



Determination of the status as  
addressee of Section 19a(1) GWB

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(CONVENIENCE TRANSLATION).  
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**Only the German version of the  
decision is authentic.**

## Decision

In the administrative proceedings

1. Meta Platforms, Inc.  
1601 Willow Road  
Menlo Park, CA 94025, USA

- Party 1) -

2. Facebook Germany GmbH  
Schopenstehl 13, Haus am Domplatz,  
20095 Hamburg

- Party 2) -

Authorised representatives of the Parties 1) and 2)

Dr. Ingo Brinker, lawyer

Dr. Ines Bodenstein, lawyer

Gleiss Lutz Hootz Hirsch

Karl-Scharnagel-Ring 6

80539 Munich

for the determination of the status as norm addressee pursuant to Section 19a(1) German Competition Act (GWB), the 6th Decision Division has issued the following decision on 2 May 2022:

## CONVENIENCE TRANSLATION

1. It is hereby determined that Party 1) including all its affiliated companies pursuant to Section 36(2) GWB is of paramount significance for competition across markets within the meaning of Section 19a(1) GWB.
2. The validity of the decision is hereby limited to 5 years from the date on which it becomes final.
3. The fee for this decision is hereby set at

[...]

and is imposed on Parties 1) and 2) as joint and several debtors.

## Reasons

### A. Facts

#### I. Affected company

##### 1. The Meta Group

- (1) Meta Platforms, Inc., Menlo Park/USA (hereinafter also: **Meta**) is the Meta group's US American parent company established in 2014 under the name "Facebook, Inc.", which together with its subsidiaries develops and operates digital products, online services and applications for smartphones (hereinafter: **apps**) as well as online advertising products worldwide. Facebook, Inc. was renamed Meta Platforms, Inc. on 28 October 2021.<sup>1</sup>
- (2) Meta Platforms, Inc. is a publicly traded company with more than 90% of its shares held in free float by numerous shareholders<sup>2,3</sup> However, CEO Mark Zuckerberg holds more than 50% of the voting rights.<sup>4</sup>
- (3) The Meta Group comprises a total of [...] undertakings. In addition to [...] the following operating undertakings are of particular importance:
- (4) *Meta Platforms Ireland Ltd. Dublin/Ireland* is the operating company of the *Facebook*, *Instagram* and now also *Oculus* services in Europe, as well as the *Workplace* service outside the USA and Canada. Meta Platforms Ireland Ltd., Dublin is the contractual partner of all private and commercial users of these services outside the USA and Canada.
- (5) *Facebook Germany GmbH, Hamburg* is a wholly owned subsidiary of Facebook Global Holdings II, LLC and the German presence of the Meta Group. It supports Facebook Ireland Ltd. in the areas of advertising, communications and public relations.
- (6) *WhatsApp LLC* (formerly *WhatsApp, Inc.*), Menlo Park/USA, which was acquired by Facebook in 2014, offers the mobile messenger app *WhatsApp* in Europe and Germany via its Irish subsidiary *WhatsApp Ireland Ltd*, Dublin.
- (7) In 2021, the group employed a total of approx. 72,000 employees and generated global sales of approx. 118 billion US dollars. This corresponds to a year-on-year increase of 37%. Europe accounted for around [20-30] % of these sales. Meta Platforms, Inc. generated around [40-

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<sup>1</sup> Meta, response to question A.I.1 of the request for information of 26 October 2021, B6-27/21.

<sup>2</sup> For reasons of better readability, the masculine form is used in this document for personal names and personal nouns. Corresponding terms apply to all genders for the purpose of equal treatment. The abbreviated form of language is for editorial reasons only and does not imply any valuation.

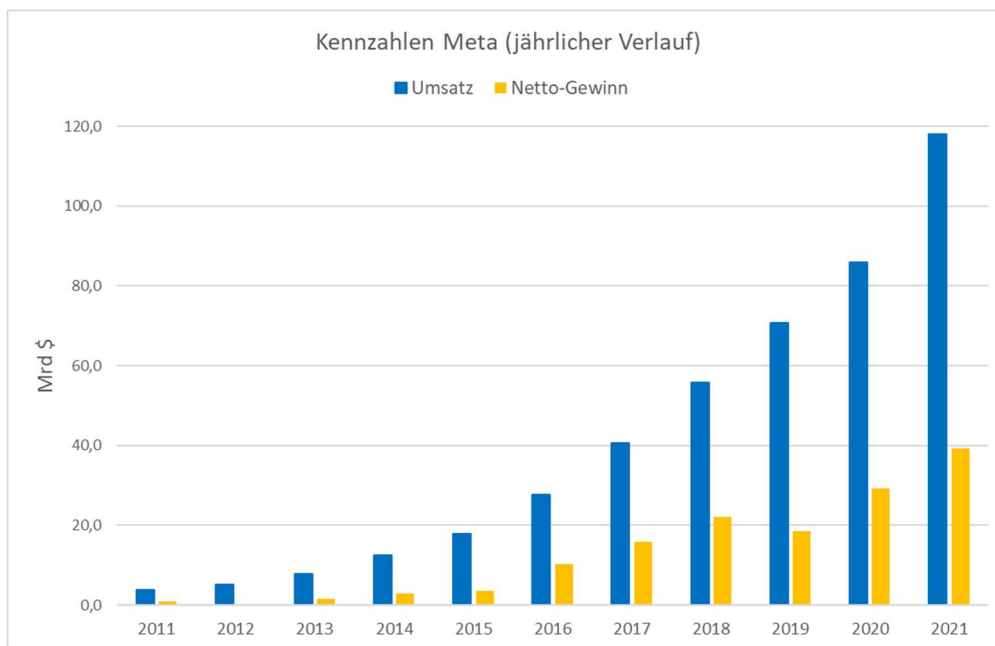
<sup>3</sup> See Meta's publicly available annual report for 2021, p. 48

<sup>4</sup> See Meta's publicly available annual report for 2021, pp. 33, 43.

50] % of its revenue in the USA. The group’s core revenue driver is online advertising, which accounted for around 97% of the revenue worldwide in 2021.

- (8) The operating profit in 2021 amounted to 46.8 billion US dollars (+43% year-on-year). The net profit amounted to 39.4 billion US dollars (+35% year-on-year) with a return on sales of 34%. The company’s market value accounted for 565 billion US dollars in February 2022.
- (9) Over the last ten years, Meta’s sales and net profit have developed as follows:

[Meta’s annual key figures: revenue and net income in billion US Dollars]



**2. The product range<sup>5</sup>**

- (10) Meta’s product range is offered to a large number of different user groups, primarily on the *Facebook* (see a)) and *Instagram* (see b)) platforms and on *WhatsApp* (see c)). The products are financed via online advertising (see d)). Meta also offers various virtual reality products (see e)).

**a) Facebook services**

- (11) On the largest platform, *Facebook*, Meta offers a variety of products and services aimed at different groups. These include, first of all, the *Facebook* social network offering, which is primarily aimed at private users and content providers (“publishers”). In addition, the platform also includes the Facebook developer platform (“Meta for Developers”), which can be used by

<sup>5</sup> Specifically, Meta, response to question B.I.1 of the request for information of 26 October 2021, B6-27/21.

third-party companies to develop their services via the “Facebook Business Tools” and other software products and programming interfaces, among other things.

### aa) Social network

- (12) Meta's core product is the social network *Facebook*, which users can access via their browser at [www.facebook.com](http://www.facebook.com), or in Germany also at [www.facebook.de](http://www.facebook.de), or via the Facebook app on mobile devices (together: *Facebook*). The company does not charge any monetary fee for the use of *Facebook* or for downloading the app.
- (13) *Facebook* offers **private users** a range of functions with which they can – among other things – connect with their friends and acquaintances and share content with each other. Meta summarizes the functions of the social network with the keywords “Verbinden” (“connect”), “Kommunizieren” (“communicate”), “Teilen” (“share”) and “Entdecken” (“discover”).
- (14) The starting point to use *Facebook* for private purposes is the personal Facebook account created upon registration. Here, the user creates a user profile, on the basis of which a personal Facebook page is created. This page is divided into various sub-pages, including the profile page, the home page and the “Find friends” page. In addition to the personal information entered, the profile page also contains the “Chronik” (“Timeline”), which arranges and displays all of the user's activities in reverse chronological order along a timeline. Furthermore, the list of “friends” can be found here, i.e., a list of the people with their real names and profile photos, with whom the user is connected on the social network. The “Find Friends” page allows users to search for specific people using targeted search parameters. In addition, *Facebook* uses an algorithm to suggest people the user might know as friends.
- (15) The home page is the core area of communication. It contains the news feed, which displays the latest news (“posts”) from the user's friends and from content providers and companies to which the user has subscribed or which the user has “liked”. The posts displayed in the newsfeed are pre-sorted by an algorithm according to relevance for the respective users based on their data, but can also be prioritized by the users in the settings. The newsfeed also includes the users' own “status messages,” which they can use to share their own posts with their friends or publicly, as they choose. These posts then appear in the newsfeeds of their friends or the entire social network. For this, the users can post their thoughts including, for example, a photo, a video or their current location. Content from external websites can be integrated. Furthermore, users can create a “Facebook Story” in which they tell a story or provide status updates and information in the form of short temporary clips from several automatically running sequences of images or videos or text.

- (16) *Facebook* also offers **content and product providers** (“publishers”) the opportunity to use the social network as a publication space for their own content and products. Companies, associations or individuals, for example, can set up their own *Facebook* company pages (“pages”) for this purpose without monetary compensation. Providers can use *Facebook* to publicize their content and products, connect with users via “subscriptions” and “likes” and thereby increase their reach. Through communication on *Facebook* such as “sharing” content in the personal network, content of *Facebook* company pages can be effectively disseminated.

### **bb) Other Facebook services**

- (17) From the home page, users can access a variety of other services provided on *Facebook*. These include:
- (18) **Facebook Messenger:** This is a messenger service that allows users to communicate bilaterally or in small groups in real time (“chats and chat rooms”). This is possible by means of text messages and by sending photo, video or audio files. In addition, Messenger offers voice and video calls. *Facebook Messenger* is pre-installed as a messaging tool on the *Facebook* website in the desktop version and is also available as a separate app for use on a mobile device. Companies can embed the service in their software environment via a **Messenger API**.
- (19) **Messenger Rooms:** This is a video conferencing service that allows up to 50 people to participate in a group video call, which is referred to as a “room”. Users can start a chat room via *Facebook Messenger*, *Facebook*, *Instagram Direct* or *Portal*, as long as they have a *Facebook* account. WhatsApp users can be invited to join rooms.
- (20) **Facebook Marketplace:** Via Marketplace, it is possible to sell (used) products through classified ads by private *Facebook* users, which can be restricted regionally.
- (21) **Facebook Watch:** This is a video service on *Facebook* on topics such as sports, entertainment or food. Watch Together allows users to watch videos together with friends and exchange ideas in real time.
- (22) **Facebook News:** News is a separate section for curated journalistic content. In a separate tab on *Facebook*, users receive a selection of news content from national and local publishers that is selected by a journalistic team, tailored to the users’ interests and free of charge for users. In Germany, around 35 publishers are currently cooperating with *Facebook* and receive fees if they make content available that was not previously available on the platform.
- (23) **Facebook Jobs:** Companies can post job listings on their *Facebook* company page that users can access through their *Facebook* page.

- (24) **Facebook Games:** On *Facebook*, users can also find and play a wide variety of online games, either on the platform itself or outside *Facebook*.
- (25) **Facebook Gaming Video:** This is a streaming service for live video games that was integrated into *Facebook* in 2019. This service combines live and recorded gaming videos and offers users the possibility to watch a game in progress.
- (26) **Facebook Pay:** Facebook Pay is a payment processing service that supports various payment methods such as credit cards, PayPal, and the like. Facebook Pay can be used to make payments, such as for fundraisers on *Facebook*, in-app purchases, tickets to events, purchases on Facebook Marketplace or Shops, and money transfers to other users on *Facebook Messenger* and *Instagram*.
- (27) **Shops:** Shops enables product providers to operate online stores where users can discover products and (currently only in the USA) purchase them directly or via the company's website via in-app-browsing and which can be reached via *Facebook* and *Instagram*. The selection of products, communication, completion of the purchase and payment are carried out via *Facebook*. *WhatsApp* and *Facebook Messenger* are envisaged for communication, and Facebook Pay and Shopify Pay for payment.
- (28) **Facebook Dating:** A special dating function can also be accessed on *Facebook*. Via Facebook Dating, the user can create another special dating profile and send "Likes" and messages to other users, as well as chat with them.
- (29) *Facebook* services further include **Facebook Portal** hardware. The Portal devices (Portal, Portal+, Portal Mini, and Portal TV) are video communication devices that use *Facebook Messenger* or *WhatsApp* to call or message friends, family members, and colleagues. The Facebook Portal devices feature AI-based "Smart Camera" and "Smart Sound" technology. This technology allows the cameras to detect people and then follow them around the room, automatically panning and zooming while minimizing background noise and enhancing the caller's voice. Portal also includes Amazon Alexa as a standard feature.
- (30) Finally, **Facebook Workplace** is also one of the *Facebook* services. It is a communication platform for businesses. Facebook Workplace is a closed *Facebook* environment with special features for business use. Similar to the social network, it includes a newsfeed, a work chat, groups, events, video conferences, live videos, but also automatic translations, organisation chart search and various tool integrations.

### cc) Facebook Developer Platform

- (31) Meta lastly offers companies a variety of tools and products with which they can use the company's wide user base and information as well as its access to *Facebook* users for a wide

range of business purposes in various ways. These include, for example, the so-called “Business Tools”. The products are available on the so-called Facebook developer platform (“Meta for developers”). They are designed to help companies integrate and use information and share it with Meta.

- (32) The products are aimed at website operators, developers, advertisers and other companies that can integrate the tools into their own websites, apps and online offerings or into their offerings on the Facebook platform via application programming interfaces (APIs) predefined by Meta using a configurator. Meta does not charge a monetary fee for this. Meta collects considerable data about the users of the respective website or app in particular via the Facebook Business Tools.
- (33) The possible uses of the various individual tools and APIs are very diverse. For example, companies can use the products to interact with Facebook users on the company website (outside of *Facebook*) and trigger actions on the social network or actions on their own website or app (in particular, so-called social plugins, Facebook Login).
- (34) The best-known and most widely used social plugin is the “**Like**” button. If the user clicks this button on third-party pages and apps, the user's profile will show the page's “Like” marker and the website or content will be displayed in the user’s Facebook friends’ newsfeed. Also the “**Share**” button is a widely used plugin and allows users to share content from non-*Facebook* websites or apps on *Facebook* among their circle of friends and comment on it at the same time through a status message. **Facebook Login** allows users to log in to a third-party website using their identifying *Facebook* registration data, i.e., their email address or mobile phone number and *Facebook* password. In addition, users have the option of transferring further personal data to the app, so that they do not have to create a user profile when logging in to a new app/site, for example.
- (35) Companies can also use the corresponding tools and APIs to develop and/or integrate content and apps on the Facebook platform or their Facebook company pages (e.g. Pages API, Live Video API, Graph API, Games on Facebook). In addition, companies can obtain information about Facebook user behaviour in relation to their own company in various forms via Business Tools (in particular Meta Pixel and Facebook SDK).

### **b) Instagram services**

- (36) Meta also offers a variety of products and services that are aimed at different user groups on *Instagram*.



**aa) Social medium**

- (37) The *Instagram* service is a social medium for sharing photos and videos. It was founded in 2010 and acquired by Facebook Inc. (now: Meta Platforms, Inc.) in 2012 for 1 billion US dollars. It is used predominantly via a mobile app and mobile devices with camera function and filters, but is also available as a simplified desktop version.
- (38) Users must register via the mobile app and create a profile. The profile can, but does not have to be linked to the Facebook account. To use *Instagram*, users create a contact list. This can be created from the address book, from *Facebook*'s friend lists or by manual search. Users receive suggestions as to which Instagram users to follow." When users follow others, they can see their photos, videos and posts on the "Home" page, which are displayed there in a central, continuous stream according to a ranking generated by an algorithm. Users can take photos and videos using the Instagram camera, edit them by adding filters, texts, drawings or special effects, and share them with other users. The posts can either be posted in the "Story" function or as a status message on the "Home" page.
- (39) The service is also used by companies and celebrities or other disseminators users can follow. Companies must create a business account for this purpose. The accounts of celebrities and other disseminators in particular are often used specifically for marketing purposes ("influencer marketing"). In October 2020, there were approximately 180 million business profiles on *Instagram* worldwide.<sup>6</sup>

**bb) Other Instagram services**

- (40) Instagram users also have access to a variety of other services that are available on *Instagram*. These include inter alia:
- (41) **Instagram Direct Message:** This is an integrated messenger that allows users to message people they follow, send photos and videos, and share content with them. Posting a private response to Instagram stories or ads is possible. Group chats with up to 32 people per group and video chats with up to 6 people can be held. For companies, there is a **Messenger API for Instagram** that allows communication to be integrated into their own software environment.
- (42) **Instagram Video:** The service was initially launched in 2018 as Instagram TV (IGTV) and was renamed Instagram Video in October 2021. Primarily, users are taken from the feed to the video section. Longer videos of up to 60 minutes can be uploaded and edited, and filters and geolocation tags can be added. The videos can be shared in Instagram Stories as well as Instagram Direct Messages.

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<sup>6</sup> Cf. <https://allfacebook.de/instagram/instagram-nutzer-deutschland>.

- (43) **Instagram Reels:** This service was launched in 2020. Similar to *TikTok*, it allows users to record, edit, add music to, and publish short videos (“reels”) with a maximum length of 15 seconds or 30 seconds. Furthermore, the service suggests reels from other users.
- (44) **Instagram Live:** This feature allows users to start a live video stream in Instagram Stories. The stream can last up to 60 minutes. After the stream ends, users can share the video directly on Instagram Video or download it.
- (45) **Instagram Shops:** Shops is a service for businesses that want to sell their products directly within the app. With an Instagram Shop, the product catalogue can be integrated into the Instagram business profile. This makes it possible to promote products directly to Instagram users via posts, Stories, on the app’s Discover tab, and on a dedicated Shops tab. Users can browse the catalogue in Shops, learn more about specific products, and purchase them without leaving *Instagram*. After users place their first order, their information (name, email, billing information, and shipping address) is saved.

### c) **WhatsApp**

- (46) WhatsApp Inc. was founded in 2009 and acquired by Facebook Inc. in 2014 for (at least) 16 billion US dollars. The messenger service is offered to both private users and companies.

#### aa) **Messenger service**

- (47) WhatsApp belongs to the so-called “instant messaging” services, which are implemented over the internet using a so-called network protocol that enables the exchange of data between computers. Users must be connected to the app via the internet to communicate with each other.
- (48) To use WhatsApp, users have to register after installation by entering their mobile phone number. After registration, users are asked to allow access to their address book. WhatsApp checks the contact list against the users registered on WhatsApp with their mobile phone number and creates the WhatsApp contacts on that basis.
- (49) The service supports sending and receiving a variety of media such as text messages, images, videos, documents and locations, as well as voice messages and calls. In addition to bilateral messages, group conversations (“chats”) and video conferences are also possible. In 2016, WhatsApp introduced the so-called “Status” function, which, similar to the “Story” function, sends status messages with photos, videos, emoticons, texts and drawings to all contacts. Furthermore, “disappearing messages” have also been possible in WhatsApp since 2020, where the user can set the message to disappear again after 24 hours, 7 days or 90 days. Since August 2021, the “one-time view” function has been available, which automatically

deletes photos after they have been viewed once and does not save them in the gallery, for example.

### **bb) WhatsApp for Business**

- (50) In addition to the WhatsApp messenger, which, according to the terms of use, can only be used for private communication, Meta offers two separate WhatsApp business applications: the WhatsApp Business App and the WhatsApp Business API.
- (51) In 2018, the **WhatsApp Business App** was launched. This is a free app designed specifically for small business owners. In addition to the standard WhatsApp functions, WhatsApp Business offers some additional features such as its own business profile with important basic information, as well as the automated sending of messages and quick replies, and the creation of message statistics.
- (52) For medium and large enterprises, Meta offers the **WhatsApp Business API**, which provides an interface to connect the service to customer relations management (CRM) systems and proprietary software environments. This allows the software to be used for two purposes: customer service and notifications. In the case of customer service, the user contacts the company with a question. The company can respond within 24 hours at no charge. In the case of notifications, the company contacts its customers on various occasions, for example with product recommendations or other information. The companies are charged a country-specific fee for this. In Germany, this fee is currently 7 cents per push message.

### **d) Advertising products**

- (53) Meta finances its services primarily through online advertising, which can currently be placed on *Facebook*, *Facebook Messenger*, *Instagram*, and the *Meta Audience Network (MAN)*, Meta's advertising network. This advertising is tailored to the individual users and aims to show the users precisely the advertising they might be interested in based on their personal consumer behaviour, interests, purchasing power and life situation ("targeting" or "targeted advertising", "interest-based advertising", "personalised advertising").
- (54) A prerequisite for the placement of advertising on the Meta services is the creation of a Facebook page, which in turn requires a Facebook account.<sup>7</sup> If the advertiser operates an Instagram Business account, this can be linked to a Facebook account. This takes the advertiser to the "Ads Manager" where the advertising campaign can be created.
- (55) Advertisers can narrow down their advertising target in more detail and specify their desired target group in more detail. First of all, it is possible to narrow down the target group granularly

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<sup>7</sup> Meta, response to question D.II.4 of the request for information of 26 October 2021, B6-27/21.

according to location, age, gender and language as well as other demographic data, interests and behaviour. In the context of “Custom Audiences”, advertisers have the option of advertising to a tailored target group by uploading their own customer data to the Facebook server, where it is matched with data from Meta services, can be enriched with further data, and then a custom target group is created with specific identified users. “Lookalike Audiences” further allow advertisers to create target groups with Facebook users who “resemble” their customers and therefore might also be interested in the advertised products.

- (56) In the Ads Manager, advertisers can also specify the location where their ads are to be placed or ask *Facebook* to automatically display the ads where they are most likely to achieve the best results. On *Facebook* and *Instagram*, the ads are displayed or played in particular within the user's newsfeed (labelled as “sponsored”) as well as in the right column of the user's home page. In addition, advertising is possible in Stories. Furthermore, ads can be placed within videos.
- (57) Advertising is possible in different formats (image, text, video). Furthermore, users can be enabled to perform various actions by clicking on the advertisement with so-called “call-to-action” menus, for example to contact the product provider via the Meta messengers (*Facebook Messenger, WhatsApp, Instagram Direct Messenger*) (“call-to-message”) or to be forwarded directly to the respective online store or to Facebook or Instagram Shops to find out more about the product and purchase the product there.
- (58) Advertising space is allocated to advertisers automatically by auction. Advertisers pay for the advertising products on a cost-per-click, cost-per-action or thousand-contact price (“cost-per-mille” or CPM in short) basis. The advertising products are supplemented by measurement and analysis tools that measure the success of advertising in a wide variety of parameters.

### **e) Virtual and augmented reality products**

- (59) Finally, Meta is active in the field of so-called virtual reality and augmented reality with various products.
- (60) Virtual reality products aim to simulate a virtual reality for users when using digital content. Three-dimensional vision, which enables the human eye to perceive the environment, is simulated by appropriate technology. This enables users to enter a world of their own, the so-called “immersion” or “immersive experience”, so that the virtual environment is perceived as real. Closely related to virtual reality (VR) is so-called augmented reality (AR). This involves the “enrichment” of visually perceived reality with additional virtual information. This results in a combination of reality and virtual reality. The two technologies are also often summarised under “XR”.

- (61) The use of VR technology requires special VR glasses that can visualise the optical effect described above. In addition, specific VR applications are required, which, so far, have mainly consisted of VR games and videos, and which are sold via specific distribution platforms. However, Meta also sees VR as having a promising future in the professional sector, especially for collaboration (working with other people in a shared virtual space), product presentation and in the field of education/training (e.g. in natural sciences, healthcare and security).
- (62) Meta is active in all three areas with the **Meta** brand (formerly: **Oculus**), which has been used since 2022. Under this brand, Meta offers VR glasses in particular, especially the **Meta Quest 2**. A Facebook account is currently mandatory to operate the glasses.<sup>8</sup> Meta also offered the PC-bound Oculus Rift, Rift S and Oculus Go glasses, which are no longer available.
- (63) Meta is also active in VR software development, especially for VR games. In 2019, Meta first bought the Czech VR studio Beat Saber, a developer of popular VR games. This was followed by the purchase of the Japanese VR studio Sanzaru Games, which had produced the popular VR game “Asgard's Wrath” in the past. Meta has also launched the **Horizon Worlds** VR service in a beta version, in which selected users can participate. In this game, users can move from a general starting point (hub) through portals into user-generated worlds. There is also a beta version of Horizon Worlds for corporate workspaces, a collaboration application for virtual collaboration or product presentation.
- (64) Finally, Meta operates a distribution platform under **Oculus.com** for VR content that can be used on Oculus devices. A Facebook account is required to use the platform.
- (65) The renaming of the company and the VR products to Meta and Meta Quest, respectively, goes back to Mark Zuckerberg’s long-term project to transform the internet into a “**Metaverse**” with Meta.<sup>9</sup> This is based on the vision of using the internet as a virtual space where users can move through virtual worlds using XR technology. Meta intends to make significant investment for this and [...] a large number of development staff for this project, working on VR and AR products [...].

## II. Course of the proceedings

- (66) By a request for information of 28 January 2021, the Decision Division extended the ongoing proceedings against Meta Platforms, Inc. for tying the Meta (formerly: Oculus) services to a Facebook account (B6-55/20) to also include Section 19a(2) sentence 1 no. 1a, nos. 3a and b, and no. 4a GWB, thereby also initiating proceedings to assess the company’s status as

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<sup>8</sup> This is the subject of the proceedings against Meta conducted under the case number B6-55/20, from which the present proceedings arose. Due to the proceedings, the glasses are currently not directly available in Germany, but can be easily purchased via online stores outside Germany.

<sup>9</sup> Cf. <https://about.fb.com/news/2021/10/founders-letter/>.

norm addressee pursuant to Section 19a(1) GWB.

- (67) In a letter of 29 April 2021, the Decision Division informed Meta Platforms, Inc. that it has separated the proceedings to assess the company's status as norm addressee pursuant to Section 19a(1) GWB and will continue to examine this issue in the present separate determination proceeding under file number B6-27/21.
- (68) By issuing the requests for information of 27 August 2021 and 24 September 2021, the Decision Division conducted investigations at digital media agencies and competitors from the social media sector. It also sent requests for information to publishers and press companies. On 26 October 2021, the Decision Division sent another request for information to Meta. Meta responded to this in three consecutive tranches within a deadline that, after two talks and two deadline extensions, was approximately eight weeks in total. The Decision Division received the last of Meta's responses on 21 December 2021.
- (69) The case file B6-22/16 has been included in its entirety in the present proceedings with regard to the prohibition proceedings (main file up to p. 13749, as well as annexes<sup>10</sup>). Furthermore, the Decision Division included individual documents from the enforcement volume of file number B6-22/16 and added a copy to the case file B6-27/21. In addition, the Decision Division included the responses of Meta Platforms, Inc. from the request for information of 28 January 2021 in the proceedings B6-55/20 and added a copy to the case file B6-27/21.<sup>11</sup> From the proceedings B6-21/22, the Decision Division included Meta's answers to the request for information of 25 January 2022 and added a copy to the case file B6-27/21.<sup>12</sup>
- (70) On 23 November 2021, a meeting was held with representatives of Meta Platforms, Inc. at the Bundeskartellamt, in which a document outlining the preliminary assessment was announced for the purpose of enabling an exchange on the new matter as early as possible and the main aspects of the examination pursuant to Section 19a (1) GWB were explained.
- (71) With its document outlining the preliminary assessment dated 23 December 2021, the Decision Division gave Meta the opportunity to comprehensively comment on the matter. In response to Meta's same-day request for access to the file, the Decision Division granted Meta access to the file on 17 January 2022. Within the period of more than seven weeks following the extension of the deadline, Meta essentially only commented on the proceedings and the two market dominance examinations.

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<sup>10</sup> B6-22-16\_response Facebook to the request for information of 23 May 2016; B6-22-16\_questioning of media agencies; B6-22-16\_questioning of advertisers; B6-22-16\_survey of users; B6-22- 16\_ questioning of competitors.

<sup>11</sup> Cf. in detail the relevant note of 21 December 2021, B6-27/21.

<sup>12</sup> Cf. in detail the relevant note of 15 March 2022, B6-27/21.

- (72) In a meeting on 1 March 2022, Meta was given another opportunity to comment. In the course of the discussion and upon request, Meta also commented on the examination concept and examination standards for Section 19a(1) GWB and also mentioned points by which Meta took particular issue. Following the meeting, Meta submitted an additional statement to the Decision Division with more detailed comments on the points in question.
- (73) On 18 March 2022, the Decision Division sent Meta an additional document outlining the preliminary assessment and granted access to additional files. In this document outlining the preliminary assessment, the Decision Division also considered points objected to by Meta to a certain extent. Meta submitted its comments on the additional assessment notice on 8 April 2022. In its statement, Meta, in abbreviated form, essentially repeated its submission from the previous statement.

## B. Legal analysis

- (74) The overall assessment of the requirements of Section 19a(1) GWB shows that Meta Platforms, Inc. (formerly Facebook, Inc.), including its group companies<sup>13</sup>, is of paramount significance for competition across markets.

### I. Principles

- (75) The main purpose of Section 19a GWB, which, together with other provisions on abuse control, was introduced with the so-called “GWB Digitalisation Act” (10th Amendment to the GWB)<sup>14</sup> is to capture special positions of power and their possible anti-competitive effects on and threats to competition in the area of “digital ecosystems” in which individual companies may have a so-called gatekeeper function.<sup>15</sup>
- (76) Large digital companies which offer a wide variety of products and services can hold an economic position of power across markets which is difficult for competitors to challenge and gives rise to a scope of action that allows the relevant company to further consolidate, expand or otherwise use this position to its own advantage without sufficient control by competition. Such positions of power and their expansion are enhanced by the dynamics of the digital and internet economy, which especially on markets within the meaning of Section 18(3a) GWB lead to accelerated and increased concentration and bring about conglomerate or vertically integrated business structures<sup>16</sup> in which cross-market systems of products and services, which often are scalable and – through the bundling of the data collected, for example – connected in various ways, can be operated and expanded.
- (77) By basing the rule on significance “across markets”, the provision also takes into account the fact that the trend towards the formation of ecosystems and the linking of markets may lead to blurred market boundaries in the digital economy<sup>17</sup> and markets are constantly expanded through expansion strategies.<sup>18</sup> Competition from alternative providers can often take place

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<sup>13</sup> Cf. the list of group companies at Meta, response to question 1. a) of the request for information of 25 January 2022, B6-27/21.

<sup>14</sup> “Act Amending the Act Against Restraints of Competition for a Focused, Proactive and Digital Competition Law 4.0 and Amending Other Competition Law Provisions” (GWB Digitalisation Act) [„Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen für ein fokussiertes, proaktives und digitales Wettbewerbsrecht 4.0 und anderer Bestimmungen“ (GWB-Digitalisierungsgesetz), Federal Law Gazette of 2021, part 1 no. 1, 18 January 2021.

<sup>15</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 73.

<sup>16</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 73.

<sup>17</sup> Cf. resolution recommendation of the Economic Committee on the 10th amendment to the GWB, Bundestag printed paper 19/25868, p. 7.

<sup>18</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, pp. 73 et seq.



only at the fringes of an ecosystem, since competitors offer, for example, individual services which cover only a subarea of the portfolio of offerings or which, for their part, can be offered as part of the ecosystem only – for example on its technical platform. Operators of ecosystems are regularly well equipped to fend off competition from other providers, e.g., in the form of innovation competition in subareas and the expansion of competitors' activities. Insofar as expansion into a new service and into new markets is concerned, this is also easy for such undertakings, e.g., because they themselves organise the markets, their access conditions and thus the competitive opportunities within their ecosystem and/or high switching costs for users may exist due to the breadth and characteristics of the ecosystem. In addition, large digital corporations regularly have a particular amount of resources that can be deployed in a variety of different areas, such as a large user base, access to data and data sources, know-how, technology, their own computing capacities or financial resources.

- (78) Whether an undertaking in the digital economy is in a position of paramount economic power across markets in this sense is determined by an overall assessment of all circumstances relevant in the individual case.<sup>19</sup> Section 19a(1) GWB lists several factors that can contribute to a company's competitive potential for the purpose of characterising paramount significance across markets. According to the explanatory memorandum, these factors are neither cumulative nor exhaustive; nor is any weighting intended by their order.<sup>20</sup> The individual factors to determinate the status as norm addressee are to be interpreted taking into account the objective of Section 19a GWB, which is aimed at capturing the scope of action resulting from a company's significance across markets. Adopting a schematic interpretation of identical market-related factors to establish the existence of a dominant position, for example pursuant to Section 18(3), (3a) or (3b) GWB, is therefore not possible. However, the principles developed for market-related positions of power can be applied *mutatis mutandis* for the purposes of Section 19a GWB.

## **II. Substantial activities on markets within the meaning of Section 18(3a) GWB**

- (79) Meta Platforms Inc. and the companies affiliated with it pursuant to Section 36(2) GWB are active to a significant extent on markets within the meaning of Section 18(3a) GWB.

### **1. Function**

- (80) The condition of being active on markets within the meaning of Section 18(3a) GWB to a

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<sup>19</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 75.

<sup>20</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, pp. 74 et seq.

significant extent is a mandatory component of the status as norm addressee under Section 19a GWB. The condition is intended to ensure that only companies with a focus on digital business models are subject to the norm.<sup>21</sup> With the 9th amendment to the GWB and the provisions introduced in Section 18(2a) and (3a) GWB, the legislator has identified in particular multi-sided markets and networks as the core of the frequently internet and data-based business models with recognisable concentration tendencies in certain business fields, which go hand in hand with the increasing digitalisation of markets.<sup>22</sup> In addition, the condition takes up the above-mentioned facilitation of positions of power across markets through the concentration and self-reinforcement dynamics of multi-sided markets and networks, which poses the risk of further consolidation and the expansion of a position of power to further business areas and markets.<sup>23</sup>

- (81) In this context, it is irrelevant whether the paramount significance for competition across markets is attributable precisely to such products or whether it has also been made possible as a result of other activities. In particular, the provision also covers undertakings that are active to a significant extent on markets as defined in Section 18(3a) GWB, but whose paramount significance for competition across markets is also fed to a substantial extent by other activities on digital markets.<sup>24</sup> In this respect, the legislator has found the potential competitive threat posed by such business models to be a sufficient starting point for the legal assessment of a company's status as norm addressee of Section 19a GWB.
- (82) This does not cover companies whose activity in a multi-sided market or network either plays only a completely subordinate role for the company itself – compared to its other activities – or which play only a subordinate role on the relevant markets compared to their competitors.<sup>25</sup> An exclusive or predominant activity on markets within the meaning of Section 18(3a) GWB is not required to establish a company's significant extent of activity. It is sufficient that the undertaking focuses on one (of possibly several) activity(ies) in such markets, but may also pursue other activities in addition. According to the purpose of the condition, which is to capture an essential element of the potential competitive threat arising from the significance of a company in the digital economy across markets, it does not matter whether dominant positions or even monopolies also exist in such markets pursuant to Section 18(3a) GWB. Moreover, in the case of Meta's core activities in the area of social media in question here, this also holds

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<sup>21</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 74.

<sup>22</sup> Cf. government explanatory memorandum to the 9th amendment to the GWB, Bundestag printed paper 18/10207, pp. 1, 39.

<sup>23</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 73.

<sup>24</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 74.

<sup>25</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 74.

true (for more details, see III.1.).

**2. Meta’s activities on markets within the meaning of Section 18(3a) GWB**

- (83) With all its activities regarding the social media services *Facebook*, *Instagram*, *Facebook Messenger* and *WhatsApp*, Meta is active on markets within the meaning of Section 18(3a) GWB.
- (84) In this respect, the only decisive factor is that based on their service features these products fulfil the business models of a multi-sided market or a network and that these services are provided on markets within the meaning of the GWB (in particular pursuant to Section 18(2a) GWB).
- (85) *Multi-sided markets* are typically services which, as intermediaries, enable direct interactions between two or more user groups, with *indirect* network effects existing between them.<sup>26</sup> Therefore, *networks* are typically undertakings which, as intermediaries, enable interactions between users of the same user group, with *direct* network effects arising among them.<sup>27</sup>

**a) Facebook, Instagram**

- (86) Based on its service description, Meta offers intermediary services with the ad-financed social network *Facebook* as well as with the ad-financed photo and video network *Instagram*, which are a combination of a network and a multi-sided market pursuant to Section 18(3a) GWB.
- (87) The relevant user groups of the services are, in essence, **private users** who use *Facebook* and *Instagram* without monetary consideration on the one hand, and, on the other hand, the group of **advertisers** who, in return for payment, use the services to place targeted adverts based on user data there. Pursuant to Section 18(2a) GWB, this business model as a whole – including the side that does not have to pay a fee – constitutes a market service within the meaning of the GWB, since a uniform profit-making purpose is pursued with both sides.<sup>28</sup>
- (88) For the user group of private users, *Facebook’s* main service is to offer a range of functions with which users can find friends and acquaintances in particular and share content in various forms with them in certain identified private circles of people. On *Instagram*, it is also possible

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<sup>26</sup> Cf. government explanatory memorandum to the 9th amendment to the GWB, Bundestag printed paper 18/10207, p. 49; BKartA, decision of 6 February 2019 – B6-22/16 – Facebook, para. 215.

<sup>27</sup> Cf. government explanatory memorandum to the 9th amendment to the GWB, Bundestag printed paper 18/10207, p. 49; BKartA, decision of 6 February 2019 – B6-22/16 – Facebook, para. 215.

<sup>28</sup> Cf. government explanatory memorandum to the 9th amendment to the GWB, Bundestag printed paper 18/10207, p. 48; Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – Facebook, para. 28; BKartA, decision of 6 February 2019 – B6-22/16 – Facebook, paras. 239 et seq.

for users to search for people whose posts or stories they would like to see or who follow the users (“follower”).

- (89) To begin with, such a service constitutes a network within the meaning of Section 18(3a) GWB, since *Facebook* as an intermediary enables interactions between *Facebook* or *Instagram* users and positive direct network effects occur within the group of private users. Direct network effects exist when members of a group benefit directly from the fact that more members of their group (positive direct network effects) or fewer members of their group (negative direct network effects) are represented on the platform.<sup>29</sup>
- (90) The members of the group of private users of *Facebook* and *Instagram* all benefit directly from the fact that more private users use *Facebook* and *Instagram* respectively. This refers to the effects within the group between the individual private users. Both direct and indirect connections between users can result in network effects. The more private users are active on *Facebook* or *Instagram*, the greater the benefit for this user group, as the opportunities for interaction between users increase and finding interesting people, friends and acquaintances becomes more likely the more users the network has.
- (91) The reach created by private end users using the service, the users’ attention and the data collected from them as well as the advertising spaces existing within the service are, on the other hand, essential service content of *Facebook* and *Instagram* provided to **advertisers** for a fee. The advertising-financed offer thereby also constitutes a multi-sided market pursuant to Section 18(3a) GWB, since *Facebook* here, as an intermediary, enables direct interaction between the group of advertisers and the group of private users on *Facebook* and *Instagram*, with indirect network effects existing between them.
- (92) Based on user data and the users’ attention when using the social network, Facebook enables direct interaction between users and advertisers in the form of an advertising follow-up contact, which occurs when the user follows up on the advertisement (by taking note of the advertisement or by clicking on the advertisement). This results in indirect network effects between the group of private users and the group of advertisers. Indirect network effects occur when the benefit or profit gained by users from one group depends on the number of users from another group.
- (93) In any case, *Facebook* and *Instagram* both show intense positive indirect network effects for the benefit of advertisers. The benefit of the networks for advertisers increases the more private users the service has. This is because the more private users an advertiser can address in its target group, the higher its sales opportunities. Due to the large number of private users,

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<sup>29</sup> Cf. BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, para. 217; Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 44.

a large number of different target groups are represented on *Facebook* and *Instagram*.<sup>30</sup>

- (94) With the social network's free functionalities for **content and product providers**, Meta has added another market side to the core product of *Facebook* and of *Instagram*, which are also part of the multi-sided market and give companies further access to private users.
- (95) Content and product providers use the services *Facebook* and *Instagram* to promote their own company and products to users through their own *Facebook* or *Instagram* presence. On their *Facebook* and *Instagram* presences, providers can distribute their editorial content, connect with users, monetise their websites, and collect information about user behaviour. In addition, Meta's "Shop" feature, particularly on *Instagram*, offers businesses an e-commerce function that allows users to be directed to a store via a company's *Instagram* profile or through its feed and stories. There, they can search for products and place orders directly or via the company's website using in-app browsing. On *Instagram*, it is also possible to act as a creator. In particular, these are so-called influencers who use their celebrity or influence in social media to promote products, services, or lifestyles and opinions.
- (96) With *Facebook* and *Instagram*, Meta thus also acts as an intermediary between private users and content and product providers to enable direct contacts or direct transactions. There are indirect network effects between the user groups of content and product providers and private users with regard to the marketing purpose. This is because commercial page operators on *Facebook* and *Instagram* benefit from the growth of the private user group, as this enables them to achieve greater reach and visibility as well as a higher transaction volume.
- (97) Finally, *Facebook*'s developer platform is another market side of the social network. Facebook offers the **user group of developers** the opportunity to integrate their web offerings (websites or apps) with *Facebook* particularly via Facebook Business Tools in order to increase their user base and monetise their service. Furthermore, developers of game apps in particular can offer online games to users on the Facebook platform.
- (98) In doing so, the customers of the developer platform and the available tools and interfaces use the reach and the resulting data pool of the social network for the purposes pursued in each case with the software or the integration of the tools and interfaces. With the tools, *Facebook* therefore, in turn, acts as an intermediary that enables direct interaction between private users and developers or their applications. This results in different interactions, depending on what the Facebook interfaces enable. With regard to the development of apps for Facebook e.g. Facebook users are enabled to use the application via *Facebook*'s interface or to download applications. In the case of social plugins, users can share content on *Facebook* by pressing

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<sup>30</sup> Regarding network effects in social networks, cf. BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 219 et seq.; Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 43.

the Share or Like button on the developer's website.

- (99) Indirect network effects occur between the developers and the private users, which can vary depending on the tool. The benefit of the products increases for the developers the more private users use the social network. For a large number of the products, there are also positive indirect network effects in the opposite direction, such as in the case of tools for developing apps for Facebook. The more apps are developed for Facebook, the more attractive the social network becomes for private users.

### **b) Messenger services WhatsApp and Facebook Messenger**

- (100) Meta is also active in markets pursuant to Section 18(3a) GWB with the *WhatsApp* and *Facebook Messenger* services.
- (101) The key function of the messenger services is the provision of communication options by means of a variety of media such as text messages, images, videos, documents and locations, as well as voice messages between two or more users. This is done on the basis of a proprietary protocol, which in each case only allows *WhatsApp* or *Facebook Messenger* users to communicate among each other, but does not allow communication between *Facebook* or *WhatsApp* users and third-party messenger services.
- (102) However, the messenger services can be used separately from *Facebook* and each messenger service therefore constitutes a network pursuant to Section 18(3a) GWB in its own right, as Meta in each case enables direct interactions among *WhatsApp* user or *Facebook Messenger* users and there are positive direct network effects within the user groups. This is because here, too, users benefit directly from the fact that more users (positive direct network effects) use the respective service, or, to put it the other way around, the benefit of the service decreases if fewer users use the service.
- (103) These services are also provided on markets within the meaning of the GWB, as pursuant to Section 18(3a) GWB the fact that the services are provided to the users free of charge does not preclude the assumption of a market, not least because of the indirect monetisation of the services via advertising on *Facebook* and *Instagram* or the potential direct monetisation of the services. According to the case law of the Federal Court of Justice (BGH), on the basis of Section 18(2a) GWB it is sufficient for a market service to be part of a strategy which at least indirectly or in the longer term is aimed at generating profit.<sup>31</sup>
- (104) *Facebook Messenger* is now directly monetised through advertising on the messenger itself and is also part of the functionalities offered by *Facebook*. In the web version, it is integrated directly into the website and can be used within *Facebook*. On mobile devices, *Facebook*

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<sup>31</sup> Cf. Federal Court of Justice, decision of 23 June 2021 – KVR 69/19 – *Facebook*, para. 28.

*Messenger* can also be used separately from *Facebook*, but is technically implemented on the same platform as *Facebook* and is functionally closely linked to the social network for users via interfaces. User data from the use of *Facebook Messenger* is merged with data from *Facebook* and *Instagram* and used by Meta for advertising purposes.

- (105) The service *WhatsApp*, which is free of charge, is also provided on a market within the meaning of Section 18(2a) GWB. At present, *WhatsApp* is in functional terms still largely operated separately from *Facebook* and *Instagram*, but is nevertheless an essential part of the Meta ecosystem focused on social media and can also be regarded as indirectly monetised via advertising on *Facebook* and *Instagram*. The service is also part of a strategy that is at least indirectly or in the longer term aimed at generating profit. This results from the various functional connections between *WhatsApp* and *Facebook* or *Instagram*, such as the possibility to hold meetings in Facebook Rooms<sup>32</sup> or the possibility for users to access advertisements or company pages through so-called click-to-message buttons also on *WhatsApp*. Furthermore, the WhatsApp Business API is an offer for which business customers partially have to pay and through which undertakings can communicate with their customers on a large scale, using *WhatsApp* together with their own communication platform (such as CRM software) [...]

