issues such as the market power of the undertakings or associations of undertakings concerned, and the gravity of the damage which occurred or is likely to occur as a result of the violation shall be considered”*. Taking into account the fact that FACEBOOK has high market power and thus the effects of its practices contrary to Article 6 of the Act no 4054 will be more serious, the basic fine is calculated as (.....)%.
- (564) Another step for the calculation of fines is the period of the violation according to article 5 of the Fines Regulation. As per the third paragraph of the said article, this amount is increased by half for violations which lasted longer than one year, shorter than five years and by one fold for violations which lasted longer than five years. It is understood in the file that FACEBOOK has used WHATSAPP data since 2016; thus, cross use of data between the two companies has lasted more than five years. Even if FACEBOOK’s data sharing and combination with other group companies went back to an older date, the result would not change. The violation has lasted more than five

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years under any circumstance. For this reason, the basic fine is increased by “one fold” according to article 5(3) of the Fines Regulation and calculated as (.....)%. No aggravating or mitigating factor, which will affect the calculated administrative fine, is found.

J. CONCLUSION

(565) According to the Report prepared and the Additional Opinion, evidence collected, written pleas, the explanations made during the hearing and the scope of the file examined within the scope of the investigation conducted per the Board decision dated 11.01.2021 and numbered 21-02/25-M, it has been decided

- a) UNANIMOUSLY that Madoka Turkey Bilişim Hizmetleri Ltd. Şti., which is under investigation, does not have any role in the provision of the activities analyzed, therefore cannot be held responsible for the claims considered within the framework of the investigation,
- b) UNANIMOUSLY that the economic unity under investigation, FACEBOOK, consisted of Meta Platforms, Inc. (previous title Facebook Inc.), Meta Platforms Ireland Limited (previous title Facebook Ireland Limited) and WhatsApp LLC, is dominant in the markets for personal social networking services, consumer communication services, and online display advertising,
- c) UNANIMOUSLY that FACEBOOK 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 *Facebook, Instagram and WhatsApp* services that are called core services and violated Article 6 of the Act no 4054,
- d) UNANIMOUSLY and with the different reason of the Board Member Hasan Hüseyin ÜNLÜ that according to third paragraph of Article 16 of the Act no 4054 and Article 5(1)(b), 5(2) and 5(3)(b) of the Regulation on Fines to Apply in cases of Agreements, Concerted Practices and Decisions Limiting Competition, and Abuse of Dominant Position, by (.....)% of the annual gross income accrued at the end of the financial year 2021 and determined by the Board, by discretion, Meta Platforms, Inc. (previous title Facebook Inc.), Meta Platforms Ireland Limited (previous title Facebook Ireland Limited) and WhatsApp LLC shall be imposed 346.717.193,40- TL administrative fines for the infringement.
- e) WITH THE MAJORITY OF VOTES and dissenting votes of the Deputy Chairman Ahmet ALGAN and Board Member Ayşe ERGEZEN that FACEBOOK shall be imposed the following obligations:
 - a. FACEBOOK should submit the Authority, within one month as of the notification of the reasoned decision at the latest, the necessary measures to terminate the infringement mentioned in paragraph (c) and to ensure the establishment of efficient competition in the market,
 - b. FACEBOOK should implement the necessary measures within 6 (six) month as of the notification of the reasoned decision,
 - c. FACEBOOK should submit an annual report periodically to the Authority for 5 (five) years following the implementation of the first compliance measure.

with the decision subject to review before Ankara Administrative Courts within 60 days as of the notification of the reasoned decision.

THE REASON OF THE DISSENTING VOTE

to paragraph (e) of the Competition Board decision dated 20.10.2020 and numbered 22-48/706-299

We do not agree with subparagraph (e), which will result in leaving the measures that will essentially resolve the infringement structurally to the investigation party, on the following grounds:

- I. **The market, which the infringement has affected, is defined with network effects. The party to the investigation is an incumbent company. By nature, data increase barriers to entry by creating a “virtuous cycle” in favor of incumbents.**

As known, digitalization has promoted global incumbents' market power. Because of this, the set of ex-post conventional competition law rules are supported with ex-ante (quasi-regulation) rules throughout the world. Empirical studies and bottlenecks in legal processes show the importance of timely intervention to the existing and potential competitive restraints and the long-term harms caused by underregulation are undeniable. Therefore, in this Decision and in similar cases, eliminating the conduct/strategy (whatever the type of the competitive constraint is) leading to an infringement or the motive/structure encouraging that conduct is more important than the detection and punishment of the infringement. At this point, beside being left open to the discretion and direction of the investigation party, the solution is delayed by giving time, as a result of which the effects of the existing competitive constraint will continue and the rapid implementation of an efficient solution is obstructed. In the meantime, Meta Group will continue to expand its market power thanks to the data it collects within its ecosystem and integration; virtuous cycle caused by data in favor of incumbents will reinforce barriers to entry and expansion.

- II. **Structural division/separation is the most efficient remedy in eliminating the motive for the conduct in digital markets.**

The ability of Meta Group to overcollect data and make its market power “unbeaten” is based on its control over two services, social network and messaging, its ability to relate the data of consumers using those services with each other, and ownership of a data set by profiling, which none of its competitors can create no matter how efficient they are. For this very reason, without prohibiting data combination absolutely, it is not possible to make the markets, where the violation will be corrected, competitive again.