### 3. Significant extent of Meta's activities

- (106) Meta's activities on the aforementioned markets pursuant to Section 18(3a) GWB reach a "significant extent" within the meaning of Section 19a(1) GWB in all respects.
- (107) Only such undertakings for which the activity as a platform or network either plays only a completely subordinate role for the company itself – compared to its other activities – or which play only a subordinate role on the relevant markets compared to their competitors are not covered by the provision.<sup>33</sup>
- (108) In the present case, however, the social media services made available to end customers as well as to the other market sides actually represent the core activity of the undertaking. In addition to traditional social media services, Meta offers only a few directly monetised services that are also consistently related to social media. These include payment services for developers and product providers, such as gaming payments and marketing payments. Meta also develops and sells hardware, particularly in the virtual reality area. Meta also offers a few business products in return for payment, such as Facebook Workplace and the WhatsApp Business API. [...] all of these products play only a subordinate role [...] compared to the markets under Section 18(3a) GWB in the social media sector.
- (109) [...] the services in the social media business sector play a prominent role compared to the

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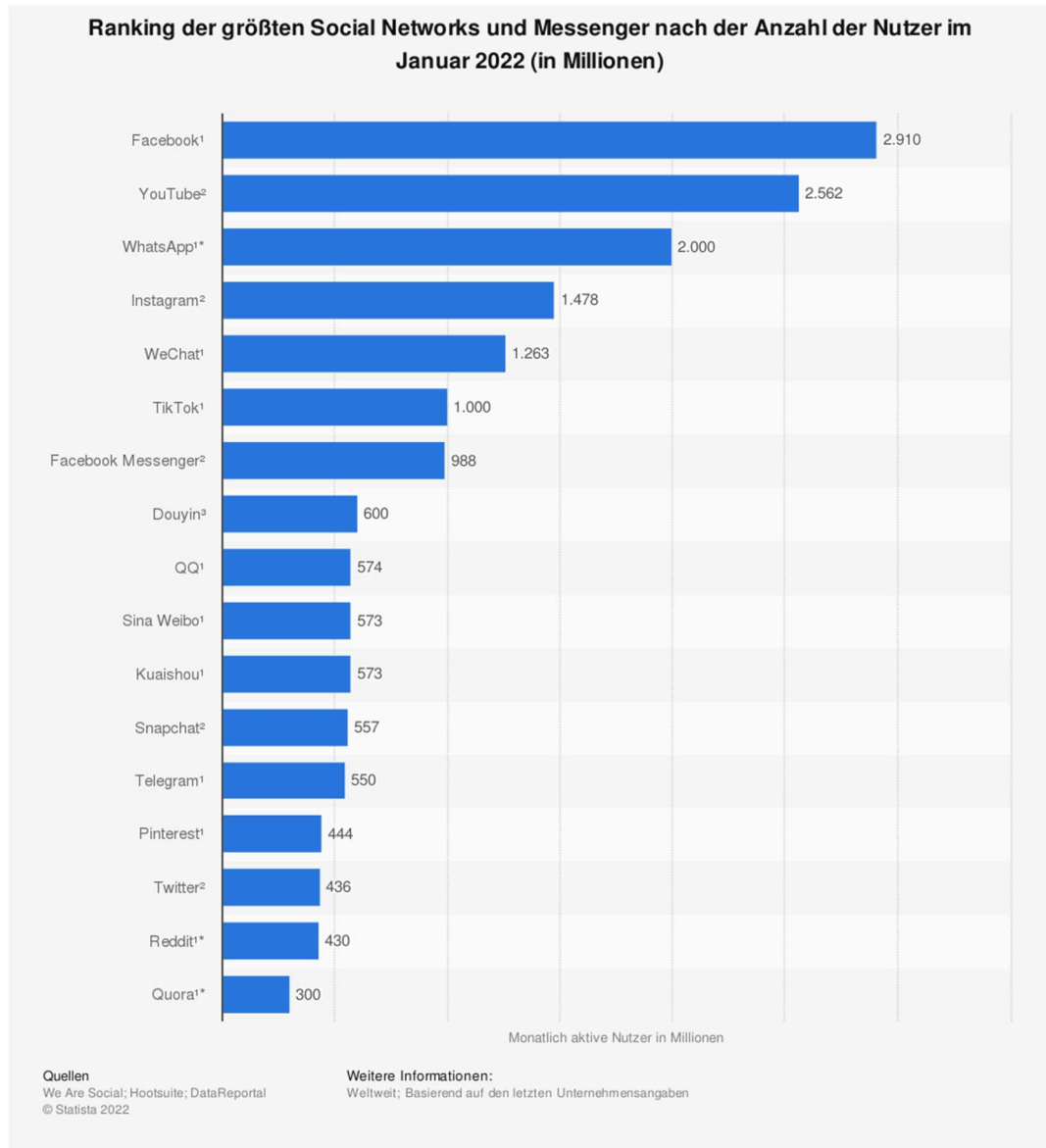
<sup>32</sup> Cf. <https://www.messenger.com/rooms>.

<sup>33</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 74.

services of their competitors in terms of user numbers and advertising revenues, both globally and nationally.

- (110) Globally, Meta’s services together are by far the largest social media, based on the key performance indicator of “Monthly Active User” (MAU).<sup>34</sup>

[Ranking of the largest social networks and messenger services according to user numbers in January 2022 (in million)]



[monthly active users in million; sources: We Are Social; Hootsuite; DataReportal; © Statista 2022; further information: worldwide; based on the most recent information provided by the company]

<sup>34</sup> <https://de.statista.com/statistik/daten/studie/181086/umfrage/die-weltweit-groessten-socialnetworks-nach-anzahl-der-user/>.



- (111) Compared to its other activities, the aforementioned core activities represent the source of almost all of Meta's revenue. In 2021, Meta generated around 97% of its total revenues worldwide from advertising placed on the aforementioned products and from advertising delivered via *Facebook* and *Instagram*.
- (112) Meta's steadily growing advertising revenues amounted to around 118 billion US dollars worldwide in 2021. Meta is also the leading provider of advertising on social media at the national level (for more details, see III.1.c. below).

### III. Paramount significance for competition across markets

- (113) Meta is of paramount significance for competition across markets because, when all relevant circumstances in the individual case are overall considered, the company has a position of economic power across markets that allows for a scope of action across markets that is not sufficiently controlled by competition.
- (114) Meta operates a strong, data-driven ecosystem in the entire sector of ad-financed social media, which due to strong lock-in effects on private and business users poses the risk of competition mostly existing only in certain specific areas and competitors being permanently pushed to the fringes of the ecosystem, thus significantly jeopardising their power to innovate. In addition, economies of scope facilitate the ecosystem's continuous expansion and consolidation as well as its financing. As a result, Meta's ecosystem holds a position which extends across various markets with blurred market boundaries and which is difficult or impossible for other companies to challenge.
- (115) This finding is based on an overall assessment of all relevant facts taking into account the factors set out in Section 19a(1) nos. 1 to 5 GWB. According to the legislative materials, it is not necessary for the factors set out in Section 19a(1) nos. 1 to 5 GWB to exist cumulatively in order to assume the status as norm addressee. Also, the order of the factors mentioned is not intended to imply any guidance for their weighting.<sup>35</sup> Meta's notion that all of the criteria listed in Section 19a(1) nos. 1 to 5 GWB have to be examined with regard to all of the undertaking's activities in the digital sector in order to determine the status as addressee of Section 19a(1) GWB<sup>36</sup> is therefore not in line with the idea of the law and is not supported in any way by the cited government explanatory memorandum.<sup>37</sup>
- (116) With regard to Meta, Section 19a(1) sentence 2 nos. 1, 3 and 4 GWB are especially important

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<sup>35</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 75.

<sup>36</sup> Meta, statement of 15 February 2022, p. 22, paras. 72, 73.

<sup>37</sup> The government explanatory memorandum to the 10th amendment to the GWB referred to by Meta, Bundestag printed paper 19/23492, p. 69 exclusively refers to Section 18(3); p. 86 refers to the requirements of an interim order.

in the overall assessment. Intermediation power and the power to set rules pursuant to no. 5, at least in some areas, as well as considerable resources at its disposal pursuant to no. 2 add to Meta's particular economic power.

- (117) With its core service *Facebook*, Meta holds a dominant position on the national platform and network market for social networks for private users; in the area of social media advertising, the company is at least very strong. This market and area in themselves already show high barriers to entry due to strong lock-in effects on private users, the access to data relevant for competition and the lack of innovative power driven by competition (Section 19a(1) sentence 2 no. 1 GWB, for details see 1.).
- (118) Meta's position of power goes beyond its core service and is characterised by considerable economies of scope, which intensify the lock-in effect to the detriment of all user groups and allow Meta to ward off competition in innovation. These advantages result from services which are linked to each other in various ways. Alongside Facebook, these comprise other strong services of Meta (such as *Instagram*, *Facebook Messenger* and *WhatsApp* in particular) which, on the one hand, cover the entire range of offers for private users in the social media sector and, on the other hand, are financed through vertically completely integrated online advertising opportunities offered to advertisers across all services. In connection with its social media services, Meta offers companies and developers an expansive network of space to present themselves and establish contacts or possibilities to engage and interact with all users in a comprehensive communication and sales space with considerable economies of scope (Section 19a(1) sentence 2 no. 3 GWB, for details see 2.).
- (119) Due to its large number of private users and other sources such as, in particular, business customers, developers and advertisers, and due to combining the data from various sources, Meta has superior access especially to personal user data, which are highly relevant across markets for user retention and product development as well as for monetising the company's overall product range (Section 19a(1) sentence 2 no. 4 GWB, for details see 3.).
- (120) In addition, as key provider of the online social communication infrastructure, Meta has a significant influence on the possibilities for commercial communication and thus the access of product providers, advertisers and content providers to supply and sales markets. The great importance of social media advertising on Meta's services can in the future also create (additional) trading platforms on Meta's social media and thus additional monetisation channels already launched with Facebook and Instagram Shops linked to advertising space (Section 19a(1) sentence 2 no. 5 GWB, for details see 4.).
- (121) Owing to its commercial success, Meta has extensive financial resources of its own, excellent access to the financial market and considerable technical capacities both in terms of operating its services and in terms of research and development. In addition, Meta can rely on world-

famous brands with an extremely wide user base which, due to the positive direct network effects that are particularly strong in the relevant sector, is exceptionally stable (Section 19a(1) sentence 2 no. 2 GWB, for details see 5.).

- (122) In the overall assessment of all facts relevant in this individual case, Meta Platforms, Inc. as a whole is therefore to be regarded as a company of paramount significance for competition across markets within the meaning of Section 19a(1) GWB (for details see 6.).

### **1. Market dominance (Section 19a(1) sentence 2 no. 1 GWB)**

- (123) With its core service *Facebook*, Meta holds a dominant position on the platform and network market for social networks for private users in Germany and in the area of social media advertising the company is at least very strong. This market and area in themselves already show high barriers to entry on both sides due to strong lock-in effects on private users and advertisers, access to data relevant for competition and limited innovative power driven by competition.

#### **a) Function of the criterion**

- (124) The factor of market dominance in Section 19a(1) sentence 2 no. 1 GWB is, according to the meaning and purpose of the provision, not a mandatory requirement for the determination as an addressee of the provision.<sup>38</sup> This is because the provision aims precisely to take account of the cross-market nature of ecosystems and the resulting blurring of market boundaries. This is also in line with the government's explanatory memorandum which clarifies that the factors of Section 19a(1) sentence 2 GWB do not have to be met cumulatively and their order does not imply any guidance for their weighting.<sup>39</sup>
- (125) However, if the criterion of market dominance is fulfilled, this circumstance can carry considerable weight. Thus, in its assessment in the present case, the Decision Division attaches particular importance to the fact that Meta, in particular with *Facebook*, holds a dominant position, as the matter concerns the market sides of a platform and network market within the meaning of Section 18(3a) GWB, and moreover, because this market forms the basis of the [...] core activity of the Meta ecosystem [...] The core markets dominated by Meta in the area of social media demonstrate the company's potency and abstract danger posed by it especially with regard to the specific protective purpose of Section 19a GWB. Both in the government's explanatory memorandum and in the Economic Committee's recommendation for a resolution, the legislative materials of the provision strongly point out the particular threat

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<sup>38</sup> Cf. explicitly the resolution recommendation of the Economic Committee on the 10th amendment to the GWB, Bundestag printed paper 19/25868, p. 113.

<sup>39</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 74 (at the end) and p. 75.

to competition in platform and network markets, especially the dangers of “tipping” due to consolidated market positions.<sup>40</sup>

### b) Quasi-monopoly on the national market for social networks for private users

- (126) With its *Facebook* service, Meta is dominant on the relevant national market for social networks for private users as one side of the multi-sided market.

#### aa) Market definition

- (127) With the *Facebook* service, Meta is active on the national market for social networks for private users. The user side of the multilateral market *Facebook* forms a separate market from the advertising side (see (1)) and must be assigned to a separate market for social networks within social media (see (2)) which is to be defined on a national basis (see (3)).

#### (1) Market sides are separate markets

- (128) The market sides of the multilateral market (see para. (83) above) do not form a uniform opposite market side. *Facebook* serves a different need among the user groups of advertisers, content providers and developers than among the user group of private users.<sup>41</sup>
- (129) From the Decision Division’s point of view, a uniform market definition which does not differentiate between the various user groups is, in principle, possible in the case of multi-sided markets. However, a uniform market definition – encompassing several or all market sides – must also follow the principles of the demand-side substitutability concept [“*Bedarfsmarktkonzept*”] and can therefore only be assumed if the user groups’ points of view regarding the functional interchangeability of the service do not differ significantly from each other and they thus have a largely uniform demand.<sup>42</sup> This is not the case with the various user groups of *Facebook*.
- (130) This is especially true for **advertisers** who run targeted ads on *Facebook*, *Facebook Messenger*, and *Instagram*. By adding the advertising side, an existing service is monetised by offering an additional product – advertising space within the existing service. From the perspective of the user groups of private users on the one hand and advertisers on the other,

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<sup>40</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 74 (at the end) and p. 75, resolution recommendation of the Economic Committee on the 10th amendment to the GWB, Bundestag printed paper 19/25868, p. 113.

<sup>41</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, paras. 31 et seq.

<sup>42</sup> In that regard BKartA, decision of 22 October 2015 – B6-57/15 – *Parship/Elitepartner*, paras. 71 et seq.; BKartA, case summary of 20 April 2015, B6-39/15 – *Immonet/Immowelt*; BKartA, case summary of 5 August 2015 – B8-67/15 – *P7S1/Verivox*; BKartA, decision of 20 December 2013 – B9-66/10 – *HRS*; cf. Bundeskartellamt, working paper on market power of platforms and networks, June 2016, pp. 31 et seqq.

no uniform demand can be assumed. Advertisers use *Facebook*, *Facebook Messenger* and *Instagram* for marketing purposes and thus satisfy a different need than users who want to use the social network's functionalities.

- (131) This also holds true with regard to **content providers**, who also satisfy a different need with their use of *Facebook* than private users. However, the content providers' use of *Facebook* is in many ways intertwined with private use and, from the private users' perspective, represents part of the functionalities in the social network. Nevertheless, it cannot be assumed that the user groups have a uniform need. The purpose for which content providers use the network differs from private use and consists primarily in making their own company or business known to *Facebook* users through their own "page". Their use therefore primarily serves a marketing purpose and leads to a user group that can be determined according to various characteristics.
- (132) Finally, the needs of **developers** in using the APIs and the *Facebook* developer platform differ significantly from the needs of private users. The various APIs are special software products that primarily provide technical access to the social network and its users as well as to the associated reach in order to improve or monetise their own product. The developer platform for gaming or VR software also serves the purpose of gaining access to private users with software offered on *Facebook* or the VR products. A uniform demand from private users and developers can therefore not be assumed.

### (2) **Separate market for social networks within social media**

- (133) On the basis of the demand-side substitutability concept [*"Bedarfsmarktkonzept"*],<sup>43</sup> which is also fully applicable to the market side which uses the network free of charge, a market for social networks, on which Meta is active in any case with the *Facebook* service, can be defined from the perspective of private users.

#### (a) **Typical contractual service provided by a social network**

- (134) According to the case law handed down by the Federal Court of Justice, the product offered must first be identified when defining the market for the purpose of establishing Meta's dominant position as service provider. Based on this, it must be examined whether other providers offer products or services that, from the demand side's point of view, are interchangeable with the identified product or service in terms of their characteristics, intended use and price to satisfy a specific need.<sup>44</sup>
- (135) These principles developed by case law already prohibit the assumption of a "market for user

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<sup>43</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 29.

<sup>44</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 23.

attention” as a starting point.<sup>45</sup> This is because such a view is not based on the product and the needs of the private users as the opposite market side, but ultimately on the product that is offered to the advertisers.

- (136) In the area of social networks, Meta offers private users the *Facebook* service. The core purpose of the social network *Facebook* is to allow users to find and network with people they already know and to comprehensively and regularly, usually at least daily, share experiences, opinions and content within certain identity-based circles of contacts defined by the users. Contrary to Meta’s view<sup>46</sup>, this results above all from the terms of service of *Facebook*, whose typical contractual service is the sole focus when identifying the product. According to point 1 “The services we provide”, *Facebook* states in particular:

“Our mission is to give people the power to build community and bring the world closer together. To help advance this mission, we provide the Products and services described below to you:

**Provide a personalized experience for you:**

Your experience on Facebook is unlike anyone else's: from the posts, stories, events, ads, and other content you see in Facebook News Feed or our video platform to the Facebook Pages you follow and other features you might use, such as Facebook Marketplace, and search. For example, we use data about the connections you make, the choices and settings you select, and what you share and do on and off our Products - to personalize your experience.

**Connect you with people and organizations you care about:**

We help you find and connect with people, groups, businesses, organizations, and others that matter to you across the Meta Products you use. We use data to make suggestions for you and others - for example, groups to join, events to attend, Facebook Pages to follow or send a message to, shows to watch, and people you may want to become friends with. Stronger ties make for better communities, and we believe our services are most useful when people are connected to people, groups, and organizations they care about.

**Empower you to express yourself and communicate about what matters to you:**

There are many ways to express yourself on Facebook to communicate with friends, family, and others about what matters to you - for example, sharing status updates, photos, videos, and stories across the Meta Products (consistent with your settings), sending messages or making voice or video calls to a friend or several people, creating events or groups, or adding content to your profile as well as showing you insights on how others engage with your content. We have also developed, and continue to explore, new ways for people to use technology, such as augmented reality and 360 video to create and share more expressive and engaging content on Meta Products.”

...”

- (137) The typical contractual service provided by the social network is thus to offer users a comprehensive, personalised “virtual space”.<sup>47</sup> Users should be able to build “genuine

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<sup>45</sup> In that regard, however, Meta, statement of 15 February 2022, p. 43, paras. 147 et seq.; like Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 22.

<sup>46</sup> Meta, statement of 15 February 2022, p. 10, para. 22.

<sup>47</sup> In that regard already European Commission, decision of 3 October 2014 – COMP/M. 7217 – *Facebook/WhatsApp*, para. 54; Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 24.

interpersonal relationships” in the network.<sup>48</sup> The users’ own “virtual identity” is supposed to be at the heart of their user experience and is created by setting up a personal profile and creating a friends list. This online identity is supposed to be a virtual reflection of their real life.<sup>49</sup> All the activities pursued by users on a social network are linked to their personal network of friends and acquaintances, providing them with a highly personalised user experience.<sup>50</sup>

(138) This user need satisfied in this way is mirrored by certain typical core functionalities of a social network. In this context, social networks do not have a fixed set of functionalities. Meta's assertion that the Decision Division identifies the market on the basis of an allegedly precise catalogue of functionalities only, is not true.<sup>51</sup> Rather, the only issue at stake is the functional implementation of the typical contractual service provided by the social network, which forms the basis of the assessment of the service’s interchangeability. Under the demand-side substitutability concept, a product’s features are also an aspect which is included in assessing a product’s interchangeability *in addition to* the intended use (which is the focus here). A number of features and functions can be regarded as defining the social network in this respect, since they form the basis for the comprehensive, personal “virtual space” described above.<sup>52</sup> These typically include a registration and login requirement to use the service, creating a detailed personal profile, building a personal contact list, functions for finding other people (“find friends”), the possibility of communicating with other users and the preparation of content tailored to the individual user as part of a newsfeed or comparable functionality.<sup>53</sup>

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<sup>48</sup> In that regard already Google+, response to question B.8 of the questionnaire for competitors, B6-22/16, p. 598 of the file (“From Google+’s perspective, it is important to provide a platform where users can both share and consume interesting content and build genuine interpersonal relationships (...”).

<sup>49</sup> Cf. already the answers to question B.8 of the questionnaire for competitors, B6-22/16 (e.g., Xing’s answer, p. 553 of the file: “*Virtual identities as a reflection of the real world*”).

<sup>50</sup> Facebook, response B.1 to the request for information of 23 May 2016, B6-22/16, pp. 622 et seqq. of the file.

<sup>51</sup> Meta, statement of 15 February 2022, p. 40, para. 138. Instead, Meta tries to define another market based on functionalities using the table copied from the British CMA’s market study (“Online Platforms and Digital Advertising”. pp 117 seqq. [https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final\\_report\\_Digital\\_ALT\\_TEXT.pdf](https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf)). The CMA, which is not quoted, states in this regard: “... However, the closeness of competition between different platforms depends on the degree to which consumers consider them substitutes, rather than the 118 extent to which they share common functionalities. Despite sharing basic functionalities, we found that these platforms are differentiated in important ways, including in the user needs they meet... We found that an important aspect of differentiation is the extent to which platforms emphasise communication between users, versus the consumption of engaging content ...”

<sup>52</sup> See already responses to question B.8 of the questionnaire for competitors, B6-22/16, pp. 2 et seqq. of the file.

<sup>53</sup> Cf. also European Commission, decision of 6 December 2016 – COMP/M. 8124 – *Microsoft/LinkedIn*, para. 98. There, the market participants already named the following functions as characteristic of a social network: “*creation of a user profile and the possibility to send/receive messages, closely followed by several others (search for other people in the network, send/accept invitations to connect with new contacts, post/share content, post comments on items posted by others, interact with other users through private or public groups and have a newsfeed displaying news from the user’s connections*”.

- (139) According to the investigations conducted in the present case, this identification of the relevant product, which was based in particular on the investigations carried out in the context of case number B6-22/16 used in the present case, has not changed significantly since then.<sup>54</sup> This is already clear from the current terms of service. The contractual service as well as the typical functionalities and the emphasis on personal exchange between friends and acquaintances have not only remained unchanged, but have even been strengthened since then. This can be seen, for example, in the fact that *Facebook's* algorithm has prioritised posts from “friends and family” more strongly in the News Feed since 2018. Facebook further introduced an additional functionality in March 2021 in the sorting and display of the News Feed, which is significant for social networks, allowing users themselves to prioritise and filter posts from friends and pages to a certain extent. Accordingly, more emphasis is placed on personal exchanges between friends and acquaintances in a defined circle, and commercial sites – especially those not subscribed to by the user – are downgraded in the newsfeed ranking.<sup>55</sup> This confirms a social network’s focus on the virtual personal space and the maintenance of the users’ “interpersonal relationships”.
- (140) By contrast, Meta’s service *Instagram* does not operate on the same market as *Facebook*, even if the market boundaries between social networks in the narrower sense and other, more entertainment-related social media are blurred. This is especially true with regard to Meta's own services *Facebook* and *Instagram*.
- (141) The fact that communication is strongly limited to photos and videos and that the social medium thus focuses on content sharing is also an argument against classifying the service as a social network.<sup>56</sup> Although it is possible to select a “private account” when creating a profile, where only certain confirmed persons can see the user's photos and videos, *Instagram* is designed for public use that generates more “followers”. *Instagram* has a certain incentive structure for this (just like *YouTube*, see para. (152) below), as users can make their accounts available as advertising channels. If the users generate sufficient followers, advertising revenues can be generated. The incentive for publicity is therefore high. Although the purpose of use also includes networking and private communication among users by sharing photos, for example, it also heavily focuses on entertainment and following celebrities or *Instagram* stars who are only known there. The service is also interesting for so-called influencer advertising since it is used intensively by these people. Accordingly, the age structure of *Instagram* users clearly

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<sup>54</sup> Meta, response to question B.I.1. of the request for information of 26 October 2021, B6-27/21. Meta’s allegation apparently consists in stating that the Bundeskartellamt had relied on the European Commission’s decisions in order to determine the typical contractual performance, see statement of 15 February 2022, p. 10, paras. 21 et seqq.

<sup>55</sup> Cf. in all respects the Facebook blog of 21 March 2021, <https://about.fb.com/news/2021/03/more-control-and-context-in-news-feed/>.

<sup>56</sup> Meta, response to question B.I.1. of the request for information of 26 October 2021, B6-27/21.



differs from the age structure of *Facebook* users as it appeals primarily to young people between the ages of (18 and 34).<sup>57</sup>

(142) In the end, it can be left open whether *Instagram* is part of the market for social networks with regard to the function of private users networking with each other.

(143) The *WhatsApp* and *Facebook Messenger* services, which also belong to Meta, are not part of the social network market either. As messenger services, they belong to a separate market. According to the investigations, such services are predominantly used in addition to, and thus complementary to, social networks. Like social networks, they fulfil a communication purpose between acquaintances and friends, so that there is a partial overlap with social networks. Messenger services, however, are not specifically intended to build a virtual social space in which users seek an intensive social user experience by comprehensively sharing opinions, experiences and messages. They also have corresponding differences in terms of functionalities and use.<sup>58</sup>

### **(b) No functional interchangeability with other social media**

(144) Based on the needs identified above and according to the results of the present investigation, the market for social networks for private users in Germany can, in addition to *Facebook*, currently only include the very small networks *Jappy* and *Vero* in terms of easily comparable functionalities and purposes of use. These are, however, not interchangeable in terms of their user numbers, and, in any case, do not have any significance on the market and are therefore negligible. As with *Instagram*, the market boundaries are also blurred when looking at the larger services *Twitter* and *Reddit*. Ultimately, it can be left open whether these services should be included.

(145) Contrary to Meta's assertion,<sup>59</sup> the Decision Division has updated the investigation results from case number B6-22/16 used in the present proceedings and interviewed the 15 most important social media also representing of the respective segments. In this regard, it is not necessary to include all messaging services, as envisaged by Meta<sup>60</sup>. Generally, conducting an additional user survey is not mandatory for the purpose of defining the market<sup>61</sup> as competitors are perfectly capable of comprehending their customers' views. In addition, according to the case

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<sup>57</sup> <https://de.statista.com/statistik/daten/studie/809703/umfrage/instagram-nutzer-nach-alter-und-gender-worldwide/>; Meta stated that it could not provide information on the age structure on Instagram, see answer to question C.I.3 of the request for information of 26 October 2021, B6-27/21.

<sup>58</sup> Confirmed by Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 25; in detail BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 286 et seqq.

<sup>59</sup> Meta, statement of 15 February 2022, p. 10, para. 23.

<sup>60</sup> Meta, statement of 15 February 2022, p. 10, para. 35.

<sup>61</sup> In that regard, however, Meta, statement of 15 February 2022, p. 16, paras. 47, 83, 143.

law handed down by the Federal Court of Justice, the members of the Decision Division who belong to the relevant group of customers can also reach the necessary conclusions themselves on the basis of their own life experience.<sup>62</sup> In addition, the precise market definition is ultimately irrelevant for the purpose of assessing the competitive situation, since even in the case of a broad definition, Meta services can be assumed to have a dominant position (for more details see 1.b.bb) below).

(146) From the users' point of view, the service **Twitter**, like *Instagram*, is not to be included in the market for social networks in terms of purpose and form of use. According to its own description, *Twitter* is a public, global, open real time micro-blogging platform, on which people can look at a topic from all perspectives, discover news, share their views and participate in conversations. The platform allows users to view, create, distribute, and discover content, and has made content creation and dissemination widely available. From breaking news and entertainment to sports, politics, and everyday concerns, *Twitter* users provide insights into all facets of a story. On *Twitter*, users can participate in public discussion through multimedia content such as photos, video clips, and live streaming of events.<sup>63</sup> Here, too, the service strongly focuses on the exchange of content with a focus on news. *Twitter* users can indeed create a more detailed user profile and, in addition to general interests, add further details on age, gender, profession or interests. Users can also check their own contact list against the service to see which of their friends are active on the service. According to the investigations, many users also follow people they know on *Twitter*.<sup>64</sup> The boundaries between social networks and pure content platforms have therefore also become blurred for this service as well. In the end, the question of whether *Twitter* is to be included in the market can be left open.<sup>65</sup>

(147) The service **Reddit** is also more of a content service. According to its own description, *Reddit* is a community of "communities". *Reddit* and its users create their own experiences, generate their own content, and share ideas based on the platform's technical services. *Reddit* has communities for experts on specific topics as well as for interested newcomers curious about local or even global communities. Since *Reddit* does not require users to provide any personal data, users can communicate securely with each other on the platform.<sup>66</sup> On the *Reddit* site,

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<sup>62</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 18; Federal Court of Justice, decision of 16 January 2007 – KVR 12/06 – BGHZ 170, 299-311 – *National Geographic II*, para. 15 (juris).

<sup>63</sup> Cf. Twitter, response to question A.3 of the questionnaire for social media services, B6-27/21.

<sup>64</sup> Cf. Twitter, confidential annex to question D.4 of the questionnaire for social media services, B6-27/21.

<sup>65</sup> Cf. in contrast BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, para. 319, in which Twitter was not yet to be considered as a part of the market.

<sup>66</sup> Reddit, response to question 1 of the questionnaire for social media services based abroad, B6-27/21.

the service is described as a “social news aggregator” where registered users can post or offer content. A piece of content can consist of either a link, a video, an image, a poll, or a text post. Other users can rate the posts as positive or negative. The ratings influence which position the post takes on the respective Reddit page as well as the homepage. This, too, suggests that this service is rather a platform to share content. However, the question of whether to include this service in the market can also be left open here, too.

- (148) Other social media services are also not functionally interchangeable from the user side’s perspective, but in terms of partial functions can be classified as substitute competition.<sup>67</sup>
- (149) **Professional networks** in particular, such as *LinkedIn* and *Xing*, or job boards such as *Indeed* and *Stepstone* are not part of the market for private social networks.<sup>68</sup> Although they are partly used for personal networking – just like private social networks – they focus on professional contacts and are therefore not interchangeable with private social networks regarding the purpose of use. The willingness of users to pay is also different, since professional networks are often structured as “freemium” models in which relatively high fees are charged for important functionalities.
- (150) **Messenger and video conferencing services** such as *Google Hangouts*, *Telegram*, *Threema*, *iMessage*, *Discord*, *Skype*, *FaceTime*, *Line*, *WeChat*, *Signal*, *Viber*, *Zoom*, and many more cannot be included in the social network market, just like *WhatsApp* and *Facebook Messenger*, in view of their purposes of use and strongly focused functionalities.
- (151) The same holds true for the service **Snapchat** which describes itself as a “camera app” that helps people to communicate visually with friends and family through short videos and images called “snaps” and offers curated content from commercial users under the Discover feature.<sup>69</sup> The central function is therefore the smartphone camera, which opens automatically as soon as the user opens the app. In addition to “snaps”, private users can create so-called “stories” from a sequence of snaps with which they can build a narrative and which (by default) can be viewed by their own contacts. The *Snapchat* app also offers short videos created by users via the Spotlight feature, as well as a range of augmented reality features for entertainment, communication and shopping purposes. The service is an instant messaging service from its very outset and technical implementation and is, therefore, close to the messaging services mentioned. The strong focus on the exchange of photos and videos, as well as the lack of a newsfeed, are also arguments against including the service in the market for social networks,

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<sup>67</sup> Cf. in detail the extensive consideration of services in BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 264 et seqq.

<sup>68</sup> Cf. already BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 277 et seqq; already European Commission, decision of 6 December 2016 – COMP/M. 8124 – *Microsoft/LinkedIn*, paras. 115 et seqq.

<sup>69</sup> Snap, response to question A.3 of the questionnaire for social media services, B6-27/21.

which is characterised by services offering a comprehensive personal virtual space, which Snapchat covers only in part.<sup>70</sup> The service is much closer to the content services described below.

- (152) **Content services** such as *YouTube*, *TikTok*, *Twitch* and *Pinterest* are also not part of the market for social networks. While there are indeed overlaps with *Facebook* in terms of the functions of the respective services, there are significant differences with regard to the services' purpose of use, the way in which providers position themselves and the functions offered for this purpose. This is an argument against the service being interchangeable with *Facebook* from the users' perspective. Nonetheless, the Decision Division – contrary to Meta's view – takes into account the substitute competition arising from these services in its competitive assessment of the market.<sup>71</sup> Even from the perspective of its operator Google, **YouTube** as a video platform has a significantly different focus than a social network that prioritises interactive communication between users in a virtual social space. Google rather characterises its *YouTube* service as a "video-on-demand hosting service" which precisely does not select videos on the basis of the users' connections to one another (the "social graph") thus generating or facilitating interaction between them, but merely provides content for use. Accordingly, communication between channel subscribers on *YouTube* is limited to public comments to which everyone can respond publicly. Therefore, Google itself does not consider *YouTube* to be a social medium.<sup>72</sup>
- (153) *YouTube*'s focus as a video platform is also reflected in the fact that the exchange of videos and communication takes place between two definable user groups rather than within the various user groups. Thus, the focus here is on the platform feature that enables direct interaction between the users posting the videos ("creators") and the users consuming the videos, who can subscribe to the creators' channels. In this regard, *YouTube* has also become a marketing platform for artists and from within the medium produces its own stars who present themselves through the videos, which generate considerable advertising revenue when click rates are high. Incidentally, due to this possibility of users being able to receive significant advertising revenues with their own videos, *YouTube* has a special incentive structure for private users, which is very different from the purposes of a social network used for private networking with friends.<sup>73</sup>

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<sup>70</sup> Cf. already BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 295 et seqq.; Meta's allegation that the Bundeskartellamt relied on an previous investigations (statement, p. 10, para. 23) is not comprehensible. When reading the paragraph, it becomes very clear that it is based on current investigations into social media services.

<sup>71</sup> Cf. Meta, statement of 15 February 2022, pp. 40 et seq., paras. 137 et seqq.

<sup>72</sup> Google/YouTube, response to question A.3 of the questionnaire for social media services, B6-27/21.

<sup>73</sup> Cf. in detail already BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 309 et seqq.

- (154) The service **Twitch**, which belongs to Amazon, is also not to be included in the market. *Twitch* is structured similarly to *YouTube*. The service describes itself as “live streaming service” and is primarily used to broadcast video games. In addition to video games, the so-called streamers can also broadcast music or other creative content via *Twitch*. *Twitch* content can be viewed either live or on-demand.<sup>74</sup> The user interaction on *Twitch*, made possible, to a certain extent, by way of comments, is not the main focus, just like on *YouTube*. The separate user groups of active streamers and passive viewers are also a characteristic of this service. The latter group does not need a *Twitch* or Amazon account to passively consume the content.
- (155) Similarly, the relatively new service **TikTok** cannot be included in the relevant product market. *TikTok* started as a mobile karaoke service or so-called “lipsync” app. *TikTok* today describes itself as a “content sharing and entertainment platform” that aims to inspire users to be creative by enabling each user to create content directly from their smartphone and send it into the world.<sup>75</sup> On *TikTok*, users can record short videos of themselves dancing or lip syncing to previously selected music, for example. The videos can be pepped up with filters and effects, shared with other users and commented on. Although *TikTok* belongs to the social media area in the broader sense, it is primarily a content-sharing platform with a strong focus on videos and therefore, like *YouTube* or the similarly classified service *Snapchat*, cannot be assigned to the social network market despite partial overlaps.
- (156) **Pinterest** is also not interchangeable with social networks from the users' point of view. *Pinterest* essentially describes itself as an “idea platform for implementing small and large projects in (offline) everyday life” that does not pursue the purpose of connecting with friends and sharing content.<sup>76</sup> It is therefore doubtful whether this service can be considered a social media service at all from the perspective of the users, who are called “pinners” on *Pinterest*. In any case, given the purpose of the service and the characteristics of the platform, it cannot be included in the market for social networks for private users.<sup>77</sup>
- (157) Whether **very small services** such as *Jappy* and *Vero* or the school friends-based network *Stayfriends*, for which users have to pay, belong to the market for social networks for private users is questionable due to their low number of users. This is because, from the private users' point of view, the size of the networks is, with a view to network effects, also an essential characteristic that has a decisive impact on the interchangeability of services. Ultimately, however, the services do not have to be taken into account in the examination, as they are of no significance for the competitive assessment.

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<sup>74</sup> Twitch, response to question A.3. of the questionnaire for social media services, B6-27/21.

<sup>75</sup> TikTok, response to question A.3. of the questionnaire for social media services, B6-27/21.

<sup>76</sup> Pinterest, response to questions A.3 and A.6 of the questionnaire for social media services, B6-27/21.

<sup>77</sup> Cf. BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 329 et seqq.

**(c) No potential for supply side substitution**

- (158) Other social media cannot be included in the relevant market even under the principles of supply-side substitution [*“Angebotsumstellungsflexibilität”*] either. This is because suppliers of similar products are neither willing nor able to change their services at short notice and at economically acceptable costs.<sup>78</sup>
- (159) On this basis, including *YouTube* in particular into the market can therefore be ruled out. Irrespective of technical aspects and the investments required in this respect (which could make it more difficult to change services in the short term), it cannot simply be assumed that large platforms and services are able to enter neighbouring markets at any time in the short term and have the same success there, which would make them current competitors in a wide variety of internet markets. This is particularly true in the event that the change would alter the product in its underlying philosophy and appearance. In the case of *YouTube*, it must also be taken into account that the parent company Alphabet has already operated a social network with Google+, which aimed to compete with *Facebook* and has failed in that regard.<sup>79</sup> It is not evident that Google intends to establish a second social network with *YouTube* in the near future and thereby risk jeopardizing *YouTube*'s successful concept as a video platform through such a transformation.

**(3) Geographic market definition**

- (160) In geographical terms, the market for social networks is to be defined as national in scope.
- (161) The geographic market definition is determined based on the actual alternative options available to the other market side, in this case to potential users of a social network. The actual market conditions are decisive in this respect. These may result from economic, technical or other factual circumstances, whereby the actual consumer habits have to be taken into account.<sup>80</sup>
- (162) Due to the language barriers and the fact that the content shared by users has a regional or national context, and the advertising is written in German and is tailored to the interests of German users, the market should be defined as national in scope. According to the investigations in the proceedings B6-22/16, users also use social networks mainly for networking with their friends residing in Germany.<sup>81</sup>

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<sup>78</sup> Federal Court of Justice, decision of 16 January 2007 – KVR 12/06 – BGHZ 170, 299-311 – *National Geographic II*, para. 20 (juris).

<sup>79</sup> Cf. BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 276, 437.

<sup>80</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 34; Federal Court of Justice, decision of 13 December 2005 – KVR 13/05 – WuW 2006, 780, para. 16 – *Stadtwerke Dachau*; BGHZ 156, 379, 383 et seq. – *Strom und Telefon I*.

<sup>81</sup> Cf. in detail BKartA, decision of 6 February 2019 – B6-22/19 – *Facebook*, paras. 345 et seqq.

### **bb) Market dominance**

- (163) With its *Facebook* service, Meta is in any case dominant pursuant to Section 18(1) in conjunction with (3) and (3a) GWB, because, when all relevant structural factors of market power are taken into account, the company has a scope of action that is not sufficiently controlled by competition and can act independently of its competitors and the other side of the market.
- (164) According to the investigations, the market for social networks is, based on its market structure (see (1)) and the other factors of market power pursuant to Section 18(3a) and (3) GWB (see (2)), a market which tends towards tipping and which has given rise to the *Facebook* service as a quasi-monopolist, or at any rate as a dominant network.

### **(1) Market structure and development of user shares**

- (165) According to the Decision Division's investigations, *Facebook* has a quasi-monopolistic market position with practically a 100% market share on a narrowly defined national market for social networks. This assessment is based on the number of daily active users (DAUs), which has remained unchanged for many years until today.<sup>82</sup>
- (166) But even if other, also larger social media services that are also more broadly positioned but different to *Facebook* – especially *Instagram* and *Twitter* – would have to be included in the market because of the blurring market boundaries, Meta with its two relevant services would achieve user shares of 80-90% based on DAUs.
- (167) From the Decision Division's perspective, the share of services in the daily active users and uses of social networks provides a robust indication of the competitive importance and market success of the network. In the case of social networks, the described purpose of finding and networking with people already known to users and the comprehensive and regular (usually at least daily) exchange of experiences, opinions and content in certain identified contact circles defined by users is the primary reason why the daily active users are the key indicator of the value of the network and its market success. User demand is also determined precisely by the high intensity of use of social networks as a virtual social space, so that the intensive temporal activity also provides an important indication of the actual market positions of competitors when considering market shares. The parameter of monthly active users (MAUs), on the other hand, is less informative because it does not reflect the users' typical needs or typical behaviour. In the present case, however, the figures based on MAUs do not differ significantly.
- (168) Even when the assessment is based on a broader market for social networks, which would

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<sup>82</sup> Cf. in detail BKartA, decision of 6 February 2019 – B6 22/16 – *Facebook*, paras. 389 et seqq.

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include the massively growing Meta-owned service *Instagram* as well as *Twitter* and *Reddit*, *Facebook* still has high user shares with a great market share lead over its competitors.

- (169) Based on DAUs, user numbers in Germany have developed as follows over the past six years:

Service	Q1/2016	Q1/2017	Q1/2018	Q1/2019	Q1/2020	Q1/2021
<i>Facebook</i>	20-30 million	20-30 million	20-30 million	20-30 million	20-30 million	20-30 million
<i>Instagram</i>	5-10 million	5-10 million	10-20 million	10-20 million	20-30 million	20-30 million
<i>Twitter</i>	0-5 million	0-5 million	0-5 million	0-5 million	0-5 million	0-5 million
<i>Reddit</i>	n.a.	n.a.	n.a.	n.a.	n.a.	0-5 million

- (170) *Facebook* and *Instagram* together account for 80-90% of social network users over the years, provided that *Instagram*, *Twitter* and *Reddit* are to be considered part of the market. This high market share is of special importance in the overall assessment, not only because of its absolute size, but also because of the considerable lead over the few also larger competitors.<sup>83</sup> Furthermore, Meta has maintained a stable usage quota of 80-90% with both services over the last 6 years and in recent years has been able to steer the general extent of intensification to which social networks are used to a large extent to its own services. This also holds true even if *Reddit* were to be assumed to have achieved roughly the current user share over the past years. It is true that *Twitter* and, by some estimates, *Reddit* were able to grow in user numbers. However, *Instagram's* growth exceeded that of the other services many times over. The number of users has increased from [5-10] million DAUs in 2016 to [20-30] million DAUs in 2021.
- (171) It does not appear to be decisive that, when taking the somewhat extended field of services offered by social networks as a basis, some users are counted twice, insofar as the individual user is to be taken as the key figure for the market position. Double counting is possible if the number of DAUs is based on active user accounts and users use multiple accounts on the same service. Furthermore, it can be assumed to a certain extent that various social media services are used in parallel, but this parallel use is modest in view of the low user numbers of competitors and is largely limited to the parallel use of *Facebook* and *Instagram*. However, the indicator of DAUs also shows the intensity of use. It also provides information about the market position, especially since many users prioritise one service over other networks.
- (172) The market position is also not decisively relativised by substitute competition arising from the other services mentioned above, which coincide partly in their functionalities. This is because

<sup>83</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 39; BGHZ 170, 299 – *National Geographic II*, para. 21; BGHZ 176, 1 – *Soda Club II*, para. 27.



inevitably only marginal competition arises from the services which cover partial areas of the social network. With regard to overlaps only in terms of partial functions, the possibility of substitution is primarily characterised by one-sidedness. This means that *Facebook* exerts considerable competitive pressure on alternative social media, but, on the other hand, the individual social media services are only able to generate competitive pressure very selectively in a sometimes narrowly limited subarea. Thus, the overlap of *Facebook*'s functions with the extremely popular service *YouTube* is ultimately small with regard to the video platform function, because *Facebook* also allows videos to be uploaded, but this primarily serves the purpose of a social user experience tool in the circle of friends.

(173) Ultimately, however, Meta and its services have a very strong market position even when including the DAUs of all the services examined that include elements of social media in a broadly defined market for social media. In this context, if e.g. *YouTube*, *Twitch*, *Snapchat* and *Discord* are fully included, there would be no good reason not to also take into account other important services of the Meta Group, namely *WhatsApp* and *Facebook Messenger*, with regard to the degree of overlap in some functions. These services also significantly exceed the reach of *YouTube*.

Service	DAUs 1st quarter 2021
<i>WhatsApp</i>	50-60 million [20-30%]
<i>Facebook</i>	20-30 million [10-20%]
<i>Instagram</i>	20-30 million [10-20%]
<i>Facebook Messenger</i>	10-20 million [0-5%]
<i>YouTube</i> <sup>84</sup>	20-45 million [10-30%]
<i>Snapchat</i>	5-10 million [0-5%]
<i>Telegram</i> <sup>85</sup>	5-10 million [0-5%]
<i>Threema</i> <sup>86</sup>	5-10 million [0-5%]
<i>Twitch</i>	5-10 million [0-5%]
<i>TikTok</i>	5-10 million [0-5%]
<i>Discord</i>	0-5 million [0-5%]
<i>Twitter</i>	0-5 million [0-5%]
<i>Reddit</i>	0-5 million [0-5%]
<i>Xing</i>	0-5 million [0-5%]
<i>LinkedIn</i>	0-5 million [0-5%]

<sup>84</sup> In the case of *YouTube*, only the figures for registered DAUs are provided, as only the registration on *YouTube* enables the use of essential social functions.

<sup>85</sup> Figure of 2019, <https://www.messengerpeople.com/de/weltweite-nutzer-statistik-fuer-whatsapp-wechat-and-other-messenger/#Germany>.

<sup>86</sup> Figure of 2019, <https://www.messengerpeople.com/de/weltweite-nutzer-statistik-fuer-whatsapp-wechat-and-other-messenger/#Germany>.

(174) The Meta services collectively account for 40-75% of usage shares across the entire social media area when considered in this way. Even if the list is randomly extended to include further messenger services or social media, the market share lead of all Meta services combined is massive even when compared to *YouTube*. *YouTube*, however, is not to be included in the market, either from the Decision Division's perspective or from *YouTube*'s perspective itself, but due to the lack of a social function can, at best, be regarded as exerting substitute competition with regard to the active video sharing functionality.

### **(2) Factors of market power pursuant to Section 18(3a) GWB**

(175) The high market shares and the development of market conditions in the narrowly defined market for social networks suggest market tipping on the basis of the factors pursuant to Section 18(3a) GWB. In the present case, particular emphasis has to be placed on self-reinforcing network effects (see (a) and (b)) as well as the enormous switching costs for users and the low level of parallel use of multiple services within the market (see (c)). Access to data relevant for competition, particularly in connection with network effects (see (d)), and the limited effectiveness of competitive pressure driven by innovation (see (e)) are further factors contributing to *Facebook*'s existing market dominance.

#### **(a) Tendency towards monopolisation due to self-reinforcing direct network effects**

(176) In view of the high market share lead over competitors, especially the positive direct network effects described above, which arise among the private users of *Facebook*'s social network, are an indication of market dominance. Over time, the market for social networks has experienced a considerable concentration process, which can be attributed to the regularly observed self-reinforcing tendency of positive direct network effects and is still on-going.

(177) The tendency for self-reinforcement is inherent in positive direct network effects because growing user numbers give other users an incentive to use the network. Due to the advantage associated with direct network effects of also finding users on the network with whom one would like to connect, users tend to prefer large networks where they can come together in the long term to form a single large network.<sup>87</sup> According to the results of the investigation, when choosing a social network, users choose the network that most of their friends also use (user identity) or that they suspect most of their friends use (network size).<sup>88</sup>

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<sup>87</sup> Cf. Bundeskartellamt, working paper on market power of platforms and networks, June 2016, p. 113.

<sup>88</sup> The Bundeskartellamt supported this general economic mechanism of network effects in its B6-22/16 proceedings by means of a user survey: cf. responses to question 10 of the user survey, B6-22/16. In addition to the reasons given, the survey asked about the following reasons: Users from different regions (important to very important for 53.3%); range of functions (important to very important for 63.9%); handling of data (important to very important for 74.9%); less advertising

- (178) This self-reinforcing process of direct network effects promotes what is known as market tipping, which means that, once the network exceeds a certain market-specific size, competing networks can hardly find any customers due to the self-reinforcing trend from which this network benefits, and even the former users of other networks switch to the large network. The current competitors are largely eliminated in this process because their shrinking networks become unattractive (“winner takes most” or “winner takes it all”).<sup>89</sup> The result is a monopoly or quasi-monopoly. The competitive relationship between network providers maintains the nature of competition for the market until tipping occurs.
- (179) Such a process can be observed in the market for social networks for private users concerned here.
- (180) The strengthening process is initially clearly reflected in the development of *Facebook’s* user numbers based on DAUs and MAUs. *Facebook’s* user numbers have risen steadily since the network entered the German market in 2008 and have been stagnating at a high level for some time.<sup>90</sup>

Quarter	DAUs (in thousands)	MAUs (in thousands)
Q1 2009	[...]	[...]
Q1 2010	[...]	[...]
Q1 2011	[5,000-15,000]	[10,000-20,000]
Q1 2012	[...]	[...]
Q1 2013	[...]	[...]
Q1 2014	[...]	[...]
Q1 2015	[...]	[...]
Q1 2016	[20,000-30,000]	[25,000-35,000]
Q1 2017	[...]	[...]
Q1 2018	[...]	[...]
Q1 2019	[...]	[...]
Q1 2020	[...]	[...]
Q1 2021	[20,000-30,000]	[25,000-35,000]

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(important to very important for 67.5 %); personalised advertising (important to very important for 12.2 %); price (74.2 %). For 86% of the users, it was important to very important that friends, family and colleagues use the network. The total number of people using the network was also cited by 47% of the users as an important to very important reason for deciding on social networks, while people in the physical vicinity (e.g., city or district) who use the network are important to very important for 62% of the users.

<sup>89</sup> Cf. Dewenter/Rösch, Einführung in die neue Ökonomie der Medienmärkte, 2015. pp. 197 et seqq. who speaks of a tendency towards a “natural monopoly”.

<sup>90</sup> Facebook, response to request for information of 7 May 2018, B6-22/16, p. 7715 of the file (details are a business secret); Meta, response to question X.1. of the request for information of 28 January 2021; Meta, response to question C.I.1. of the request for information of 26 October 2021, B6-27/21.

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- (181) In its first year, *Facebook* had already reached more than [0-5 million] DAUs. In subsequent years, the number of both DAUs and MAUs continued to rise. [...] Over time, an increasingly high level of activity among these users became apparent, as the number of DAUs grew significantly more strongly than the number of MAUs in relative terms, and the share of DAUs in MAUs has thus increased from [40-60]% at the beginning to [60-80]%.
- (182) At the same time, it could be observed that competing networks were continuously squeezed out of or eliminated from the market from 2011 onwards. According to the Decision Division's investigations, *StudiVZ* saw a decline in activity at the end of 2010, which accelerated rapidly in 2011.<sup>91</sup> In the autumn of 2012, *StudiVZ* was sold to a financial investor and subsequently user numbers continued to decline.<sup>92</sup> The service has since been discontinued and the company is in insolvency. A similar development occurred with *Lokalisten* and *MySpace*.<sup>93</sup> Finally, *Google+* was initially able to attract a considerable number of DAUs in Germany, but the number always remained at a comparatively low level.<sup>94</sup> With the launch of the corporate version of *Google+* in spring 2018 and the discontinuation of the version for private users, *Google+* ultimately also dropped out of the relevant market.
- (183) Even when considering a broader market for social networks that includes other services, in particular *Instagram*, *Twitter* and *Reddit*, there is much to suggest that the market is in the process of tipping. This is because *Instagram's* user numbers have also risen considerably in recent years and have now overtaken *Facebook's* user numbers<sup>95</sup>:

Quarter	DAUs (in thousands)	MAUs (in thousands)
Q1 2013	[...]	[...]
Q1 2014	[...]	[...]
Q1 2015	[...]	[...]
Q1 2016	[5,000-10,000]	[10,000-20,000]
Q1 2017	[...]	[...]
Q1 2018	[...]	[...]
Q1 2019	[...]	[...]
Q1 2020	[...]	[...]
Q1 2021	[20,000-30,000]	[30,000-40,000]

- (184) The increase in user numbers on *Twitter* and, presumably also on *Reddit*, does not contradict

<sup>91</sup> Questioning of competitors, B6-22/16 p. 3127 of the file (details are a business secret).

<sup>92</sup> Questioning of competitors, B6-22/16 p. 589 of the file (exact user numbers are a business secret).

<sup>93</sup> Discussion notes, questioning of competitors, B6-22/16 p. 2783 of the file; questioning of competitors, B6-22/16 pp. 2490 et seqq. of the file (details are a business secret).

<sup>94</sup> Questioning of competitors, B6-22/16 p. 612 of the file (details are a business secret).

<sup>95</sup> Meta, response to question X.1. of the request for information of 28 January 2021; Meta, response to question C.I.1. of the request for information of 26 October 2021, B6-27/21.

this. After all, – even when taking into account the non-registered active users – they have increased to a much lesser extent. If the user numbers are reduced to the active registered users, growth significantly decreases even further.

**(b) Reinforcement of the tendency towards concentration by indirect network effects**

- (185) *Facebook's* feature as a multi-sided market and the indirect network effects combined with the direct network effects reinforce the market entry barriers and the market's tendency towards tipping. Contrary to Meta's view, taking indirect network effects into account does not result in the user side's scope of action being restricted by the advertising side.<sup>96</sup> This is due to the simple reason that Meta also holds a very strong position on the advertising side (for more details see 1.c)).
- (186) First of all, with regard to the required market entry, there is an additional barrier to market entry on the social media advertising market. In view of the required user number and intensity of use and the data required for personalisation and due to the existing direct network effects, this barrier is high. This is also clearly demonstrated by the fact that only a small proportion of the social media available on the internet are monetized at all. Even the relatively established social media have, according to the investigations, only been able to achieve monetisation after 4 to 10 years, which also lags far behind the monetisation of the Meta services (for more details, see 1.c) below). However, it is ultimately not possible to classify a service which is permanently non-monetised as a sustainable market entry and competitor.
- (187) Indirect network effects, on the contrary, have an inherent concentration effect. In the case of ad-financed services, they lead to advertisers concentrating their budgets on a few very large services in view of their high reach, intensity of use and data. At the same time, this is also the result of direct network effects, as these lead to a high tendency toward concentration on the service side and to the fact that large platforms prevail. This combination therefore does not at all show any tendency of the market sides controlling their scope of action among themselves, but rather results in a tendency towards monopolisation on both sides, which reinforce each other (see also 1.c. below).
- (188) Controlling the scope of action on the user side can therefore also be ruled out as users leaving the social network would have a negative impact on the advertising side because the benefit of the platform for advertisers would decline. However, the direct network effects prevent users from leaving due to their significant lock-in effect.

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<sup>96</sup> Meta, statement of 15 February 2022, p. 46, para. 159.

### (c) High switching costs and little used multi-homing

- (189) The high switching costs existing for users in the social network market also supports the assumption of market dominance as well as a tipping process in the market. In particular, the identity-based direct network effects lead to a lock-in effect, which makes it difficult or even impossible to switch social networks and to engage in multi-homing in the market.
- (190) According to the purpose of using a social network, it only makes sense for users to switch to an alternative network if they can find their friends and acquaintances as users on the other network as well. Users who want to switch to another network would therefore have to convince their existing contacts in the currently used network to switch as well. However, as these contacts also have other contacts on the network they currently use, these would also have to be persuaded to switch. The more contacts a user who is willing to switch has on the currently used network and the more closely these contacts are connected with other users, the more difficult or even impossible it is to take these contacts along to a new network. Users who are willing to switch may then be faced with the question of whether they should switch to another network even if a significant portion of their previous contacts will not follow them. Consequently, the more intensively the currently used network is used, the less appealing it is to switch social networks.
- (191) The Decision Division's investigations also confirm the finding that the barrier to switching is high: According to the investigations, a *Facebook* user has an average of [200-400] friends<sup>97</sup>, who in turn each have at least<sup>98</sup> an average of [200-400] friends, and so on. At the same time, the number of friends on *Facebook* is much higher in individual cases and can also include several thousand contacts, which are then more or less important. Even though not all of the [200-400] friends may be equally important to the respective user, the number of users who would have to be persuaded to switch in order to achieve a similarly high benefit is extremely high. The low level of willingness of social network users to switch networks could also be clearly seen in the user survey carried out among Facebook users in the course of the B6-22/16 proceedings. When asked about reasons why users would want to increase their use of another service, 76% of the *Facebook* users surveyed said that this would be the case if friends, family and acquaintances used another service. For all other reasons given for switching, only a (sometimes significant) minority agreed in each case. Thus, higher activity on another service and better functions are seen as a reason to switch by only 23% and 34%

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<sup>97</sup> Meta, response to question C.II.1. of the request for information of 26 October 2021, B6-27/21; cf. already Facebook, response to the request for information of 23 May 2016, response C.7, B6-22/16, p. 680 of the file.

<sup>98</sup> According to the so-called friendship paradox, it is likely that almost every person's friends have on average more friends than the person has, cf. Scott L. Feld: *Why Your Friends Have More Friends Than You Do*. In: *American Journal of Sociology*. Volume 96, no. 6, 1 May 1991, pp. 1464-1477.

respectively.<sup>99</sup>

- (192) On that account, there is ultimately also no reason why users would in parallel use social networks belonging to this market to a significant extent which could prevent competitors from leaving the market and facilitate new entries.
- (193) The parallel use of several services within the meaning of Section 18(3a) no. 2 GWB initially only counteracts a tipping process effectively if the services used in parallel consistently cover the same needs of the user. It is therefore imperative that the services used in parallel operate on the same market. This is because network effects harbour a risk of tipping if the tendency toward self-reinforcement and concentration is accompanied by the successive elimination of all or almost all competitors active on the market, and market entries can also no longer be successful. If the market is characterised by the prevalence of effective multi-homing, it is less likely that current competitors will exit the market because the self-reinforcement tendencies then continue to benefit all competitors and customers do not abandon the services in the case of multi-homing. Newcomers have a chance to win customers because they do not have to be pulled away from a dominant service. However, the Bundeskartellamt has not been able to establish to a sufficient extent that *Facebook* users use other social networks in the same market in parallel. On the contrary, since 2011, user numbers have continuously declined and competitors have exited the market; this development has most recently also reached *Google+*. A market share of 80-90% or more with further increasing user numbers, especially for *Instagram*, shows a great tendency towards monopolisation, which is not stopped by multi-homing.
- (194) Even when taking into account competitive pressure from other services in the context of substitute competition or in the context of a broader product differentiation, the market result does not reflect any significant restriction of the tendency toward monopolisation or lowering of barriers to entry caused by the parallel use of services. As shown above, this is because the Meta services, even when viewed very broadly, continue to achieve very high usage shares with large leads over competitors. Multi-homing, which is generally possible throughout the social media sector, allows competitors to enter the market with services in limited sub-segments of social media or with partial functionalities. However, this has not had any lasting effect on the market structure.
- (195) This is particularly true with regard to the *TikTok* service especially pointed out by Meta.<sup>100</sup> Specifically in that regard it becomes clear that market entry is limited to a narrow sub-segment of social media and therefore even an assumed multi-homing with *Facebook* or *Instagram* does not sufficiently lower the barriers to market entry. In addition, the investigations have

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<sup>99</sup> Cf. responses to question 11 of the survey of users, B6-22/16.

<sup>100</sup> Meta, statement of 15 February 2022, p. 42, para. 145.

shown that *TikTok* serves a different age group than *Facebook* in particular. A comparable user structure is more likely to be found on *Instagram*<sup>101</sup> where features corresponding to *TikTok* functionalities can also be found. The degree of multi-homing that can be expected is thus limited to the partial functionalities on *Instagram* among the corresponding age groups. This constitutes substitute competition, which – also in view of Meta's broad ecosystem (see III.2. below) – can ultimately not decisively impact Meta's market position.

### (d) Access to data relevant for competition

- (196) *Facebook's* access to data relevant for competition pursuant to Section 18(3a) no. 4 GWB also represents a significant factor that increases market power in the overall assessment of the structural characteristics of the multi-sided market for social networks. This is because social networks are a strongly data-driven service the characteristics and financial viability of which are particularly related to the personal user data available. The great competitive relevance of the data base for a social network provider leads to an additional barrier to market entry because most competitors cannot collect personal data to the same extent or level of detail as *Facebook*. This barrier to market entry further reinforces the lock-in effect of direct network effects (for more details see III.3. below).
- (197) In this context, the data of users who directly use a social network for its intended purpose by registering, logging in, and using *Facebook's* home page on mobile or stationary devices already constitute a great pool of data that *Facebook* can access. Users actively provide data on their real name (real name policy), age, gender, relationship status, place of residence, education, occupation, employer, interests and hobbies to create their profile. In doing so, users have a high incentive to provide both comprehensive and correct information, since the main purpose of using the social network is to find and interact with certain other users as well as to present oneself.
- (198) By carrying out activities on the social network in the form of posts and other interactions, *Facebook* also gains information about the people with whom the user communicates and the topics in which the user is interested. Through the location function in mobile use and technical options for the geographical allocation of IP addresses, *Facebook* can track the location of users and the routes they take. Due to the registration requirement, *Facebook* can track a registered user across devices and recognise from which end devices the social network is used. If users upload address books to the social network to find friends, *Facebook* receives further information about the users' circle of friends and about the people with whom the users

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<sup>101</sup> Meta has stated that it was not able to provide the age structure for Instagram and has not answered the corresponding question in the request for information of 26 October 2021. According to publicly available studies, it can be seen that in 2021, more than 50% of all Instagram accounts belong to people under 35 years; cf. e.g. <https://www.shopify.de/blog/instagramstatistik>.



communicate.

- (199) User data are of great competitive relevance because the product of a social network is driven by this personal data in particular and the algorithms used for interaction ultimately turn the product into an offer of data to users. Superior access to these data allows the product to be constantly adapted in the form of technical enhancements, increased personalisation or use for other corporate strategic purposes. In addition, the data sources secure financing through advertising, which is possible in a highly targeted manner by using the data and can be continuously refined, which in turn generates new data about the user.
- (200) *Facebook* has achieved a great data advantage, particularly in connection with network effects, which competitors – especially new market entrants – have difficulty catching up with. This is due in particular to the high and steadily growing user numbers, which competitors find difficult to match. After all, with [20-30] million daily active users, *Facebook* alone manages to accumulate a very large amount of data. The same number of *Instagram* users has to be added to this. It is a special characteristic of data that their usability and value are not derived from the data themselves, but, above all, result from combining and linking them to patterns. Thus, the value and the possibility to gain insights based on each individual data element increases the more other data elements are available. Therefore, algorithms can be used to predict a user's behaviour or interests. As the amount of available data increases (in relation to the individual user, but also to the community as a whole), predictions will be increasingly accurate and precise. Thus, the advantage continues to increase with the amount of available data. This quantity and quality of data is difficult for competitors to duplicate, especially since it constantly increases and improves over time.
- (201) This gives *Facebook* a clear advantage, especially in optimising the newsfeed algorithm and therefore in developing and improving its product. This advantage increases as the user base grows. In this regard, the personalisation of the service plays an important role. According to its current data policy, *Facebook* uses user data especially also to personalise functions and content (including the newsfeed) and to make suggestions to users (such as groups or events in which the users may be interested, or topics to which they might want to subscribe). For this purpose, *Facebook* also uses the users' connections, preferences, interests and activities. This is based on the active data input, the information about how users use and interact with *Facebook's* products, and the people, places or things users are connected to or interested in on and off the Meta products.<sup>102</sup>
- (202) Personalising the service via user data reinforces the lock-in effect. By means of user data, users are guided to recommendations and suggestions to services and functionalities (such

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<sup>102</sup> Cf. <https://de-deFacebook/policy.php>.

as events, groups, videos or news, etc.) within the social network. This keeps users on *Facebook* and makes it even more difficult to switch to other social networks.<sup>103</sup>

- (203) In addition, the growing user base and the associated collection of data have an impact on the advertising side, which funds the network. If a high number of users engaging in intensive interaction spend a lot of time on the Facebook page, this leads to improved targeting opportunities, which in turn attracts a large number of advertisers who bring their own data sources as well as generate further data using *Facebook's* measurement tools and make the data available to *Facebook*. The Decision Division's investigations have shown that it is the data collected by Meta and made available for advertising purposes, in addition to the wide reach of the Meta services, that is seen as an important advantage of advertising activities on *Facebook* by the companies questioned<sup>104</sup> (for more details on access to data relevant for competition, see B.III.3. below).

### **(e) No sufficient competition driven by innovation**

- (204) Finally, contrary to Meta's view,<sup>105</sup> *Facebook's* market position is not threatened by sufficient competitive pressure driven by innovation.
- (205) First of all, the innovative and revolutionary potential of the internet cannot be used as a general argument against the market power of internet companies. In order to decisively put a strong market position based on other market power criteria into perspective, concrete indications of a dynamic or disruptive process are required in each individual case, which can also be derived from markets other than the market in question. An abstract contestability that might be expected at some point in time is not sufficient. This is because even in the internet economy, it is possible to hold largely secured market positions for longer periods, in particular by means of direct and indirect network effects. Instead, a careful case-by-case examination is required to determine whether the market position is not only contestable in an abstract way that is too vague in terms of time. If the mere prospect of a dominant position ceasing to exist at some point in the future were to lead to a denial of market dominance, the allegation of an abuse of this dominant position could per se not be reviewed.<sup>106</sup>
- (206) There is no sufficient competitive pressure driven by innovation from other, neighbouring markets that could decisively affect *Facebook's* market position on the market for social networks at present or in the near future. Rather, the high market shares and market share

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<sup>103</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 94.

<sup>104</sup> Responses to question E.2 of the questioning of media agencies, B6-22/16 pp. 27 et seqq. of the file; responses to question E.2 of the questioning of advertisers B6-22/16 pp. 28 et seqq. of the file; responses to question C.1.a) and C.1.b) of the questioning of media agencies, B6-27/21.

<sup>105</sup> Meta, statement of 15 February 2022, p. 45, para. 156.

<sup>106</sup> Cf. government bill, Bundestag printed paper 18/10207 of 7 November 2016, p. 50; Federal Court of Justice, decision of 23 June 2021 – KVR 60/19 – *Facebook*, para. 51.

leads described above indicate that neither technical changes nor competitive moves by competitors have led to successfully exerting pressure on *Facebook's* market position by means of innovation. The fact that an undertaking has to react to competitors' innovations is not an argument against market dominance.<sup>107</sup> Rather, according to the investigations, *Facebook* has regularly been able to fend off the impetus for innovation provided by substitute competition from neighbouring markets, where competitors innovate and expand their own social media, in particular by directly integrating the innovation into its own portfolio. Although this demonstrates the competitive pressure described above with regard to individual subfunctions of a social network, it is no more than substitute competition at the fringes and cannot threaten *Facebook's* market position.

- (207) These innovations include streaming videos through Facebook Live, uploading 360-degree videos and photos, trending, hashtagging, or extending the Like button; functionalities that were introduced by *YouTube* and *Twitter* in particular.<sup>108</sup> The successful "Story" feature, originally developed by the *Snapchat* service, which allows users to post short video or photo messages that delete themselves after a certain time (usually 24 hours), has been adopted not only in the *Facebook* social network but also and to begin with in the *WhatsApp* and *Instagram* services. Something similar can be seen in Meta's more recent response to the *TikTok* service. In June 2020, *Instagram* introduced the new "Reels" feature in Germany as an immediate response to *TikTok*, with which – very similar to *TikTok* – 15-second videos created by users themselves can be underlaid with music tracks and edited with numerous additional effects (for more details see 2.b)aa)(2) below.).
- (208) Finally, the finding is confirmed by the fact that, despite the innovative power of the internet, there have not been any recognisable replacement tendencies or relevant losses in *Facebook's* market share over the last ten years. This means that the market position is contestable only in a vague, abstract manner which cannot affect *Facebook's* dominant position.<sup>109</sup>

### **c) Market dominance on a national market for social media advertising**

- (209) The Decision Division's investigations suggest that Meta is also dominant on the advertising side of the company's social media. However, this can ultimately be left open for the question of whether Meta is a norm addressee under Section 19a(1) GWB
- (210) From the Decision Division's point of view, it is possible to consider a separate national market for social media advertising (see aa)). On such a market, Meta would have a dominant position;

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<sup>107</sup> Cf. Federal Court of Justice, decision of 23 June 2021 – KVR 60/19 – *Facebook*, para. 50.

<sup>108</sup> Cf. BKartA, decision 6 February 2019 – B6-22/16 – *Facebook*, para. 514.

<sup>109</sup> In that regard also Federal Court of Justice, decision of 23 June 2021 – KVR 60/19 – *Facebook*, para. 52.

on a market for non-search-based advertising, which is to be further defined (bb)), it is, however, to be assumed that Meta has at least a strong market position.

### aa) Market definition

- (211) The Decision Division's investigations suggest that social media advertising forms a separate market within online advertising (see (1)). This market would have to be defined as national in scope (see (2)).

#### (1) Definition of the product market

- (212) In terms of the product, the market on which Meta is active with its advertising offers may, according to the Decision Division's investigations, be limited to social media advertising.
- (213) On the one hand, online advertising is to be distinguished from offering advertising in "offline" media (see (a)). Within online advertising, the Decision Division's investigations suggest that there is a market for social media advertising on which Meta is active with the advertising products particularly for *Facebook*, *Facebook Messenger* and *Instagram* (see (b)).

#### (a) Relationship between online advertising and advertising on "offline" media

- (214) In terms of the product, online advertising first has to be distinguished from advertising on offline media. Advertising on "offline" media includes traditional forms of advertising such as TV, radio and newspaper ads. Online advertising refers to advertising on the internet, namely on websites or apps.
- (215) It is in line with the established decision-making practice of the courts, the Bundeskartellamt and the European Commission that there is no general advertising market including all types of media.<sup>110</sup> The various advertising media differ considerably in terms of their characteristics and intended use. According to case law as well, online media and print media are fundamentally different means of communication or media for publication, which, from the perspective of the average advertiser, entail differences in the way they are used and thus, in particular, in how the advertising is perceived, and, not least, in the price per ad.<sup>111</sup>
- (216) It has been confirmed by the Decision Division's investigations in the case number B6-22/16

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<sup>110</sup> Cf., for example, BKartA, decision of 11 June 2015 – B6-22/15 – *Funke/Springer/Media Impact*, paras. 213-217; Düsseldorf Higher Regional Court, decision of 8 June 2010 – Kart 7/06 – *Springer/ProSiebenSat.1*, para. 29; European Commission, decision of 18 February 2010 – COMP/M.5727 – *Microsoft/Yahoo! Search Business*, para. 61; decision of 11 March 2008 – COMP/M.4731 – *Google/DoubleClick*, paras. 44 et seqq.; decision of 20 March 2019 – AT.40411 – *Google AdSense*, paras. 124 et seqq.; most recently, decision of 17 December 2020 – M.9660 – *Google/Fitbit*, para. 151.

<sup>111</sup> Cf. Düsseldorf Higher Regional Court, decision of 22 December 2010, VI Kart 4/09 – *Anzeigengemeinschaft*.

used in this matter and once again in the present proceedings that there is no interchangeability between the forms of advertising from the advertisers' perspective.<sup>112</sup>

- (217) For example, respondents regularly emphasise that online advertising makes it possible to address target groups in a much better way. Target groups and their members can be better identified online and addressed accurately and individually based on users' personal data (so-called "targeting"). Furthermore, online advertising is seen as particularly flexible, fast and easily scalable. It also offers better possibilities for measuring success and tracking. In particular, companies with a high online presence emphasise that online advertising enables direct customer interaction without having to change the medium.<sup>113</sup>
- (218) The investigations again showed only a very slight tendency, if any, to shift budgets to the offline sector in the event of a price increase in the online advertising sector – especially online advertising in the social media sector –, which is also an argument against substitutability between the two forms of advertising.<sup>114</sup> This is confirmed by the investigations regarding the substitutability in particular between social media advertising and offline advertising. In this case, respondents stated that social-media advertising could not be replaced by offline advertising and vice versa.<sup>115</sup>

### **(b) Separate market for social media advertising within online advertising**

- (219) The Decision Division's investigations suggest that social media advertising forms a separate product market within online advertising on the basis of the demand-side substitutability concept
- (220) To determine the competitive situation within online advertising in the present proceedings, the Decision Division conducted a questioning of 29 media agencies as well as 15 services from the area of social media which besides the Meta services are the most important ones.<sup>116</sup> The media agencies questioned represent a total of at least 3,900 advertising customers operating predominantly in Germany and essentially covering the entire spectrum of advertising budgets in 2020: in each case, around 800 customers spend €1,000 to €5,000, >€ 5,000 to €25,000, >€25,000 to 100,000 and >€100,000 to 500,000. Approximately 460 customers have a budget between €500,000 and €2.5 million, while 256 customers spend more than €2.5 million. In addition, the Decision Division used the investigations conducted in the context of case number

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<sup>112</sup> Cf. BKartA, decision of 6 February 2019 – B6 22/16 – *Facebook*, paras. 354-357.

<sup>113</sup> Responses to question B.4 of the questionnaire for advertisers and to question B.4 of the questionnaire for media agencies, B6-22/16 pp. 14 et seqq. of the file.

<sup>114</sup> Responses to question B.2 of the questionnaire for advertisers, B6-22/16 pp. 14 et seqq. of the file; specifically for the budget shift of social media advertising, see responses to question B.8 of the questionnaire for media agencies, B6-27/21.

<sup>115</sup> Responses to questions B.9. and 10 of the questionnaire for media agencies, B6 27/21.

<sup>116</sup> Survey of media agencies, B7-27/21; questionnaire for social media services, B6-27/21.

B6-22/16.<sup>117</sup>

(221) Contrary to Meta's opinion, these are viable investigations that can support the assessment of market conditions. The agencies questioned are not at all merely digital agencies<sup>118</sup>, but include the largest general media agencies as well as a considerable number of digital agencies, which are familiar with the whole sector of social media in particular. The Decision Division was able to expect these agencies to sufficiently clarify the facts as the respondents can provide information about all segments of the advertising market and manage a great number of advertising customers with all budget sizes and from various product areas and, thus, know their interests very well. Therefore, an additional questioning of direct advertising customers is of no significant additional informative value.<sup>119</sup> As the Decision Division has to determine the view of the opposite market side and not the perspective of Meta's customers, the question as to whether the structure of respondents completely covers Meta's customers is, contrary to Meta's opinion<sup>120</sup>, not the only important aspect. Nevertheless, the Decision Division would like to point out that, according to the documents available, Meta's customers include companies with all budget sizes, even if, according to Meta's submission, [...].

**(aa) Specific demand for social media advertising**

- (222) According to the case law of the Federal Court of Justice already mentioned above, the product offered must first be identified when defining the market for the purpose of determining Meta's dominant market position as a provider of online advertising. Based on this, it has to be examined whether other providers offer products or services that, from the demand side's point of view, are interchangeable with the identified product or service in terms of their characteristics, intended use and price to satisfy a specific need.<sup>121</sup>
- (223) On this basis, a specific need for social media advertising can first be assumed, which, from the advertisers' point of view, differs significantly from other online advertising in terms of characteristics, intended use and price. Contrary to Meta's opinion<sup>122</sup>, it is first relevant to identify the product's characteristics from the customer's point of view. The interchangeability with other products becomes relevant only in a second step.
- (224) According to the investigations in the present proceedings, customers of online advertising space to a large extent consider "social media advertising" to be content paid for advertising purposes within social media and business networks.<sup>123</sup> In this context, a large majority of

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<sup>117</sup> Survey of media agencies, B6-22/16; questionnaire for advertisers, B6-22/16.

<sup>118</sup> In that regard, however, Meta, statement of 15 February 2022, p. 16, para. 47.

<sup>119</sup> Thus erroneous Meta, statement of 15 February 2022, p. 28, para. 95.

<sup>120</sup> Meta, statement of 15 February 2022, p. 28, para. 95.

<sup>121</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 23.

<sup>122</sup> Meta, statement of 15 February 2022, p. 27, para. 92.

<sup>123</sup> Responses to question B.1. of the questionnaire for media agencies, B6-27/21.

customers point out certain significant characteristics of social media advertising that are important in the decision to place adverts on social media.

- (225) These include, in particular, the so-called newsfeed as a central functionality of a social medium, in which the content and the shared information are sorted according to relevance and listed chronologically.<sup>124</sup> According to the investigations, the newsfeed is an important and specific starting point for social media advertising<sup>125</sup> because the advertising material unobtrusively blends in with the “organic” content and is therefore not perceived as advertising (so-called native advertising)<sup>126</sup> More than 80% of respondents consider the newsfeed to be “important” or “extremely important” for their decision whether or not to place social media adverts.<sup>127</sup>
- (226) Furthermore, customers consider the possibility of advertising as part of the “Stories” or “Status” or a comparable functionality of a social medium to be similarly important. In social media or messaging services, a story refers to the functionality first offered by *Snapchat* which allows users to tell a story or communicate status messages and information in the form of short temporary clips from several automatically running sequences of images or videos. In most cases, stories cannot be edited retroactively and are only available for a short time. Online advertising within stories – such as *Facebook* or *Instagram Story Ads*<sup>128</sup> – are paid product-related stories that are displayed to a potential target group between the stories the user has subscribed to, similar to the newsfeed. These look like normal stories and are displayed in full-screen mode, but just like in the newsfeed, they are marked as “sponsored”. More than 80% of the respondents also consider this form of advertising to be important or extremely important for their decision to place social media adverts.<sup>129</sup>
- (227) Another outstanding feature of social media advertising is the variety of formats and advertising media (text, images, videos) that can be used. All respondents stated that the variety of possible advertising media was important for their decision to place social media adverts. For more than half of the respondents, this was even extremely important.<sup>130</sup>
- (228) In addition, the respondents point out the special nature of the users’ interactions with each other and with the adverts or brand on the social medium, which make their adverts more

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<sup>124</sup> Regarding the structure of the Facebook page for private users cf. in detail BKartA, decision of 6 February, 2019 – B6-22/16 – *Facebook*, paras. 19 et seqq., and paras. 25 et seq. regarding the newsfeed and para. 39 regarding the placement of advertisements.

<sup>125</sup> Responses to questions B.1. and B.5.a) of the questionnaire for media agencies, B6-27/21.

<sup>126</sup> Responses to question B.1. and B.4.f) of the questionnaire for media agencies, B6-27/21; cf. also Statista, Digital Advertising Report 2020 – Statista Market Outlook, p. 63, B6-27/21.

<sup>127</sup> Responses to questions B.5.a) of the questionnaire for media agencies, B6-27/21.

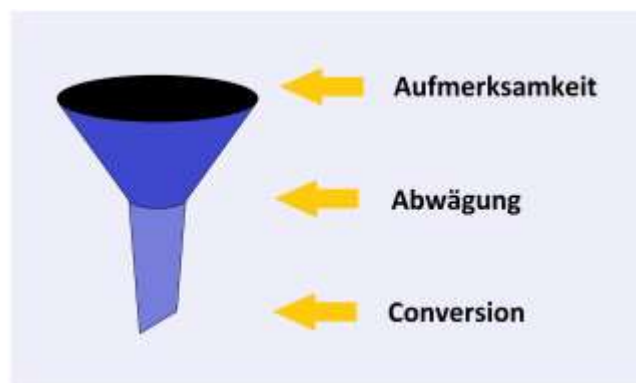
<sup>128</sup> Cf. <https://de-de.Facebook/business/news/introducing-facebook-stories-ads> .

<sup>129</sup> Responses to questions B.5.a) of the questionnaire for media agencies, B6-27/21.

<sup>130</sup> Responses to questions B.5.a) of the questionnaire for media agencies, B6-27/21.

relevant and lead to more attention.<sup>131</sup> Social interaction with other users and friends leads to a high level of personal involvement (“engagement”) of users, personal messages and recommendations (“liking” or “sharing” content with friends) receive an immediate social response.<sup>132</sup> In this context, more than half of the respondents consider a pronounced and active interaction of the users with each other and with the adverts (“lean forward” scenario of use) to be an important or extremely important criterion in the context of their decision whether to place social media adverts at all. The same applies to the possibility of users interacting with the adverts (in the form of likes, comments or shares).<sup>133</sup>

- (229) Regarding advertising purposes, the investigations also revealed that social media advertising can be used both for the purpose of increasing brand awareness and for the purpose of sales advertising (“performance campaign”).
- (230) According to an advertising effectiveness model commonly used in marketing,<sup>134</sup> a distinction can essentially be made between the two advertising purposes mentioned above in the selection of advertising forms and media. A similar approach is the so-called “marketing funnel”, which is very important in online advertising. It describes the various stages of a buying process (the “customer journey”), through which customers are to be guided until their intention is converted into purchases or sales (“conversion”) by means of the appropriate online advertising measures in each case. Depending on the stage in which the customer is to be engaged, the advertising measures differ in terms of their target groups, characteristics and requirements.
- (231) In online marketing, at least these three funnel points are usually found:



[awareness, consideration, conversion]

<sup>131</sup> Responses to question B.1. and B.5.a) of the questionnaire for media agencies, B6-27/21.

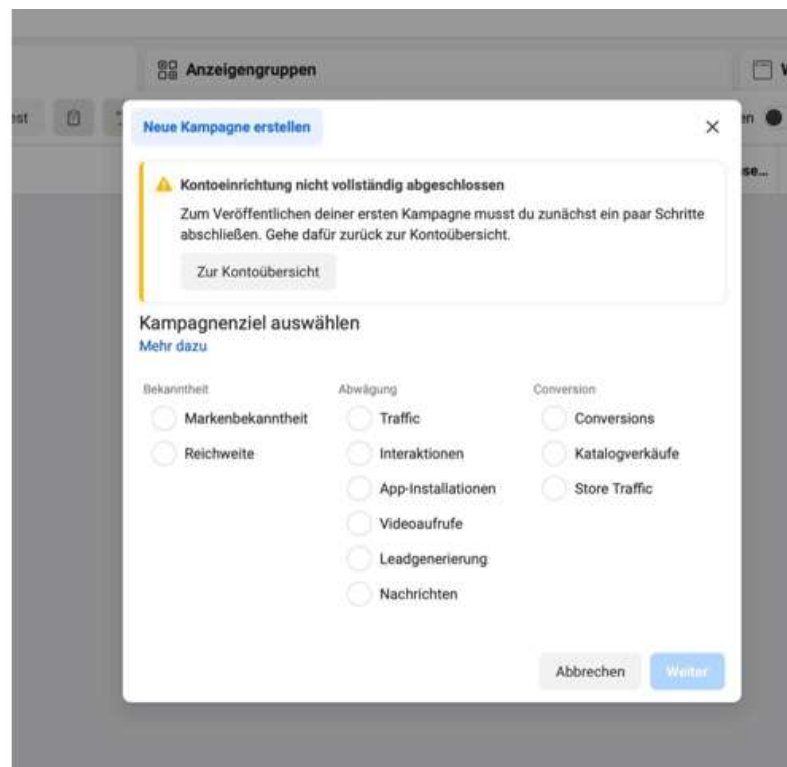
<sup>132</sup> Cf. Statista, Digital Advertising Report 2020 – Statista Market Outlook, p. 63, B6-27/21.

<sup>133</sup> Responses to question B.5.a) of the questionnaire for media agencies, B6-27/21.

<sup>134</sup> The so-called AIDA model: “Attention”, “Interest” as brand advertising on the one hand and “Desire” and “Action” as sales advertising on the other hand; cf. e.g. <https://smartmarketingbreaks.eu/aida-werbewirkungsmodell/>.



- (232) In the awareness stage (awareness), the main purpose is to create a demand among a broad target group and create brand awareness. Therefore, advertising primarily has to be suitable for attracting the users' attention and also reaching them on an emotional level. Targeting plays an important role regarding, for example, the interest level for the creation of a demand. This involves the possibility for advertisers to compile target groups – which are as broad as possible for attention advertising – from the users of a service on the basis of detailed personal data about and interests of the individual users and to deliver the adverts specifically to the identified users.
- (233) In the consideration stage, the target group becomes very narrow, as users are about to make the purchase decision (intent) imminently or at least very soon. This stage is followed by the decision to buy. Targeting and the precise composition of the narrower target group, if possible without any scattering losses, thus become even more important. Above all, the advertising space that is to be selected must be relevant to the transaction, e.g., have a temporal or factual connection to the purchase process.
- (234) Meta is wrong to object that the campaign goals of brand awareness and sales advertising are not a suitable criterion as these goals could not be distinguished.<sup>135</sup> In contrast, Meta itself uses this distinction of purposes in its own Ads Manager, where in the first step the advertising goal has to be chosen from the alternative funnel points described above in order to create an advert<sup>136</sup>:



<sup>135</sup> Meta, statement of 15 February 2022, p. 31, paras. 104 et seq.

<sup>136</sup> In that regard also Meta, response to question D.1. of the request for information of 26 October 2021, B6-27/21.

[Create new campaign

Please complete setting up your account

Before publishing your first campaign you have to complete a few steps.  
Please return to your account overview.

To account overview

Choose campaign objective

Learn more

Awareness: brand awareness, reach

Consideration: traffic, interaction, app installations, video views, lead generation, news

Conversion: conversions, catalogue sales, store traffic

cancel, continue]

(235) In this regard, Meta explains the following under “Learn more”:

“Before you create an ad, first consider what your business goals are. It’s important to know what you want to achieve in order to choose the right objective. Your advertising objective is what you want people to do when they see your ads. For example, if you want to show your website to people interested in your business, you can create ads that encourage people to visit your website. Below are the three broader categories, or goals, that your objectives may fall under.

**Awareness:** Objectives that generate interest in your product or service. Increasing brand awareness is about telling people what makes your business valuable. For example, Jasper’s Market is going to launch a small regional chain of grocery stores. Using the brand awareness objective they can create a campaign that highlights their fresh, organic produce to people in the local area.

**Consideration:** Objectives that get people to think about your business and seek more information. For example, Jasper’s Market has a website that tells their story and lists some of their store’s unique offerings. Using the traffic objective they can create a campaign that encourages people to visit their site to learn more.

**Conversions:** Objectives that encourage people interested in your business to buy or use your product or service. For example, Jasper’s Market has opened a few new locations. Using the store traffic objective they can create a campaign to encourage potential customers to stop by their nearest store.

As your business grows, your campaign goals will change. First, your campaigns may focus on building awareness and acquiring new customers. Later, you may encourage people to make a purchase or sign up for an event.”

(236) It is, thus, surprising that the advertising purposes specified by Meta itself supposedly are of no significance whatsoever for selecting the advertising offers. Accordingly, the customers questioned did not state at any point in the questioning that these were not meaningful advertising objectives and thus intended uses of the advertising offers.

(237) The customer questioning initially revealed that social media advertising is very suitable for brand awareness campaigns. Around 90% of the respondents agreed completely or for the

most part.<sup>137</sup> In terms of the reasons provided, many respondents referred to the possibility of visual or attention-grabbing advertising media as a criterion for social media advertising's suitability for brand campaigns (41% of respondents), followed by the possibility of achieving a high reach (35%) and granular targeting (21%).<sup>138</sup>

- (238) This is consistent with the result of the above-mentioned investigation on the characteristics of social media advertising. In addition to the various advertising media available, the awareness-creating "engagement" of users with each other and with social media advertising in the newsfeed or social media (see para. (226) above), the respondents also emphasised the regularly high reach of the individual services in the area of social media. In principle, all respondents (100%) agree that social media advertising achieves a high reach. 75% of the respondents completely agree with this.<sup>139</sup>
- (239) Furthermore, the respondents pointed out the particular granularity of the targeting options offered by social media advertising. Compared to all the other forms of advertising asked about, social media advertising received by far the highest levels of agreement from the respondents with regard to the criterion of granularity of targeting based on a large number of socio-demographic criteria. All respondents (100%) believe that this is mostly the case for social media advertising. More than 70% of the respondents even fully agree with the statement.<sup>140</sup>
- (240) At the same time, the majority of the respondents also consider social media advertising space to be well suited for performance campaigns. 69% of the respondents agree with this fully or for the most part.<sup>141</sup> The most frequently mentioned criteria in the reasons provided for why social media advertising is suitable for performance campaigns were also granular (interest-based) targeting, high data quality, and good tracking options. A certain relevance to the intended transaction is required, based on which any existing demand is directly skimmed off. This could also be achieved, for example, by retargeting potential buyers.
- (241) In particular, retargeting or remarketing plays an important role in social media advertising. This involves potential customers who have visited the advertisers' websites and have checked out a product or added it to their shopping cart, but who have left the website without making a purchase. To address such users again on a social media service, advertisers can in particular integrate a small code – a so-called advertising pixel [*Werbepixel*] – from social media providers (or a retargeting partner) into their website. The pixel places a browser cookie with the information about the user's visit on the visitor's device. This cookie later informs the

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<sup>137</sup> Cf. responses to question B.4.g) of the questionnaire for media agencies, B6-27/21.

<sup>138</sup> Cf. the respective reasons for the answers to question B.4.g) of the questionnaire for media agencies, B6-27/21.

<sup>139</sup> Cf. responses to question B.4.a) of the questionnaire for media agencies, B6-27/21.

<sup>140</sup> Cf. responses to question B.4.e) aa) of the questionnaire for media agencies, B6-27/21.

<sup>141</sup> Responses to question B.4.h) of the questionnaire for media agencies, B6-27/21.

provider when the potential customer appears on a social media page so that an ad can be placed based on their previous behaviour. In this way, a link to a purchase interest can be established even if the social media services themselves are not used to gather information or purchase the product. Due to the mostly high to very high reach of the individual services, social media advertising spaces are particularly well suited for retargeting, as it is very likely that the prospective buyer can be found there again very quickly.<sup>142</sup> For this purpose, social media services consistently offer advertisers the opportunity to form their own target groups consisting of their own customers and known potential buyers. *Facebook*, for example, allows companies to specify their “custom audiences”, while *Twitter* offers “tailored audiences”.

(242) Finally, the suitability of social media advertising for both brand advertising and performance campaigns is reflected in the pricing models used in the social media sector. As far as advertisers primarily intend to increase their brand awareness, the most suitable pricing method is the price per thousand contacts (CPM “cost-per-mille” or CPI “cost-per-impression”) in the form of auctions based on advertising contacts (“ad impressions”), since the advertising message is supposed to be seen by as many recipients as possible belonging to a broader target group. If, on the other hand, advertisers pursue sales advertising or performance campaigns, pricing by way of cost-per-click (CPC) is particularly suitable.<sup>143</sup> In this respect, the investigations have shown that the CPM model plays a major to overriding role with regard to social media services and that therefore brand advertising is the main focus. However, according to the majority of the respondents, CPC also plays a significant role in many social media services, especially *Facebook*.<sup>144</sup>

**(bb) No interchangeability with search-based advertising**

(243) On the basis of the demand determined above, search-based advertising and social media advertising are not interchangeable. This also corresponds to the consistent practice of the competition authorities, according to which search-based online advertising is not interchangeable with other non-search-based advertising.<sup>145</sup> The investigations in case number B6-22/16 used also in the present proceedings and the investigations in the present proceedings confirm this finding also for (non-search-based) social media advertising.

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<sup>142</sup> Cf. e.g. the explanation at <https://strikesocial.com/blog/retargeting-social-media-ads/> and at <https://www.criteo.com/de/blog/social-media-retargeting-wie-esfunktioniert-und-warum-man-es-braucht/>.

<sup>143</sup> Cf. also Google’s recommendations on the right price option at <https://support.google.com/google-ads/answer/172621?hl=de>; also Facebook <https://de-de.facebook.com/business/help/201828586525529?id=629338044106215>.

<sup>144</sup> Cf. responses to question B.7. of the questionnaire for media agencies, B6-27/21.

<sup>145</sup> European Commission, decision of 17 December 2020 – M.9660 – *Google/Fitbit*, para. 152; decision of 20 March 2019 – AT.40411 – *Google AdSense*, paras. 135 et seqq.; BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 358 et seqq.; Meta, on the other hand, refers in its statement to a decision by the European Commission in 2008 and a statement by the Monopolies Commission in 2015.

- (244) Search-based advertising refers to the advertising spaces on the search results pages of (general or specialised) search engines, such as the Google search engine in particular, for which search-based advertising is offered via Google Ads. A search engine automatically records the content of web pages that are available on the internet. Above all, it uses the database built up in this way to enable various searches to be carried out by users of its services. If a user enters search words into the search bar of the search engine (the search), various categories of search results appear on the search results page in a certain order based on certain algorithms. In addition, in many cases, based on a user's search and the used keywords ("Schlüsselwörter"), paid adverts appear on the search results page, whereby the advertising space is regularly awarded in auctions. The term "online search-based advertising" has been established as an antitrust market term.
- (245) From the advertisers' point of view, search-based advertising differs from social media advertising in terms of its characteristics, intended use and pricing.
- (246) The connecting point of the search request, through which the advertisers react to an immediate current need and even to an immediate current purchase intention (so-called "intent"), is decisive in this respect. The purchase intention is revealed in the specific search, which is why specific and targeted sales advertising ("performance campaign") is the primary focus and it cannot be assumed that this form of advertising is suitable for brand advertising.
- (247) This has been confirmed once again by the investigations in the present proceedings. More than 90% of the media agencies questioned found it to be "completely true" that search-based advertising was suitable for performance campaigns. By contrast, more than 80% of the respondents see search-based advertising as largely unsuitable for brand advertising ("brand awareness").<sup>146</sup>
- (248) The forms of advertising also differ in their pricing models according to their advertising objective. Unlike search-based advertising, the pricing model cost-per-click (CPC), based on which advertisers only pay if users actually click on the advert, is predominant. Almost all respondents (96%) state that the cost-per-click model is of great or outstanding importance regarding the search engines *Bing* and *Google*. For *Amazon*, the figure is still 85%. Conversely, more than three quarters of respondents attribute only little or no importance to the cost-per-mille (CPM) model regarding *Google Search* and *Bing*.<sup>147</sup> These results show that search-based advertising is not commonly used for awareness and brand advertising.
- (249) Search-based advertising also differs significantly in terms of the advertising media used in accordance with its advertising objective. Whereas search-based advertising focuses on the ad text and the simple appearance of a search result, it is important for social media

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<sup>146</sup> Responses to question B.4.g) and h) of the questionnaire for media agencies, B6-27/21.

<sup>147</sup> Responses to question B.7 of the questionnaire for media agencies, B6-27/21.

advertising, according to the investigation result presented above (para. (227)), that a variety of different advertising media can be used. The scenario in which a search engine is used also differs considerably from the “lean-forward” use of a social medium presented above and the associated high level of user engagement also with the advert.

- (250) The fact that social media advertising is also generally suitable for sales advertising cannot establish substitutability. Rather, there is only a partial substitutability in this respect, which only exerts limited competitive pressure and therefore enables imperfect substitution. This also applies in view of the comparable targeting options for search-based advertising and social media advertising, as well as the existing low scattering losses. Accordingly, the investigations in the present proceedings have also clearly shown that search-based advertising and social media advertising are ultimately not interchangeable.
- (251) This results from the fact that none of the media agencies questioned stated that they would shift at least part of their social media advertising budget to search-based advertising in the event of a significant price increase for social media advertising. Instead, the results show that in the event of a permanent 10% price increase for social media advertising, only one company questioned would shift parts of its social media advertising budget to other forms of advertising. This company cited a partial budget shift to instream video advertising as the main substitute. For all other respondents, a budget shift was not an option. Slightly more than half of the respondents indicated they would leave their social media budget unchanged in this case and correspondingly accepted to run fewer social media adverts. The remaining respondents (approx. 45%) said they would increase the budget for social media advertising in the event of a 10% price increase to be able to place roughly the same amount of social media adverts.<sup>148</sup>
- (252) Finally, the Decision Division asked the media agencies specifically about the substitutability of the two forms of advertising with each other in both ways: 92.8% of respondents stated that social media advertising could not at all or only to a certain extent be substituted with search-based advertising.<sup>149</sup> Conversely, 85.7% of respondents said that search-based advertising could not at all or only to a certain extent be substituted with social media advertising. 14.3% said that around 50% of search-based advertising could be substituted with social media advertising.<sup>150</sup> This shows a very limited substitutability with search-based advertising.

### **(cc) No interchangeability with classic display and banner advertising**

- (253) The Decision Division’s investigations suggest that, within non-search-based online advertising, social media advertising is not interchangeable with classic display and banner

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<sup>148</sup> Responses to question B.8 of the questionnaire for media agencies, B6-27/21.

<sup>149</sup> Responses to question B.9 of the questionnaire for media agencies, B6-27/21.

<sup>150</sup> Responses to question B.10 of the questionnaire for media agencies, B6-27/21.

advertising. Ultimately, however, this question can be left open here.

- (254) “*Classic display and banner advertising*” is one of the advertising forms of “non-search-based online advertising”, which in antitrust practice<sup>151</sup> includes all forms of advertising except search engine advertising and classified ads.<sup>152</sup> In the advertising industry, the forms of non-search-based advertising are sometimes more generally referred to as “*display and banner advertising*”. This term includes all forms of online advertising on any websites and apps with the exception of search engines and classified ad platforms, but including social media advertising and video advertising in the form of “*instream video advertising*”. However, the categories “*social media advertising*” and “*instream video advertising*”, which are often considered separately and do not include “*classic display and banner advertising*”, can frequently be found as well.
- (255) *Classic display and banner advertising* refers to ads in a wide variety of sizes and formats that can be placed on a website or within an app and that usually are linked to the advertiser's website. Typical banner formats are, e.g. “skyscraper” (vertical advertising material that is usually shown to the right of the editorial content of the website), “wallpaper” (an entire web page is framed by a brand or “look” as background) or “pop-ups” (advertising ad that automatically opens in a separate window when users visit a web page). Classic banner advertising contains static displays of text and images, while the so-called “rich media banners” may also include sounds, animations or videos.
- (256) In the Decision Division’s investigations, the segment of classic display and banner advertising is referred to as “other non-search-based advertising” for clarification purposes and information in this regard was gathered separately from the information on social media advertising and instream video advertising.
- (257) The investigations confirm that social media advertising is not interchangeable with other non-search-based advertising.
- (258) According to the investigations, social media advertising is well suited for both brand advertising and sales advertising. As shown, the majority of the respondents consider the social media advertising space to be well suited for performance campaigns. 69% of the

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<sup>151</sup> Most recently, e.g., EU Commission, decision of 20 March 2019 – AT.40411 – *Google Search (AdSense)*, pp. 27 et seqq.