- III. **It is wrong to show consumer consent as a “wand”, consent can be meaningful only if there are alternatives, that means, only if competition is established again.**

It is seen that the basic defense and remedy mentality of Meta Group focus on “consumer consent”. However, this focus should be avoided due to two reasons in practice. First, the discussion about “consent” is a trap. Notifications such as terms of use depend always on Meta’s discretion about design (unilaterally). Unless the background is not changed, due to data-advertisement interaction, Meta Group will always find a way to make consumers choose consent box in a rational way. The administrative/public costs to occur if intervention is preferred in every update and

contract amendment are obvious. Second, in order for consumers to leave using a network, it is necessary that they are able to switch to a competing platform and the individuals in their network should also be in that platform. This depends on the development of competition, which has been excessively restricted. As explained in the decision, the virtuous cycle provided by the financial power and data on advertisement side in favor of incumbents complicates the growth of competition. Therefore, behavioral solution formulation with consumer consent trap cannot develop a realistic solution for markets with such super-dominance.

Based on all these reasons, it is concluded that subparagraph (e) should be as follows:

- FACEBOOK should terminate collecting data from *Facebook, Instagram* and *WhatsApp* services that are called core services and separate those data technically,
- should limit the use of data obtained on the basis of each core service in a way to be used only to improve the relevant core service and in terms of online advertising market under the scope of the same service
- should keep the data obtained on the basis of each core service in a separate data base.

Ahmet ALGAN
Deputy Chairman

Ayşe ERGEZEN
Member of the Board

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According to the Competition Board Decision dated 20.11.2022 and numbered 22-48/706-299, it has been decided that FACEBOOK abused its dominant position by complicating its competitors' activities by means of combining and using the data owned by its group companies and by creating barriers to entry; therefore, it shall be imposed administrative fines according to article 16 of the Act no 4054. Although I agree with the violation findings and imposition of fines, I think that the duration of fines should not be taken into account for the calculation of fines because of the following reasons:

The current investigation is about the assessment of FACEBOOK UPDATE, which required that WHATSAPP users in Türkiye consent to the use of their data in other FACEBOOK services and which was planned to be implemented on 08.02.2021, within the scope of article 6 of the Act no 4054. However, following the decision to initiate an investigation, in accordance with the information obtained from parties to the investigation, the said data sharing had continued since 2016 and the said UPDATE would not change the nature or scope of the data sharing in question. Therefore, it is understood that WHATSAPP has been sharing certain data categories with other FACEBOOK companies since 2016.

Products offered in digital platforms are regarded as zero price products and users benefit from the said free services in return for their data they give to the service provider. Therefore, today, those platforms are regarded as "data-based functioning undertakings." A lot of digital platforms which function in this way collect huge amount and a wide variety of user data. The data collected usually go beyond the data which users give actively while they are using those platforms. The said data are used for developing the products or services. Besides, they are important in terms of the services provided in the related markets and allow platforms who provide zero price services to finance the free services they provide with targeted advertising activities. It is seen that for digital markets, data is an important input basically for online services, production processes, logistics, smart devices and artificial intelligence. It is estimated that access to data and use of data will affect undertakings' competitiveness more and more. Today, the competitive power of undertakings is measured according to the amount, variety and quality of the data owned by in the.

Depending on the information provided in tables 2, 3 and 4 in the decision, it is seen that many undertakings operating in digital markets collect user data as much as (and some of them more) FACEBOOK.

It is certain that data combination has certain benefits for both consumers/users and sector shareholders, especially more personalized services and increased targeting for advertisers. However, if some undertakings become too strong in the market, users who receive services from the platform become more and more dependent on the platform and the strong undertaking start to direct the market. Therefore, by considering only efficiency gains, it is not possible to overlook competitive concerns. At this point, it is necessary to consider benefits and anticompetitive effects together.

When big data first appeared, concerns about data were addressed within the framework of privacy and thus protection of data or consumer law. However, recently, it is seen that the issue is under competition law's intervention field more. Therefore, the issues such as collecting/overcollecting and use of consumer data in the field of social services and platform services, use of those data without consent/permission, data combination, mutual or unilateral use of those data between group companies have been recently discussed in concern/violation considerations in the context of competition law. Still many competition authorities work and resolve the issue outside competition law (especially protection of personal data). Some authorities do not detect violation but settle the case.

With respect to this file, it is found that WHATSAPP has been sharing certain data categories with other FACEBOOK companies. It is understood from the information and findings in the file that FACEBOOK was dominant at that dates too. However, since the subject of the violation is complicating competitors' activity and creating barriers to entry by combining and using data, I think that the allegation that the violation has continued since the moment when WHATSAPP started to share data with FACEBOOK cannot be proven properly with the information and findings in the file. As I explained above, the main activities and living condition of the sector and those undertakings depend on collection of data. The subject of the violation is not collection or use of data but complicating competitors' activities and creating barriers to entry with respect to the file. In terms of abuse of dominance claim, the violation starts with the detection of this.

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The fact which triggered to start this case and materialized the abuse of dominance is FACEBOOK UPDATE, which was planned to be effective as of 08.02.2021. Only after the analysis and a decision to be made by the Competition Authority will it be possible to know until when the combination and use of data before that date will be considered as a competition issue and after when the issue will be regarded as an abuse of dominance.

Due to the explanations made above, thinking that the duration of the violation covered by article 5 of the Fines Regulation should not be taken into account in terms of this file, I agree with the decision with a different reason in terms of calculation of the fine.

Hasan Hüseyin ÜNLÜ

Member of the Board