<sup>152</sup> One exception is online classifieds, which are occasionally defined in the advertising industry as a part and segment of online advertising. They can be regarded as the online version of print classified ads. The online version involves paid advertisements on a frequently topic-specific online platform with various additional functionalities. The sale is not carried out via the platform. Three areas in particular have emerged in which large specialised platforms are active: job ads (e.g. StepStone), vehicles (e.g. mobile.de) and real estate (e.g. ImmobilienScout24). In addition, there are also general platforms for online classified ads, on which mainly private individuals place ads (e.g. eBay classifieds). The Decision Division therefore views this form of advertising as a separate market or as separate special markets.

respondents share this assessment fully or for the most part.<sup>153</sup> On the other hand, the respondents considered other non-search-based advertising to be suitable only to a limited extent for performance campaigns. Only around 17% of the respondents considered other non-search-based advertising to be “mostly” or “completely” suitable for performance campaigns. Around 45% thought that this form of advertising was only “rather” suitable. Around 21% found that other non-search-based advertising was “rather not” suitable for performance campaigns. Overall, this suggests that this form of advertising is only suitable to a limited extent.<sup>154</sup>

- (259) Even for brand advertising, social media advertising is significantly more suitable from the advertisers’ point of view. While almost 90% of the respondents considered social media advertising to be “mostly” or “completely” suitable for brand advertising, only 56% thought so with regard to non-search-based advertising. A relatively large proportion of the respondents therefore generally think that classic display and banner advertising has considerable disadvantages compared to social media advertising.
- (260) This is confirmed and underscored by the ability of social media advertising to offer particularly granular targeting. From the point of view of the opposite market side, other non-search-based advertising cannot offer comparable targeting. While all respondents considered the statement that social media advertising enables granular targeting based on a large number of socio-demographic criteria to be completely or at least mostly true, only 34% of the respondents thought so in the case of non-search-based advertisement.<sup>155</sup> The opposite market side also considers the accuracy of targeting with regard to user identification to be much higher in the case of social media advertising than in the case of other non-search-based advertising on websites and apps, which very often do not require users to register or login to use the service.
- (261) Rather, in the area of other non-search-based advertising, the advertiser very often encounter a fragmented field of publishers with correspondingly fragmented reach and contexts that are offered in bundles. Unlike in the case of social media advertising, users do not actively enter a large number of data to present themselves, nor can a granular profile be created from the use of the individual website. Targeting can therefore only rely on taking into account the context and content of the visited website or app as well as on user data mostly gathered by tracking users with continuous user identification and observing their surfing behaviour on a wide variety of websites (“third-party data”).
- (262) The fragmentation of the publisher field in the area of non-search-based advertising also leads to a different form of marketing for this form of advertising. Social media advertising is sold almost exclusively by the social media themselves as an integrated product, using all the

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<sup>153</sup> Responses to question B.4.h) of the questionnaire for media agencies, B6-27/21.

<sup>154</sup> Responses to question B.4.h) of the questionnaire for media agencies, B6-27/21.

<sup>155</sup> Responses to question B.4.e) aa) of the questionnaire for media agencies, B6-27/21.



necessary advertising technology (auction technology, ad serving, measurement and analysis services) as a bundle, and is not traded on open marketplaces or via third-party marketers.<sup>156</sup> Other non-search-based advertising, on the other hand, is sold to a large extent via, sometimes large, third-party marketers and intermediaries (such as Google in particular) and also, to a considerable extent, via so-called programmatic advertising and trading on partially or fully automated marketplaces. In the latter case, advertisers have to purchase technical services in a tight, complex value chain (“Demand Side Platforms”, “Data Management Platforms”, “Supply Side Platforms”, ad serving services, measurement and analysis services, brand safety services, anti-fraud measures, ad blockers).<sup>157</sup>

- (263) Finally, the customers have highlighted the special situation in which social media advertising is used, which is characterised by the “lean-forward” use of a newsfeed or stories – as outlined above – as well as the interactions among the users, with the adverts or with the brand (see para. (228) above).
- (264) Overall, in response to the question of substitutability, the customers mostly stated that a slight degree of substitutability between social media advertising and other non-search-based advertising could be assumed (around 64%). 25% said that around 50% of social media advertising could be substituted with other non-search-based advertising. Only 7.4% came to the conclusion that social media advertising was largely substitutable, and no one came to the conclusion that it was completely substitutable.<sup>158</sup> Conversely, customers see a higher possibility for substitution with social media advertising, but this substitutability was also only limited<sup>159</sup>, so that between the forms of advertising overall substitute competition only exists at the fringes. Also in this case, this is confirmed by the fact that none of the media agencies questioned stated that it would shift at least a part of the social media advertising budget to classic display advertising in the event of a significant price increase for social media advertising. As described, the results show that in the event of a permanent price increase of 10% for social media advertising, only one company questioned would shift parts of its social media advertising budget to other advertising formats. For all other respondents a budget shift was out of the question.<sup>160</sup>
- (265) In the Decision Division’s opinion, it can be doubted whether booking advertisements in the Google display advertising network via “Google Ads”, in particular, is interchangeable with social media advertising from the advertisers’ perspective<sup>161</sup>. The product may have similar

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<sup>156</sup> Responses to question F.6 of the questionnaire for social media services, B6-27/21.

<sup>157</sup> Cf. in that regard Statista, Digital Advertising Report 2020 – Statista Market Outlook, p. 27, B6-27/21. It is not understandable, given the clear statement in this section, that Meta believes that the Decision Division has included, e.g., DSPs in the market, statement of 15 February 2022, p. 38, para. 131.

<sup>158</sup> Responses to question B.9. of the questionnaire for media agencies, B6-27/21.

<sup>159</sup> Responses to question B.10 of the questionnaire for media agencies, B6-27/21.

<sup>160</sup> Responses to question B.8 of the questionnaire for media agencies, B6-27/21.

<sup>161</sup> Meta, statement of 15 February 2022, pp. 31 et seq., paras. 108 et seqq.

personalisation functions, which alone, however, cannot establish interchangeability. The European Commission's investigations in the *Google/Fitbit* case also suggest that interchangeability cannot be assumed. The Commission could ultimately leave this question open, but indicated, however, that the providers questioned particularly emphasised the different technologies and that the customers' responses pointed to the complementarity of – amongst others – social media advertising (“advertising on social networks”) and classic display advertising (“advertising off social networks”).<sup>162</sup> This is in line with the results of the Decision Division's investigation. However, this can ultimately be left open when examining Section 19a(1) GWB.

### **(dd) No interchangeability with instream video advertising**

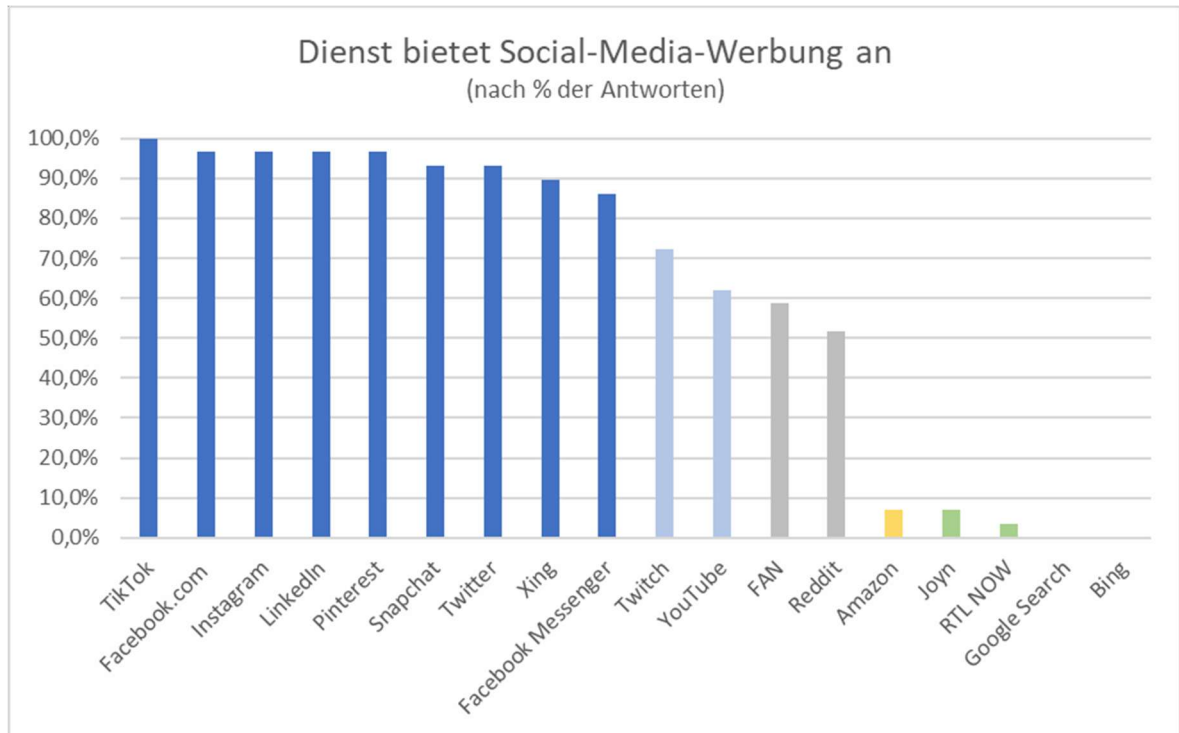
- (266) Finally, according to the investigations, social media advertising is not fully interchangeable with *instream video advertising*. However, the forms of advertising exhibit a higher degree of proximity to one another than social media advertising and other non-search-based online advertising. The extent to which *YouTube* in particular, a service that quite predominantly only generates instream video advertising revenues, can be included in the market can ultimately be left open.
- (267) *Instream video advertising* usually refers to online advertising where the advertising medium is a video that is shown in the immediate context of another video in which the user is actually interested. Typical formats are clips or commercials that are shown before, during or after a video stream (so-called pre-roll, mid-roll and post-roll commercials). In addition, so-called “overlays” can be used, i.e. advertising texts, images or other formats that overlay the image when a video is played.
- (268) This form of advertising is on a larger scale primarily found on video platforms which do not have the special points of reference a social medium has, such as a newsfeed, and where user interactions on the service play a subordinate role at best. A special role is played by the services *Twitch* and especially *YouTube*, whose role as a “social medium” is assessed differently by the advertisers. The answers given by the media agencies in response to the question as to which services offer social media advertising according to their own definition can be shown as follows<sup>163</sup>:

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<sup>162</sup> Cf. European Commission, decision of 17 December, 2020 – M.9660 – *Google/Fitbit*, para. 154; Meta's reference to the CMA is irrelevant as the study does not define the market, but focusses on the competitive proximity of products. The Decision Division basically confirmed substitute competition as well.

<sup>163</sup> Responses to question B.2. of the questionnaire for media agencies, B6-27/21

[Services offering social media advertising (in % of total responses)]



(269) It is noticeable that the advertising offers of the purely professional video platforms *RTL Now* and *Joyn* are clearly not considered to offer social media advertising. In contrast, the *YouTube* platform, which is predominantly characterised by user-generated videos, is classified as such a provider by around 60% of the respondents. *YouTube*, however, does not see itself as a social medium.<sup>164</sup> *Twitch*, a special video platform for the gaming scene operated by Amazon.com Inc., which shows user-generated live streams of users' gameplays and in turn – like *YouTube* – primarily offers instream video advertising, is classified as a provider of social media advertising by approximately 70% of the respondents.

(270) However, it can be concluded from the investigations that instream video advertising as an advertising form has a number of significant differences which, in the end, mean that, from the customers' point of view, substitutability with social media advertising can be assumed only partly ("half"), depending in particular on the advertising objective.<sup>165</sup> Compared to other non-search-based advertising (excluding instream video advertising), the respondents rated the substitutability slightly higher. Thus, around 46% of the respondents believe that half of social media advertising can be substituted with instream video advertising, while only 25% of the respondents confirmed that half of social media advertising could be substituted with other

<sup>164</sup> Google/YouTube, response to question A.3 of the questionnaire for social media services, B6-27/21.

<sup>165</sup> Responses to questions B.9., B.10. and B.13 of the questionnaire for media agencies, B6-27/21.

non-search-based advertising.<sup>166</sup>

- (271) This is because instream video advertising is a form of advertising that is primarily suitable for increasing brand awareness, i.e. for brand campaigns, while a characteristic of social media advertising as shown is that it is also well suited for performance campaigns.<sup>167</sup> When asked about its suitability for performance campaigns, 31% of the respondents said that this was not or predominately not true for instream video advertising, and 44.8% said that it was “rather not” true.<sup>168</sup> This also explains why many respondents assume that social media advertising can be substituted with instream video advertising only to a limited extent, but conversely consider it rather possible to substitute instream video advertising with social media advertising.<sup>169</sup> This is confirmed by the pricing models mainly offered by services with a focus on instream video advertising. For example, the cost-per-mille pricing model, which is suitable for brand campaigns, is of paramount importance on *RTL*, *Joyn*, *Twitch* and *YouTube*, while the cost-per-click pricing model is significantly less important on these services than on social media services.<sup>170</sup>
- (272) Other significant differences between instream video advertising and social media advertising exist with regard to the users’ “engagement” on the platform. While on social media services users are engaged in an active, so-called “lean forward” attitude, the usage behaviour on (pure) video platforms is of a primarily passive, consuming nature. In addition, with regard to social media advertising it is often emphasised that it is unobtrusive due to its “native” nature, which makes the ad not immediately recognisable as such. Instream video advertising also blends in with editorial content, but interrupts it very clearly and is immediately recognisable as advertising.
- (273) The investigations have also shown that, from the customers’ point of view, it is extremely important when deciding on social media advertising whether advertisements are possible in a wide variety of advertising formats (text, video, image, etc.).<sup>171</sup> This limits the interchangeability with advertising on platforms that essentially offer only one advertising medium, namely video. This finding is also confirmed by the fact that the respondents assumed advertising on *Facebook* or *Instagram* to be substitutable only to a limited extent with advertising on *YouTube*<sup>172</sup> and the latter service was mentioned as a – limited – alternative to *Facebook* or *Instagram*.<sup>173</sup>

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<sup>166</sup> Responses to questions B.9. of the questionnaire for media agencies, B6-27/21.

<sup>167</sup> Responses to questions B.4.g) and B.4.h) of the questionnaire for media agencies, B6-27/21.

<sup>168</sup> Responses to questions B.4.h) of the questionnaire for media agencies, B6-27/21.

<sup>169</sup> Responses to questions B.9. and B.10 of the questionnaire for media agencies, B6-27/21.

<sup>170</sup> Responses to question B.7. of the questionnaire for media agencies, B6-27/21.

<sup>171</sup> Cf. responses to questions B.5.a) of the questionnaire for media agencies, B6-27/21.

<sup>172</sup> Responses to question B.13. of the questionnaire for media agencies B6-27/21.

<sup>173</sup> Responses to question B.11 of the questionnaire for media agencies, B6-27/21.

(274) Thus, against this backdrop, pure video platforms such as *RTL Now* and *Joyn* are not to be regarded as interchangeable with social media advertising and the video sharing platforms such as *Twitch* and *YouTube* are ultimately to be classified only as substitute competition. In the end, however, it can be left open whether *Twitch* and *YouTube* are part of the market, as this has no significant impact on the assessment of the market position of the Meta services.<sup>174</sup>

**(2) Geographic market**

(275) In accordance with the established practice of antitrust authorities and courts, advertising markets, including online advertising markets, are defined as national in scope with regard to supplying advertising space to advertisers.

(276) This is because advertisers address their target groups in their respective languages, as this is the only way they can effectively communicate their advertising message. Therefore, their advertising campaigns are commonly developed and executed on a country-by-country basis.

**bb) Market dominance**

(277) If a national market for social media advertising is taken as a basis, Meta would be dominant with its advertising products for placing advertisements on *Facebook* and *Instagram* pursuant to Section 18(3) in conjunction with (3a) GWB. In any case, it must be assumed that Meta has a strong position on a broadly defined market for non-search-based advertising, which must also be taken into account in the context of Section 19a(1) GWB.

**(1) Market structure**

(278) Based on the market definition above, the market must include at least *Twitter*, *Pinterest*, *Reddit*, *TikTok*, *Snapchat*, *LinkedIn*, and *Xing* in addition to *Facebook* and *Instagram*.

(279) In view of *YouTube*'s main advertising objective and the fact that advertising is practically limited to instream video advertising, it is questionable whether *YouTube* would have to be included in a market for social media advertising. Accordingly, *Twitch* is also rather to be regarded only as substitute competition. In the end, however, this can be left open, since even if these services were included, Meta services would still have to be assumed to be dominant. The customers did not name any other significant services offering social media advertising.<sup>175</sup>

(280) To establish the market volume for 2020, the Decision Division determined the revenues generated by the main services offering social media advertising in Germany named by the

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<sup>174</sup> In this respect, it is unnecessary to address Meta's objection that the Decision Division excluded *YouTube* and *Twitch*, statement of 15 February 2022, p. 33, para. 116 and again in the statement of 8 April 2022, para. 18.

<sup>175</sup> Cf. responses to question B.2. of the questionnaire for media agencies, B6-27/21.

customers questioned and evaluated studies and the information provided by the media agencies questioned on the distribution of their online advertising expenditure in the social media sector.<sup>176</sup> Furthermore, market players provided estimates regarding the net market volume, which show that the competitors' revenue fully reflects the market volume.<sup>177</sup> As a result, it can be assumed that the market volume on a broader market including *YouTube* and *Twitch* in Germany amounted to 3-4 billion euros in 2020.

(281) Since, in the Decision Division's view, *YouTube* in particular is rather not to be included in the market, Meta would reach a market share of 75-95%. However, even based on a somewhat broader definition of the social media advertising market including *YouTube*, Meta's market shares are between 65 and 85%.

<b>Provider</b>	<b>Market share in Germany</b>
<i>Facebook/Instagram/Facebook Messenger</i>	65-85%
<i>YouTube</i>	10-20%
<i>LinkedIn</i>	0-5%
<i>Pinterest</i>	0-5%
<i>Twitter</i>	0-5%
<i>Reddit</i> <sup>178</sup>	0-5%
<i>TikTok</i>	0-5%
<i>Snapchat</i>	0-5%
<i>Twitch</i>	0-5%
<i>Xing</i>	0-5%
<i>Discord</i>	0-5%
<i>Jappy</i>	0-5%
Market volume	<b>3-4 billion euros</b>

(282) Regardless of the market definition, the lead over the following competitors is very high, including the lead over *YouTube*, which has a market share of 10-20%. This is still true even if the calculated market volume is increased by a 10% safety margin. Other services offering social media advertising are virtually irrelevant on the market. Each service only holds market shares of less than 5%.

<sup>176</sup> Cf. responses to question A.4.b) of the questionnaire for media agencies, B6-27/21.

<sup>177</sup> Cf. responses to question B.3. of the questionnaire for media agencies, B6-27/21.

<sup>178</sup> Estimated for Germany on the basis of reported global sales (approx. 10-15% of total sales), which is likely to overestimate sales.

## CONVENIENCE TRANSLATION

(283) This market structure is consistent with the fact that, in the course of the investigations, customers consistently stated that they could not do without *Facebook* and *Instagram* when rolling out a typical social media campaign.<sup>179</sup> Only advertising on *Facebook Messenger*, which accounts for only a small portion of Meta’s advertising sales in Germany, appears to be dispensable to customers.

(284) Furthermore, the customers of social media advertising assumed the substitutability among social media to be only very limited. In particular, according to the view held by all customers, no other service can replace social media advertising on *Facebook*, while some consider advertising on *Instagram* to be rather substitutable, for example, by advertising on *TikTok* or *YouTube*.<sup>180</sup> On a scale from 1 to 5 (1 = not at all replaceable, 5 = completely replaceable), respondents gave the following average replaceability scores:

[Advertising on ... / ... is replaceable by advertising on ...]

...ist ersetzbar durch Werbung auf...	Facebook	Instagram	Youtube	TikTok	Pinterest	Snapchat	Twitter	LinkedIn	Reddit	Xing	Stayfriends	Jappy
Facebook		3,8	2,9	2,6	2,3	2,4	1,9	1,7	1,8	1,5	1,4	1,3
Instagram	3,6		2,8	2,9	2,5	2,4	1,8	1,5	1,5	1,4	1,3	1,2
Youtube	3	2,9		2,4	2	2	1,6	1,6	1,5	1,4	1,3	1,1
TikTok	3,2	3,5	3,3		2,3	3,1	1,8	1,4	1,8	1,3	1,3	1,5
Pinterest	3,2	3,6	2,6	2,4		2,2	1,7	1,3	1,6	1,2	1,3	1,3
Snapchat	3,3	3,8	3	3,8	2,4		1,7	1,4	1,8	1,2	1,2	1,4
Twitter	3	2,6	2,4	1,9	2,1	1,9		2,6	2	1,9	1,3	1,1
LinkedIn	2,1	1,8	1,8	1,3	1,4	1,3	2,1		1,5	3,4	1,2	1
Reddit	3,4	3,1	2,5	2,2	2,3	2,2	2,5	1,8		1,8	1,4	1,2
Xing	2,3	2	2	1,4	1,4	1,3	2,2	4,4	1,7		1,2	1
Stayfriends	4,3	3,8	3,1	3	3,2	3	2,7	2,1	2,5	2,1		2,5
Jappy	4,1	4	3,1	3,4	3,3	3,3	2,7	2	2,6	2	2,2	

(285) These findings ultimately even suggest that the market is limited to *Facebook* and *Instagram* and that Meta thus has a monopoly position.

<sup>179</sup> Cf. responses to question C.2 of the questionnaire for media agencies, B6-27/21.

<sup>180</sup> Responses to question B.13 of the questionnaire for media agencies, B6-27/21.

**(2) Other factors of market power pursuant to Section 18(3a) GWB**

(286) As the company is part of a multi-sided market, the assessment of market dominance on the advertising side, as a major source of monetisation for the social network, as well as on the user side is determined based on the special factors pursuant to Section 18(3a) GWB.

**(a) High barriers to market entry and network effects**

(287) Direct and indirect network effects and the associated barriers to entry play an important role for Meta's position in a market for social media advertising.

(288) First, it has to be considered here that **direct network effects**, which affect the user side of social media, make it more difficult to enter the market with a social media advertising product. This is because it is more difficult from the outset to enter the social media advertising market as the provider must successfully enter the market on at least two sides in order to achieve sustainable market entry: First, a provider has to enter the market with its own social media service on the user side offering functionalities that are relevant to ad-based financing, such as the newsfeed, and, second, a provider has to enter the social media advertising market. In order to monetise the service through advertising, it is, in view of indirect network effects, necessary to reach a critical mass of users who form an attractive target group for advertisers. When asked what the prerequisites are for monetising a social media service through advertising, the majority of competitors mentioned the importance of a high number of users.<sup>181</sup> However, achieving such a critical mass is made difficult by direct network effects on the user side, which on *Facebook* but also on *Instagram* especially lead to a strong lock-in effect. Although entry into the social media market is generally possible, it has so far only been possible with differentiated and functionally very limited services. Developing a wide reach in the short-term is, however, often restricted by the strong lock-in effect of *Facebook* and *Instagram*.

(289) This is particularly the case with regard to the broad range of social media offerings and target groups covered by the Meta services, which have a very wide reach across all age groups. Many customers of social media advertising have explicitly mentioned the good target group reachability as an advantage of Meta services.<sup>182</sup> With *Facebook* and *Instagram*, for example, virtually all age target groups can be reached with either one or the other service from the advertisers' perspective, in particular also the promising younger target group. In the present case, the Decision Division asked the media agencies about the target group reachability of specific services. In this context, respondents could choose between "very poorly reachable", "poorly reachable", "rather poorly reachable" for each age group, "rather good reachability",

<sup>181</sup> Cf. responses to question F.2 of the questionnaire for social media services, B6-27/21.

<sup>182</sup> Cf. responses to questions C.1.a) and b) of the questionnaire for media agencies, B6-27/21.



“good reachability” and “excellent reachability”. The following chart shows the percentage of respondents that regarded the individual services’ reach as good or excellent:<sup>183</sup>

[Good or excellent reachability of age groups

Service | 13 to 20 years, 21 to 34 years, 35 to 49 years, 50 to 64 years, more than 65 years]

Gute bis hervorragende Erreichbarkeit der Alterszielgruppen					
Dienst	13 bis 20 Jahre	21 bis 34 Jahre	35 bis 49 Jahre	50 bis 64 Jahre	Über 65 Jahre
Facebook	38 %	62 %	90 %	62 %	14 %
Instagram	83 %	90 %	72 %	17 %	0 %
Facebook Messenger	31 %	42 %	46 %	35 %	15 %
TikTok	100 %	81 %	11 %	0 %	0 %
YouTube	93 %	100 %	86 %	39 %	14 %
Snapchat	86 %	57 %	11 %	4 %	0 %
Twitch	77 %	73 %	4 %	0 %	0 %
Pinterest	19 %	52 %	56 %	15 %	7 %
Twitter	14 %	36 %	44 %	30 %	7 %
Reddit	21 %	29 %	21 %	4 %	0 %
LinkedIn	7 %	48 %	76 %	48 %	7 %
Xing	7 %	28 %	45 %	28 %	7 %

(290) It can be seen that from the advertisers’ point of view, in addition to Meta with *Facebook* and *Instagram*, only *YouTube* which is rather not to be included in the market, is capable of offering good and broad target group reachability in all age groups. Other services often focus on individual age groups. This finding is also confirmed by the questioning of social media services.<sup>184</sup>

(291) In view of the critical reach required, monetisation of the services and thus market entry into the market for social media advertising are therefore usually only possible after a considerable period of offering the service without refinancing. In this respect, the investigations have shown that, with a few exceptions, monetisation of the services through advertising was only possible after 4 to 10 years. Moreover, as can be seen from the revenue figures of even long-established services such as *Twitter* or the *TikTok* service, which was quite successful with a younger audience within a short period of time, monetisation ultimately has only limited success, even when a considerable reach is achieved. Meta’s note that the Chinese parent company of

<sup>183</sup> Cf. responses to question B.6 of the questionnaire for media agencies, B6-27/21.

<sup>184</sup> Responses to question D.2 of the questionnaire for social media services, B6-27/21. Meta, on the other hand, did not feel able to provide age distributions for Instagram, response to question C.I.3. of the request for information of 26 October 2021, B6-27/21.

*TikTok*, ByteDance, was able to achieve a considerable growth in worldwide sales in 2020, is, with a view to this corporation, irrelevant for the present assessment as it is not possible to draw conclusions regarding *TikTok*'s sales growth (in Germany).

- (292) This is the result of **indirect network effects**, which work in addition to the direct network effects already mentioned above, and which lead advertisers to concentrate their budgets on a few very large services. Indirect network effects occur in services financed by advertising because the platform's benefit for the advertising side depends on the number and composition of users using the service. Indirect network effects are positive from the advertiser's perspective because advertisers benefit from a high number of users and different target groups on a service. The indirect network effects often occur to an asymmetrical degree on attention platforms, since intensified advertising is not necessarily an advantage from the users' point of view, especially if it becomes a disruptive factor in the use of the service. The more users from a wide variety of target groups a service can attract the more attractive and important this service becomes for placing adverts, and the more other less strongly positioned services take a back seat in the advertisers' budget allocation.

**(b) No large-scale multi-homing**

- (293) Indirect network effects thus significantly contribute to a concentration of advertising budgets on both Meta services. This means that advertisers do not engage in large-scale multi-homing within a broader social media market as this takes place quite significantly only within the Meta services.
- (294) Almost all customers stated that they regularly book advertisements on *Facebook* and *Instagram*.<sup>185</sup> The customers often also place adverts on other social media services at the same time.<sup>186</sup> However, the Meta services are allocated a high budget first. Other services, none of which can replace *Facebook* and *Instagram*, are only used as secondary services and as a supplement. Almost all customers named either *Facebook* or *Instagram* as the most important service for placing adverts and, conversely, *Instagram* or *Facebook* respectively as the most important alternative.<sup>187</sup>
- (295) The fact that the available media are predominantly used as a media mix in online and offline advertising cannot decisively lower the barriers to market entry. This can only be assumed if the parallel use occurs in the same market. Substitute competition only exists between the media and advertising forms due to partial budget shifts, which also depend on the annual campaign targets set in each case. In this context, the investigations – as shown above – have made it clear that such substitute competition arising from other media has precisely no effect

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<sup>185</sup> Responses to question C.3. of the questionnaire for media agencies, B6-27/21.

<sup>186</sup> Responses to question A.4.b) of the questionnaire for media agencies, B6-27/21.

<sup>187</sup> Responses to question B.11 of the questionnaire for media agencies, B6-27/21.

on social media advertising, which is dominated by Meta services.

### (c) Access to data relevant for competition

- (296) *Facebook* and *Instagram* also have a significant competitive advantage due to their ability to offer differentiated granular targeting, which is the result of their outstanding access to data relevant for competition. According to the investigations, the granularity of the database and the degree to which adverts can thus be personalised particularly form a decisive advantage of social media advertising on *Facebook* and *Instagram*.<sup>188</sup> At the same time, these factors form a considerable barrier to market entry for competitors. The granularity of the data is based, on the one hand, on the high reach and intensity of use of the social network itself and, on the other hand, on the broad range of the data sources to which Meta has access. The data collected by Meta on its services already enable particularly precise targeting, so that target groups can be formed according to specific personal criteria or consisting of specific identified persons (“customer audience”, “lookalike audience”) (see in detail III.3. below).
- (297) In view of these data, Meta can thus offer more valuable advertising in particular compared to competitors, which enables Meta to achieve higher prices and at the same time makes the competitors’ offers less competitive. This is because the more detailed information the advertising space provider has about its users, the more precise and small-scale targeting options it can offer. The users’ personal data determine the value of the online advertising for the respective advertiser and therefore the price achievable in the auction. The quality and quantity of user-related data are a decisive factor in determining the price to be paid by advertising partners.<sup>189</sup> Competitors have also confirmed in the present case that the ability to personalise advertising has a high influence on advertising revenues.<sup>190</sup>
- (298) Ultimately, the question of whether Meta is dominant on a market for social media advertising can be left open here. This is because a dominant position of Meta also comes into question on a more broadly defined market for non-search-based advertising. The Decision Division’s investigations as well as those of the Commission in the *Google/Fitbit* case have shown that Meta is also the largest provider on a larger market for non-search-based advertising, ahead of Google with the *Google Display Network*, and has a high market share.<sup>191</sup> In any case, however, Meta can be assumed to have a strong position on a market for non-search advertising.
- (299) Strong market positions must also be taken into account in the required overall assessment of

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<sup>188</sup> Responses to question C.1.a) and C.1.b) of the questionnaire for media agencies, B6-27/21.

<sup>189</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 62.

<sup>190</sup> Responses to question F.5 of the questionnaire for social media services, B6-27/21.

<sup>191</sup> Cf. European Commission, decision of 17 December 2020 – M.9660 – *Google/Fitbit*, para. 343; cf. also European Commission, decision of 27 January 2022 – M.10262 – *Meta/Kustomer*, press release of the Commission IP/22/652.

all relevant factors to determine a paramount significance for competition across markets, especially since Section 19a(1) sentence 2 GWB does not provide an exhaustive list of the relevant criteria. The explanatory memorandum to the act makes it clear in several places that the threshold for intervention under Section 19a GWB can lie below market dominance. In view of the purpose of Section 19a GWB, which is to capture a company's significance across markets, and the fact that a strong market position or position of power is sufficient in the overall assessment, it is in the individual case not necessary to reach an exact market definition or determine that a company has a dominant position. Such market positions or positions of power – which are to be located in the grey area of the traditional market dominance concept – must also be considered all in all, at any rate within the framework of Section 19a(1) sentence 2 GWB.

**2. Vertical integration and activities in otherwise related markets  
(Section 19a(1) sentence 2 no. 3 GWB)**

(300) However, Meta not only has a dominant position in the national market for social networks for private users and a very strong position in the area of social media advertising. In addition, Meta's position of power goes beyond the market power of its core service and, as a digital ecosystem, is also characterised by significant economies of scope due to vertical integration and the company's activity in otherwise related markets with other strong services.

**a) Function of the criterion**

(301) The factor set forth in Section 19a(1) sentence 2 no. 3 GWB makes it possible in the overall assessment to capture the particularities of digital ecosystems arising from the vertical and/or conglomerate relationship of their products, services or offers.<sup>192</sup>

(302) The term "digital ecosystem", which is frequently used in economic literature<sup>193</sup> and in competition policy<sup>194</sup>, describes in particular a strategy in which the service provider combines

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<sup>192</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, see Bundestag printed paper 19/23492, p. 73.

<sup>193</sup> Moore, Predators and Prey: A new Ecology of Competition, Harvard Business Review, May-June 1993, pp. 75-86 (p.76); Jacobides/Cennamo/Gawer, Towards a theory of ecosystems, Strategic Management Journal, 2018, vol. 39(8), pp. 2255-2276 (p. 2264); Jacobides/Lianos, Ecosystems and Competition Law in Theory and Practice, UCL Centre for Law, Economics and Society Research Paper, January 2021, Table 1, pp. 9 et seq. (<https://ssrn.com/abstract=3772366>); Cremer/de Montjoye/Schweitzer, Competition Policy for the digital era, Report for the EU Commission, 2019, p. 34; Competition and Markets Authority, Online platforms and digital advertising – Market study final report, Appendix E: ecosystems of Google and Facebook, July 2020, para. 2 (<https://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study#final-report>); Bourreau/de Stree, Digital Conglomerates and EU Competition Policy, 2019 (<http://www.crid.be/pdf/public/8377.pdf>); Fletcher, Digital competition policy: Are ecosystems different?, Note for the OECD Hearing on Competition Economics of Digital Ecosystems, December 2020, p. 2.

<sup>194</sup> E.g., Commission Competition Law 4.0, A New Competition Framework for the Digital Economy,

various products for its customers in a portfolio-like manner so that they can perform as many activities as possible on its platform or within its “ecosystem”. This includes the formation of an ecosystem around a strong platform without really interconnecting services on the same platform, but that allows users to move back and forth between various services in the system. The different forms of digital service offerings from the same provider have the potential to keep the end user in the ecosystem. By shaping the relationship with the end user, for example, by increasingly individualising the usage environment with increasing in-depth internal connections and expanded offerings, it becomes cheaper for the user to stay in the ecosystem as switching costs become higher.

- (303) However, the characteristic of “relatedness” goes beyond user-side content-related connections and, in line with the protective purpose of Section 19a GWB, aims to determine whether vertical integration or other connections between a company’s fields of activity give rise to possibilities to achieve competitive advantages or even control market access.<sup>195</sup> In the case of functional or value-adding links between products, the possibility of digital ecosystems to leverage or deploy resources and capabilities in different areas of activity represents a considerable potential threat in contrast to a mere conglomerate. At the same time, a broad ecosystem allows companies in an exceptional way to offer certain services without monetary payment or at very low cost by financing them through revenues achieved elsewhere.
- (304) Furthermore, the criteria of vertical integration and activity on otherwise related markets are not different in terms of their significance. Rather, they take into account that in the internet economy boundaries between “true” vertical integration and other interconnections are blurring. According to the explanatory memorandum, the aim of determining the range of activities and services is to capture the threat to competition, which is also caused by potential conglomerate effects, i.e., effects that are not (only) based on the combination of value-added stages that build on one another, but also result from activities in different fields that are otherwise related to one another. In this respect, the explanatory memorandum speaks of “particular potential competitive threat[s], especially as a result of increased possibilities for vertical and conglomerate exploitation of economic power”.<sup>196</sup> Furthermore, the explanatory memorandum points to the fact that “companies that operate digital platforms and networks can be of central significance for different markets due to the advantages of conglomerate structures and the occupation of key positions relevant to competition”.<sup>197</sup> The criteria of

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September 2019, p. 18 (<https://www.bmwi.de/Redaktion/DE/Publikationen/Wirtschaft/bericht-der-commission-competition-law-4-0.html>); Schweitzer/Haucap/Kerber/Welker, Modernisierung der Missbrauchsaufsicht für marktmächtige Unternehmen – Endbericht, 2018; p. 15.

<sup>195</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 75.

<sup>196</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 73.

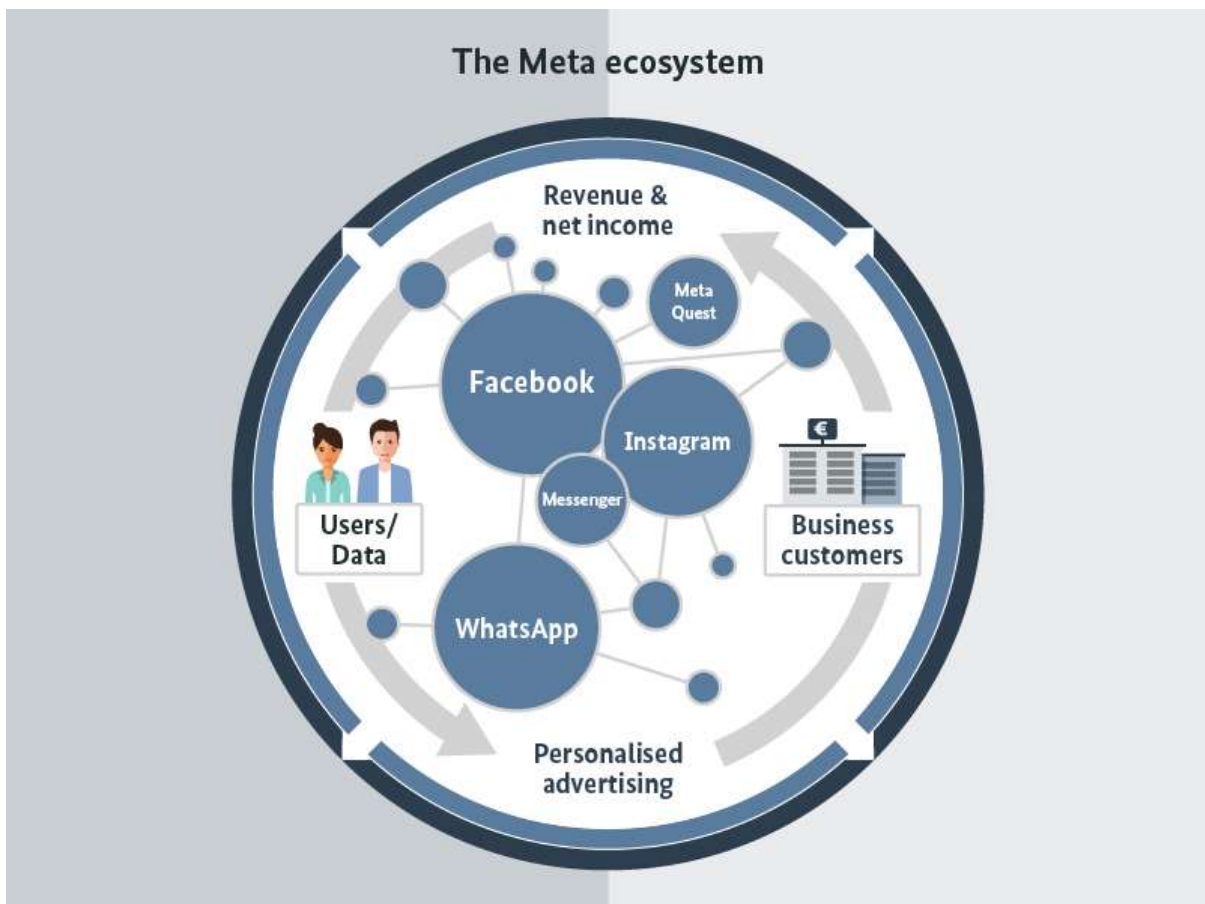
<sup>197</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 73.

Section 19a(1) sentence 2 no. 3 GWB therefore apply to all perspectives on the relationship of the products to one another, especially with regard to the “depth” and “breadth” of the product range. In particular, they cover the competitive scopes of action and threats to competition caused by such economies of scope.

### b) Meta’s “ecosystem”

(305) On this basis, Meta has created an ecosystem with a large number of users whose economies of scope are to a considerable extent constituent for Meta’s paramount significance across markets, as it has a strong lock-in effect on both private users and business customers, has considerable economies of scope, makes it possible to fend off innovation from competitors and enables the continuous and targeted expansion of the offer on the platforms.

(306) The ecosystem can be illustrated as follows:



(307) This is based on the comprehensive, closely connected and interoperable offering to private users across the whole social media sector (see aa)). In addition, there are significant economies of scope with regard to the communication offers provided to business customers due to a broad and integrated provision of advertising space and formats across all products, and a continuously evolving network of further space for content and product providers as well as developers to present themselves and establish contacts or possibilities to engage and interact with all users (see bb)).

(308) The Decision Division has carried out extensive investigations in this regard, which, in addition to the already presented questionings of Meta, the main social media providers and advertisers also refer to numerous publicly available sources, which – contrary to Meta’s view<sup>198</sup> – allow viable and robust statements. These include, for example, the possibilities of use of the services in question, which are recognisable to everyone, as well as the large amount of information made publicly available by Meta and its competitors themselves, both for private users and for business customers. To confirm and supplement this, a wide range of information is also available from reliable third-party sources, in particular publications by public authorities, such as Meta’s and other companies’ Form 10-K reports published by the US Securities and Exchange Commission (SEC), a complaint by the Federal Trade Commission (FTC) or an investigative report by the Department of Justice (DOJ), as well as publications and press releases by experts and statistics by specialised providers. The questioning of Meta and the consultation of already existing information as well as the current questionings of market participants have – contrary to Meta’s opinion<sup>199</sup> – confirmed and supplemented the findings already obtained from public sources in all material respects.

**aa) Offerings for private users**

(309) Meta operates a comprehensive, connected and interoperable service with a very large number of users on various interconnected platforms to private users across the whole social media sector (see (1)). This is accompanied by significant competitive advantages and threats to competition (see (2)).

**(1) Wide range of connected offerings in the whole social media sector**

(310) With its product range, Meta operates a comprehensive ecosystem for private users, which is a combination of the portfolio-like bundling of products on platforms and the formation of a system of individual products around strong platforms. In this system, Meta with its services offers private users a large spectrum of closely linked offers on various platforms in the social media sector.

(311) The ecosystem first consists of the *Facebook* service, which already bundles a large spectrum of offers (see (a)). With the *Instagram* service, Meta operates another product bundle closely linked to *Facebook* (see (b)). With *WhatsApp*, *Instagram Direct Messenger* and *Facebook Messenger*, Meta offers a range of messenger services connected to *Facebook* and *Instagram* (see (c)). The range is supplemented in particular with the VR/AR products *Meta Quest* and *Oculus* (see (d)). All in all, the services form a comprehensive integrated digital ecosystem (see (e)).

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<sup>198</sup> Meta, statement of 15 February 2022, p. 10, paras. 25 seqq., p. 16, para. 47.

<sup>199</sup> Meta, statement of 15 February 2022, p. 11, para. 28.

**(a) Facebook**

(312) Under the umbrella of *Facebook*, Meta has brought together and interconnected a large number of offerings.<sup>200</sup> Meta thus already covers a large area of social media with associated individual functions that other providers often offer only as independent services (see (aa)). All offers on *Facebook* are bundled on one platform and form a strong network (see (bb)). *Facebook* is rolled out worldwide and is the service with the largest number of users worldwide (see (cc)).

**(aa) Provision of a broad range of functionalities in the social media sector**

- (313) Meta already covers a large area of social media on *Facebook* with associated individual functions that other providers often offer as separate services or in parts.
- (314) To enable users to network easily, *Facebook* provides them with a wide range of possibilities for creating their own sound profile. To build connections with other users or groups of users and thus to establish their own online social network, they can, for example, make use of search options in and targeted suggestions from the large Facebook network. For the actual social interaction itself, the central functions available to users are posting their own content and reacting to the content that others have posted and which then appears in their own newsfeed, which is the primary space to exchange information. There are a large number of possibilities with regard to the design of both the users' own posts and the reactions to the posts of others.
- (315) This core offering for users to network and communicate with each other is complemented by numerous other functions and services. These often cover separate offers of other products, which often are limited to this offer. For example, *Facebook* users have the possibility to trade with each other via the "Marketplace". In addition to (used) items of all kinds, this classifieds service also includes vehicle and real estate offers and therefore offers the same functionality as *eBay classifieds*. With "Watch", Meta offers a video service similar to *YouTube's* video sharing service. Rather simple computer games (casual games) are offered under "Games", more elaborate computer games in the more independent "Gaming/Video" section. Casual games are also offered in many other places on hardware and the internet. More elaborate computer games are in particular offered, for example, for special game consoles and via platforms such as Steam. In Meta's "Gaming/Video" section, it is also possible to stream gameplay live, as it is basically offered by Amazon's *Twitch* app.
- (316) In addition, *Facebook* – like Google's "News Showcase" – offers an additional service for general news on the basis of agreements with the press. Since May 2021, the "News" section

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<sup>200</sup> Cf. in more details also Meta, responses to question B.I.1. of the request for information of 26 October 2021, B6-27/21.



with curated press content has also been offered on *Facebook* (so far only in the app) in Germany for this purpose. It complements the possibility of publishers and companies in general to draw attention to themselves via their own Facebook pages and posts in addition to their own publications or websites, and to (further) disseminate their content via posts among Facebook users. Under “Pages” in the “Events” section, companies, in particular, can find all kinds of related offers and go directly to the relevant Facebook page.

- (317) Since mid-2020, Meta has also been offering the “Shops” service, which is accessible via both *Instagram* and *Facebook* and addresses the e-commerce sector (“social commerce”). Users who participate in the Facebook Pay system, which was introduced in the USA at the end of 2019, can make payments directly on *Facebook* for special services such as purchases within games or goods offered in the “Gaming/Videos” section or on the “Marketplace”.
- (318) With “Jobs”, a personnel placement service – like the ones in special professional networks – is also integrated into *Facebook*. “Fundraising”, just as *Kickstarter* or *GoFundMe*, offers the possibility of collecting money for personal or charitable causes. “Community Help” is like a corresponding noticeboard in a supermarket or DIY store, for example. With “Places”, for instance, it is also possible in the Facebook app to share one’s own location and to see which places other people are visiting (previously *Foursquare*, a location-based recommendation service in the form of an application software for restaurants and other places). Under “Memories”, users can also view what they have posted or shared on Facebook a year ago (which was previously offered by *Timehop*, for example, an application for smartphones that collects and edits previous photos and posts on *Facebook*, *Instagram*, *Twitter*, *Photo Gallery*, *Google Photos* and *Dropbox*).

### **(bb) Portfolio-like bundle on a single platform**

- (319) The services offered on Facebook are bundled on one platform in a portfolio-like manner and form a strong combination.
- (320) The bundling of services initially has a uniform technical basis on which the Facebook services are operated and provided. This includes [...] The underlying uniform technology makes it possible to ensure smooth interoperable operation of all services and to link the services through a wide variety of accesses. Users can thus easily access the various functionalities on *Facebook* from different places via the corresponding user navigation on the *Facebook* user interface. Combining the services on one platform means that the paths between the individual services on *Facebook* are very short. With “one click” users can switch from a post in the newsfeed to the Marketplace or from there to an entertainment offer such as Watch or Gaming/Videos or send an (individual) message via *Facebook Messenger*, for example from an advertisement in the newsfeed.

- (321) For users, the bundling of services is made possible via their Facebook account, which is mandatory for using the platform. After setting up the account, which also concludes the user contract for *Facebook*, all services on the platform are activated and can be used by the user. After logging in, users can move freely between the services on *Facebook* on the uniform technical platform and use the various services or functions without having to log in again and again. Based on their Facebook account, users create their user profile and their home page, choose their friends, connections and contacts as well as the pages they wish to subscribe to, upload photos, set up their newsfeed and develop corresponding routines. When the Facebook account is created, users receive a Facebook ID based on which they can be identified in the ecosystem and under which the data on their usage behaviour and routines on *Facebook* are brought together.
- (322) An essential connection between the services are therefore the user data generated when using the services on *Facebook*, which users themselves actively disclose by entering such data in their profile and which are generated by using the entire bundle on *Facebook*. These data about the individual users and their connections or actions, together with other usage data generated outside of *Facebook*, ensure that users are continuously and in all areas provided with the most relevant and potentially interesting offers or suggestions at places which correspond to their usage routines, thus enabling guidance from one service to another. The Facebook Terms of Service therefore also emphasise that users are provided with a “personalised experience”, “from the posts, stories, events, ads and other content they see in the newsfeed or on the video platform, to the Facebook pages they subscribe to and other features they use, such as Topical, Facebook Marketplace and Search” and to provide users with “seamless and consistent experiences”.<sup>201</sup>

### **(cc) Offer with the largest number of users worldwide**

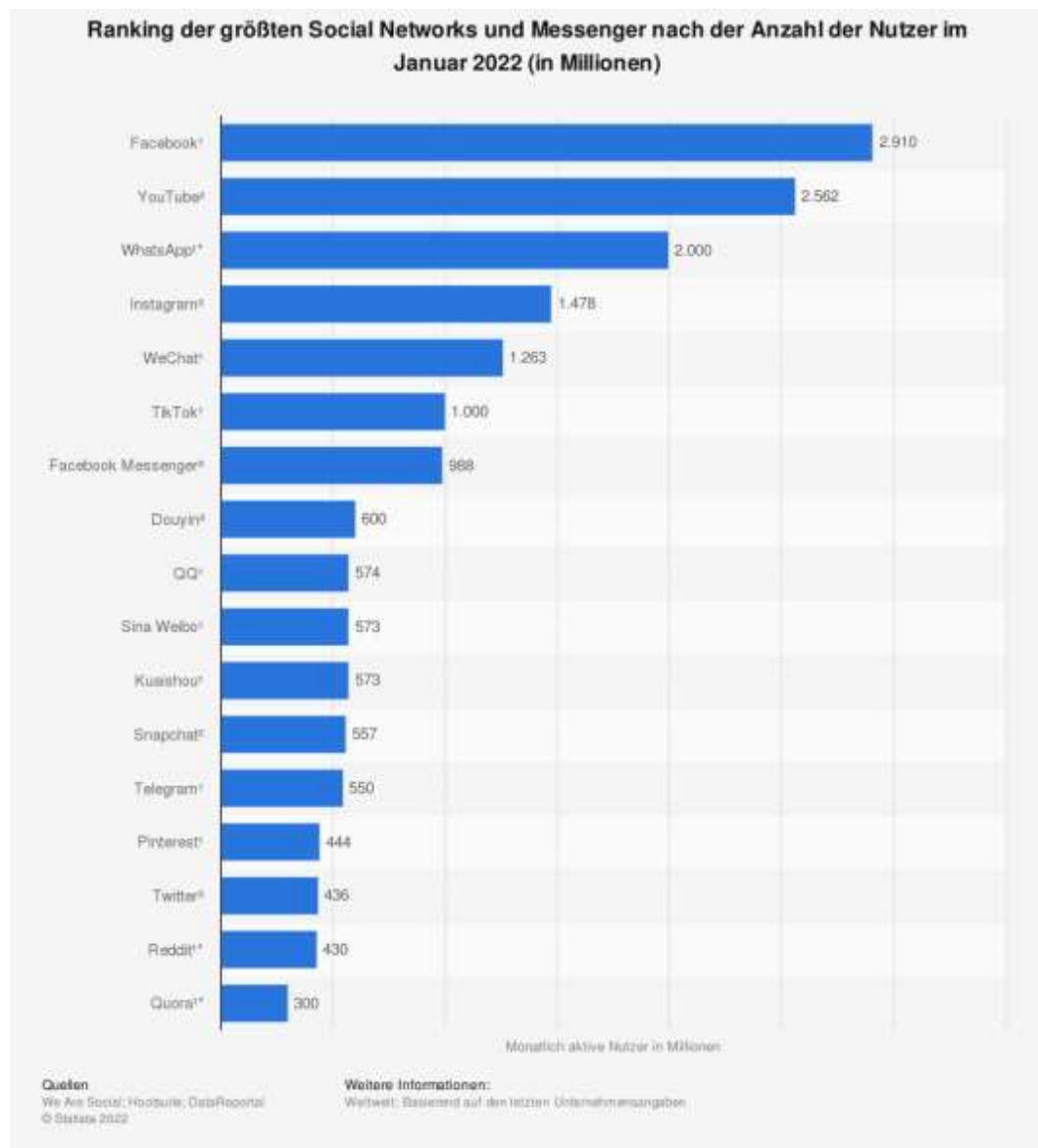
- (323) *Facebook* is available worldwide and is the social media offer with the largest user numbers in the world.
- (324) *Facebook* is available in 84 languages and is, with a few exceptions, offered in all countries of the world. All regional offers are integrated and networked in accordance with the corporate philosophy (“an open and networked world”). The product bundle is therefore very broadly positioned and interconnected also in regional terms.
- (325) *Facebook* is – as described in the section on market dominance (see paras. (126) et seqq. above) – not only by far the leading social network in Germany, but also the offering with the largest number of users in Europe and worldwide, having a largely equal presence in the

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<sup>201</sup> Cf. Facebook Terms of Service Item 1. “The services we provide” <https://de-en.facebook.com/legal/terms>.

individual countries. With almost two billion daily active users (DAUs) and three billion monthly active users (MAUs)<sup>202</sup> worldwide, Meta reaches almost half of all internet users on a daily basis, and almost three quarters of all internet users on a monthly basis – this being based on currently about four billion internet users worldwide. The latter even corresponds to roughly one third of the entire world population. As shown, *Facebook* alone is the service with the largest number of users in the world compared to other social media and messenger services:<sup>203</sup>

[Ranking of the largest social networks and messenger services according to user numbers in January 2022 (in million)]



<sup>202</sup> Meta, response to question C.I.1. of the request for information of 26 October 2021, B6-27/21, as of Q3 2021.

<sup>203</sup> <https://de.statista.com/statistik/daten/studie/181086/umfrage/die-weltweit-groessten-social-networks-nach-anzahl-der-user/>.

[monthly active users in million; sources: We Are Social; Hootsuite; DataReportal; © Statista 2022; further information: worldwide; based on the most recent information provided by the company]

(326) In Europe, with [100-300] million daily active users and [150-350] million monthly active users<sup>204</sup>, even between [one third and two thirds] of the total EEA population of 520 million people used Facebook in late 2020. In view of the requirement for users to use their real name on *Facebook*, the Decision Division assumes that the number of users (as the number of user accounts) largely corresponds to the number of individuals actually behind these accounts. In this context, the number of user accounts of companies is negligible in comparison to the number of user accounts of private persons.<sup>205</sup>

**(b) Instagram**

(327) Another important part of the Meta ecosystem is the product offer bundled on the *Instagram* platform. With *Instagram*, Meta offers a comprehensive content-sharing platform that differs from *Facebook* in terms of the content and the target group (see (aa)). *Instagram* is technically and functionally closely linked to the Facebook services (see (bb)). The globally available product bundle is also one of the services with the largest number of users in the world (see (cc)).

**(aa) Additional comprehensive content-sharing platform**

(328) With *Instagram*, Meta offers a platform that differs from *Facebook* in terms of the content and the target group. As a so-called content-sharing platform, *Instagram* has a different focus than *Facebook* and thus covers another important segment of social media that is also addressed – albeit only with partial functionalities – by *TikTok*, *Snapchat* and the video service *YouTube*.

(329) *Instagram* is a service founded in 2010, which Meta acquired in 2012 for 1 billion US dollars and continues to offer to users in a separate app requiring a separate *Instagram* account. Taking advantage of the proliferation of smartphones with cameras, the offering focuses on presenting and sharing photos and videos. As early as 2012, “profiles” were also introduced on *Instagram*, through which users can present themselves individually. The content users post appears on the profile pages. On *Instagram*, too, users have many ways to create their own posts and to react to the posts of others. In line with the orientation of the offering, the focus of the content creation options is on editing photos and videos, e.g. with filters.

(330) The development of the functionalities in many respects reflects the individual offers and functionalities of the providers active in the market sector. With “Stories” and “Reels”, Meta

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<sup>204</sup> Meta, response to question X.1. of the request for information of 28 January 2021, B6-27/21.

<sup>205</sup> Meta, response to question C.I.2. of the request for information of 26 October 2021, B6-27/21.

provides *Instagram* users with other important functions that have emerged in the area of social media. With “Stories”, a reaction to *Snapchat*, *Instagram* users also have the possibility to create and publish small picture stories that disappear after 24 hours. With “Reels”, a reaction to *TikTok*, users are also shown content from people they do not already follow, based on the selection by an algorithm.

- (331) Unlike *Facebook*, all posts on *Instagram* are public by default. However, a certain degree of privacy can also be created, if desired. In view of this orientation as a rather “public” platform, *Instagram* is also used, among others, by celebrities to communicate with their fans. Based on this, the field of activity of influencers, who also intend to reach a large number of (unknown) users, in particular for advertising purposes, has emerged on *Instagram*. Finally, companies themselves also use the possibilities offered by *Instagram*. Individual users have the possibility to find the content providers and content they are interested in in various ways, e.g. also via hashtags. Once they have decided who they want to follow, their posts appear in a central stream, the newsfeed, on the main page of *Instagram*, just like on *Facebook* (or *Twitter* and other social media).
- (332) In addition to these central functions of a social photo and video network, Meta has further expanded *Instagram* and broadened this service over the past years. For example, with the “Direct Messenger”, a way of exchanging short messages is (also) already integrated into *Instagram* (see also (1)(c) below). In keeping with the special focus on visuals, *Instagram* also contains another prominent offering, Instagram Video, which – like Watch on *Facebook* – is similar to *YouTube*. Instagram Video is also offered as a separate app – in addition to being used from within *Instagram* itself. Via Instagram Video, *Instagram* users can also watch longer videos or make them available themselves and comment on them. For the selection of the videos that *Instagram* suggests to users in this area, Meta can in any case access all the information that is already known about the users and their interests based on their activities on *Instagram* itself. Users are directed to Instagram Video primarily via the newsfeed. A special button introduced temporarily was removed by *Instagram* after users had developed usage routines.
- (333) In addition, with *Instagram* as a particularly visual access channel to the internet, Meta is also active in the social media shopping area (“social commerce”) in addition to the social media advertising area.<sup>206</sup> In addition to discussing or evaluating products, there has also been the possibility for some time now to create a direct link to the (external) shop of the provider of the respective product via “tags”, on photos, for example. Via the “Shops” section of *Instagram* and *Facebook*, it is increasingly possible to find out more about the products in question directly on *Instagram* and *Facebook* and, depending on how the offer is designed, to purchase them

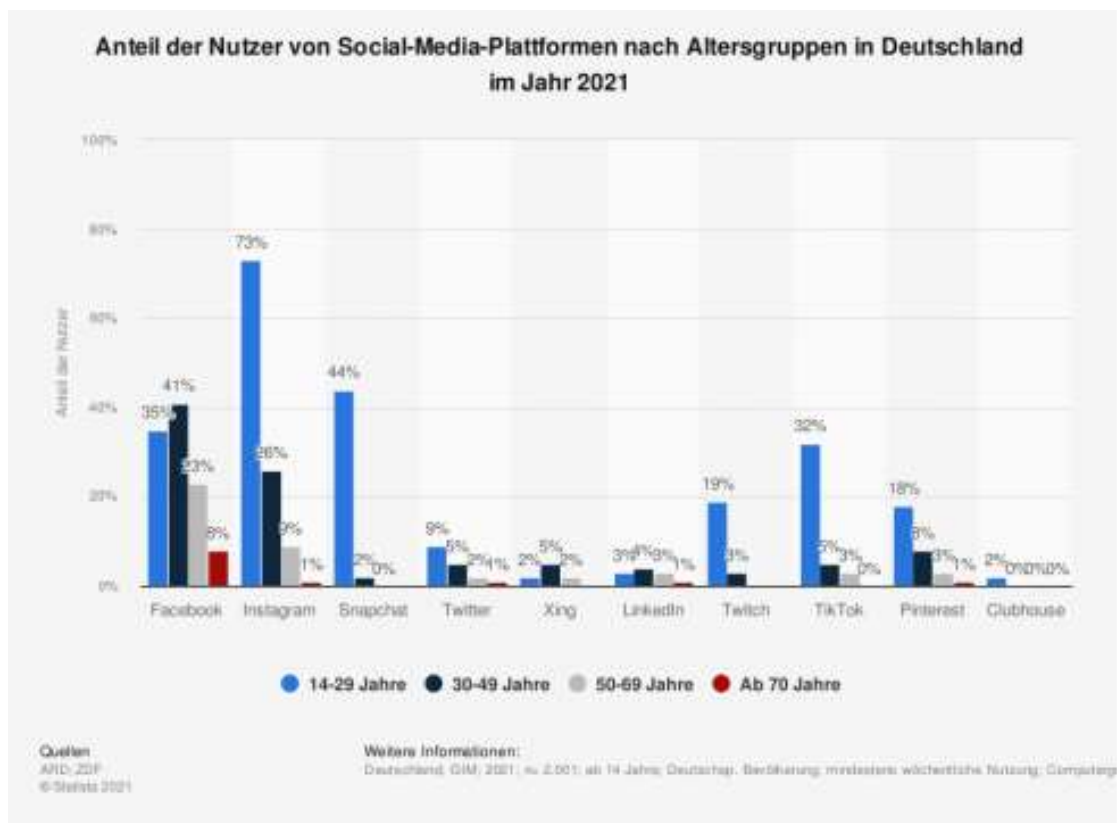
<sup>206</sup>

Cf. <https://www.giga.de/news/whatsapp-wird-zum-einkaufszentrum-facebook-enthueellt-neue-plaene/>; cf. Meta, response to question B. III. of the request for information of 26 October 2021.

directly. Facebook Pay can – as far as it is already available – also be used as a means of payment, which further shortens the path from (first) noticing a certain product to purchasing it. For those who are less spontaneous, *Instagram* offers, for example, the possibility to put products on a “wish list”, which can then be accessed again later, similar to Pinterest.

- (334) *Instagram* also differs from *Facebook* in terms of its target group. This is because the service is mainly used by a younger age group, whereas *Facebook* has significantly fewer users in this young age group. *Facebook* and *Instagram*, thus, complement each other in terms of their users’ age structure: while *Facebook* has users of all ages, but especially middle-aged users – and thus also particularly solvent users – *Instagram*, which focuses especially on a visual access to social interaction, is used by younger users in particular.<sup>207</sup>

[Share of social media platform users according to age groups in Germany in 2021]



[Number of users; 14-29 years; 30-49 years; 50-69 years; over 70 years; sources: ARD ZDF; © Statista 2021; further information: Germany; GIM 2021; 2.001; 14 years and over, German-speaking population, at least weakly use, computer based]

<sup>207</sup> <https://de.statista.com/statistik/daten/studie/543605/umfrage/verteilung-der-nutzer-von-social-media-plattformen-nachaltergruppen-in-deutschland/>; cf. Also <https://www.ard-zdfonlinestudie.de/social-media-undmessenger/social-media/>. The figures largely coincide with the age groups given by Meta for *Facebook* itself. However, Meta was unable to provide an age distribution for *Instagram*.

(335) With this orientation, *Instagram* covers the upcoming social media generation and their usage habits in particular in order to be able to reach the entire user spectrum together with *Facebook*. Thus, Meta can in particular also tie the group of young internet users, which is already interesting for the economy today, and thus users who will be financially strong in the future to its service.

### **(bb) Close connection of the product bundle to Facebook**

(336) Just like *Facebook*, *Instagram* itself first constitutes a portfolio-like bundle on a platform, which is offered to users as a standalone app and a user interface with a separate Instagram account that comprises the bundle. At the same time, the two services are closely related and connected in many ways.<sup>208</sup>

(337) This applies first to the technical platform used by *Facebook* and *Instagram*. This includes [...]

(338) Although *Instagram* is generally used with a separate Instagram account, users who have a Facebook and Instagram account are able to connect them, thus significantly expanding interoperability. It is also possible to log in to *Instagram* using the Facebook account. Since the introduction of the account overview to make it especially convenient to manage the “connected experience” on *Facebook*, *Instagram* and *Facebook Messenger* in autumn 2020<sup>209</sup>, it has been possible to manage the accounts from one place. Thereby, each Facebook account can be assigned to an Instagram account. Moreover, it is possible to operate and link one or more business accounts in addition to the respective private accounts – while maintaining the obligation to use a real name on *Facebook*. In addition to the functions of “single sign-on” and the automatic synchronisation of profile information for a seamless individualised use, the account overview also facilitates the use of many already existing interoperabilities.

(339) For example, users can centrally determine that a story they post on *Instagram* also appears directly on *Facebook* and in *Facebook Messenger*. In addition, they can – as far as available – centrally synchronise the shopping options across services or organise payment options. In contrast, the possibilities for *Instagram* users to interact with third-party services are in comparison hardly developed. On *Instagram*, contacts can also be taken directly from *Twitter* via a special API and at least cross-postings to *Twitter* and the anglophone service *Tumblr* are possible. However, there is no further cross-application use.

(340) Even without linking the accounts, Instagram users can decide whether they want to import their Facebook friends list, and when using *Instagram*, content can be posted directly to

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<sup>208</sup> Cf. Meta, responses to question B.I.1. of the request for information of 26. October 2021, B6-27/21.

<sup>209</sup> Cf. <https://about.fb.com/news/2020/09/privacy-matters-accounts-center/>; <https://itigic.com/facebook-account-center-what-it-is-how-it-works/>; Meta, responses to question B.I.1. of the request for information of 26 October 2021, B6-27/21.

*Facebook* and *Facebook Messenger* in addition to *Instagram*. Other interoperabilities include the possibility to mirror Instagram video posts on *Facebook* and – where available – to use Facebook Pay on *Instagram*. Friend suggestions are made across both products. *Facebook's* and *Instagram's* terms of service (which are identical in wording) provide for “continuous and seamless experiences across all products of the Meta companies”.<sup>210</sup>

- (341) Therefore, there are close data-related links between *Facebook* and *Instagram* in this context. In this respect, when introducing the central account overview in 2020, Meta once again expressly pointed out that the new or expanded setting options did not change the fact that Meta uses users' data across all services to offer users the most seamless, individualised use possible.<sup>211</sup> This is also in line with the current terms of service of *Facebook* and *Instagram*.

### **(cc) Offer with a large number of users worldwide**

- (342) *Instagram* as well is a globally available service in the area of social media with a large number of users.

- (343) In 2021, the service had [20-30] million daily active users (DAUs) and [30-40] million monthly active users (MAUs) in Germany.<sup>212</sup> In Europe, the figures were [100-200] million and [200-300] million respectively at the end of 2020<sup>213</sup> and recently amounted to [0.5-1.5 billion] and [1.5-2.5 billion] worldwide.<sup>214</sup> As regards these figures, however, it must be taken into account that it is possible to have several user accounts on *Instagram* as an individual. However, even when taking into account the aforementioned circumstance, the absolute number clearly stands out from the user numbers of other providers (see para. (326) above):<sup>215</sup>

In comparison, *Instagram*, for example, has more than 1.2 billion users worldwide as at January 2021, while *TikTok* has 689 million, *Snapchat* 498 million and *Pinterest* 442 million. Likewise, *Reddit* only has around 430 million users, while *Twitter* has around 350 million users.

### **(c) WhatsApp, Facebook Messenger and Instagram Direct Messenger**

- (344) Another important part of the ecosystem is the assortment of messenger services, namely *WhatsApp*, *Facebook Messenger* and *Instagram Direct Messenger*. The services cover the

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<sup>210</sup> Cf. Facebook Terms of Service item 1. “The services we provide”, <https://de.en.facebook.com/legal/terms>; Instagram Terms of Use item “The Instagram Service”, <https://dede.facebook.com/help/instagram/5810661655818>.

<sup>211</sup> Cf. <https://about.fb.com/news/2020/09/privacy-matters-accounts-center/>; <https://www.Facebook/help/instagram/1731078377046291>.

<sup>212</sup> Meta, response to question C.I.1. of the request for information of 26 October 2021, B6-27/21, as of Q3 2021.

<sup>213</sup> Meta, response to question X.1. of the request for information of 28 January 2021, B6-27/21.

<sup>214</sup> Meta, response to question C.I.1. of the request for information of 26 October 2021, B6-27/21, as of Q3 2021.

<sup>215</sup> <https://de.statista.com/statistik/daten/studie/181086/umfrage/die-weltweit-groessten-social-networks-by-number-of-users/>.



usual range of applications of voice, text and video communication via so-called direct messaging (see (aa)). The services are closely linked to each other as well as to the major platforms *Facebook* and *Instagram* (see (bb)). With the globally rolled out service *WhatsApp* and the two other messenger services, Meta once again offers the messaging services with the most users worldwide (see (cc)).

### (aa) Coverage of the typical scope of application of messenger services

- (345) With *WhatsApp* and *Facebook Messenger* as well as *Instagram Direct Messenger*, Meta provides users with services that are directly related or complementary to those of *Facebook* and *Instagram*.<sup>216</sup> In particular, they cover the special area of so-called direct or instant messaging, in which services such as *Skype*, *Telegram*, *Threema*, *Signal* and many others are active. Messaging is the real-time conversation (“chat”) between two or more participants via text, photo or video message. The services often also offer voice and video chat and video conferencing options, and each has a different focus in terms of functionality. Technically, the services are based on the so-called “push method”, with which the messages are sent directly to the recipient’s device. For this purpose, the services use a network protocol that is usually proprietary and usually requires users to be connected with each other via the respective app.
- (346) The Meta Messenger services, for their part, have certain focusses in terms of functionalities and thus cover the spectrum of use. All three Meta messengers offer the core functions of chatting and telephoning, without or with picture(s). Just as *Skype*, *Telegram*, *iMessage* (offered by Apple), *Signal* or *Threema* focus on special functions in their respective offerings, Meta’s own services are also individually positioned to a certain extent or also have these specific functions, which nevertheless complement each other and thus offer users a Meta product for every situation of use, especially with regard to the use of *Facebook* and *Instagram*.
- (347) With the *Facebook Messenger* connected to the Facebook account and the *Instagram Direct Messages* connected to the Instagram account, all core functions can be used. In addition to messages, users can also send photos, videos, stickers, voice messages, etc. with both messengers. Users can make video calls and confer with several people via video. With *Facebook Messenger*, users can also – if Facebook Pay is offered – transfer money, a function that the Chinese service *WeChat* has been offering for a long time and that *iMessage* now offers as well. If desired, users can select that messages be transmitted “secretly”, i.e. end-to-end encrypted. With *Messenger for Kids*, Meta also offers a product with which children can chat and make phone calls (and play games). No telephone number, but only a user account is required to use *Facebook Messenger* or *Instagram Direct Messages*.

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<sup>216</sup> See also in more detail Meta, responses to question B.I.1. of the request for information of 26 October 2021, B6-27/21.

(348) *WhatsApp* also provides the basic functions mentioned above with some additional features. As specific features, *WhatsApp* does not save messages and offers end-to-end encrypted communication by default as well as the so-called status, which is similar to stories. Furthermore, money can also be transferred via *WhatsApp*. Unlike the other Meta messengers, the connecting factor for using *WhatsApp* is the users' telephone number and a special *WhatsApp* account.

### (bb) Tight network

(349) The messenger services offered by Meta are closely linked to each other as well as to the major platforms *Facebook* and *Instagram*.

(350) *Facebook Messenger* and *Instagram Direct Messaging* in particular are integrated in the respective overall *Facebook* and *Instagram* offerings, but are also provided as a standalone service. *Instagram Direct Messaging* is largely interoperable with the *Facebook Messenger*.

(351) *Facebook Messenger* and *Instagram Direct Messaging* are, to begin with, closely interwoven with *Facebook* and *Instagram*. *Facebook Messenger* is integrated in the desktop version of *Facebook*, in the mobile version and on *Instagram* there is a direct link to the messenger. For users who do not use *Instagram*, there is a separate desktop version of the *Instagram Direct Messenger*.<sup>217</sup> Technically, all services are realised on the same platform and can also be linked in terms of accounts. In view of this, *Facebook* and *Facebook Messenger* as well as *Instagram* with the *Instagram Direct Messenger* form a "communication continuum" in which, with increasingly fewer restrictions, a mutual exchange of messages or mutual communication such as the posting of stories, which then, if desired, appear on all three services, is possible without any problems.

(352) *WhatsApp* is (still) positioned much more independently, but is also being brought closer to the other Meta services [...]. *WhatsApp* users cannot (to date) exchange messages directly with users of *Facebook Messenger* and *Instagram Direct Messaging*. On a technical level, however, *WhatsApp* shares part of the infrastructure with *Facebook* and *Instagram* [...]

(353) According to public reports, Meta had also announced in 2019 that it wanted to bring *WhatsApp* closer to the group's other services and, in particular, to operate the three group-owned messengers on one basis and to introduce end-to-end communication between them.<sup>218</sup> Compared to the strong integration of *Facebook*, *Instagram* (including the *Direct Messenger*) and the *Facebook Messenger*, this has only partly occurred for *WhatsApp*.

(354) However, certain areas in which one of the three messenger services can be used without

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<sup>217</sup> Available at <https://igdm.me/>.

<sup>218</sup> Cf. <https://www.forbes.com/sites/kateoflahertyuk/2019/01/26/whatsapp-is-merging-with-facebook-messenger-heres-what-to-do/>.

distinction in the overall Meta system already exist. For example, in the “Rooms” service it is possible to invite not only other users of *Facebook Messenger*, but also users of *Instagram* and *WhatsApp*. Shops also allows users to contact each other via *Facebook Messenger*, *Instagram* or *WhatsApp*. To communicate with a company, the user can also use the “click-to-message” option on the company’s page or profile on *Facebook* or *Instagram* or on its advertisement and select the preferred messenger from the Meta portfolio.

### (cc) Messenger services with the most users worldwide

- (355) With the globally rolled out service *WhatsApp* as well as the two other messenger services, Meta once again provides the messaging offerings with the most users in the world.
- (356) With *WhatsApp* and the *Facebook Messenger*, Meta has the two leading messenger services in Germany, Europe and worldwide (with the exception of China) in its portfolio. According to Meta<sup>219</sup>, *WhatsApp* has [50-60] million daily active users (DAUs) and [60-70] million monthly active users (MAUs) in Germany, while the *Facebook Messenger* recently had [0-20] million daily and [20-30] million monthly active users.<sup>220</sup> For Europe, [200-300] million daily and [250-350] million monthly active *WhatsApp* users and [100-200] million daily and [150-250] million monthly active *Facebook Messenger* users were stated for the end of 2020.<sup>221</sup> According to Meta, *WhatsApp* has [1.5-2.5] billion daily and [2.0-3.0] billion monthly active users and the *Facebook Messenger* has [0.5-1.5] billion daily and [1.0-2.0] billion monthly active users worldwide.<sup>222</sup> Also with regard to these figures (as with regard to *Instagram*), it must be taken into account that an individual can have several *WhatsApp* accounts – and, to a certain extent, several *Facebook Messenger* accounts – (based on the use of several phones or phone numbers).
- (357) However, the figures are viable especially when compared to those of potential contenders: While Statista<sup>223</sup> lists approx. 2 billion users worldwide for *WhatsApp* and approx. 1.2 billion for the *Facebook Messenger* as at January 2021, the next largest messenger service *Telegram* (excluding Chinese providers) only has a worldwide user base of approx. 500 million. Other well-known messenger services such as *Skype*, *iMessage*, *Signal* or *Threema* are not even mentioned in this statistic.

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<sup>219</sup> Meta, response to question C.I.1. of the request for information of 26 October 2021, B6-27/21, as of Q3 2021.

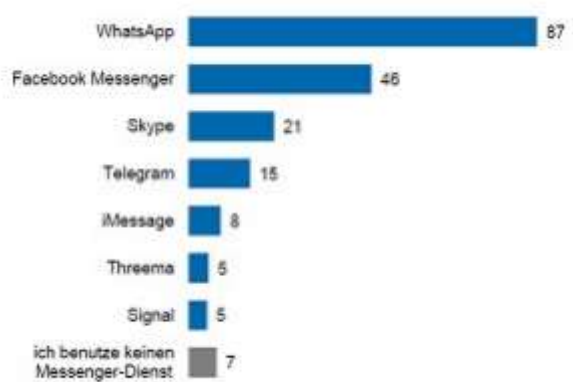
<sup>220</sup> Meta, response to question C.I.1. of the request for information of 26 October 2021, B6-27/21, as of Q3 2021.

<sup>221</sup> Meta, response to question X.1. of the request for information of 28 January 2021, B6-27/21.

<sup>222</sup> Meta, response to question C.I.1. of the request for information of 26 October 2021, B6-27/21, as of Q3 2021.

<sup>223</sup> Cf. <https://de.statista.com/statistik/daten/studie/181086/umfrage/die-weltweit-groessten-socialnetworks-nach-anzahl-der-user/>.

(358) User surveys also confirm the strong role of *WhatsApp* and the *Facebook Messenger*. In a survey by the VZBV,<sup>224</sup> the most used messenger services in Germany were:



[I do not use any messenger services]

Also when taking into account the worldwide situation, Meta still offers the leading messaging services (with a few exceptions) with *WhatsApp* and the *Facebook Messenger*.<sup>225</sup>



**(d) VR/AR products**

(359) Finally, Meta offers several other products that further broaden and connect the portfolio.

(360) This initially includes in particular the area of virtual reality and augmented reality. Meta is active in all three areas with the *Meta* brand (formerly *Oculus*), which has been in use since 2022. Under this brand, Meta offers VR glasses, in particular the *Meta Quest 2*. Meta is also active in VR software development, in particular for VR games. In 2019, Meta first bought the Czech VR studio Beat Saber, a developer of popular VR games. This was followed by the

<sup>224</sup> Cf. VZBV, Chartbericht Interoperabilität von Messenger-Diensten\_final.pdf.  
<sup>225</sup> Cf. <https://www.messengerpeople.com/de/weltweite-nutzer-statistik-fuer-whatsapp-wechat-und-other-messenger/>.

purchase of the Japanese VR studio Sanzaru Games, which had produced the popular VR game “Asgard’s Wrath” in the past. At the end of 2021, Meta announced that it would acquire the VR developer “Within Studio”, which offers the VR fitness app “Supernatural”.<sup>226</sup>

- (361) In addition, Meta has launched *Horizon Worlds*, a beta version VR service in which selected users can participate. In this game, users can move from a general starting point (hub) through portals into user-generated worlds. There is also a beta version of *Horizon Worlds* for corporate workspaces, a collaborative application for virtual collaboration or product presentation. Finally, Meta operates Oculus.com, a distribution platform for VR content that can be used on *Meta Quest* devices.
- (362) The products are closely linked to *Facebook*. They are technically connected to the Facebook platform and currently require a Facebook account without exception. This also applies in particular to the operation of the VR glasses.<sup>227</sup> The data generated by the respective services are combined and also used for the purposes of the VR services. The requirement of a proprietary hardware with which the applications must be operated also turns the products into a fixed and vertically integrated VR system consisting of all elements of the VR sector from the hardware, the operating system, the software and the VR app store.
- (363) VR technology is considered to be very promising in the future. The Meta CEO, Mark Zuckerberg, sees VR, which requires little hardware suitable for everyday use, in particular as a technology that paves the way to augmented reality (AR), which requires much less expensive glasses. AR glasses in particular are expected to have great potential in terms of becoming the successor of the smartphone in the mobile Internet.<sup>228</sup> At present, VR glasses and VR applications are still not yet widely used, but they are showing high double-digit growth rates in sales.<sup>229</sup>
- (364) With its Quest 2, which Meta can offer at a very reasonable price, Meta already offers by far the leading product. In the second quarter of 2020, Meta already had a global sales share of almost 40% with its VR glasses:<sup>230</sup>

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<sup>226</sup> Cf. the announcement on Meta’s Oculus blog, available at <https://www.oculus.com/blog/within-to-join-meta/>.

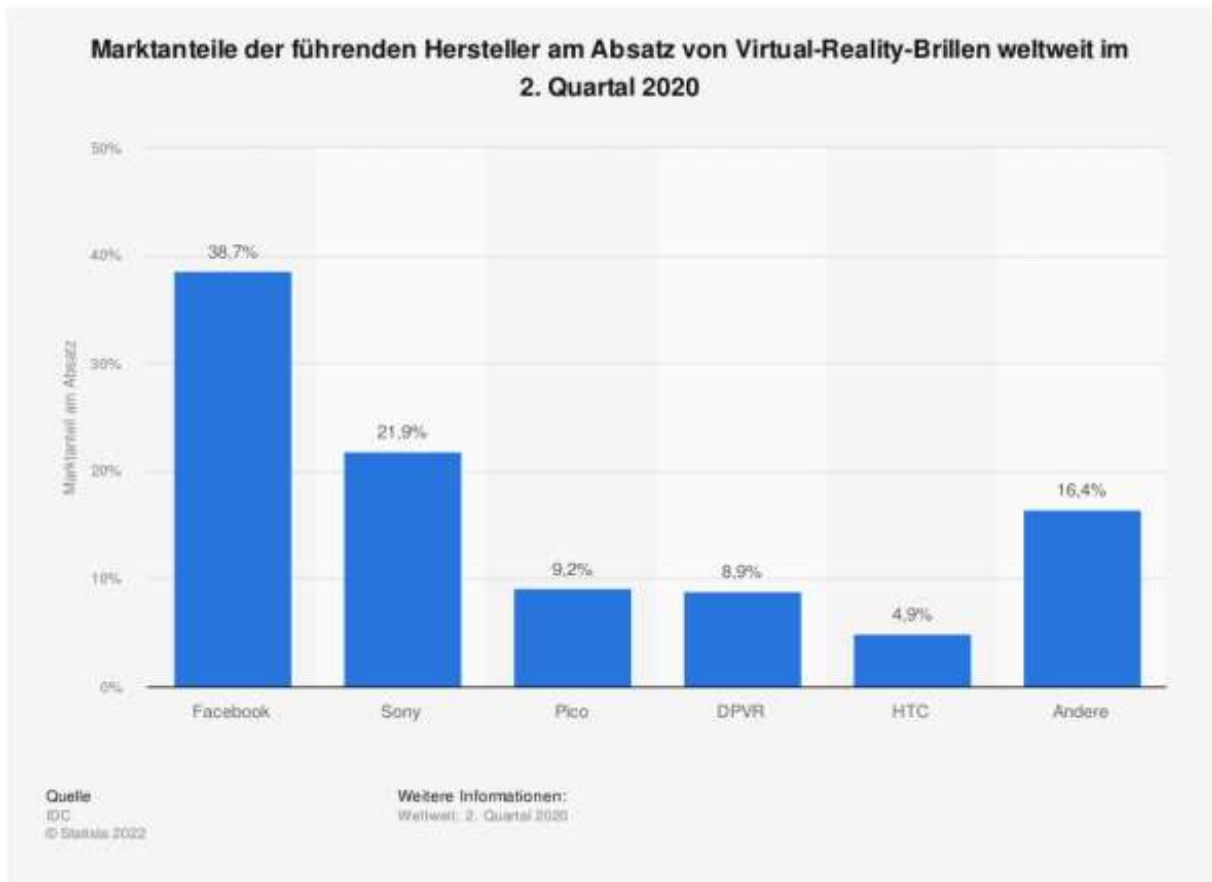
<sup>227</sup> This is the subject of the proceedings against Meta filed under B6-55/20, from which the present proceedings arose. Due to the proceedings, the glasses are currently not directly available in Germany, but can be purchased easily from online shops outside Germany.

<sup>228</sup> Cf. the interview with Mark Zuckerberg on CNet, available at <https://www.cnet.com/tech/mobile/facebooks-zuckerbergisnt-giving-up-on-oculus-or-virtual-reality/>.

<sup>229</sup> Cf. PWC study for Germany, available at <https://www.pwc.de/de/technologie-medien-undtelekommunikation/studie-deutscher-virtual-reality-markt-waechst-ueber-die-nische-hinaus.html>.

<sup>230</sup> <https://de.statista.com/statistik/daten/studie/1230812/umfrage/marktanteile-der-hersteller-am-weltweiten-absatz-von-virtual-reality-brillen/>.

[Market shares of the leading producers in virtual reality glasses sales worldwide in the 2nd quarter of 2020]



[Source: IDC; © Statista 2022; further information: worldwide; 2nd quarter 2020]

(365) According to a survey by the VR platform and system operator SteamVR on the distribution of glasses among SteamVR users, the share of users using these glasses amounted to 46% in January 2022.<sup>231</sup>

**(e) Overall operation of an integrated system**

(366) Overall, Meta operates a very broad ecosystem of digital services on the user side in terms of functionality and target groups, all of which are closely linked to each other in technical, functional and data-related ways.

(367) The social media sector is, thus, covered in its entire spectrum of product differentiation, including social networks, content sharing platforms, blogging services and messaging services, and forms a complete space for users and their social needs. Due to the multiple connections between the services and platforms, practically the entire offer of Meta for private

<sup>231</sup> Cf. the survey at <https://mixed.de/steamvr-im-januar-2022-meta-gehört-mehr-als-zwei-drittel/>; however, this survey only covers a part of the users.

users constitutes an activity on related markets within the meaning of Section 19a(1) sentence 2 no. 3 GWB.

(368) Overall, this offer has a very large userbase. According to Meta, at the end of 2021 it had reached around 3.6 billion people in terms of monthly active persons (MAPs), which corresponds to around two-thirds to three-quarters of all internet users worldwide.

<b>Quarter</b>	<b>MAPs worldwide in billion</b>
Q4 2018	2.64
Q1 2019	2.69
Q2 2019	2.76
Q3 2019	2.82
Q4 2019	2.89
Q1 2020	2.99
Q2 2020	3.14
Q3 2020	3.21
Q4 2020	3.30
Q1 2021	3.45
Q2 2021	3.51
Q3 2021	3.58
end of 2021	3.59

(369) The trend continues to point upwards [...]

**(2) Economies of scope and threats to competition**

(370) As regards Meta’s users, the ecosystem described above gives rise to economies of scope, which decisively contribute to Meta’s paramount significance for competition across markets. On the user side, the system can develop a strong lock-in effect, since users can be kept in the ecosystem due to the possibilities of user guidance within and between the services (see (a)). The breadth of interconnected services across the entire area of social media opens up the possibility of specifically reacting to and fending off the impetus for innovation provided by competitors, ultimately rendering them active merely at the fringes of the ecosystem (see (b)).

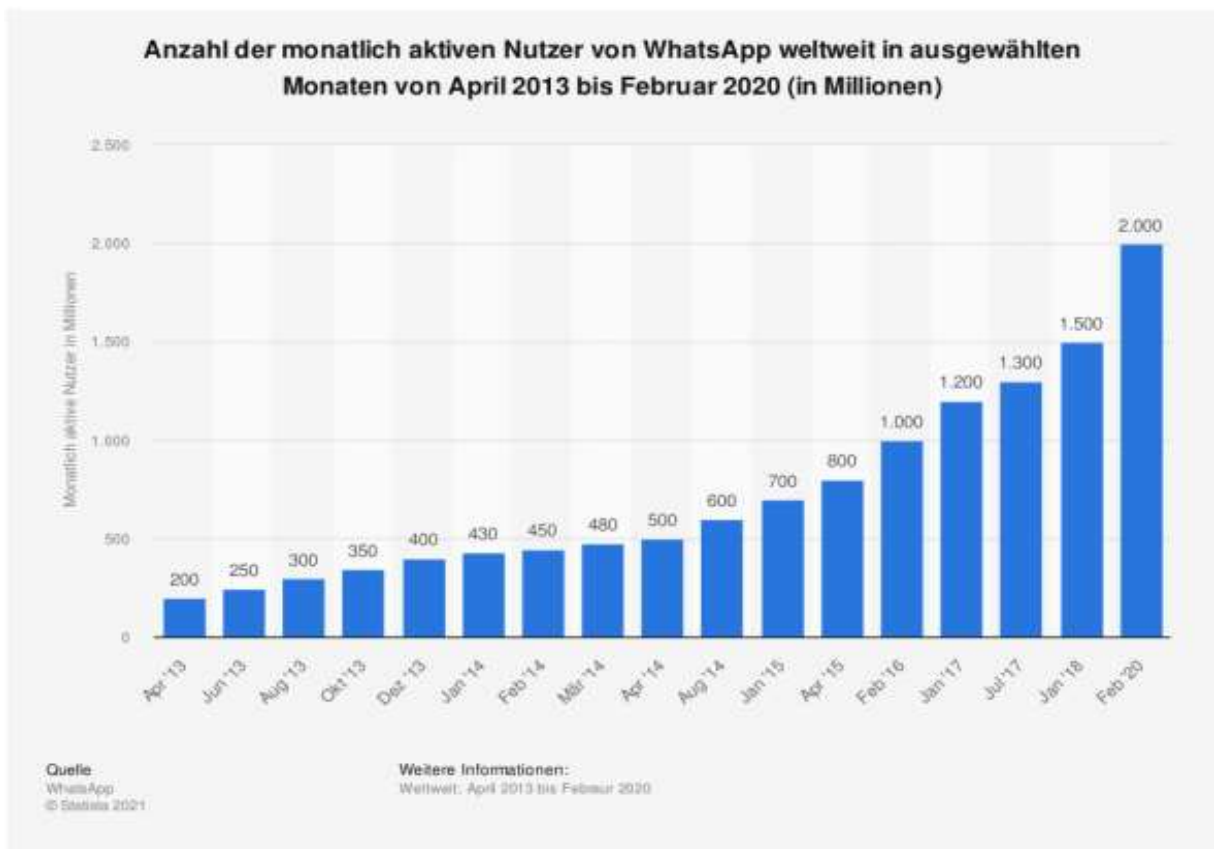
**(a) Development of a strong binding effect (lock-in effect) on private users**

(371) The Meta ecosystem, with its broad, interconnected offer, carries the risk of significant lock-in effects and thus of high barriers for users to switch services, which also make it more difficult to engage in relevant multi-homing with services outside the Meta ecosystem.

(372) This is first of all a consequence of the intensive direct network effects that occur in all Meta

services in the area of social media, which create a considerable barrier for private users to switch services, since their usually numerous contacts must also be convinced to switch to other services. At the same time, the direct network effects have a strong self-reinforcing effect, as the benefits of the social network increase with the growing number of users and the increasing intensity of use, attracting an extremely high number of users. This self-reinforcing effect has become clearly visible for *Facebook* as well as for *Instagram* over the last few years (paras. (180) and (183) above), but is also particularly true for the *WhatsApp* service, whose user numbers have risen very strongly across the world over the last few years – a clear sign of a self-reinforcing effect as a consequence of direct network effects:<sup>232</sup>

[Number of monthly active WhatsApp users worldwide in selected months from April 2013 to February 2020 (in million)]



[Monthly active users in million; sources: WhatsApp; © Statista 2021; further information: worldwide; April 2013 to February 2020]

(373) Furthermore, the broad and constantly growing offering of services bundled on or connected with *Facebook* and *Instagram*, including *WhatsApp* and *Facebook Messenger*, as well as VR

<sup>232</sup> <https://de.statista.com/statistik/daten/studie/285230/umfrage/aktive-nutzer-von-whatsapp-weltweit/>.



products, is additionally suitable for keeping end users in the ecosystem and strengthening the lock-in effect to a significant extent. This is because the ecosystem forms a space in which users build up their comprehensive member profiles, define certain communication and consumption patterns and develop reproducible behaviour and usage routines. Predefined user interfaces and default settings have a considerable influence on these patterns. Usage habits are strongly guided and shaped in this way. The wide range of connected services across several major services allows Meta to present users with the most relevant offers in the most appropriate places and to direct them to such offers in numerous ways. In addition, the use of the Meta system creates individualised usage routines and multiple interconnections. The more services the system includes and the broader the spectrum of use becomes, the higher the switching costs will be, as they would require a comprehensive reorganisation and reconstruction of individual patterns and movements in – possibly several different – alternative social media.

- (374) According to the investigations, the binding effect based on the development of usage routines and consumption patterns can be exemplified in particular by the introduction of Facebook Watch and Shops.
- (375) The Facebook Watch service was first launched in the USA in 2017 and has been available in Germany and worldwide since 2018; it can be accessed as part of the service bundle on *Facebook* with the Facebook account. It is a video streaming service that primarily offers high-quality professional productions, productions with official partners, original Facebook productions and private videos generated by users that meet certain quality requirements.
- (376) The service is embedded in the social network and its core functionalities, which is used to guide the user to the service. Users have many options on *Facebook* to watch Facebook Watch videos: In the newsfeed, on pages, in groups or via the search. [...] An important access point for the service is [...], for example, the newsfeed of the network, which represents the main usage routine of users on a social network. [...]
- (377) Furthermore, a significant access point is the Facebook Watch tab on the users' home page, through which users can access the highly personalised video area. [...] usage routines [...]
- (378) The aspect of the (established) community is also important for user guidance. In the case of Watch, for example, this can be seen – in addition to the already existing possibilities of sharing and commenting or interacting with content that the overall system offers – in the offering of “Watch Party” (previously) or “Watch Together” (today), which specifically aim in this direction.<sup>233</sup> [...]
- (379) The Watch app is also available for the devices of the Portal series (which are not yet offered

<sup>233</sup>

Cf. <https://about.fb.com/news/2020/09/introducing-watch-together-on-messenger/>.

in Germany), the Meta Quest glasses and devices such as the users' own television<sup>234</sup> or third-party services. Vodafone, for example, is the first pay-TV provider in Europe to offer Facebook Watch on its set-top boxes. Facebook Watch can also be accessed via links on a website or in the results of a search. In the *Facebook Messenger*, the aforementioned special offer of Watch Together is available, which is intended to additionally encourage the use and, after an analysis of user interests in connection with the costs, to replace the Watch Parties offer<sup>235</sup>, which made it possible to watch videos together in Facebook groups, on Facebook pages and on individual profiles in real time.

(380) In order to determine which design and positioning as well as which access and supply channels are (currently) preferred, Meta not only has the options available to every company – such as conducting its own or commissioning third-party surveys, studies and tests – but can also benefit in particular from its large userbase and worldwide spread. As regards the expansion of its video offerings, Meta has, for example, introduced a special video tab for testing purposes [...] before [...] was introduced in [...]. Prior to the worldwide rollout of Facebook Watch, Meta [...] among other things [...]

(381) For the example [...] Meta specifically states that it worked with a combination of [...].<sup>236</sup> In addition, Meta repeatedly points out that user preferences are examined before any changes are made. Given its large number of users worldwide, Meta can also work with large test groups, including country tests, where the company can also provide a specific service based on survey and study results without having to fear any impact on the usage behaviour of the large majority of users. Meta can therefore draw conclusions from a large number of concrete usage experiences.

(382) With these tools, *Facebook* has been able to attract [0.5-1.5] billion monthly active users worldwide to Watch within two years until September 2020 and thus to strengthen their ties to *Facebook*. The daily active use of Facebook Watch has also grown significantly both worldwide and in Germany in this period of time.

(383) From [...] to [...] reached [...] worldwide. In Germany, too, [...].<sup>237</sup>

[diagrams]

(384) A similar approach can also be found for the new “Shops” service introduced in 2020, which was positioned as a professional and highly personalised sales platform.

(385) In Germany, Shops for end customers so far basically includes the possibility of finding out

<sup>234</sup> Cf. [https://www.facebook.com/help/1871313656439201?helpref=uf\\_permalink](https://www.facebook.com/help/1871313656439201?helpref=uf_permalink).

<sup>235</sup> Cf. <https://about.fb.com/news/2018/07/watch-party-launches-around-the-world/>.

<sup>236</sup> Cf. Meta, response to question B.II.1. of the request for information of 26 October 2021, B6-27/21.

<sup>237</sup> Cf. Meta, response to question B.II.3. of the request for information of 26 October 2021, B6-27/21.

more about products and their providers which have been brought to the attention of users by Meta in various ways, of placing products users are interested in in a shopping basket, and of being forwarded directly from one of the Meta services to the website of the provider without having to leave the Meta service (in-app browsing). Purchasing directly on *Facebook* or *Instagram* – called “checkout” by Meta – is not yet possible in Germany.<sup>238</sup> [...] However, in its broadest scope, currently already offered in the USA, Shops already includes the checkout function, end customers can use the providers’ bonus programmes (such as free shipping or redeeming bonus codes), shop via live shopping (i.e. from a live video), place pre-orders that are only produced upon request, view product recommendations (e.g. the top 10 product recommendations for a category) as well as ratings and reviews, and use a question and answer area.

- (386) Meta also directs users to the “Shops” offer not only via special tabs, but also via the newsfeed, stories and advertisements.<sup>239</sup> A “click-to-action” (CTA) button, for example, [...] as another essential entry point [...] As a concrete use case of a CTA button, users can, for example, click on shopping tags in posts by influencers, which then lead them to the company’s offer and – depending on the degree of implementation in the respective country – to the purchase process on the Meta services themselves or on the company’s website. In addition, Shops is also available in groups, e.g. for merchandise articles of the respective group.<sup>240</sup> Via the respective, directly available messaging options (“click-to-message”), users can contact the providers directly. *WhatsApp* also offers the possibility to at least look at product catalogues and contact the provider directly. As far as available, Facebook Pay can be used to pay directly. [...]
- (387) Different access points distributed throughout Meta’s offer are [...] intended [...] Special tabs and a dedicated environment with a variety of supporting or supplementary offers, especially to better understand users or for users to assess/evaluate the offers themselves and to exchange information or offers such as live shopping and the possibility to view entire collections, are then intended [...]
- (388) Also before introducing Shops, Meta [...] for which the company could use the full range of its existing offerings and users. Meta also introduced Shops in [...] in order to [...] before rolling it out in other countries or regions where the company is already represented with its services. As a concrete example, [...] already being tested in [...].
- (389) Like Watch, the Shops offering was also quickly accepted. From [...] products of [...] providers,

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<sup>238</sup> Cf. Meta, response to question B.III.2. of the request for information of 26 October 2021, B6-27/21.

<sup>239</sup> Cf. Meta, response to question B.III.2. of the request for information of 26 October 2021, B6-27/21.

<sup>240</sup> Cf. Meta, response to question B.III.2. of the request for information of 26 October 2021, B6-27/21.

which Meta saw as a starting point, Shops grew worldwide in a short time to [2.5-7.5] billion products in [1.0-2.0] million shops by Q3 2021.<sup>241</sup> At the same time, Meta already recorded [250-750] million monthly unique visits to Shops worldwide in Q3 2021. Meta has thus been able to use the consequences of the pandemic for its own purposes and, with a completely new service and in the short period of time, achieves growth rates similar to other e-commerce companies.<sup>242</sup>

- (390) These or corresponding access or connection points are available for all Meta offerings. The wide range of connected services enables Meta to serve the interests of its users in a particularly comprehensive and seamless manner and to work against users switching to similar services offered by third parties due to suitably designing and positioning the services and using the various access and connection points available in the overall system. As a result, this leads to a comprehensive organisation and standardisation of the communication and consumption patterns on the Meta services and thus to a considerable additional lock-in effect in addition to and especially in connection with the strong direct network effects of the Meta platforms.

### **(b) Reacting to and fending off the impetus for innovation**

- (391) The breadth of interconnected services across the whole area of social media and the tools of user guidance also open up the possibility of specifically reacting to and fending off the impetus for innovation provided by competitors. This can be seen, on the one hand, in the development of the services' functionalities in response to competitive moves (see (aa)). On the other hand, Meta has also taken over individual services in the past, among other things with a view to their potential threat, and integrated them into the system (see (bb)).

### **(aa) Developing and adopting functionalities**

- (392) The closely connected ecosystem makes it particularly possible for Meta to react directly to innovations and competitive moves in the area of social media, in particular by imitating the respective functionality or the respective service based on its own development and by specifically offering the functionality in the broad ecosystem. Thus, Meta has the possibility to limit the success of the competitor's innovation and to prevent users from leaving its own ecosystem or at least significantly hinder them in doing so. This makes it more difficult for the ecosystem to be challenged by innovations.

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<sup>241</sup> Cf. Meta, response to question B.III.4. of the request for information of 26 October 2021, B6-27/21.

<sup>242</sup> Over a slightly longer period, the number of Shopify shops (the company offers ready-made solutions that enable websites to build their own online shop) worldwide has also increased from around 1.3 million in March 2020 to around 3.9 million in January 2022. The annual growth rates of Shops were thus similar, although Shopify is already an established provider of e-commerce solutions.

- (393) In particular due to the breadth of the range of services offered to private users, which covers all essential product differentiations and various target groups, Meta can take over targeted innovations on those platforms which represent the ideal environment for the respective service, and with which a close competitive relationship is created to the respective competitor as regards the individual service or functionality which has been taken over. This has also been reported by competitors in the past.
- (394) According to the company itself<sup>243</sup> significant offerings that Meta has added to its product portfolio over the years with regard to *Facebook* include the newsfeed (2006), Facebook Chat (2008), the Like button (2009), Timeline (2011), Facebook Camera (2012), Facebook Hashtags (2013), Facebook Carousel Ads (2015), Facebook Marketplace (2016), Facebook Watch (2017), Facebook Stories (2017), Facebook Dating (2019), and Facebook Live Audio (2021). As regards *Instagram*, Meta mentions video sharing (2013), Instagram Direct (2013), Stories (2016), Live Video (2016), Instagram Shopping (2018; now: “Shops”), Instagram TV (2018) and Reels (2020); and as regards WhatsApp: end-to-end encryption (2015), Status (2017), WhatsApp Business API (2018), WhatsApp Stickers (2019), and Ephemeral Messaging (2020). The latest endeavours mentioned are the endeavours in the area of AR/VR.
- (395) A significant part of the developments are examples of immediate reactions to competitors. These include, in particular, the “hashtags” adopted from *Twitter*, the possibility of creating “Stories” or a “Status” first on *Instagram*, then also on *Facebook*, the *Facebook Messenger* and *WhatsApp*, which goes back to *Snapchat*, as well as the possibility of creating “Reels”, which was first introduced by *TikTok*. “Live Video” was first introduced on Facebook as Facebook Live and was a reaction to a corresponding YouTube development.<sup>244</sup> In addition, the wish list for certain products on *Instagram* can be seen as a direct reaction to the corresponding functionality on *Pinterest*. The “Marketplace” is a response to the eBay service, “Watch” (*Facebook*) and “TV” (*Instagram*) are based on *YouTube*, the recording of gameplays goes back to Amazon’s *Twitch*.<sup>245</sup> In this context, “Rooms” can be seen as a reaction to *Zoom*. The Reddit service also claims that many of the functionalities of “Facebook groups” such as “Community Awards” are direct copies of Reddit’s offering.<sup>246</sup>
- (396) The present proceedings are not about the possible unlawfulness of imitating or adopting the functionalities of competitors. The Decision Division does not fail to recognise that this is part of the rather normal competitive activity in the area of social media and that other companies in the area of social media also make efforts to copy successful offers of other companies.<sup>247</sup>

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<sup>243</sup> Cf. Meta, reply to question A.VI.1. of the request for information of 26 October 2021, B6-27/21.

<sup>244</sup> Cf. already BKartA, decision of 6 February 2019 – B6-22/16 – para. 514 – *Facebook*.

<sup>245</sup> Cf. Twitch, response to question B.1. of the questionnaire for social media services, B6-27/21.

<sup>246</sup> Cf. Reddit, response to question 5 of the questionnaire for social media services (USA), B6-27/21.

<sup>247</sup> Cf., for example, TikTok, response to question B.1. or Pinterest, responses to questions B.1. and

For example, *Snapchat* offers an alternative to *TikTok* with “Spotlight”. And with “Spectacles”, it offers (its own) AR glasses that are closely linked to *Snapchat*’s other offerings. *YouTube* offers an alternative to *TikTok*’s “Reels” with “Shorts”.<sup>248</sup>

- (397) It is rather about the significant competitive advantage that Meta, with its broad ecosystem across the whole area of social media and its user strength, has compared to other significantly less broadly positioned companies. Their offerings neither cover the range of services and user groups, nor do their services show this inner connection and depth, the user numbers and the possibilities to comprehensively guide users in the way the Meta ecosystem can. Thus, in the end, *YouTube* is also a special service the functionalities of which are limited, and which, from *YouTube*’s point of view, is not even a social medium, and belongs to the Google ecosystem of Alphabet Inc., which, for its part, is a norm addressee of Section 19a(1) GWB.<sup>249</sup> However, *TikTok* or the Amazon service *Twitch* cannot react in a comparable manner due to their lack of a corresponding position in the social media sector.
- (398) Meta, on the other hand, is regularly already active in the area in question, so that it can build directly on existing structures and experiences. At the same time, when a new product is introduced on *Facebook* and other services, there are numerous ways to draw the attention of the large userbase of the overall system to this new product and to promote it, such as including a special tab in the app, calling up a post with videos or reels or a post with products from Shops in the newsfeed or recommendations of further videos or articles.<sup>250</sup> At the same time, there are no technical or financial obstacles which stand in the way of the products spreading fast since the products, as part of the overall offer, benefit from the entire technical and financial possibilities of the company right from the start. It therefore does not matter, for example, to what extent the new product can (already) contribute to monetisation [...]
- (399) This also explains why there is no sign of a significant decline in user numbers, the emergence of a similarly broadly-based ecosystem or a tendency towards being replaced by another service. This is because the direct sanctioning of a competitive move by offering the same or a comparable service on Meta’s own platforms, which appeal to all target groups, inevitably dampens the effect of the innovation and therefore slows down the competitor in developing a corresponding market position. Instead, there are indications that the focus of use within the Meta ecosystem is shifting from *Facebook* to *Instagram* or that both platforms are forming a balance. This also shows that despite the existing competition it is considerably difficult to challenge the ecosystem and that competition can ultimately only take place in subareas and

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B.2. respectively of the questionnaire for social media services, B6-27/21.

<sup>248</sup> Cf. *TikTok*, response to question B.1. of the questionnaire for social media services, B6-27/21.

<sup>249</sup> Cf. BKartA, decision of 30 December 2021, B7-61/21, <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Entscheidungen/Missbrauchsaufsicht/2021/B7-61-21.html>.

<sup>250</sup> Cf. Meta, responses to questions B.II.2. and B.III.2. of the request for information of 26 October 2021, B6- 27/21.

thus at the fringes of the ecosystem.

**(bb) Acquisition of competitors**

- (400) Meta can also expand and (re)position the existing ecosystem by specifically acquiring individual services in the area of social media and thereby fend off the competitor’s corresponding innovative and competitive potential. This can be seen in the acquisitions of competitors in the past.
- (401) A significant acquisition was the *Instagram* service, which at the time was a mobile photo service. The company was acquired in 2012 for more than 1 billion US dollars.<sup>251</sup> According to the available documents on this acquisition<sup>252</sup>, it was particularly about the acquisition of a functioning concept for photos, but also about the competitive potential of *Instagram* based on its considerable success with regard to network effects, which make it difficult to replace the service with another; *Facebook*, on the other hand, would then be able to integrate the service well into its existing mechanisms and also keep it out of the reach of other competitors.<sup>253</sup> At the same time, after its acquisition, *Instagram* was positioned in such a way that it would not compete with *Facebook*, but constitute a product differentiation in the spectrum of social media.<sup>254</sup>
- (402) This shows that the mechanisms of the ecosystem existing at the time made it much easier for *Facebook* to buy and integrate a service to expand it. This not only meant that the pressure to innovate exerted by *Instagram* was used to the benefit of *Facebook*, but also that a considerable advantage over other companies was achieved.

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<sup>251</sup> Responses to question X.6. of the request for information of 28 January 2021, B6-27/21.

<sup>252</sup> Cf. Federal Trade Commission (FTC) v. Facebook, Inc., Complaint for injunctive and other equitable relief in the United States District Court for the District of Columbia, Case No.: 1:20-cv-03590, dated 9 December 2020, and Department of Justice (DOJ), Investigation of Competition in Digital Markets, Majority Staff Report and Recommendations, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, United States 2020.

<sup>253</sup> Cf. the email correspondence between Mark Zuckerberg and CFO Ebersman in Federal Trade Commission (FTC) v. Facebook, Inc, Complaint for injunctive and other equitable relief in the United States District Court for the District of Columbia, Case No.: 1:20-cv-03590, dated 9 December 2020: “ ... *there are network effects around social products and a finite number of different social mechanics to invent. Once someone wins at a specific mechanic, it’s difficult for others to supplant them without doing something different. It’s possible someone beats Instagram by building something that is better to the point that they get network migration, but this is harder as long as Instagram keeps running as a product. [...] in reality we already know these companies’ social dynamics and will integrate them over the next 12-24 months anyway ...*”.

<sup>254</sup> Cf. The Cunningham Memo (2018) in Federal Trade Commission (FTC) v. Facebook, Inc., Complaint for injunctive and other equitable relief in the United States District Court for the District of Columbia, Case No.: 1:20-cv-03590, dated 9 December 2020: “...*The question was how do we position Facebook and Instagram to not compete with each other. The concern was that Instagram would hit a tipping point. [...] There was brutal in-fighting between Instagram and Facebook at the time. It was very tense. It was back when Kevin Systrom was still at the company. He wanted Instagram to grow naturally and as widely as possible. But Mark was clearly saying “do not compete with us.” [...]*”.

- (403) Another important step was the acquisition of **WhatsApp** in 2014 for 16 billion US dollars, which, according to the available documents, can ultimately also be seen as a move to fend off competition. [...] point, where its own services were not very successful. Here, too, the product's network effects ultimately were the determining factor as to why the company's own product (*Facebook Messenger*) was not able to compete. According to the available documents, Meta worried that *WhatsApp* could ultimately also attack the core business of the Facebook social network by building further services around messaging, thus creating a mobile social network based on messaging.<sup>255</sup> Again, one of the goals was to keep the service out of the reach of other companies.<sup>256</sup>
- (404) According to the investigations, Meta had also sought to acquire **Twitter** in 2008.<sup>257</sup> However, the purchase was not carried out. Here, too, the motivation was to improve the company's own product accordingly, but without having to fear a growing competitor.<sup>258</sup>
- (405) According to the investigations, Meta also attempted to acquire **Snapchat**. In this respect, it was reported at the end of 2013 that *Snapchat* had received purchase offers of first 1 billion US dollars, then 3 billion US dollars, which it rejected.<sup>259</sup>
- (406) According to **TikTok's** investigation and understanding, Meta had already been interested in acquiring the predecessor service Musical.ly in 2017, before it was acquired by *TikTok's* parent company ByteDance and merged into *TikTok*.<sup>260</sup>
- (407) Finally, Meta acquired the VR glasses manufacturer **Oculus** in 2014 for 2 billion US dollars.<sup>261</sup> This acquisition also served – albeit in a somewhat broader sense – to pursue the strategic goal of remaining unassailable in the area of social media by covering and connecting as many relevant areas as possible. Meta also strives to be sufficiently present in the hardware sector.

<sup>255</sup> Cf. the Board's presentation in Federal Trade Commission (FTC) v. Facebook, Inc., Complaint for injunctive and other equitable relief in the United States District Court for the District of Columbia, Case No.: 1:20-cv-03590, dated 9 December 2020: "*[Mobile messaging apps are] a threat to our core businesses: both [with respect to] graph and content sharing. [T]hey are building gaming platforms, profiles, and news feeds. [T]hese competitors have all the ingredients for building a mobile-first social network. [...]*".

<sup>256</sup> Cf. Vice President of Growth in Federal Trade Commission (FTC) v. Facebook, Inc., Complaint for injunctive and other equitable relief in the United States District Court for the District of Columbia, Case No.: 1:20-cv-03590, dated 9 December 2020: "*[The] [b]iggest problem would be if it lands in the wrong hands [...]*".

<sup>257</sup> Cf. Twitter, response to question C.2. of the questionnaire for social media services, B6-27/21; <https://adage.com/article/digitalnext/twitter-facebook-copycat/292349>.

<sup>258</sup> Mark Zuckerberg in Federal Trade Commission (FTC) v. Facebook, Inc., Complaint for injunctive and other equitable relief in the United States District Court for the District of Columbia, Case No.: 1:20-cv-03590, dated 9 December 2020: "*I was looking forward to the extra time that would have given us to get our product in order without having to worry about a competitor growing.*".

<sup>259</sup> Cf. <https://taz.de/Snapchat-will-nicht-zu-Facebook/!5054975/>; <https://taz.de/Snapchat-will-nicht-zu-Facebook/!5054975/>.

<sup>260</sup> Cf. TikTok, response to question C.1. of the questionnaire for social media services, B6-27/21; in 2020, Microsoft was also interested in TikTok, but its offer was rejected by ByteDance, see Microsoft, response to question C.4. of the questionnaire for social media services, B6-27/21.

<sup>261</sup> Responses to question X.6. of the request for information of 28 January 2021, B6-27/21.



Meta expects the field of virtual and augmented reality to have a disruptive effect. Meta considers glasses with the appropriate capabilities to be the first priority access to the internet in the future. Accordingly, Meta has been investing heavily in this area for years. Some of the most notable acquisitions include Big Box VR, Unit 2 Games and Beat Games. The purchase of CTRL-Labs, which specialises in controlling computers with the help of thoughts, can also be assigned to this area.

- (408) All in all, this shows that Meta's existing broad ecosystem contributes significantly to the acquisition of other services closely related to or widely connected with social media and to their integration into the system both technically and strategically. In this regard, Meta has a considerable incentive and also the means to fend off emerging competition at a very early stage by taking over the competitor in question and at the same time removing it from the grasp of other market participants. In addition, the acquired services expand Meta's ability to react specifically to competitive moves. Competitors thus remain active only at the fringes of the system, remaining restricted to subareas. In most cases, Meta has acquired those competitors which had the potential to position themselves broadly with high user numbers.

### **bb) Offers for business customers**

- (409) In addition to the popular and connected offer for private users described above, the company also provides an equally broad and connected offer for business customers (see (1)). This is, in itself and in conjunction with the user side, accompanied by considerable competitive advantages and threats (see (2)).

#### **(1) Wide range of interconnected offers**

- (410) Meta explicitly mentions *Facebook*, *Instagram*, *Messenger*, *WhatsApp*, the *Meta Audience Network*, *Oculus* and *Workplace* as platforms available to business customers on its Facebook and Meta for Business pages<sup>262</sup>. Products mentioned are Facebook Pages, Instagram Profiles, Stories, Shops, Facebook Business Suite, Facebook Ads, Messenger Ads, Instagram Ads, Video Ads, Ads Manager and free tools, and business types mentioned are small businesses, large businesses, agencies, media entrepreneurs and news providers, creators, developers, startups and business partners. Besides Facebook Pages and *Instagram* business accounts Meta also mentions the following free tools (for small businesses) to increase their visibility: posts, Facebook Live and Stories and Instagram Live and Stories, to build customer relationships: messaging, groups, invite friends and fundraising, and to increase online sales: Shops, appointments, call-to-action (CTA) buttons, events and jobs.<sup>263</sup> This shows the breadth of Meta's approach in this area as well. Moreover, these offerings are closely linked through

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<sup>262</sup> Cf. <https://www.facebook/business>.

<sup>263</sup> Cf. <https://www.facebook/business/small-business/free-tools>.

offerings such as the Business Manager, the Commerce Manager and the Ads Manager.

- (411) In essence, with regard to business customer products a distinction can be made between closely related marketing products (see (a)) and technical products for developers (see (b)).

### **(a) Marketing products**

- (412) Meta offers closely related communication, advertising and trading products to business customers, i.e. the private users' other side of the ecosystem, covering the entire so-called "customer journey" of private users for the purchase or consumption of a product. The customer journey describes the purchase process from attracting a customer's attention and interest in a product in a pre-purchase phase, via a customer's concrete intention to buy a product and the purchase itself in a transaction phase, as well as the subsequent support and retention of the customer in a post-purchase phase.
- (413) Via *Facebook* and *Instagram*, Meta first offers business customers the possibility to present themselves and to use the Meta platforms mostly free of charge as a space to publish their content and product presentation, and, thus, to attract the attention of users to their own content and products and to support them in every stage (see (aa)). In addition, it offers business customers a comprehensive, paid advertising offer that covers so-called key funnel points of the customer journey (see (bb)). Finally, Meta also offers business customers some trading functions, including payment services, directly on its platforms (see (cc)).

### **(aa) Presentation and self-presentation**

- (414) The Meta platforms initially offer business customers significant possibilities to present their company and their own products, as well as a space to publish editorial content, especially from media companies. It is thus aimed at practically all undertakings offering goods or services to end customers.
- (415) In a first step, the focus is on the free offer on *Facebook* and *Instagram* companies can use to build up their own "presence" in the two social media and to get in touch with private users. This offer is an essential element of so-called "social media marketing", in which content is created on social media in order to attract a user's interest in and attention for the company and its products, as well as to build a "community" around its brands and products and to be able to communicate with its current and potential customers.
- (416) The home page, which is basically comparable to the home page of a private user, is called a "Page" for business customers on *Facebook*, and a "business profile" (or "business account") on *Instagram*. After setting up a personal Facebook account or a business account, business customers can store all possible information about their business activity and build up their brand, for example by designing a visually appealing page and pursuing a certain image. It is important that business customers have the opportunity to get in touch with users and potential

end customers directly via the social functions of the platforms. Thus, business customers initially have all the communication possibilities of the Meta platforms at their disposal, in particular sharing their business content, for example, via a personal network, a public post or a story. Regular interactions with users are e.g. comments, likes and the sharing of posts. Users can follow or subscribe to Facebook Pages or Instagram profiles. The customer relationships created this way can be maintained by the business customers responding to the comments, answering questions and offering advice.

- (417) In addition to *Facebook* and *Instagram*, all messenger services are important to communicate directly with individual users. Meta refers to these services with its options to use *Facebook Messenger* or *Instagram Direct Messenger* via the *Facebook* or *Instagram* inbox and to manage and edit messages with various tools. However, *WhatsApp* is also important, which is offered to smaller business customers with the free extension *WhatsApp Business*. In particular, it offers the possibility to create a business profile that provides basic information such as location, contact details, opening hours, website, logo or a photo. It also offers various tools for managing and editing messages. Product catalogues can also be displayed. For larger companies, Meta offers the *WhatsApp Business API*, which in particular includes an interface for customer relationship management (CRM) systems and has extended features.
- (418) With the acquired undertaking Kustomer, Meta now also has a CRM system for customer services in its portfolio, which in particular can unify various communication channels, including Meta Messenger, in a uniform timeline for each contact. [...] business messaging [...] According to Meta's public statements based on internal WhatsApp data, 175 million people sent messages to a business account every day in June 2020.
- (419) Business customers can use the range of free communication options on the Meta platforms to build up a community, develop target groups and improve their presence as well as their products and content accordingly. In this respect, the analysis tools available for Facebook Pages and Instagram Profiles, the so-called "Insights", to which business customers with a certain number of followers or subscribers have access, are also important tools. On *Facebook*, for example, aggregated statistics on actions/clicks on the page, the number of page views, views of the page preview, the "likes" the page received, the reach of posts, the reach of the story, page recommendations, post interactions, responsiveness, video playbacks, page followers and orders can be accessed. Demographic data of the respective users can also be viewed in order to determine the target group. In this way, business customers can also optimise their posts, as it is possible to determine which posts users interact with particularly frequently and which posts tend to result in negative interactions. *Instagram* provides similar analysis options with Instagram Insights. This also applies to *WhatsApp Business* and the API.
- (420) Another important feature for many business customers is the possibility of forwarding users

from *Facebook* and *Instagram* directly to the business customer's own website through links to the website, for example on the Facebook Page or Instagram Profile, in posts or stories. This is an important monetisation opportunity, as the links generate traffic to their own pages, which can then be used for personalised online display advertising on their own website. In the case of online shops, the links can also increase the probability of customers completing their purchase.

- (421) In addition to their own page or profile on the Meta platforms and the various communication points, Meta offers more specialised services within the platforms in which content and product providers can publish and monetise their content. These include the video services on Facebook ("Watch") and Instagram ("Video"), where (also) professional and long-form video content can be distributed and monetised with in-stream video advertising. [...] The Facebook News service also has such a function, in which news content from national and local publishers is published in a special section, selected by a team of journalists, tailored to the interests of users and available to them free of charge. In Germany, [25-50] publishers are currently in cooperation with the company and receive fees if they make content available that was not previously available on the platform. Also significant from the business customers' point of view is the "Shops" service, which can be accessed by users both from *Facebook* and from *Instagram* and which constitutes a further space for companies to present their own products, but also partly already fulfils trading functions (see (cc) below).

### **(bb) Paid advertising products**

- (422) The advertising products that Meta offers throughout the ecosystem in return for payment form the core of Meta's offering to business customers and are an essential element of an undertaking's social marketing strategy. They are closely linked to all other marketing offers in the ecosystem.
- (423) Meta currently offers advertising products for its own products *Facebook*, *Facebook Messenger* and *Instagram* in a variety of spaces on the platforms and in a variety of forms. Meta also offers the *Meta Audience Network* (MAN), a limited third-party advertising network on a small selection of apps. The latter third-party advertising spaces can, to a large extent, only be booked in conjunction with advertising on Meta's own services and therefore represent an extension of the reach of Meta's products. The providers of the apps that are connected to Meta receive a share of the advertising revenue from bookings in the *MAN*. All available advertising products and spaces on the platforms of the Meta ecosystem are [...] advertising manager [...] combined [...]
- (424) The Ads Manager is a tool aimed at the demand side, the advertisers and agencies for booking and optimising the respective social media advertising campaigns in line with their objective within the customer journey on the Meta services, which can be selected granularly in the Ad

Manager.<sup>264</sup> A variety of different advertising spaces are available through the Ads Manager. These include the *Facebook* feeds (and specifically the Facebook Marketplace and Facebook Video feeds), *Instagram* (including the Instagram Discover section) and *Facebook Messenger* (including the inbox), stories on *Facebook*, *Instagram* and *Facebook Messenger*, in-stream video ads on *Facebook* and *Instagram*, search ads on *Facebook*, ad messages on *Facebook Messenger*, in-article ads on *Facebook* and *Facebook Messenger*, and display ads on the *MAN*.<sup>265</sup> A wide variety of ad formats are possible, including image ads, video ads, slideshow ads, carousel ads, collection ads and mobile instant experiences using the entire screen.<sup>266</sup>

- (425) The ads are equipped with possibilities to interact with users, who can share them, comment on them or “like” them. In addition, so-called “click-to-action” ads (CTA ads) are possible, which offer further interaction with the user. This includes the so-called click-to-message ad, which contains a selection of Meta messengers that can be used to contact the undertaking directly from the ad via the messengers, for example to find out more about the product. Another possibility offered by CTA is purchasing or booking a product, which usually takes the user to the business customer’s website or shopping basket. This website is then opened via an in-app browser.
- (426) The Ads Manager also offers numerous targeting options with which advertisers can precisely define their target group. It can be specified according to numerous criteria and sub-criteria with regard to location, gender, age, interests and behaviour (see in more detail III.3.b)bb) below). In the context of so-called Custom Audiences, advertisers have the possibility to advertise to a customised target group by uploading their own customer data to the Meta server, where it is compared with user data from the Meta services and a customised target group with certain identified users is created on this basis. This customised target group can be stored in the Ads Manager and used for further advertising campaigns on the Meta services. With so-called “Lookalike Audiences”, advertisers can create target groups with users who “resemble” their customers and therefore could possibly also be interested in the products advertised. The basis for a Lookalike Audience is an initial target group (so-called “Source Audience”), which can either consist of the list of existing customers, an already created Custom Audience of the advertiser, the users of a Facebook page or the users who were identified as potential buyers on a website of the advertiser. Meta analyses the initial target group to see which features the members of the target group have in common (personal similarities such as age, employer, industry, region, etc., usage behaviour on the internet, reaction to advertising approaches, etc.). Based on this, Facebook looks for users who also have these features. These new users are the Lookalike Audience, which is added to the

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<sup>264</sup> Meta, response to question D.II.1. of the request for information of 26 October 2021, B6-27/21.

<sup>265</sup> Meta, response to question D.II.1. of the request for information of 26 October 2021, B6-27/21.

<sup>266</sup> Meta, response to question D.II.1. of the request for information of 26 October 2021, B6-27/21.

advertiser's tailored target group and which can be further narrowed down using the targeting options mentioned above.<sup>267</sup>

- (427) When determining where to place an ad, the Ads Manager allows companies to choose between automatic placement optimised via an algorithm and manual placement, whereby *Facebook*, *Instagram*, *Facebook Messenger* and the *MAN* can be chosen. In addition, it is possible to specify where exactly the advertisement should appear, e.g. in the feeds, the stories, the Instagram stream, in the search, between messages or within press articles or on which external apps and sites. Finally, there are further options through which the advertising campaign can be individually controlled. The campaign content can also be customised in various ways – like a post on *Facebook* or a story on *Instagram*. In this context, Meta also offers the possibility to have the content translated directly into different languages.
- (428) The advertising spaces are auctioned in real time within the Ads Manager when a user visits the website (“real-time bidding”) [...] complex auction mechanism [...] The bid can be placed in various ways, such as on ad impressions (advertising contact), clicks on the advertisement or on the user's actions, specifying the amount, namely a maximum amount per auction or different budgets (for the entire campaign, daily budget, etc.), which Meta can use to automatically optimise the advertising. In view of the other components of the auction mechanism, the limited advertising space is not necessarily given to the highest bidder. Rather, the criteria of relevance and quality are also decisive to a considerable extent [...]
- (429) Meta also offers various measurement and analysis tools that allow advertisers to measure the effectiveness and efficiency of their campaign and to adjust the campaign in real time. These include, among many others, the reporting functionality in the Ads Manager itself, which provides aggregated statistics and analyses of how users interact with the ads on Meta's services. Advertisers can see, for example, how many people have viewed the ad, including details on demographics and the location of the ad, and modify (adjust audience, placement, budget), pause or restart the ad as needed.<sup>268</sup> The “Conversion Lift” product allows advertisers to measure the effectiveness of their sales advertising through random testing. The “Brand Lift” product is used to measure the effectiveness of brand advertising (brand awareness).
- (430) The advertising space in the Meta ecosystem is offered exclusively by Meta itself in a vertically integrated system (“owned and operated”) and is not available on other marketing or trading platforms. Vertical integration includes all technological pre-products such as Ad Server, auction technology, targeting and tracking (Pixel, APIs), measurement and analysis services, brand safety technology, fraud prevention measures and, with the Ads Manager, elements of a so-called demand side platform (DSP) limited to the Meta ad inventory.<sup>269</sup> In the area of open

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<sup>267</sup> Meta, response to question D.II.1. of the request for information of 26 October 2021, B6-27/21.

<sup>268</sup> Meta, response to question D.II.1. of the request for information of 26 October 2021, B6-27/21.

<sup>269</sup> Cf. the definition at [https://de.ryte.com/wiki/Demand\\_Side\\_Platform](https://de.ryte.com/wiki/Demand_Side_Platform).

marketplaces, a DSP is a technology platform with which advertisers can automate their purchase of advertising space and advertising inventory from a wide variety of sources and organise it efficiently with the help of various algorithms. Meta offers a so-called supply (or sell) side platform (SSP)<sup>270</sup> to the app operators connected via the MAN.

- (431) Meta, thus, implements the entire so-called ad tech stack in its own undertaking for marketing its advertising space itself. To a limited extent, customers can use alternative products that are interoperable with the Meta advertising system. This is essentially limited to independent analysis tools that can check Meta's own advertising effectiveness analyses in one area (so-called verification performance) and that are connected to the advertising systems.<sup>271</sup> The so-called Ad Exchange operated by Meta until a few years ago, through which alternative DSPs could acquire advertising space on Meta services, has no longer existed since 2016.
- (432) As already mentioned, Meta provides the leading advertising offer in the field of social media in Germany. In addition, these considerations also hold true with regard to Meta's global activities. After achieving almost 86 billion US dollars in 2020, Meta generated almost 115 billion US dollars in advertising revenue in 2021. At the same time, social media providers other than Meta generated significantly less advertising revenue than Meta in 2021, even when all types of revenue are taken into account, e.g. Bytedance<sup>272</sup>, the parent company of *TikTok* (taking into account all of its other activities, which are largely limited to China) generated around 58 billion US dollars, *Twitter* 5.1 billion US dollars, *Snap* 4.1 billion US dollars or *Pinterest* 2.6 billion US dollars.
- (433) The vertically integrated advertising offer is also closely linked to the other marketing offers presented above.
- (434) For example, a Facebook account and a Facebook Page are mandatory for booking advertising in the entire Meta ecosystem. This also applies to the booking of paid advertising (only) on *Instagram*, which must be booked via the Ads Manager.<sup>273</sup> Meta also offers other connecting cross-sectional products such as the "Business Manager" and the "Meta Business Suite". With the help of the free Business Manager<sup>274</sup>, business customers can centrally manage their advertising accounts, Pages and the people who work on them. This is particularly interesting for business customers that want to use several advertising accounts or want to enable several people to manage the business customer's Facebook presence, including the advertising they place. In this context, the Business Manager also provides insights and reports at a company level. In addition, business customers can manage all their

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<sup>270</sup> Cf. the definition at [https://de.ryte.com/wiki/Sell\\_Side\\_Platform\\_\(SSP\)](https://de.ryte.com/wiki/Sell_Side_Platform_(SSP)).

<sup>271</sup> Meta, response to question D.II.1. of the request for information of 26 October 2021, B6-27/21.

<sup>272</sup> Cf. <https://www.derstandard.de/story/2000132700393/tiktok-eigner-bytedance-steigert-umsatz-um-70-percent>.

<sup>273</sup> Meta, response to question D.4 of the request for information of 26 October 2021, B6-27/21.

<sup>274</sup> Cf. <https://business.facebook.com/>

business activities on *Facebook*, *Instagram* and *Facebook Messenger* in one central location using the Facebook Business Suite<sup>275</sup>, which is also free. In the Business Suite, which can be used on a desktop or mobile device, business customers see all their notifications and can quickly reply to messages. They can also create or plan posts, stories and ads for their businesses, and find insights to continuously adjust their measures.

- (435) Finally, the advertisements also constitute feeder products to the more specialised publishing services, in particular to Shops, business messaging, Facebook Watch or Instagram Video, as well as other products. The movements and activities of users on these services again provide a basis for optimising marketing on Meta, including targeted ads.

### (cc) Sale and payment

- (436) Finally, especially with the highly personalised service “Shops” Meta also offers business customers some direct trading functions – currently available only in the USA –, which go beyond the pure presentation or advertising of the company and its products and should make it possible to sell products directly via the Meta system. All four major services are integrated into the trading platform developed by Meta, i.e. *Facebook*, *Instagram* including the messenger, the separate *Facebook Messenger* and *WhatsApp*. To set up and operate such a sales channel, Meta provides its business customers with the Shops section in the background, including specific functions such as a product catalogue or shopping basket. These can be integrated into their own presences on the individual services. As described, the various messaging functions can also be used to provide direct customer support after the purchase has been completed. With Facebook Pay, Meta also offers a payment system that can be used – as far as available – on the four services mentioned.
- (437) For the marketing of an undertaking’s products on Meta, particularly “Pages” on *Facebook* and the business profiles on *Instagram* are available, into which corresponding feeder buttons can be integrated and which are, again, mandatory for the operation of a shop.
- (438) To set up sales channels, the “Commerce Manager”<sup>276</sup> is offered. With that, a shop can be set up in the Meta system, the entire shop of an undertaking can be managed via the Meta platform, the possibility to access the shop via *Facebook* or *Instagram* can be integrated into a company’s existing online shop or – if available – the “Checkout” function, i.e. the possibility to directly carry out purchases on *Facebook* or *Instagram*, can be set up. If an undertaking already works with a provider of e-commerce software, such as Shopify, for its shop, the company may still set up a Meta distribution channel.

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<sup>275</sup> Cf. <https://www.facebook/business/facebook-business-suite>.

<sup>276</sup> Cf. Meta, response to question B.III.1. of the request for information of 26 October 2021, B6-27/21, in particular Annex B.III.1-003.



- (439) In addition, once a commerce account has been set up, the Commerce Manager offers the authorisation management feature for employees of the business customer to manage the shop, to manage sales and payment processes in various ways and to gain insights into the use of the shop.<sup>277</sup> In the US, unlike in Germany, sellers in the Shops section can already integrate their own loyalty programmes such as free shipping, offer live shopping, carry out discount campaigns with corresponding codes or accept pre-orders to start production on demand.<sup>278</sup> [...]
- (440) Finally, Facebook Pay<sup>279</sup> is automatically available to users of *Facebook*, *Instagram* and *Facebook Messenger*. To be able to use Facebook Pay, it is only necessary to save one's own credit card or bank details. Payment transactions can be additionally secured using a PIN or biometric information. With the help of Facebook Pay, payment transactions can also be tracked over time, information on payment transactions can be managed and customer support is available.
- (441) It should be noted, however, that the above-mentioned offers for sale and payment are so far only available in test regions [...]

### **(b) Offers for developers**

- (442) On the business customer side, Meta also offers a wide range of services for developers. These are in particular development environments and tools that are used, on the one hand, for the development of third-party apps for the Facebook platform and, on the other hand, for the integration of elements of the Meta ecosystem, in particular via the Facebook Business Tools, into third-party websites or apps (see (aa)). Finally, the AR/VR development platform is relevant for AR/VR software developers as well as the Meta Quest distribution platform Oculus.com (see (bb)).

### **(aa) Meta's developer platform**

- (443) The Meta for Developers platform was launched in 2007 and provides an environment for developers to create applications that interact with the main features of Meta services. The products are aimed at website operators, developers, advertisers and other undertakings that can integrate the tools into their own websites, apps and online offers or into their offers on Meta services via application programming interfaces (APIs) predefined by Meta using a configurator. Meta does not charge a monetary fee for this.
- (444) Meta describes various tools on the webpage "Meta for Developers": These are currently "App

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<sup>277</sup> Cf. <https://www.facebook.com/business/tools/commerce-manager/get-started>.

<sup>278</sup> Cf. Meta, response to question B.III.2. of the request for information of 26 October 2021, B6-27/21.

<sup>279</sup> Cf. <https://pay.facebook.com/how-it-works/>.

Ads”, “App Events”, “App Links”, “Commerce”, “Conversions API”, “Facebook Business Extension”, the section “Facebook Business SOK”, “Facebook Login”, “Meta Pixel”, “Statistics for Pages”, the section “Instagram”, “Instagram Experience API”, “Jobs on Facebook”, “Marketing API”, “Messenger”, “API for official events”, “Pages API”, “WhatsApp Business Platform” and “Workplace”. As *social integrations* “Frame Studio”, “Groups Plugin”, again “Instagram”, “Share on Facebook”, “Share in Stories” and the “Social Plugins” section with the tools “Save”, “Like” and “Embedded content” are mentioned. Under the Gaming section “Cloud Games”, “Gaming Services”, “Gaming Video” and “Instant Games” are mentioned.

- (445) The cases in which the individual tools can be used are very diverse. Essentially, the products allow undertakings to interact with users of Meta services on the undertaking’s website and trigger actions on the social network or actions on their own website or app (especially social plugins and the Facebook login). Undertakings may also use the products to develop and/or integrate content and apps on the Facebook platform or their Facebook pages (e.g. Pages API, Graph API). In addition, undertakings can obtain information about user behaviour in relation to their own undertaking in various forms via tools (measurement and analysis tools, e.g. Meta Pixel and App Events). Of importance are the social plugins, Facebook login, Meta Pixel and App Events, for example.
- (446) By integrating **social plugins**, companies enable the users of their app or website to integrate and distribute their content on the social network Facebook.com in various ways. The best known and most widely used plugin is the “Like” button. If the user clicks on this button on third-party websites and apps, the user’s profile will show the “Like” marker for the page and the website or content will be displayed in the newsfeed of the user’s Facebook friends. Technically, social plug-ins can be realised in different ways via programming interfaces, depending on whether they are to be integrated into a website or an app. The essential tool for this is a software development kit (SDK). An SDK is a collection of programming tools and libraries used to develop software in a specific environment. Meta offers several SDKs for download from its website. For the integration of social plug-ins into apps, the “Facebook SDK” is available for the mobile platforms iOS and Android. All interfaces have in common that they support a data flow from the users to Meta which is not dependent on the actual use of the plug-in functionality by the users of the website or app.
- (447) With the “**Facebook Login**”, users can log in to the third-party website using their Facebook registration data identifying them, i.e. with their email address or mobile phone number and Facebook password. In addition, users have the option of transferring further personal data to the app, so that they do not have to create a user profile when logging in to a new app/site, for example. Facebook Login is available on all major platforms and operating systems: iOS, Android, web, desktop apps and smart TVs, “Internet of Things” objects and similar devices. Users who log in using the Facebook Login can use the respective service across multiple

devices and platforms, as the same user ID is always used. Technically, the Facebook Login is implemented by the respective Facebook SDKs, whereby the implementation on a website is only possible with the Facebook Javascript SDK. Here, too, the SDKs provide information about which users set up an account on the third-party website using which data, without the buttons actually having to be used.

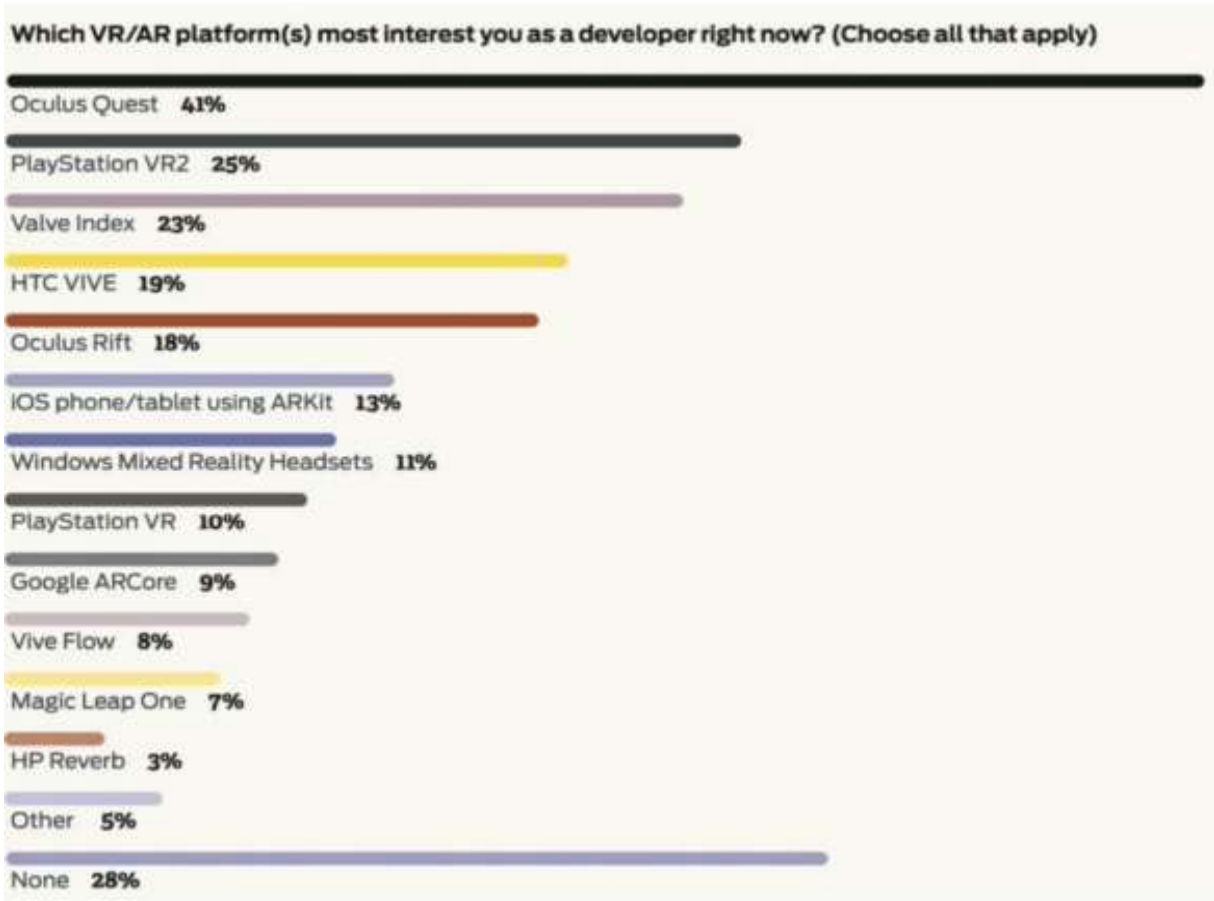
- (448) The **Meta Pixel** is a JavaScript code snippet that allows website operators to track the activity of visitors to their website. It operates by loading a small library of functions that can be used whenever a site visitor performs an action (called an event) that is to be tracked. This is mainly for measuring and analysing advertisements on Meta services, but also for analysing the effectiveness of the different processes on a website to optimise the buying process. “**App Events**” has a similar tracking purpose, but can be integrated into mobile apps as well as websites. These interfaces also deliver a considerable amount of data to Meta. The business customer receives insight into aggregated statistics.

### (bb) AR/VR developer platform

- (449) Finally, Meta provides tools and a distribution platform for AR/VR software developers.
- (450) On Meta for Developers, several developer tools are mentioned for the AR/VR area. At present, these are “Facebook 360”, “Oculus”, “Quill”, “React 360”, “React 360” and “Spark AR Studio”.
- (451) Currently, the Oculus developer platform (“Oculus for Developers”), which provides hardware, platform solutions and SDKs for the development of VR applications for the Meta Quest glasses, as well as programming guidelines and documentations, is particularly important. The Oculus developer platform is currently the most important platform in the market. According to a survey conducted by the Game Developers Conference (GDC) in 2021, the VR sector as a whole was not yet very important for the development of applications. However, as far as developers deal with the area of VR, they consider the Oculus Quest platform to be the most important platform.<sup>280</sup>

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<sup>280</sup> Cf. the survey on <https://mixed.de/gdc-survey-2022/>.



(452) The software developed for Oculus Quest, along with Meta’s own applications, must be distributed via the Oculus Store, where the software is presented and sold. To be included in the Oculus Store, the software must meet certain minimum technical requirements and must undergo a review process. Meta receives a share of the sales revenue.

**(2) Economies of scope and threats to competition**

(453) The described system of offers for business customers opens up further economies of scope for Meta, which add considerably to its paramount significance for competition across markets.

(454) The described range of communication, advertising and retail products forms a comprehensive communication and sales space, which leads to considerable data advantages as well as advantages through incentives for bundling (see (a)). The vertical integration of advertising services bears the risk of a walled garden, which in addition to data advantages also entails conflicts of interest (see (b)). The developer platform is associated with a reinforcing indirect network effect related to the Meta services, but also with the risk of innovation being fended off (see (c)).

**(a) Comprehensive communication and sales space**

(455) The range of communication, advertising and retail products outlined above forms a

comprehensive communication and sales space that can lead to significant data advantages as well as benefits from incentives for bundling.

- (456) The range of products generates economies of scope in the form of data advantages, as Meta can use these products along the entire customer journey of a large number of users and, thus, at a large number of so-called funnel points (see paras. (230)(230) above). Through an interactive product design, users reveal their interests, their brand preferences, product habits, their specific purchase intentions and their satisfaction with products. Therefore, especially with the broadly diversified and closely linked products throughout the entire advertising funnel, which are largely offered to users directly on the Meta platforms, a wide range of very valuable data is generated. These data are controlled by Meta.
- (457) The extent to which business customers can access these data can be controlled by Meta through the analytics tools provided. There is a risk that business customers will only be able to use Meta's products to target individual users based on the data and customer relationships created by the communication products throughout the entire funnel. This can lead to a further strengthening of the already close ties of advertisers to Meta services in the area of social media advertising.
- (458) Competitors cannot replicate such a communication space with the possible data advantages, or can do so only with difficulty. This is especially true in view of the high number of users Meta services enjoy and the existing indirect network effects, which offer a strong incentive for business customers to engage in very intensive communication with users across all products, thus generating a lot of funnel data.
- (459) Meta's wide range of communication, advertising and retail products also poses the risk of bundling incentives across the entire product portfolio and a further expansion of services, making the ecosystem as a "one-stop shop" less contestable.
- (460) The connections between the products outlined above already have a certain bundling effect, for example, placing an advertisement on the Meta services requires the operation of a Facebook page. Business customers are at least encouraged to actively operate this page, as not maintaining such a page on *Facebook* could be detrimental to their image. However, there are also incentives for bundling the other connected communication products as well as new products, including the Shops service, which is still rather in the development stage, and Business Messaging.
- (461) The business products are also essentially aimed at the same broad circle of customers, namely Meta's advertising clients in particular. They all have a closely related marketing purpose, which in the overall picture covers all points of communication of the business customers with their end customers. In the end, the market boundaries between the advertising markets and the product sales markets no longer exist in that the advertisement, for example,

already directly enables communication to initiate the transaction (“call-to-message”), place the product in the shopping cart on the website of the business customer or in “Shops” or, in some cases, to immediately “check-out” – i.e. conclude the purchase. Thus, the incentive to actually use all products together is increased considerably. New products can therefore be introduced easily and promisingly on the business customer side. In particular, Meta has the possibility to incentivise the use of new connected products through advertising credits and therefore to access the existing social media advertising budget of all business customers addressed in order to subsidise new products. This opens up the opportunity for Meta to take a leading role with regard to emerging products from the outset.

### **(b) “Walled Garden” due to vertically integrated advertising product**

- (462) The vertical integration of advertising services offered in return for payment described above, which encompasses the entire ad tech stack, also leads to competitive advantages. This is because Meta controls all essential operations in its advertising ecosystem through the ad tech stack. This situation, often referred to as a “walled garden” in the advertising industry, means that, especially in view of Meta’s size and its strong position in social media advertising, advertisers are forced to largely use Meta’s entire ad tech stack for their campaign on the Meta advertising spaces offered. This can be accompanied by economies of scope in Meta’s favour, which can lead to data advantages but also entail conflicts of interest.
- (463) The possibility of a data advantage here is derived primarily from the fact that advertisers may, especially for targeting, be forced to rely exclusively on data controlled by Meta and, in addition, to provide further data to Meta. The amount of data is increased on the Meta platforms by way of the advertiser’s own advertising activity – for example, through the need to contact a customer again (so-called retargeting, see (241) above). For this form of advertising it is, for example, mandatory to use the Meta tracking tools (Meta Pixel, App Events), as this is the only way for the Meta systems to match the users. These tools then transmit the customers’ event data (only) to Meta.
- (464) Conflicts of interest arise in particular with regard to the use of the Ads Manager, which provides the elements of a demand-side platform (DSP). Thus Meta is active both on the sellers’ side, pursuing its own sales interests, and on the demand side, in the interest of which the campaigns are to be managed and optimised with the automated use of the customers’ budget via an auction mechanism controlled by Meta and based on qualitative parameters. This can be reinforced by the use of Meta’s own measurement and analysis tools regarding the effectiveness and value of its own advertising offer.
- (465) Other ad-financed social media services are also trying to build up such a walled garden with their own integrated advertising offer. However, in view of their much smaller size in terms of user numbers and services, they are not in a position to achieve similar economies of scope.

**(c) Competitive advantages due to the developer platform**

- (466) Finally, the developer platform also contributes to Meta's significance across markets. This also is particularly true with regard to the high number of users the Meta services enjoy and the resulting indirect network effects that the developer platform, which relates to a large number of functionalities of the entire Meta services, unfolds. The more users the Meta services have, the more developers will develop software, apps or other products related to the Meta services. To this extent, the developer platform has the effect of a proprietary operating system as a technical platform for which software is developed. The more widespread it is, the more software will be developed for it. The more applications there are for the technical platform, the more users choose this platform and intensify their use of the functionalities.
- (467) Based on the connection, however, Meta can at the same time observe which of the developers' offers are well received by the users. While an explicit non-compete clause as set out for some time in Meta's general terms of service for the use of the "Platform" no longer exists,<sup>281</sup> Meta can, however, adopt innovations in third-party apps with social functionalities related to *Facebook* or *Instagram* in its own platform at an early stage and, thus, slow down the success of apps outside the platform. This is made possible primarily by the data flow to Meta which is on all apps triggered by business tools, gaming interfaces and other APIs during use.
- (468) The integrated AR/VR platform can also pose competitive threats in the future. This is because here, too, reinforcing indirect network effects arise from the proprietary Meta Quest platform for which AR/VR applications are produced. It can already be seen that third-party developers prefer to develop software for Meta Quest. Since Meta itself is also a provider of VR software, a conflict may arise with providers that have to distribute their software on the Oculus sales platform and at the same time develop their products in competition with Meta. A future technical connection of AR/VR third-party software to social (AR/VR) functionalities of Meta services would pose the same threats as the existing developer platform

**3. Access to data relevant for competition (Section 19a(1) sentence 2 no. 4 GWB)**

- (469) Meta's paramount significance for competition across markets is also characterised to a significant extent by its access to data relevant for competition, as the ecosystem is based on an essentially data-driven business model, meaning that data "fuel" the system, so to speak.

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<sup>281</sup> Cf. Federal Trade Commission (FTC) v. Facebook, Inc, Complaint for injunctive and other equitable relief in the United States District Court for the District of Columbia, Case No.: 1:20-cv-03590, dated 9 December 2020.

**a) Function of the criterion**

- (470) The condition set forth in Section 19a(1) sentence 2 no. 4 GWB can be of considerable relevance for the legal assessment of an undertaking's paramount significance for competition across markets.<sup>282</sup>
- (471) Data are an important resource for building and strengthening digital ecosystems. The term "data" should be understood broadly and ultimately encompasses any piece of information relevant to the operation of the ecosystem. Many digital business models are based on personal data, i.e., information relating to an identified or identifiable individual person. In addition, however, non-personal data can also be of considerable cross-market relevance for an ecosystem.
- (472) In contrast to the identically worded Section 18(3a) no. 4 GWB, this condition is not to be understood in terms of the market, but rather access to data relevant for competition is to be examined in a *cross-market sense*. For the classification of the condition as a factor of paramount significance for competition across markets, it is significant that the data are typically "shareable input", i.e. they can be used across products.<sup>283</sup> If there is a possibility to use data across different markets or services, this can be a "bracket" for connecting markets or services to form a system reaching across markets.<sup>284</sup> The generation and commercial processing of data can be the aspect which keeps together otherwise differing business areas and can establish overarching positions of power.<sup>285</sup>
- (473) The possibility to use data across markets can affect competition in several ways: If it is possible to combine data derived from the use of different services, additional information that would not be available to the same extent or in the same quality if the different datasets were analysed separately may be obtained to develop new products.<sup>286</sup> This effect is reinforced by the use of machine learning methods, which offer high added value especially when applied to large or high-quality datasets.<sup>287</sup> Improved personalisation through the collected data within an ecosystem is of additional significance. This allows existing products to be improved and new ones to be developed that are tailored to the specific needs of users. This can facilitate the

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<sup>282</sup> The government's explanatory memorandum refers in several places to the importance of data in connection with Section 19a GWB, cf. government explanatory memorandum to the 10th amendment to the GWB, see Bundestag printed paper 19/23492, pp. 74 et seq.

<sup>283</sup> See in that regard M. Bourreau, A. de Stree, Digital Conglomerates and EU Competition Policy, 2019, p. 11.

<sup>284</sup> See in that regard Schweitzer, Haucap, et al, Modernization of Abuse Supervision for Companies with Market Power – Final Report, 2018, p. 41.

<sup>285</sup> See in that regard Schweitzer, Haucap, et al, Modernization of Abuse Supervision for Companies with Market Power – Final Report, 2018, pp. 84 et seq.

<sup>286</sup> Report of Vestager Advisors Crémer/deMontjoye/Schweitzer, Competition Policy for the Digital Era, 2019, p. 33.

<sup>287</sup> Parker/Petroupolos/Van Alstyne, Digital platforms and antitrust, Bruegel Working Paper 06/2020, p. 6 (<https://www.bruegel.org/wp-content/uploads/2020/11/WP-2020-06-1.pdf>).



entering into new markets.<sup>288</sup> However, the personalisation options can also reinforce the ecosystem's lock-in effect. Furthermore, the data can hold enormous potential to prevent innovative offers from competitors and thus further solidify the company's significance across markets.<sup>289</sup>

(474) Access to data relevant for competition can also become highly significant for monetisation through online advertising: access to data across markets allows targeted advertising to be optimised across products, providing the core form of financing for the entire ecosystem. Thus, in the event of user overlaps between different services, the corresponding user data can be combined and the extensive user profiles thus obtained can be used for targeted advertising. Targeting can be continuously refined and in turn generate new data about the user.<sup>290</sup> In addition, financing by means of online advertising makes it possible to offer or continuously expand and cross-finance the portfolio of *free* services, the data of which thus become, to a certain extent, the economic consideration for the use of the service.<sup>291</sup> This facilitates market entry with products that can be financed through online advertising, since with a particularly large amount of data personalised advertising does not require a particularly wide reach.

### **b) Meta's superior access to data relevant for competition**

(475) Accordingly, access to data relevant for competition forms another central component of Meta's paramount significance for competition across markets.

(476) Decisive for this is Meta's access to a large set of data generated from various sources and in very good quality, which will continue to increase in the future (see aa)). The superior access to data is very valuable to Meta and it is of great importance for Meta's offer due to its great competitive relevance (see bb)).

### **aa) Very extensive set of data of very good quality**

(477) Meta has superior access to data relevant for competition, in particular to the personal data of its users. The scope of the data base is correspondingly high in view of the large user base on Meta's services – especially *Facebook*, *Instagram*, *WhatsApp* and *Facebook Messenger*. But the level of detail of the data is also very high due to the many types of data and sources available to Meta.

(478) Access to and the processing of large amounts of data are often considered under the term

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<sup>288</sup> Cf. BMWi, A New Competition Framework for the Digital Economy – Report of the Competition Law 4.0 Commission, 2019, p. 18.

<sup>289</sup> Government explanatory memorandum to the 10th amendment to the GWB, see Bundestag printed paper 19/23492, p. 76.

<sup>290</sup> Cf. BKartA, decision of 6 February 2019 – B6-22/16 – *Facebook*, paras. 482, 488, 492.

<sup>291</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 62.

“Big Data”. In this regard, five aspects play a central role in illustrating the various relevant dimensions of access to data: volume, variety, veracity, velocity and value (so-called “five Vs of Big Data”).<sup>292</sup> This refers to the following aspects of data access and data processing:

- **Volume:** The amount of data an undertaking has (see (1)).
- **Variety:** The variety of data types and sources from which an undertaking obtains data. Both redundancy of data sources and the possibilities of combining data from different sources play a role here (see (2)).
- **Veracity:** The accuracy or veracity of the data, which in this respect concerns the quality of the data in terms of authenticity and longevity (see (3)).
- **Velocity:** The speed at which data can be collected, but also processed. In this respect, both the increasing volumes of data collected by an undertaking as well as the technological changes in the possibility to process data play an important role (see (4) below).
- **Value:** The value of the data that results from the usability or the possible applications of the data. If data access is viewed from a competitive perspective, the value results precisely from the possibility to use the data in competition (see bb)).

### (1) Large amount of data (volume)

- (479) Meta has a large volume of data from highly different sources. In principle, data volumes can be classified in terms of data size (in terabytes) or number of data elements. However, only limited conclusions can be drawn from this information, if it is available or identifiable at all, about the actual amount of data relevant for competition. This is because data size does not necessarily correlate with the information that is relevant for competition in particular. For example, a video of several gigabytes in size may contain less information than a file just of a few kilobytes in size that contains personal data such as the date of birth, place of residence, occupation, income and marital status of a person. In the present context, there is no useful type of measurement to evaluate the information content of data or data volumes.<sup>293</sup>
- (480) However, by way of approximation, the number of active users, i.e., users who regularly use Meta’s services and thus regularly provide data to Meta, as well as the data-relevant intensity of use, can be used to illustrate the large amount of data to which Meta has access.

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<sup>292</sup> In the past, the EU Commission has used the dimensions variety, velocity, volume and value, see for example para. 317 in COMP/M.8788 – *Apple/Shazam*. In the literature, various characterisations of the term “Big Data” can be found, which usually include at least the aspects of volume, variety and velocity, but sometimes also several other dimensions, including very often value and veracity.

<sup>293</sup> Although entropy is a physical property to measure the information content of data, it cannot be meaningfully used or operationalised for data types as diverse as profile information, text, video, and images.

- (481) According to the “Facebook Reports Third Quarter 2021 Results”, the *Facebook* social network had an average of 1.93 billion daily active users (DAUs) worldwide in the third quarter of 2021, and this number increased by 6% year-over-year. The social network had 2.91 billion monthly active users (MAUs) worldwide in the third quarter of 2021, which adds up to an increase of 6% year-over-year. If the user numbers are added up across all Meta offers (Facebook Family) – adjusted with regard to double counts – the number of family daily active people (DAP) in the third quarter of 2021 averaged 2.81 billion and the number of family monthly active people (MAP) 3.58 billion. Both figures increased by 11% (DAP) and 12% (MAP) in a year-on-year comparison.<sup>294</sup>
- (482) The fact that Meta has a very large volume of data is already demonstrated by the very high number of active users. In addition, a (more or less) large amount of individual data is collected from every single active user by using Meta services. The extent of these individual data volumes depends on the usage behaviour of the individual users: the more active a user is on Meta’s services, the larger the associated individual data volume. The two services *Facebook* and *Instagram* in particular are characterised by intensive usage behaviour in terms of data disclosure. Users who tend to use these services for interactions obviously disclose information about their individual preferences by posting, commenting, sharing and liking individual content. Information can also be derived from usage behaviour about users who tend to consume content without interacting. For example, it can be recorded how long individual content is viewed or which content is skipped. Since a larger amount of (new) content is presented to the user on these two services in the respective feeds, users who tend to consume more rather than interact also provide Meta with relevant data. In addition, Meta also collects non-redundant or complementary individual data across the different services according to the different focuses of the services, which also contributes to a very large amount of data in the overall view.
- (483) The intensity of usage behaviour is, in turn, dependent on the number of connections among users, which are a central aspect of Meta’s services. This first holds true within the individual services offered by Meta. For example, the social network *Facebook* is characterised by connecting friends, which means that Meta not only has access to datasets of the individual users, but also to the connections of datasets between users who are friends. This enables Meta to draw conclusions about the users based on the usage behaviour of their friends and, in this respect, to generate additional information by linking the datasets. In particular, this also makes it possible to obtain information about users who tend to use the service less. The situation is similar with regard to *Instagram*, where users can follow other users. Here, too,

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Cf. [https://s21.q4cdn.com/399680738/files/doc\\_financials/2021/q3/FB-Earnings-Presentation-Q3-2021.pdf](https://s21.q4cdn.com/399680738/files/doc_financials/2021/q3/FB-Earnings-Presentation-Q3-2021.pdf) and <https://investor.fb.com/investor-news/press-release-details/2021/Facebook-Reports-Third-Quarter-2021-Results/default.aspx> .

Meta obtains additional data precisely by linking the datasets of individual users.

- (484) Furthermore, Meta is also able to identify users across services, allowing Meta to use the connections between users across all services, but especially between *Facebook* and *Instagram*, in terms of data. In this respect, in order to consider the amount of data to which Meta has access, in addition to the high number of users of the Meta services themselves, it is of particular importance that the number of connections between these users increases disproportionately with the number of users.<sup>295</sup> Thus, increasing user numbers lead to a disproportionate increase in the amount of data that Meta can access.
- (485) *Facebook* itself has addressed the particular importance of the number of connections between users. According to a blog entry at [research.fb.com](https://research.fb.com), the average number of connections between any two users worldwide was calculated for the years 2011 and 2016 on the basis of their social network data.<sup>296</sup> The lower this average number of connections is, the more strongly the users are connected or linked with each other.
- (486) In the post, *Facebook* came to the following conclusion for 2016: “[W]e’ve crunched the Facebook friend graph and determined that the number is 3.57. Each person in the world (at least among the 1.59 billion people active on Facebook) is connected to every other person by an average of three and a half other people.”<sup>297</sup> *Facebook* also compared this result to the 2011 calculation: “Our collective “degrees of separation” have shrunk over the past five years. In 2011, researchers at Cornell, the Università degli Studi di Milano, and Facebook computed the average across the 721 million people using the site then, and found that it was 3.74. Now, with twice as many people using the site, we’ve grown more interconnected, thus shortening the distance between any two people in the world.”<sup>298</sup>
- (487) In addition, the direct and indirect network effects, which play an important role in the services offered by *Facebook*, lead to a self-reinforcing effect because the data base improves as the user base increases, with which the benefit of the network for the individual user is basically increased even further. This, in turn, attracts new users.<sup>299</sup> The further increase in the network’s benefit reinforces the lock-in effect created by the direct network effects and the incompatibility.

### (2) Numerous data types and sources (variety)

- (488) In addition to the large volumes of data to which Meta has access, due to the very large number

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<sup>295</sup> Cf. Bundeskartellamt, Working Paper Market Power of Platforms and Networks, June 2016, pp. 108 et seq.

<sup>296</sup> Example: if person A knows person B, B knows C and C knows D, then persons A and D are connected via two persons.

<sup>297</sup> Cf. <https://research.fb.com/blog/2016/02/three-and-a-half-degrees-of-separation/>.

<sup>298</sup> Cf. <https://research.fb.com/blog/2016/02/three-and-a-half-degrees-of-separation/>.

<sup>299</sup> Cf. Joint paper of the Autorité de la concurrence and the Bundeskartellamt on data and its implications for competition law, May 2016, p. 13.

of active users as well as their intensity of service use, Meta also has access to a variety of data sources. These data sources can be subdivided according to the origin of the data and are presented accordingly by Meta in the data policy. In this context, the data policy specifies the types of data that are provided by the users themselves, in particular via the use of the *Facebook*, *Instagram*, *WhatsApp* and *Messenger* services (see (a)), the data that are collected as device data (see (b)) and the data that are collected via third parties (see (c)). These data, which originate from the use of the individual services, can also be linked (see (d)).

(489) The large number of data types can be exemplified by the extensive list of data categories covered, which can be viewed individually by *Facebook* users.<sup>300</sup>

### (a) Data provided by users

(490) The amount of data provided by users becomes particularly clear on *Facebook*, as the social network offers extensive options for users to flesh out their own profile with personal information. In this way, Meta accesses the data of *Facebook* users that are generated directly during the use of the social network itself. By registering, logging in, and using *Facebook*'s homepage on a mobile or stationary device, users already generate a large amount of data about themselves that *Facebook* can access. As shown, users actively provide data on their actual name (real name policy), age, gender, relationship status, place of residence, education, occupation, employer, interests and hobbies in order to create their profile. In doing so, users have a high incentive to provide both comprehensive and correct information, since the main purpose of using the social network is precisely to find and interact with certain other users as well as to present oneself. Finding other users is made much easier by providing comprehensive and correct profile information (e.g., real names). Through the activities on the social network via posts and other interactions, Meta gains information about the people with whom the user communicates and the topics in which the user is interested.

(491) *Instagram*, *WhatsApp* and *Messenger* also allow users to store personal information that, while not comparable in scope to a *Facebook* profile, at least includes a brief self-description, a profile picture, and status pictures. In addition, the users of these services also disclose information by way of their usage behaviour. *Instagram*, for example, allows users to post their own content and respond to the content of others. Even on *WhatsApp* and *Messenger*, personal information can be revealed by way of interactions such as sharing content and setting up and using group functionalities.

(492) Not only the large volume, but also the spectrum of data provided by users when using the services can be seen from the joint data policy for *Facebook*, *Instagram*, and *Messenger*, which

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<sup>300</sup> See "Which categories of my *Facebook* data are available to me?" at <https://www.facebook.com/help/930396167085762>.

generically describes user-provided data generated and processed by the services.<sup>301</sup>

- (493) “We collect the content, communications and other information you provide when you use our Products, including when you sign up for an account, create or share content, and message or communicate with others. This can include information in or about the content you provide (like metadata), such as the location of a photo or the date a file was created. [...]

**Networks and connections.** We collect information about the people, accounts, hashtags and Facebook groups and Pages you are connected to and how you interact with them across our Products, such as people you communicate with the most or groups you are part of. We also collect contact information if you choose to upload, sync or import it from a device (such as an address book or call log or SMS log history) [...]

**Your usage.** We collect information about how you use our Products, such as the types of content you view or engage with; the features you use; the actions you take; the people or accounts you interact with; and the time, frequency and duration of your activities. [...]

**Information about transactions made on our Products.** If you use our Products for purchases or other financial transactions [...], we collect information about the purchase or transaction. [...]

**Things others do and information they provide about you.** We also receive and analyze content, communications and information that other people provide when they use our Products. This can include information about you, such as when others share or comment on a photo of you, send a message to you, or upload, sync or import your contact information.”

- (494) Meta also collects and processes data provided by users when using the WhatsApp service. In the privacy policy of the WhatsApp service, these data are described as follows:<sup>302</sup>

- (495) “**Your Account Information.** You must provide your mobile phone number and basic information (including a profile name of your choice) to create a WhatsApp account. [...]

**Your Messages.** We do not retain your messages in the ordinary course of providing our Services to you. Instead, your messages are stored on your device and not typically stored on our servers. Once your messages are delivered, they are deleted from our servers. The following scenarios describe circumstances where we may store your messages in the course of delivering them: Undelivered Messages. [...]. Media Forwarding. [...].

**Your Connections.** You can use the contact upload feature and provide us, if permitted by applicable laws, with the phone numbers in your address book on a regular basis, including those of users of our Services and your other contacts. If any of your contacts aren’t yet using our Services, we’ll manage this information for you in a way that ensures those contacts cannot be identified by us. [...]

**Transactions And Payments Data.** If you use our payments services, or use our Services meant for purchases or other financial transactions, we process additional information about you, including payment account and transaction information. [...]

**Customer Support And Other Communications.** When you contact us for customer support or otherwise communicate with us, you may provide us with information related to your use of our Services, [...].”

- (496) These lists, which stem from the data policy, already illustrate the large volume of data provided by users, which can additionally be linked between users and services, thereby further

<sup>301</sup> Cf. <https://de-de.facebook.com/policy.php>.

<sup>302</sup> Cf. <https://www.whatsapp.com/legal/privacy-policy-eea>.

increasing the volume of datasets.

**(b) Device data**

- (497) Especially when using the mobile applications for the Meta services, but also when using the services on stationary devices, the users' device data are collected as well. This enables Meta to identify a user on different devices and to link the data across devices, even if the user is not logged in. In addition, the location function for mobile use and technical possibilities to geographically assign IP addresses enable Meta to track the user's whereabouts and routes across services and devices.
- (498) The large scope of device data collected via the end device used can be seen from the data policies, which generically describe the device data collected. The joint data policy for *Facebook*, *Instagram* and *Facebook Messenger* lists the following device data that are collected by Meta (in excerpts):<sup>303</sup>
- (499) "As described below, we collect information from and about the computers, phones, connected TVs and other web-connected devices you use that integrate with our Products, and we combine this information across different devices you use. [...] Information we obtain from these devices includes:
- Device attributes:** information such as the operating system, hardware and software versions, battery level, [...], browser type, app and file names and types, and plugins.  
**Device operations:** information about operations and behaviors performed on the device, [...]  
**Identifiers:** unique identifiers, device IDs, and other identifiers, such as from games, apps or accounts you use, and Family Device IDs [...].  
**Device signals:** Bluetooth signals, and information about nearby Wi-Fi access points, beacons, and cell towers.  
**Data from device settings:** information you allow us to receive through device settings you turn on, [...].  
**Network and connections:** information such as the name of your mobile operator or ISP, language, time zone, mobile phone number, IP address, [...]  
**Cookie data:** data from cookies stored on your device, including cookie IDs and settings. [...]"
- (500) *WhatsApp's* privacy policy describes the following collected device data (in excerpts):<sup>304</sup>
- (501) "**Usage And Log Information.** We collect information about your activity on our Services, like service-related, diagnostic, and performance information. This includes information about your activity [...], log files, and diagnostic, crash, website, and performance logs and reports. [...]"
- (502) **Device And Connection Information.** We collect device and connection-specific information when you install, access, or use our Services. This includes information such as hardware model, operating system information, battery level, signal strength, app version, browser information, mobile network, connection information (including phone number, mobile operator

<sup>303</sup> Cf. <https://de-de.facebook.com/policy.php>.

<sup>304</sup> Cf. <https://www.whatsapp.com/legal/privacy-policy-eea>.

or ISP), language and time zone, IP address, device operations information, and identifiers (including identifiers unique to Meta Company Products associated with the same device or account).

- (503) **Location Information.** We collect and use precise location information from your device with your permission when you choose to use location-related features, like when you decide to share your location with your contacts or view locations nearby or locations others have shared with you. [...] Even if you do not use our location-related features, we use IP addresses and other information like phone number area codes to estimate your general location [...].
- (504) **Cookies.** We use cookies to operate and provide our Services, [...].”
- (505) Basically, the collection of device data may be technically required and necessary to use the services offered. For example, information about the current location is required for content that is displayed to users with reference to their location, or technical information about the device is used to display content adapted to the device.<sup>305</sup> Nevertheless, the scope of device data collected by apps and programs differs significantly in some cases, suggesting that, from a purely technical point of view, there are also less data-intensive ways of using device data. In this regard, a blog post by Clario ([www.clario.co](http://www.clario.co)), a cybersecurity vendor, analysed which user data and device data the most popular apps can collect.<sup>306</sup> In this regard, Clario concluded that it is *Facebook* and *Instagram* which access the most personal data. This is illustrated as follows:

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<sup>305</sup> For example, information about the operating system used, the graphics resolution and about the browser potentially used are utilised for the adapted page design, which differs significantly, depending on whether a PC or a smartphone with a significantly smaller display is used.

<sup>306</sup> Cf. <https://clario.co/blog/which-company-uses-most-data/>.





(506) Based on this analysis, by accessing a large number of different data types and sources, *Facebook* has access to 79.49% and *Instagram* to 69.23% of the users' personal data assessed by Clario. According to this analysis, no other app captures a broader range of data types or sources than these two Meta services.

**(c) Data collected from third parties**

(507) Meta also receives detailed data about the behaviour of its users from various types of third-party providers. In particular, through the integration of interfaces (APIs) associated with the placement of cookies on users' browsers, Meta can track the behaviour of users on these sites, even if they are not logged in or registered with a Meta service. In particular, the social plugins (e.g. "Like" button and "Share" button) and the "Facebook login" are integrated and used million times<sup>307</sup> on third-party websites or apps in Germany. The measurement and analysis tools for third-party companies also represent an important source of data, in which, based on the combination of the integrated interface and cookies, the IP address, browser type, URL of the websites visited and the time of the visit, as well as other information are transmitted to the Meta servers. The ID integrated in the cookies enables the data to be assigned to the Meta services' user profile. Thus, the cookies contain, among other things, the user's specific ID, the browser identifier and timestamp, as well as various other data. In the case of mobile apps, users are also identified by reading the operating system's advertising ID without using any additional cookies. Therefore, Meta receives additional information, such as the app ID and metadata such as the operating system used, name and version of the app used, etc.

(508) Advertisers are another source of data for Meta. In order to specify target groups ("custom audiences", "Facebook Offline Events") advertisers are required to upload "hashed" customer data, which are checked against Meta data. For this purpose, advertisers use their own customer list with data they have generated themselves such as first name, last name, phone number, email addresses, city, country, date of birth, age, gender, purchase behaviour, purchase amount and various IDs of their customers.

(509) In the joint data policy for the services *Facebook*, *Instagram* and *Facebook Messenger*, details are provided on information from advertisers, app developers and publishers, referred to by Meta as "partners"; apart from that, Meta names "third-party data providers" from whom Meta receives information not only about users' actions online but also offline.<sup>308</sup>

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<sup>307</sup> Exact data are a business secret, cf. Facebook, response E.5 to the request for information of 23 May 2016, B6-22/16 p. 754 of the file.

<sup>308</sup> Cf. <https://de-de.facebook.com/policy.php>.

- (510) “Advertisers, app developers, and publishers can send us information through Meta Business Tools they use, including our social plug-ins (such as the Like button), Facebook Login, our APIs and SDKs, or the Meta pixel. These partners provide information about your activities off of our Products — including information about your device, websites you visit, purchases you make, the ads you see, and how you use their services — whether or not you have an account or are logged into our Products. [...] We also receive information about your online and offline actions and purchases from third-party data providers who have the rights to provide us with your information. [...]”
- (511) In comparison, according to *WhatsApp’s* privacy policy the scope of data collected via third parties is narrower:<sup>309</sup>
- (512) “Information Others Provide About You. We receive information about you from other users. [...]

**Businesses On WhatsApp.** Businesses you interact with using our Services may provide us with information about their interactions with you. [...]

**Third-Party Service Providers.** We work with third-party service providers and other Meta Companies to help us operate, provide, improve, understand, customize, support, and market our Services. [...] These companies may provide us with information about you in certain circumstances; for example, app stores may provide us with reports to help us diagnose and fix service issues. [...]

**Third-Party Services.** We allow you to use our Services in connection with third-party services and Meta Company Products. If you use our Services with such third-party services or Meta Company Products, we may receive information about you from them; [...]

**(d) Merging data**

- (513) An essential aspect when considering the multitude of data sources that Meta can access is the linking of the datasets. In this regard, different aspects are relevant. First of all, when a user uses the individual services, it is technically possible to link a user’s usage behaviour or rather the data collected during the use across devices. The registration requirement allows Meta to track a registered user across devices and to identify the devices from which the social network is used.
- (514) In addition, the data of a specific service can be linked to an individual user, so that the data of the individual services are combined into a comprehensive dataset via a unique identifier that uniquely identifies the individual user. This creates a comprehensive dataset for each individual user, combining all the data from the services themselves, device data and third-party data in particular. Since the usage behaviour for the services can vary and different data are provided for the individual services, combining these data increases the informational content of the entire dataset for an individual user. This can be illustrated with the following example: if one dataset includes spendings on a particular transaction and another dataset

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<sup>309</sup> Cf. <https://www.whatsapp.com/legal/privacy-policy-eea>

includes the age of users, then each dataset has value on its own. However, if both datasets can be combined via a unique ID, this connection creates an additional dataset that connects the two variables and, thus, allows the data to be further analysed, e.g., with regard to the correlation of the two variables. By analysing this, further patterns emerge that could not have been derived from the two separate datasets.

(515) It is a unique characteristic of data that their usability and their value do not result from their pure existence, but rather from their combination and their linking to a pattern. As a result, the value and the possibility of gaining knowledge from each individual data element increases in accordance with the quantity of other data elements available.<sup>310</sup> Algorithms can be used to predict the behaviour or interests of a user. With the increasing quantity of available data (in relation to a user, but also in relation to the entire community) it is possible to make even more precise and accurate predictions. Thus, the advantage increases continuously with larger amounts of available data, especially from different sources.

(516) Meta also explicitly points out that it combines the datasets from the individual services:<sup>311</sup>

(517) “*Facebook* and *Instagram* share infrastructure, systems and technology with other Meta Companies (which include *WhatsApp* and *Oculus*) to provide an innovative, relevant, consistent and safe experience across all Meta Company Products you use. We also process information about you across the Meta Companies for these purposes, as permitted by applicable law and in accordance with their terms and policies. For example, we process information from *WhatsApp* about accounts sending spam on its service so we can take appropriate action against those accounts on *Facebook*, *Instagram* or *Messenger*. We also work to understand how people use and interact with Meta Company Products, such as understanding the number of unique users on different Meta Company Products.”

**(3) Quality and truthfulness of the data (veracity)**

(518) Meta has access to data of a very special quality. This already results from the interplay described above between the very large number of active users, which leads to a very large amount of data, and the large number of data sources, which allows the collection of various types of data across devices and services. The multidimensional datasets resulting from this also achieve a particularly high data quality due to the possibilities of combining the data. As a result, Meta also has superior access to data in terms of data quality, which is of particular importance both for the personalisation of its own products and for the advertising industry.

(519) Ensuring these high-quality data as well as their veracity in terms of content is one of the central areas of activity in data collection and processing. This is because the usability of these

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<sup>310</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 62.

<sup>311</sup> Cf. <https://de-de.facebook.com/policy.php>.

data is closely linked to the quality of the data. In principle, even if a large amount of data is available from multiple sources, there is the risk that this extensive volume of data will be of little use if the data themselves are incorrect, contradictory or inconsistent. However, the datasets captured by Meta are characterised by high data quality, which is the result of several factors. It should be noted that the quality can be ensured partly by the behaviour of users themselves and partly by Meta's data processing.

(520) In principle, the origin and the degree of immediacy play an important role, since the authenticity of the data is higher the more directly the data are generated from original user information. Therefore, Meta has a clear advantage, since large volumes of data are collected directly from users via the services offered, so that Meta, for example, is able to determine the individual variables and also their aggregation and storage in databases. Additionally, Meta has the technical possibilities of finding out or deriving further information from the available data.

**(a) Authenticity**

(521) The data collected by Meta, especially on the social network *Facebook*, are characterised by a high degree of authenticity. To a certain extent, this results from the nature of social networks and services. For example, from the user's point of view, the core idea of a social network is to share one's personal life with family and friends. This means, first, that users have a high incentive to provide truthful information about themselves. After all, discoverability as the first step in interacting with friends on a social network or service depends on users being able to be found via their name, but also via information about their hometown, current place of residence, place of education or employer. Second, as users continue to use social networks and services, they continue to have an incentive to share authentic information in order to let friends participate in their own lives. This can be done, for example, by reporting on personal events or sharing current locations (e.g., holiday trips or attending events). Sharing third-party content also shows a certain proximity to this content and, in this respect, refines the image that friends of these users receive overall.

(522) Another aspect related to the authenticity of the data is the method used by Meta to steer the users' behaviour toward increased data disclosure. This happens in a variety of ways. For example, users receive notifications if the information in their own user profile has not been filled in completely. Additionally, when Facebook.com is called up, an input field with the text "What's on your mind, [user name]?" appears in a prominent position to encourage the user to provide up-to-date information.

(523) Likes, reactions and comments also play an important role as feedback for users because they signal that the published content is of interest and users are encouraged to remain active and continue to post (personal) content on Facebook and Instagram.

**(b) Algorithms to analyse the content**

- (524) Meta has been developing algorithms for some time, in particular using machine-learning methods, to analyse the content users publish on Meta services in more detail. This gives Meta the opportunity to examine the textual content of a post, for example.
- (525) For the analysis, Meta has created DeepText, a natural language processing system to understand texts almost as correctly as humans, process several thousand posts per second, and support more than 20 languages. The context is also taken into account in order to correctly capture the content in the case of ambiguous terms.<sup>312</sup>
- (526) “Text understanding includes multiple tasks, such as general classification to determine what a post is about – basketball, for example – and recognition of entities, like the names of players, stats from a game, and other meaningful information. But to get closer to how humans understand text, we need to teach the computer to understand things like slang and word-sense disambiguation. As an example, if someone says, “I like blackberry,” does that mean the fruit or the device?”
- (527) DeepText uses so-called Deep Learning to understand the texts and makes use of recurrent and convolutional neural networks. The actual machine learning can take place at both the word and character level. To recognise the structure of texts, Facebook relies on a combination of supervised and unsupervised learning.<sup>313</sup> This is intended to largely avoid the use of data that have been annotated by humans in a very time-intensive manner. The trained models can be rolled out on Facebook’s infrastructure at the push of a button.<sup>314</sup> The idea for DeepText is based on internal research results developed by Facebook AI research employees.<sup>315</sup>
- (528) Meta is trying to use this technology to understand the actual content of a message and even recognise certain intentions of its users. For example, the bots in *Facebook Messenger* can react to the user’s input, and after a post, the social network could also suggest tools to the user that can be used to implement the user’s intended action.
- (529) For the use and further development of DeepText, access to large amounts of data is important in order to be able to train the machine-learning model. In this respect, Meta benefits from the already existing data volumes and the large number of data sources:

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<sup>312</sup> For an outline of DeepText, see <https://engineering.fb.com/2016/06/01/core-data/introducing-deeptext-facebook-s-text-understanding-engine/>.

<sup>313</sup> For explanations and definitions, see “Joint study on “algorithms and competition” of the French Autorité de la concurrence and the German Bundeskartellamt”, pp. 9 et seqq., available [at https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Berichte/Algorithmen\\_and\\_Competition\\_Working-Paper.html](https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Berichte/Algorithmen_and_Competition_Working-Paper.html).

<sup>314</sup> Cf. <https://www.golem.de/news/deep-text-facebooks-ki-liest-nachrichten-der-nutzer-1606-121262.html>.

<sup>315</sup> Cf. <https://engineering.fb.com/2016/06/01/core-data/introducing-deeptext-facebook-s-text-understanding-engine/>.

- (530) “While applying deep learning techniques to text understanding will continue to enhance Facebook products and experiences, the reverse is also true. The unstructured data on Facebook presents a unique opportunity for text understanding systems to learn automatically on language as it is naturally used by people across multiple languages, which will further advance the state of the art in natural language processing.”<sup>316</sup>
- (531) In addition to its application in text recognition, Meta also uses machine learning to analyse photos and other graphical representations to determine the displayed content. According to Meta, two billion photos are posted to Meta services every day. These images are systematically analysed to generate alternative text, in addition to the image itself, which describes the content of the image as suspected by the algorithm.<sup>317</sup> The methods and algorithms used for this were developed by *Facebook* itself and trained with data from the Meta services.

**(c) Data derived from usage behaviour**

- (532) By following others on *Instagram* or joining groups (regional or thematic groups) on *Facebook*, personal attitudes and interests are at least indirectly revealed – even in the case of users who do not otherwise actively use these services. Likewise, algorithmic analyses can also be used to derive further information about users from their usage behaviour. For example, it matters which content a user shares, which content a user likes, and which content a user has reacted to or commented on. Further information can be derived from these interactions, also and especially through the connections to other users.
- (533) This information derived in this way can also be of high quality, since the interests and attitudes of the user are ultimately also reflected in other people’s content to which the user reacts. This can even lead to the (deliberate or involuntary) disclosure of very personal information.

**(d) Temporal importance of the data**

- (534) The personal data of users, which are disclosed in particular via *Facebook*, are, in part, also characterised by a longevity that, for example, does not exist in the case of search query data. Long lived data include personal data that remain unchanged over time, such as date and place of birth or educational institutions attended, or data that change rather seldom, such as place of residence or current employer. However, data that change more frequently can also lead to datasets that are themselves long lived. For example, movement patterns can result from location data enabling conclusions to be drawn as to the place of residence or employer, for example.

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<sup>316</sup> Cf. <https://engineering.fb.com/2016/06/01/core-data/introducing-deeptext-facebook-s-text-understanding-engine/>.

<sup>317</sup> Cf. <https://tech.fb.com/using-artificial-intelligence-to-help-blind-people-see-facebook/>.

(535) However, qualitatively valuable data also result from rather short-lived information, for example the current location. In particular, the continuous active use of the services offered by Meta by a large number of users results in a high level of data granularity in temporal aspects, so that the only temporary significance of certain information does not prevent a systematic use of corresponding data and, thus, enables Meta to capture patterns based on rather short-lived data.

**(4) Constantly increasing data volumes (velocity)**

(536) The already outstanding access to data relevant for competition will continue to increase in the future, as both the functioning of social media per se and Meta’s active activities will continue to increase both the amount of data and their quality.

(537) Social media – and with regard to Meta services, *Facebook* and *Instagram* in particular – are characterised by strong direct and indirect network effects. Regarding the existing and growing user base, the network effects have a self-reinforcing impact that can ensure and expand the attractiveness of the services in the future. An increase in the number of users, which can be seen particularly with regard to *Instagram*, also has a positive effect on the existing user base due to the network effects. Additionally, the network effects can strengthen the intensity of activity and, thus, lead to a further increase in data flows.

(538) In addition, social media regularly have incentive effects that lead to a self-reinforcement of user activities and, thus, to the disclosure of data. Central elements here are the various feedback options on content that users publish, i.e. likes, reactions and comments, as well as the number of subscribers. These different types of feedback often function as a reward system for users and lead to users having an incentive to publish more content in order to continue receiving positive feedback for it. Because of this, there are many tips and advice on the internet for social media users to increase the number of positive feedbacks. Overall, the incentive effect also leads to a self-reinforcing effect in terms of user activity and, thus, data disclosure. This self-reinforcing effect is more pronounced the larger the user base.

(539) In this context, it also matters that the Meta services only offer a positive feedback option. For example, both Facebook and Instagram have always offered only the option to “Like” content; there has never been a “Dislike” button.<sup>318</sup> Negative feedback, especially in larger quantities, can lead to a decrease in the user’s activities.

(540) In addition, Meta is actively working on the development of further data sources, which will

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<sup>318</sup> *YouTube* was different, offering both a positive (thumbs up) and negative (thumbs down) feedback option until now. As of late, however, the number of negative feedback is no longer publicly displayed on *YouTube*. See <https://www.heise.de/news/Daumen-runter-Youtube-macht-den-Dislike-Zaehler-unsichtbar-6264568.html>.



lead to a further expansion of the database in the future. This initially includes expanding the scope of existing services to include new functions. This is intended to lead to a more intensive use of the services.<sup>319</sup> In addition, Meta is also trying to introduce new target groups to its services in order to tie users to these services at an early stage. For example, in 2017 Meta launched the app “*Messenger Kids*”, which introduces children to the use of *Facebook Messenger* at an early age. The app itself is not funded by advertising, but serves to engage children at an early stage as future users of other Meta services. Meta is currently working on a standalone version of *Instagram* for a young target group under the age of 13.<sup>320</sup> Here again, the focus is not on monetisation by way of the service, but on introducing the target group to Meta services and tying them to the services for the future, which ultimately leads to broadening the user base.<sup>321</sup>

- (541) The purchase of Giphy<sup>322</sup> also indicates Meta’s interest in gaining additional users for its own services and increasing user activity through new functionalities such as the GIFs provided by Giphy. In addition to the associated increase in data volumes due to the number and activity of users alone, it presumably plays a role that Giphy itself can provide access to additional data sources to which Meta has not had access yet.
- (542) Additionally, Meta’s efforts to expand the use of the already existing and extensive database through its own research activities have to be considered. This is evident from the intensive research activities that are clearly documented on Meta’s own website. On the one hand, these deal with questions relating to self-learning algorithms, which are intended to enable the discovery of further information and patterns in the datasets and thus to get more out of the existing data for competitive use. On the other hand, some research projects aim to develop more efficient algorithms that continue to be able to analyse and utilise the data in a time-efficient manner, even with constantly growing data volumes. This enables the particularly important processing of extensive and further increasing data volumes.

**bb) Central element for Meta’s offers in a competitive environment (value)**

- (543) Meta’s data sources are of great competitive relevance because all products offered in the area of social media are driven in particular by these personal data and because the algorithms used for interaction ultimately turn the products into data offers to the user. Superior access to these data enables increased personalisation across all services (see (1) for more details). In addition, data sources secure the financing through advertising, which can be highly targeted

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<sup>319</sup> Most recently introducing collabs on *Instagram*, see <https://www.business-punk.com/2021/10/instagram-this-new-function-makes-users-co-creators/>.

<sup>320</sup> Cf. <https://www.heise.de/news/Facebook-plant-Instagram-fuer-Kids-5993486.html>.

<sup>321</sup> Cf. <https://www.buzzfeednews.com/article/ryanmac/facebook-instagram-for-children-under-13>. The project is currently on hold following protests, cf. <https://about.instagram.com/de-en/blog/announcements/pausing-instagram-kids>.

<sup>322</sup> Cf. <https://about.fb.com/news/2020/05/welcome-giphy/>.

and continuously refined through the use of data, and in turn generates new data about the user (on this, see (2)).

- (544) Given the large amount, high quality, and different sources of data to which Meta has access, it is particularly important that the usability of the data and their value evolve into patterns by combining and linking the data. The value and potential insights gathered from each data element increase as the amount of other data available increases. The user contributes to a database created and owned by Meta. The database is not available to users, not even to the extent that the data result from their own internet use. Therefore, users cannot grant third parties equal access to these data.<sup>323</sup>
- (545) Competitors are thus largely unable to duplicate the data collection. This is especially true for smaller competitors that have a limited ability to combine data from different relevant sources in an ecosystem. It is true that every internet company uses tracking technologies and acquires data from third-party providers. However, the sources of data opened up to Meta from the social network's user base as well as from the group's own services are not comparable to those of its competitors. According to the Decision Division's investigations, the competitors, with the exception of Google, cannot combine data from the group's own services in the same way and to the same extent.

**(1) Increased personalisation and improvement of all services**

- (546) The social media services offered by Meta are based on user interaction. Depending on the positioning of each service, the nature of the interaction can be different, but in any event, the connections between users enabled by the respective service play an essential role for the interaction. On *Facebook* and *Instagram* in particular, the connections between users – in the form of friendships, subscribers, or group memberships – result in a lot of content that a user can receive from connected other users. In this respect, a key feature of social media is the personalisation of this content so that users are shown the most relevant content each time they use the service. On *Facebook*, this personalised content, sorted by relevance, is displayed in the newsfeed, and on *Instagram*, it is displayed in the feed. The newsfeed is a personalised stream of content and activities related to the user. In order to have the most personalised user experience possible, users are primarily shown the content that is most relevant to them when scrolling through the newsfeed. In addition, users are also presented with other recommended content the relevance of which is personalised as well (on Instagram, for example, as Explore and Reels).
- (547) Against the background of the very high and increasing numbers of users on Meta services, access to and the processing of data play a key role for personalising the services by sorting

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<sup>323</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 62.

the content in the respective newsfeed.

- (548) The personal data are first used for personalised content in the newsfeed. To ensure this, all posts are ranked and pre-sorted by an algorithm. For continuous improvement, the newsfeed algorithm is subject to a constant complex process of adaptation and modification based on various influencing factors and the data collected. The algorithm calculates a score for each individual user and each possible post for the newsfeed based on all factors that have a positive or negative influence on the presumed relevance of a post. Based on this, the content is sorted in the personal newsfeed.<sup>324</sup>
- (549) Three of the key factors for the score are affinity, weight and decay.<sup>325</sup> Affinity refers to the user's connection to the person acting. It is determined on the basis of the interaction with the respective user and its posts. Indicators include contact in the form of posts to the timeline, likes, comments, mutual tags, page visits, etc. The extent to which users' interests, friends and action patterns overlap is relevant, too. Weight means the importance of the respective post from the user's point of view. The basis of the assessment is the interaction of others with the post through clicks, likes, shares, comments and even the content of the interactions. Personal factors such as the relevance of the people who interacted with the post also play a role, as do click/like or click/share rates. The latter have a negative influence on relevance and, among many other factors, are intended to counteract the spread of spam and click baits – which are intended to arouse the curiosity of users and entice them to click via particularly lurid, possibly also misleading headlines or images. On the other hand, content is given greater weight if other people (friends or third parties) have also shared the same content. Decay means the expiration time of a post. Newer posts are considered potentially more interesting than older ones. However, the extent to which the post is only interesting in the current situation or also remains relevant in the long term is also taken into account. This is determined, among other things, on the basis of the reaction (short-term and intense or long-term and consistent). The type of content is also important, i.e. whether it is an image, video, text, link, etc. If it is found that a user reacts intensively to images, but rarely clicks on links, then images seem to be more interesting to this user and are potentially ranked higher.
- (550) The list of influencing factors can be extended arbitrarily. In addition to the user's own behaviour, the behaviour of the users posting and interacting with the content is also very important. Interactions of people who use *Facebook* rather rarely are potentially more relevant than those of "power users". In addition to these factors, non-behavioural factors also play a role, such as the quality of the internet connection. *Facebook's* orientation and company policy

<sup>324</sup>

Cf. presentation at <https://engineering.fb.com/2021/01/26/ml-applications/news-feed-ranking/>.

<sup>325</sup>

These main factors were central to the EdgeRank ranking algorithm (cf. <https://www.integr8.com/insights/kurz-praegnant-der-newsfeed-algorithmus-von-facebook/>) and continue to be of great importance for the machine learning-based algorithm now used by Meta (cf. <https://engineering.fb.com/2021/01/26/ml-applications/news-feed-ranking/>).

can also have an influence on the algorithm and thus on the position of posts in the newsfeed. For example, it is possible to control whether posts from friends (personal character) or from commercial sites (news character) should generally be ranked higher. In addition, the algorithm is used to regularly rank new *Facebook* functions higher and advertise them in this way.

- (551) The *Facebook* and *Instagram* services as social media, which are significantly driven by the personal data described above and use algorithms for interaction, ultimately turn the services into an offering of data to users. Superior access to these data enables the products to be constantly adapted by increasing personalisation. The “personalised user experience” is a key aspect of social media in particular. The extent of personalisation is a significant competitive parameter from the perspective of users and competitors.<sup>326</sup>
- (552) In addition, the personalisation of services represents an essential element of tying users to the services and locking them into the ecosystem. This is because personal data are an important element for user guidance within the ecosystem. Meta can use the personal data to provide targeted suggestions and content tailored to the user, for example, in the newsfeed of the services, and thus guide the user to its own services within the ecosystem. In this regard, according to the terms of service, all Meta products are explicitly designed to ensure that the user experience is “continuous and seamless” across the various products of the Meta companies used by the respective user. Meta explicitly notes that the company (“we”) collects data about the people with whom the user interacts on *Facebook* in order to make it easier for the user to connect with them on *Instagram* or *Facebook Messenger*.<sup>327</sup> Data thus play an essential role in shaping the ecosystem as a space in which users build their membership profiles (which are particularly comprehensive on *Facebook*), determine certain communication and consumption patterns, and develop reproducible behaviour and usage routines. In the process, usage habits can be guided and shaped by seamless product experiences tailored to the user. The “unified user experience” throughout the ecosystem which Meta envisages by using data, as well as the described form of user guidance, is highly suitable to reinforce the lock-in effect emanating from the considerable network effects and thus to keep users in the ecosystem.

This relevance is also clearly reflected in Meta’s data policy, which explains that all data processing of any kind of personal data from all sources is used for the efficiency and quality of all services offered by Meta.<sup>328</sup> Accordingly, all data form the basis of a personalised and consistent user experience, which is defined by users finding the people, groups, and content that are of personal interest to them. Meta claims that the personal data a user shares and the

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<sup>326</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 24, 86.

<sup>327</sup> Cf. the Facebook terms of service, available at <https://de-en.facebook.com/legal/terms>, item 1. “The services we provide”.

<sup>328</sup> Cf. <https://de-de.facebook.com/policy.php>.

information on individual user behaviour that Meta collects make it possible to give the user this personalised user experience. Explicitly, Meta also states in the data policy: **“Information across Meta Products and devices:** We connect information about your activities on different Meta Products and devices to provide a more tailored and consistent experience on all Meta Products you use, wherever you use them. For example, we can suggest that you join a group on Facebook that includes people you follow on Instagram or communicate with using Messenger. We can also make your experience more seamless, for example, by automatically filling in your registration information (such as your phone number) from one Meta Product when you sign up for an account on a different Product.”<sup>329</sup>

(553) It follows from the fact that the relevant products are data-driven products in the described sense that the ability to personalise services and to further develop functionalities and new services is an important parameter for the market success of competitors who want to offer services in social media to private users. Additionally, a lead of a provider in this regard is a significant barrier to market entry in the social media sector. In this respect, personal data in the form of user and device-related data from the use of the Meta services themselves and from sources outside these services are relevant.

**(2) Excellent basis for social media advertising**

(554) In addition, the data collected by Meta are used to offer targeted advertising. Since the services offered by Meta are ad-financed, advertising is by far the most important source of monetisation. For this reason, Meta has a strong incentive to use the comprehensive personal data as the basis for a particularly targeted and successful advertising offer.

(555) Any advertising is based on targeting and requires the most precise target group definition possible, which the advertiser sets for its product. The provider (or intermediary) of the advertising space regularly offers criteria according to which it can compile the individual users of the service who will be shown the advert. The more detailed information the provider has about its users, the more precise and small-scale targeting options can be offered. The personal data about the users determine the value of the online advertising for the respective advertiser and thus the price that can be achieved in the auction. The quality and quantity of user-related data are a decisive factor in determining the price to be paid by advertising partners.<sup>330</sup>

(556) In addition to the most precise individual data possible, for example on interests, the current location or other demographic characteristics of the user, the reliable assignment of these characteristics to the individual user and thus the reliable identification of the user at the

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<sup>329</sup> Cf. Facebook Data Policy, available at <https://de-de.facebook.com/about/privacy>, under “How do we use this information?”.

<sup>330</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 62.

moment of visiting the service and its web pages play a decisive role and have impact on the value. The more reliably users can be identified with their characteristics and the more granular the data reliably assigned to individual users, the more valuable the advertising space and the higher the bids of the advertisers will be.

- (557) A classic identification technique – as far as the user is not already logged in to the service used – is the storage of a cookie in the browser when a website is called up. Such a file contains, among other things, a number – a so-called ID – which identifies the visitor to the website and with which users are recognised once they visit the site again. Together with the cookies, the browsing behaviour of users can be monitored via (third-party) content embedded on websites – such as the like button, the pixel or other tools from *Facebook* or even a YouTube video. If this content is called up, a direct connection is established to the server from which the embedded content originates and user data including the cookie ID data are sent. If a provider can equip a large number of websites with its elements, it can track a user's movements on the internet in detail. If a cookie is not available, users can be identified based on other techniques. These include device fingerprinting, which is made possible by collecting a large amount of device-related data from the user when visiting a website or app.
- (558) Targeting is particularly important in the area of social media advertising. The starting point here is the – personalised – newsfeed into which the targeted advert is integrated. Social media services can offer good targeting based on their function as a virtual image of social activities, the associated self-presentation of users and their socio-demographic details as well as interests. Social interaction with other users and already known friends leads to a high level of personal involvement of users. Personal messages and recommendations (liking or sharing content with friends) receive an immediate social response.
- (559) In the process, the various data sources enable particularly precise targeting. Advertisers are first given the opportunity to narrow down the target group granularly in terms of location, age, gender and language, as well as other demographic data, interests and behaviour. The targeting options that Meta offers to advertisers are very diverse due to the large amount and granularity of the data. A publicly available list of *Facebook's* targeting options<sup>331</sup> shows the extensive and fine-grained options that are offered in each of several categories. The following figures show a selection of some of these options.<sup>332</sup>

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<sup>331</sup> The listing of targeting options requested from Meta is not yet available.  
<sup>332</sup> Cf. <https://www.digitalspotlight.com/facebook-ad-targeting-options/>.

CATEGORY  
**Demographics**  
1



Demographics

**Home**

**Home Ownership**

- First time home buyer
- Homeowners
- Renters

**Home Type**

- Multi-family home
- Single

**Household Composition**

- Grandparents
- Member of a family-based household
- Member of a housemate-based household
- New parents
- Veterans in home
- Working women
- Young & hip
- Young adults in home

CATEGORY  
**Interests**  
2



Interests

**Food and drink**

**Alcoholic drink**

- Beer
- Distilled drink
- Wine

**Beverages**

- Coffee
- Energy drinks
- Juice
- Soft drinks
- Tea

**Cooking**

- Baking
- Recipes



Demographics

**Education**

**Education Level**

- At high school
- At university (postgraduate)
- Doctorate degree
- Foundation degree
- High school leaver
- Master's degree
- Professional degree
- Some high school
- Some university
- Some university (postgraduate)
- University graduate
- Unspecified

**Fields of study\*  
Schools / Universities\*  
Undergrad years**



Demographics

**Parents**

**All Parents**

- Parents (All)
- New Parents (0-12 months)
- Parents with adult children



Interests

**Entertainment**

**Films**

- Action films
- Animated films
- Anime films
- Bollywood films
- Comedy films
- Documentary films
- Drama films
- Fantasy films
- Horror films
- Musical theatre
- Science fiction films
- Thriller films

**Games**

- Action games
- Board games
- Browser games
- Card games
- Casino games
- First-person shooter games
- Gambling
- Massively multiplayer online games
- Massively multiplayer online-role playing games
- Online games
- Online poker
- Puzzle video games
- Racing games
- Role-playing games
- Shooter games



Demographics

**Financial**

**Income**

1. \$30000 - \$39999
2. \$40000 - \$49999
3. \$50000 - \$74999
4. \$75000 - \$99999
5. \$100000 - \$129999
6. \$125000 - \$149999
7. \$150000 - \$249999
8. \$250000 - \$349999
9. \$350000 - \$499999
- Over \$500000

**Net Worth**

1. \$1 - \$99999
2. \$100000 - \$199999
3. \$200000 - \$499999
4. \$500000 - \$749999
5. \$750000 - \$999999
6. \$1000000 - \$1999999
- Over \$2000000

**Liquid Assets**

1. \$1 - \$25000
2. \$25000 - \$49999
3. \$50000 - \$99999
4. \$100000 - \$249999
5. \$250000 - \$499999
6. \$500000 - \$999999
7. \$1000000 - \$1999999
8. \$2000000 - \$2999999
- Over \$3000000



Interests

**Family & Relationships**

**Dating**

- Family
- Fatherhood
- Friendship
- Marriage
- Motherhood
- Parenting
- Weddings



Interests

**Hobbies and activities**

**Arts and music**

- Acting
- Crafts
- Dance
- Drawing
- Drums



Demographics

**Generation**

- Baby boomers (US)
- Generation X
- Millennials



Demographics

**Life Events**

**Anniversary**

- Anniversary in 31-60 days
- Anniversary within 60 days

**Away from family**

**Away from home**

**Date of birth**

**Month of birth**

- January
- February
- March
- April
- May
- June
- July
- August
- September
- October
- November



Interests

**Fitness and wellness**

**Bodybuilding**

- Dieting
- Gyms
- Meditation
- Nutrition
- Physical exercise
- Physical fitness
- Running
- Weight training
- Yoga
- Zumba



Interests

**Shopping and Fashion**

**Beauty**

- Beauty salons



**Behavior**

**Anniversary**  
Anniversary in 61-90 days



**Behavior**

**Automotive**  
Motorcycle  
**Purchased**  
New  
Used

**New vehicle buyers (Near market)**  
**Style**  
Crossover  
Economy/compact  
Full-size SUV  
Full-size sedan  
Hybrid/alternative fuel  
Luxury SUV  
Luxury sedan  
Midsize car  
Minivan  
Pickup truck  
Small/midsize SUV  
Sports car/convertible

**New vehicle shoppers (In market)**  
**Make**  
Acura  
Audi  
BMW  
Buick  
Cadillac  
Chevrolet car  
Chevrolet truck  
Chrysler  
Dodge RAM



**Behavior**

**B2B**  
**Company size**  
1,000 - 4,999 Employees  
10 - 49 Employees  
100 - 499 Employees  
5,000+ Employees  
50-99 Employees  
500-999 Employees  
Less Than 10 Employees

**Industry**  
Agriculture  
Business Services  
Construction  
Consumer Services  
Cultural & Recreation  
Education  
Finance  
Government  
Healthcare  
Hospitality & Travel  
Insurance  
Legal  
Logistics & Transportation  
Manufacturing  
Media & Internet  
Real Estate  
Restaurant  
Retail  
Telecommunications  
Wholesale Trade

**Seniority**  
Executive/C-Suite  
Mid Management



**Behavior**

**Consumer classification**  
**Brazil**  
(A+B) affinity for high-value goods - Brazil

**India**  
(A) affinity for high-value goods, in India  
(A+B) affinity for high-value goods, in India

**South Africa**  
(5,6,7) Affinity for Mid Value Goods - South Africa  
(8,9,10) Affinity for High Value Goods - South Africa



**Behavior**

**Digital Activities**  
**Canvas Gaming**  
**Average Engagement**  
Played game in last 14 days  
Played game in last 3 days  
Played game in last 7 days  
Played game yesterday

**Console gamers**  
**Early technology adopters**  
**Event creators**  
**FB Payments (all)**  
**FB Payments (higher than average spend)**  
**FB Payments (recent)**  
**Facebook Page Admins**  
**Internet Browser Used**  
Primary Browser: Chrome

- (560) In the context of “Custom Audiences”, advertisers have the possibility to advertise to a tailored target group by uploading their own customer data. The data can be checked against data from Meta services, enriched with further data and then used to create the advertiser’s own target group with specific identified users. “Lookalike Audiences” also allow advertisers to create target groups with Facebook users who “resemble” their customers and might therefore be interested in the advertised products. Overall, significant targeting methods such as technical targeting, behavioural targeting, semantic targeting and re-targeting can be combined, thereby using granular datasets in each case.
- (561) As described above, Meta has superior access to data relevant for competition, in particular to the personal data of its users. The scope of the database and the level of detail of the data as well as the data quality is very high due to the broad user base and the diverse data sources (see aa)). Personal user data and device-related data from all sources are of great relevance to the social media advertising offer. This is because they enable particularly precise targeting, so that target groups can be determined according to specific personal criteria or formed by specific identified persons. In the data policy for *Facebook*, *Instagram* and *Messenger*, Meta states, as shown, that they “... [use the] information available to provide our products, so also to personalize features and content (including ... your ads)” and: “To create personalized Products that are unique and relevant to you, we use your connections, preferences, interests



and activities based on the data we collect and learn from you and others (including any data with special protections you choose to provide where you have given your explicit consent); how you use and interact with our Products; and the people, places, or things you're connected to and interested in on and off our Products.” At a later point in the data policy, Meta again states:<sup>333</sup> “We use the information we have about you - including information about your interests, actions and connections - to select and personalize ads, offers and other sponsored content that we show you.”

- (562) An important part of the collected data consists of information suitable to identify the user. Since the Meta services can only be used after logging in, the data collected when using these services can be assigned to the unique user across devices and services. However, there are also technical possibilities to identify users – even if they are (temporarily) not logged in – based on data collected on third-party sites, for example via the Facebook pixel. These technical possibilities are much more extensive than the majority of users might be aware of.

**4. Third-party access to supply and sales markets/influence on business activities of third parties (Section 19a(1) sentence 2 no. 5 GWB)**

- (563) The considerable significance of Meta’s activities for third parties’ access to supply and sales markets in several areas and its related influence on the business activities of third parties within the meaning of Section 19a(1) sentence 2 no. 5 GWB also contribute to Meta’s paramount significance across markets.

**a) Function of the criterion**

- (564) The significance of the economic activity for third-party access to supply and sales markets and the related influence on the business activities of third parties are mentioned in Section 19a(1) sentence 2 no. 5 GWB as particularly relevant aspects when determining a company’s paramount significance for competition across markets. Dependencies on the part of other market participants and the resulting possibilities to shape the competitive process according to one’s own ideas or to distort it to one’s own advantage can be a major characteristic of the status as addressee of Section 19a(1) GWB.<sup>334</sup>
- (565) This factor focuses on the (potential) business customers of an addressee of the provision and aims in particular to include a company’s so-called “intermediation power”<sup>335</sup> or “power to set rules”<sup>336</sup> as an aspect of its significance across markets. The concept of intermediation power

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<sup>333</sup> Cf. <https://de-de.facebook.com/policy.php>.

<sup>334</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 73.

<sup>335</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 75.

<sup>336</sup> See resolution recommendation of the Economic Committee on the 10th amendment to the GWB,

is originally derived from the factor for the assessment of market dominance described in Section 18(3b) GWB for multi-sided markets, but it is to be understood in a broader, cross-market sense for the purposes of Section 19a(1) no. 5 GWB. This factor, too, thus primarily aims to capture the risk that individual digital corporations expand their range of products and services or create their own ecosystem and thus become “gatekeepers” that control access to their users.

- (566) An intermediation activity can generally exist in quite different forms. As with trading platforms or booking portals, it can consist in mediating specific transactions. However, in the run-up to such transactions, the activity can also consist in the communication of information or the attraction of attention, as is the case with search engines or advertising platforms. A characteristic feature of these platforms is that the intermediary selects or prioritises the offers and information and determines the framework for their presentation. If this activity is sufficiently important, the company may thus exert a significant influence on the visibility of third-parties’ offerings or their access to customers.
- (567) If third-party companies are dependent on access to these users, for example for marketing their products, e.g., because the users exclusively or at least predominately use the ecosystem, these digital corporations have considerable power over the third-party providers and may dictate the terms of access to them.<sup>337</sup> In addition, the sovereignty over the design and presentation of the offer and the superior information from comprehensively collected data regularly result in a wide range of possibilities for influencing and directing user behaviour. On the part of the third-party companies dependent on access, this may lead to a significant reduction in the scope for action and competition and an increasing shift of the value creation towards the ecosystem.
- (568) The “power to set rules” therefore refers first and foremost to the ability to dictate the conditions under which companies may use the ecosystem’s offerings. In addition, however, setting rules can also be understood as “regulation” of the markets created by the platforms within the ecosystem and the competition that takes place there. This is because significant sales and supply markets that are indispensable for companies can emerge within the system – e.g., on large trading platforms or within a proprietary operating system – whose framework and conditions of participation, including, for example, the characteristics of the products, their visibility and/or certain sales strategies, have been set from the outset by the ecosystem and its different areas.

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Bundestag printed paper 19/25868, p. 115, on the theory of harm based on the wording of Section 19a(1) sentence 2 no. 5 GWB.

<sup>337</sup> Cf. BMWi (ed.), A New Competition Framework for the Digital Economy; Report of the Competition Law 4.0 Commission, p. 22.

**b) Meta's "intermediation power and power to set rules"**

- (569) As a major provider of the social communication infrastructure on the internet, Meta's offerings also have a significant influence on the possibilities for commercial communication and thus on the access of product providers, advertisers and content providers to supply and sales markets (see aa)).
- (570) Particular significance for customer access and the associated possibilities to exert influence exist in relation to publishers and other providers of news content (see bb)).
- (571) Controlling access to a uniquely broad user base and possessing an enormous amount of detailed user and transaction data gives Facebook a strong position and opportunities to exert influence in relation to the advertising companies (on this cc)).
- (572) In the future, the great significance of social media advertising on *Facebook* and *Instagram* may also create important (additional) sales platforms on Meta's social media, which are already being created with "Shops" on *Facebook* and *Instagram* and which are linked to advertising spaces (see dd)).

**aa) Communication space on the internet shaped by Meta**

- (573) As a major provider of the social communication infrastructure on the internet, Meta's offerings also have a considerable influence on commercial communications and thus on third parties' access to supply and sales markets. The very fact that Meta can largely unilaterally determine the framework of this communication means that it exerts significant influence on the business activities of all companies for which its infrastructure is important. In addition, Meta's ability to direct the attention of the users of its services to its own or third-party offerings also gives it considerable scope for exerting influence. By shaping the "communication space" on the internet to a significant extent with its offerings, Meta exerts a considerable influence on the digital presentation and communication of companies. The framework conditions set by Meta for the structure of company pages, permissible content and the presentation in the "newsfeed" in part determine the access of third parties to their customers.
- (574) The services *Facebook* and *Instagram* create a virtual social space that extends well beyond bilateral communication or exchange within the immediate circle of friends and family. Content and product providers use these services in order to make their own company and products known, disseminate content, give users possibilities to establish contact and initiate business transactions (see para. (95) above). From the point of view of private users, these business offers represent a significant part of the functionalities of a social network such as *Facebook* (para. (131)). They are part of the virtual image of real life, which is characterised not only by family, friendship and professional relationships but also by business relationships. This applies all the more to the *Instagram* offering, where many users focus more on consumption-

related use.

- (575) Given the amount of time a significant percentage of internet users spend on Meta's services every day, there is a need for companies to have a presence there as well. This is already reflected in the fact that Facebook services attract a significant share of users' total daily online attention: Estimates put this share at almost 17% of the total online time in Germany in 2019<sup>338</sup> or 15.6% of the total online time of German users over 14 years (Q3/2019).<sup>339</sup> Just as the social network *Facebook* at least for part of the consumers determines to a considerable extent whether and how they participate in social life,<sup>340</sup> it thus determines to a considerable extent whether and how lots of companies are visible and can be found on the Internet.
- (576) In this respect, it should also be noted that in the last ten years a "paradigm shift" has taken place in digital corporate communication, in the course of which the traditional static website has increasingly been supplemented and replaced by dynamic, interactive applications and communication platforms.<sup>341</sup> These allow much greater interaction with customers and potential employees. Going beyond the mere provision of information and image or product advertising, social media can be used to answer individual customer inquiries, receive ratings and criticism, conduct targeted surveys and implement customer loyalty programmes. This can go as far as to involve consumers in entrepreneurial processes and influence product and marketing decisions.
- (577) Thereby, the use of social networks is of the greatest importance. According to a Eurostat survey, 51% of companies in Europe and 45% of German companies used social networks for their corporate communications in 2019. The usage has increased significantly in recent years – in 2013, it was still 28% in Europe and 29% in Germany.<sup>342</sup> In consumer-oriented sectors (hotels, retail, communication providers), the percentage is even significantly higher in some cases. In the tourist accommodation industry, for example, more than 80% of European companies use social networks.
- (578) The number of company pages on *Facebook* and *Instagram* and the activity of the corporate customers represented there already illustrate the importance of these offerings. In Germany alone, the two services *Facebook* and *Instagram* are each used by [50,000-75,000] companies every day (DAUs in 2021); worldwide, the number in both cases is [2.5-5.0] million active corporate customers every day.<sup>343</sup> The significance is also indirectly reflected in the spread of

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<sup>338</sup> Gösler et al., Total consumer time: A new approach to identifying digital gatekeepers (2021), p. 20, based on the "Top20 Properties for Germany".

<sup>339</sup> Cf. Andree/Thomsen, Atlas of the Digital World (2020), p. 28.

<sup>340</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, paras. 102, 124.

<sup>341</sup> Cf. Eurostat, Social media – statistics on the use by enterprises, available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Social\\_media\\_-\\_statistics\\_on\\_the\\_use\\_by\\_enterprises#Social\\_media.2C\\_a\\_business\\_paradigm\\_shift](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Social_media_-_statistics_on_the_use_by_enterprises#Social_media.2C_a_business_paradigm_shift).

<sup>342</sup> Cf. Eurostat, Social media – statistics on the use by enterprises (see above, footnote 359).

<sup>343</sup> Cf. Meta, response to question C. I. 2. of the request for information of 26 October 2021, B6-27/21.

social plug-ins on third-party websites of companies. For example, *Facebook's* “Like”, “Follow” or “Share” functions are regularly integrated on company websites and in apps reaching out to consumers. Their widespread use is reflected in the fact that in 2020 Meta received data from [250,000-500,000] third-party websites and [150,000-400,000] third-party apps worldwide, which could be used for its own offerings.<sup>344</sup>

- (579) Companies thus become part of the Meta ecosystem, so to speak, and (at least also) structure their online presence with the intention of being compatible with this system. Meta provides the technical framework, decides on the forms of presentation and on visibility, for example by including the company in the newsfeed. Already the sovereignty over how to design the user interfaces and the way in which content is displayed is of considerable importance in this respect. It has been proven that the visual design has a significant influence on user behaviour.<sup>345</sup> Real-time data on user interactions also allow the product design to be analysed immediately and, if necessary, to be “readjusted”.
- (580) At the same time, the company’s presence and the associated “community” form an important basis for selling advertising or offering further functionalities and services. Advertising in the Meta ecosystem requires a *Facebook* account and thus a “Page” (see para. (54) above). Customer groups or groups of interested parties can be generated from the interactions with the company’s own presence and can then be targeted with advertising via “Custom Audience” (see para. (241)).

**bb) Significance for publishers and other news content providers**

- (581) As a communications platform that is essential to public discourse on political, social, cultural, and economic issues,<sup>346</sup> *Facebook* is of distinct significance for professional providers in this field, i.e., publishers and other news content providers.
- (582) With 20-30 million daily active users (DAUs) each, the services *Facebook* and *Instagram* have a “total reach” in Germany that is comparable to or even exceeds traditional opinion-forming mass media.<sup>347</sup> For example, the BILD newspaper claims to have nearly 8 million daily readers;<sup>348</sup> the 8 p.m. newscast on television, which has the widest reach, reached an average of 11.78 million viewers in 2020.<sup>349</sup>

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<sup>344</sup> Cf. Meta, response to question C. III. 1. of the request for information of 26 October 2021, B6-27/21.  
<sup>345</sup> Cf. the findings on Google’s search results page in the “Google Shopping” proceedings, in this regard ECJ, judgment of 10 November 2021 – T-612/17 – *Google v. European Commission*, paras. 393, 417, 566.  
<sup>346</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 124.  
<sup>347</sup> Cf. Meta, response to question C. I. 1. of the request for information of 26 October 2021, B6-27/21.  
<sup>348</sup> Together with B.Z., published in Berlin, and with a paid circulation of 1.2 million copies, see <https://www.mediaimpact.de/de/portfolio/bild>.  
<sup>349</sup> This figure is likely to be influenced by the special interest in information as a result of the Covid-19 pandemic. The long-term average reach is 10 million, cf.

- (583) Social media and *Facebook* in particular are used by large sections of the adult population to access news. According to a recent study, 31% of Germans use social media offerings as a news source, compared with 69% who use television and only 26% who use print publications – in 2013 the figures were still 18% for social media and 63% for print publications.<sup>350</sup> Regarding the group of 18 to 24-year-old users, as many as one in two (52%) use social media as a news source according to this study.<sup>351</sup> Within social media, the importance of *Facebook* has declined somewhat in recent years. However, 18% of all Germans surveyed said that they regularly use *Facebook* to see news content.<sup>352</sup> In a Eurobarometer survey from 2016, 22% of respondents in Germany even stated that social media was their main access to online news, whereas 44% named the websites or apps of news providers and 22% named search engines as their main access to news.<sup>353</sup> In other countries social media are of comparable or even greater importance. For example, more than one-third of Americans (36%) use *Facebook* as a regular news source.<sup>354</sup> The Reuters Digital News Report 2021 puts *Facebook* users (who used the service for news in the past week) at 32% for a group of 12 countries, including the USA and Germany, and at 41% for all of Europe.<sup>355</sup>
- (584) The importance of news content for Meta’s offering is reflected in the fact that [1/3-2/3] of the active *Facebook* users in Germany follow at least [...] from publishers or other news providers as a subscriber or have given them a “like”.<sup>356</sup> On average, these users even follow around [5-10] (median: [2.5-5.0]) different news sites.<sup>357</sup>
- (585) Unlike traditional mass media, a single post usually reaches only a fraction of users in Germany. On the other hand, this makes it possible to address specific target groups particularly well (with the much-discussed consequential problems of “filter bubbles” and “echo chambers”). Forwarding/re-posting can also lead to a rapid (“viral”) spread of the content.
- (586) The importance of social media, and *Facebook* in particular, for public discourse is reflected in the worldwide discussions about possible influence on elections, the spread of hate speech and “fake news”, and even the danger of promoting riots such as the storming of the US Capitol or even massacres.<sup>358</sup> In a study by Reuters, social media as a whole are seen as the main

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<https://de.statista.com/statistik/daten/studie/182978/umfrage/reichweite-der-tagesschau-seit-1992/>.

<sup>350</sup> Cf. Reuters Institute, Digital News Report 2021, p. 81; Reuters Institute Digital News Report 2021 – Results for Germany, p. 14 – Survey of a representative sample of the German population aged 18 and over with internet access (p. 8).

<sup>351</sup> Cf. Reuters Institute Digital News Report 2021 – Results for Germany, pp. 14 et seq.

<sup>352</sup> Cf. Reuters Institute Digital News Report 2021 – Results for Germany, p. 49. The following places are taken by WhatsApp (17%) and YouTube (16%), Instagram (7%) and Twitter (6%).

<sup>353</sup> Cf. EU Commission, Impact Assessment on the modernisation of EU copyright provisions, 14 September 2016, SWD(2016) 301 final, Part 1/3, p. 157 and Annex 13A, Part 3/3, p. 182.

<sup>354</sup> Cf. Pew Research Center, News Use Across Social Media Platforms in 2020 (12 January 2021).

<sup>355</sup> Cf. Reuters Institute, Digital News Report 2021, pp. 23 et seq.

<sup>356</sup> Cf. Meta, response to question B. IV. 2 a) of the request for information of 26 October 2021, B6-27/21.

<sup>357</sup> Cf. Meta, response to question B. IV. 2 b) of the request for information of 26 October 2021, B6-27/21.

<sup>358</sup> For current discussions in various countries, see “Ein Konzern, der das Chaos schürt”, *Die Zeit*, 11

source of misinformation, whereby in Europe and the USA, the focus is primarily on *Facebook*.<sup>359</sup> Meta has responded to these challenges by revising its community standards, which in a sense represent an “autonomous and private normative order for public communications”<sup>360</sup>, by strengthening the implementation of these standards through AI systems and thousands of staff in so-called review teams, and by establishing an independent oversight board to adjudicate borderline cases.<sup>361</sup> However, the sincerity of these efforts was most recently questioned by the whistle-blower Frances Haugen.<sup>362</sup>

- (587) *Facebook’s* role as an important digital communication platform leads to a distinct importance for professional providers of news content. Even though the field of news sources has widened considerably due to the easy accessibility of social media, and even though politicians, influencers and celebrities, as well as “alternative” news providers, have grown in importance, the most widely followed news sources within social media and also on *Facebook* are the mainstream news media or their journalists.<sup>363</sup>
- (588) Conversely, digital publishing offerings today depend to a considerable extent on users being referred to the content in question (“referral traffic”). There are indeed major differences between the various news sites in this respect, depending on the type of offering and brand awareness. On a rough average, however, public web statistics<sup>364</sup> and various decisions and studies indicate that at any rate more than half of the traffic is based on referrals by third parties – e.g. 61% of the total traffic in relation to four European countries in the period 2015 to 2017.<sup>365</sup> There are also considerable differences between the publishers’ offerings in terms of the sources of these referrals. Regularly, however, Meta’s services (albeit well behind those of Google) are the second most important third-party supplier of user traffic to publisher offerings.<sup>366</sup> This was also confirmed by the questioning of ten well-known German publishers in the present proceedings. The share of Facebook redirects as a percentage of the total traffic ranges from low single-digit percentages for well-known national news sites up to 12% for the online offerings of large regional publishers.<sup>367</sup> Meta itself refers to studies according to which,

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November 2021, p. 26.

<sup>359</sup> Cf. Reuters Institute, Digital News Report 2020, p. 20.

<sup>360</sup> Prof. Dr. Wolfgang Schulz, one of the authors, along with PD Dr. Matthias C. Kettemann, of the study “Setting Rules for 2.7 Billion. A (First) Look into Facebook’s Norm-Making System: Results of a Pilot Study” (2020), <https://www.hans-bredow-institut.de/en/publications/setting-provisions-for-2-7-billion-a-first-look-into-facebook-s-norm-making-system>.

<sup>361</sup> Cf. „The Blue Planet“, *Süddeutsche Zeitung*, 12 June 2021, p. 11.

<sup>362</sup> Cf. in that regard, e.g., “Errors in the System”, *Süddeutsche Zeitung*, 5 October 2021, p. 3; “Ideas from Employees for a Better Facebook”, *NZZ*, 30 October 2021, p. 27.

<sup>363</sup> Cf. Reuters Institute Digital News Report 2021 – Results for Germany, p. 52.

<sup>364</sup> Cf. for example, the information at [www.similarweb.com](http://www.similarweb.com).

<sup>365</sup> Cf. Study commissioned by Google: Deloitte, The Impact of web traffic on revenues of traditional newspaper publishers, September 2019.

<sup>366</sup> Cf. also already BKartA, decision of 8 September 2015 – B6-126/14 – *Google/VG Media*, paras. 35 et seqq.; Autorité de la Concurrence, decision of 9 April 2020, 20-MC-01, paras. 229 et seq.

<sup>367</sup> Cf. responses to question I. 2. in the questionnaire for publishers, evaluation table, vol. I, p. 409.

on average, only 10% of publishers' traffic comes from social media providers.<sup>368</sup> But, at the same time, Meta emphasises the economic importance of these redirects for the publishing industry. According to Facebook, for example, in 2020 around 180 billion clicks went to press publishers registered in the News Page Index via the Facebook Newsfeed worldwide. Meta estimates the value of this traffic at around 9 billion US dollars.<sup>369</sup> In Germany, an average of [250-750 million] redirects to the websites of publishers or other news providers occurred each month in 2020 and 2021, according to Meta.<sup>370</sup>

- (589) The importance of *Facebook* for publishers goes well beyond measurable traffic, however, as many users perceive news content without clicking on it and being redirected. In a Eurobarometer survey, 53% of respondents in Germany stated that when consuming news via aggregators, social media or search engines, they mostly only peruse and read the excerpts on these intermediaries, but do not click on the link to read the entire article.<sup>371</sup> Especially on *Facebook*, news content tends to be perceived rather as part of the overall offering.<sup>372</sup> However, noticing the content when "scrolling through" the news feed also has an advertising effect for the content providers and increases their brand presence. Accordingly, the publishers questioned emphasised the importance of *Facebook* for increasing brand awareness and opening up new target groups. The importance of their own *Facebook* presence as a basis for paid social media advertising campaigns was mentioned as well. It was, thus, explained, for example, that paid campaigns to acquire new customers (subscribers) in particular prove useful in addressing customers because of the large volume of data available at Meta and the very precise targeting that goes hand in hand with this.<sup>373</sup>
- (590) Due to its position, Meta has considerable influence on the business activities of publishers and other news providers. Meta determines the framework for the display of their content.<sup>374</sup> News content must generally meet the general community standards.<sup>375</sup> Specific characteristics then apply to the prioritisation of news content, including transparent authorship, identification as an original source or initial reporting, information content, and local

<sup>368</sup> Cf. Facebook, News Feed today: A guide for news publishers, p.12.

<sup>369</sup> Cf. Facebook, Press release of 7 June 2021, available at: <https://about.fb.com/de/news/2021/06/nachrichten-und-kreative-inhalte-auf-facebook-wir-schuetzen-die-rechte-von-urhebern/>.

<sup>370</sup> In this regard, however, the numbers [...] during this period, cf. Meta, response to question B. IV. 1. of request for information of 26 October 2021, B6-27/21.

<sup>371</sup> Cf. EU Commission, Impact Assessment on the modernisation of EU copyright provisions, 14 September 2016, SWD(2016) 301 final, Part 1/3, p.157 as well as Annex 13A, Part 3/3, p.186.

<sup>372</sup> Cf. Reuters Institute, Digital News Report 2021, p. 25.

<sup>373</sup> Cf. responses to questions I. 1. and I. 3. in the questionnaire for publishers, B6-27/21.

<sup>374</sup> In this context, Facebook can specify communication standards that go beyond compliance with legal requirements, cf. Federal Court of Justice, decision of 29 July 2021 – III ZR 179 /20 – *Allegation of hate speech*, para. 78.

<sup>375</sup> However, special news value or public interest can lead to a more generous approval of content, cf. Facebook, News Feed today: A guide for news publishers, p.3.



relevance.<sup>376</sup> Other characteristics that indicate problematic content, such as fake news or “clickbait” may lead to a downgrading.<sup>377</sup> Even though the publishers questioned in the present proceedings only reported specific problems with these general framework conditions in isolated cases,<sup>378</sup> Facebook itself almost takes on an editorial function due to its guidelines and evaluations.

- (591) The specific visibility of each publisher’s content results from the newsfeed algorithm controlled by Meta. Therefore, changes to the algorithm can have serious consequences for publishers. This was demonstrated in 2018, for example, when Facebook decided to prioritise posts from “friends and family” more strongly in the newsfeed. This led to a significant drop in redirects to publisher pages. Particular attention was drawn to the fact that the online lifestyle magazine “LittleThings” had to close down at short notice after traffic had plummeted by 75%.<sup>379</sup> Apart from that, some of the publishers questioned in the present proceedings also reported the number of redirects being halved.<sup>380</sup> The algorithm and its changes over time are consistently described as non-transparent.<sup>381</sup>
- (592) The new “*Facebook News*” offering is also important for the visibility of news content and for directing users’ attention. This is a separate area for journalistic content introduced in May 2021 within the *Facebook app*.<sup>382</sup> A separate tab displays curated content with the most important headlines and stories of the day (“top news”) on the one hand, and personalised suggestions based on which news items are read, shared, or subscribed to by the user (“news for you”) on the other hand. Content is curated according to journalistic criteria by a team from the news aggregator “Upday” under the supervision and in accordance with the guidelines<sup>383</sup> of *Facebook*. With this new offering, Meta states to pursue the goal of creating a high-quality news offering with informative, reliable, and relevant content for its users while helping publishers increase their reach and monetise their content. It aims [...].<sup>384</sup>

**cc) Importance of advertising in Meta’s social media**

- (593) Furthermore, the unique and already described position Meta holds in advertising on social media is important for Meta’s intermediation power and power to set rules (see paras. (209) et seqq. and (422) et seqq. above). In view of the importance of this advertising channel and

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<sup>376</sup> Cf. Facebook, News Feed today: A guide for news publishers, pp. 7 et seqq.  
<sup>377</sup> Cf. Facebook, News Feed today: A guide for news publishers, p. 5.  
<sup>378</sup> Cf. responses to question II. 1. in the questionnaire for publishers, B6-27/21.  
<sup>379</sup> Cf. for example, <https://www.wsj.com/articles/digital-publisher-littlethings-shuts-down-citing-facebook-news-feed-change-1519787564>.  
<sup>380</sup> Cf. responses to question II. 2. in the questionnaire for publishers, B6-27/21.  
<sup>381</sup> Cf. responses to question II. 3. in the questionnaire for publishers, B6-27/21.  
<sup>382</sup> Cf. Press release Facebook of 18 May 2021, <https://about.fb.com/de/news/2021/05/facebook-news-startet-in-deutschland/>.  
<sup>383</sup> Cf. the “Curation Guidelines” in: Meta, response to question B. IV. 3 of the request for information of 26 October 2021, B6-27/21, Annex B. IV. 3-005.  
<sup>384</sup> Cf. Meta, response to question B. IV. 3 of the request for information of 26 October 2021, B6-27/21.

Meta’s largely unique position in this area, there is no way around its offering for large sections of the economy. The control of access to a uniquely broad user base and the possibility to make use of detailed user and transaction data provide Meta with a strong position and opportunities to exert influence in relation to the advertising companies.

- (594) The investigations into social media advertising have shown that this form of advertising is of distinct importance compared to other forms of online advertising and that customers are not in a position to use *Facebook* and *Instagram* for a typical social media campaign (see para. (283) above). In addition to the reach of the services, this is primarily due to Meta’s unique data, which enable particularly granular targeting (see paras. (554) et seqq. above). This indispensability is also evident in the fact that even events that have attracted worldwide attention, such as the “Cambridge Analytica” scandal or calls for boycotts in connection with the “Black Lives Matter” movement, have had only a limited and short-term effect on Meta’s advertising revenues.<sup>385</sup>
- (595) Meta is able to broadly dictate to advertisers the terms and framework for their visibility on social media, e.g., with respect to the accounts required to post advertising content and the advertising guidelines to be followed in doing so, which are revised on an ongoing basis.<sup>386</sup> With the “Ads Manager”, Meta offers companies a complete solution for creating and placing advertisements (on the walled garden problem see paras. (462) et seqq. above). Meta also has the possibility of unilaterally blocking advertising accounts that violate the rules it has set itself. Facebook made use of this possibility [2.5-5.0] million times in Germany in 2020 ([25,000-50,000] accounts were reactivated after a review).<sup>387</sup>
- (596) Due to its sovereignty over the design of the functionalities and the user interfaces of its products, Meta is largely free to decide when and how third-party advertising content is displayed. This enables Meta to guide user attention to its own or third-party offerings. In this way, it is of considerable importance for the effectiveness of social media advertising that the ads are “embedded” in in the organic content (especially newsfeed and “Stories”) in the most seamless and inconspicuous manner possible (see paras. (225) et seq.). However, changes in the functionalities of the services can also have a strong influence on the visibility of advertising content. For example, one study shows that the introduction of the short video format “Reels” on *Instagram* led to a redirection of users and a noticeable decline in clicks on advertising (in the specific case that of Zalando).<sup>388</sup>

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<sup>385</sup> Cf. on the “#StopHateforProfit” campaign, e.g., <https://www.zeit.de/digital/internet/2020-07/facebook-advertising-boycott-hate-speech-fake-news-mark-zuckerberg> and <https://t3n.de/news/facebook-werbung-boykott-ende-1346797/>.

<sup>386</sup> Cf. the examples in Meta, response to question D. III. 2. of the request for information of 26 October 2021, B6-27/21.

<sup>387</sup> Meta, response to question D. III. 4. of the request for information of 26 October 2021, B6-27/21.

<sup>388</sup> Cf. Gösler et al, Total consumer time: A new approach to identifying digital gatekeepers (2021), pp. 20 et seqq.

**dd) Third-party transactions via Facebook**

- (597) Finally, it is to be expected that the already existing importance of Meta services as platforms for commercial transactions by third-party companies will increase in the future. This is because Meta uses its good access to customers via the various social media applications to develop these applications into a direct sales channel. This broadening and deepening of the offering for business customers can, on the one hand, secure or increase the value and achievable price of advertisements. On the other hand, the ties of companies to the ecosystem can be strengthened and, in the longer term, the sources of monetisation of its own offerings can be broadened.
- (598) The investigations have shown that the social media advertising offered by Meta is not only well suited for attracting attention and increasing brand awareness, but also for sales advertising by means of so-called performance campaigns (para. (240)). Following on from this, there are efforts by Meta, as described above, to also more strongly draw the further communication up to the conclusion of the purchase (and beyond) into its own ecosystem and to create a comprehensive communication and sales space (see paras. (455) et seqq.). The medium-term goal of this concept is to build an extensive trading platform that combines the strong position in advertising and communication services with complementary services such as Shops, business communication and payment methods.<sup>389</sup> This objective must be evaluated against the background that the industry expects “social commerce” (or “conversational commerce” insofar as communication takes place via messenger) to become significantly more important in online commerce.<sup>390</sup>
- (599) Meta’s efforts to establish its own shopping platform are to be assessed in this context. As shown, since May 2020, Meta has been offering companies “Shops”, a platform for online stores that customers can access via both *Facebook* and *Instagram*.<sup>391</sup> The shops can be found via the Facebook page and/or the Instagram account of the respective company as well as on *Instagram* in a separate shopping area. However, they can also be reached via Stories and advertisements. For example, the shop operator can add a product tag to a post, including the product name and price, and clicking on it will redirect users to the integrated shop. There they can search for products and place orders via the company’s website. Setting up the shop is free of charge for retailers. Fees are incurred, for example, for the use of the payment function, although these fees are largely only intended to cover costs. Monetisation is achieved through advertising which benefits from better data and becomes more valuable when ads are

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<sup>389</sup> Cf. Facebook, Transcript First Quarter 2021 Results Conference Call, 28 April 2021, p. 3, available at <https://investor.fb.com/home/>.

<sup>390</sup> Cf. Internet World Business, 5/2021, p. 6, “Onlineshopping steht vor einer Zäsur”.

<sup>391</sup> Cf. Facebook press release of 19 May 2020, <https://about.fb.com/de/news/2020/05/einfuehrung-von-facebook-shops/>. Since 2018, the “Instagram Shopping” function has allowed users to tag products in posts or stories and link them to their own store.

more likely to lead to a purchase.<sup>392</sup> As early as one year after implementing “Shops”, Meta reported one million monthly active “Shops” and over 250 million monthly visitors.<sup>393</sup> In Germany, in the third quarter of 2021, approximately [25,000-50,000] “Shops” (Monthly Active Shops) were operated, which together accounted for [10-15] million monthly visits in total (Monthly Unique Visits) (see paras. (384) et seqq. above).<sup>394</sup>

- (600) Unlike in the USA (where it has been available since spring 2019), Meta does not yet offer a checkout function in Germany, which means that users cannot complete the purchase process on *Facebook* or *Instagram*, but are instead redirected to the online store of the respective provider. However, there is a direct link to the external online store so that users do not have to leave the *Facebook* or *Instagram* app during the entire purchase process and can complete the purchase via the in-app browser.<sup>395</sup>
- (601) [...] look at the USA [...]. In particular, customers in the USA can buy items directly in a shop from a seller on *Facebook* or *Instagram*. The transaction takes place with the help of a checkout function directly on *Facebook* and *Instagram*. [...]
- (602) In addition, a number of other functionalities have already been introduced in the USA to further embed the Shops offering in social media content and enable a “seamless” shopping experience – for example, via the “Live Shopping” function, which allows items presented in videos to be purchased in the shop without interrupting the broadcast of the video.<sup>396</sup>
- (603) Another example are the so-called “top-product-references”. Meta evaluates which products are discussed most in groups which the customer is a member of. The most discussed products are categorised by Meta and displayed in top 10 lists in the newsfeed. [...] customers [...] the burden of researching and browsing through a multitude of products [...]
- (604) Moreover, it is to be expected that the social commerce offering will be further integrated with messaging offerings. Meta, for example, has already introduced a question and answer tool in the USA that is intended to promote B2C communication within the shops and allows users to ask specific questions about a product that can only be answered by the company that sells the product.<sup>397</sup> This allows Meta to keep both users (customers) and companies (sellers) in the ecosystem. Users are redirected from the social networks to the shops and, if necessary, also to messaging channels and back. Meta provides companies with targeted incentives to

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<sup>392</sup> <https://www.handelsblatt.com/technik/it-internet/soziales-netzwerk-facebook-startet-plattform-for-online-shops/25844968.html>.

<sup>393</sup> Facebook, Transcript First Quarter 2021 Results Conference Call, 28 April 2021, p. 2, available at <https://investor.fb.com/home/>.

<sup>394</sup> Cf. Meta, response to question B. III. 4. of the request for information of 26 October 2021, B6-27/21.

<sup>395</sup> Cf. Facebook press release, 4 December 2020, <https://about.fb.com/de/news/2020/12/guido-maria-kretschmer-starts-facebook-shops/>.

<sup>396</sup> Cf. Meta, response to question B. III. 2. of the request for information of 26 October 2021, B6-27/21.

<sup>397</sup> Cf. Meta, response to question B. III. 2. of the request for information of 26 October 2021, B6-27/21.

be active on all platforms, to place ads that guide users through the ecosystem, and to shift more and more of their own business activities to the Meta platforms.

- (605) As described, these developments are aimed at a fully integrated offering where, as Meta envisions, “the entire customer journey [can] take place on *Facebook* and *Instagram* – from inspiration to purchase”.<sup>398</sup> [...] (mobile) websites of corporate customers [...] replaced [...] within the Meta offering [...] This would give Meta an even stronger role in end-customer relationships and value creation. For third-party companies, however, their own access to customer contacts and customer data could deteriorate and the dependence on the Meta ecosystem as a sales channel for their products could increase.

**5. Financial strength and access to other resources (Section 19a(1) no. 2 GWB)**

- (606) In addition to the resources and “shareable inputs” already mentioned above – in particular the user base, the combined offering, the data pool, and the tying of third parties to Meta – Meta’s other resources also contribute to its paramount significance for competition across markets, because Meta has financial strength and access to other resources in a way that, precisely in conjunction with the resources already mentioned, enables it not only to successfully secure the position it has attained in the future, but also to expand it even further, and which may thus affect the innovative power of competition.

**a) Function of the criterion**

- (607) Taking into account the special protective purpose of Section 19a GWB, Section 19a(1) sentence 2 no. 2 GWB deals with the question of the extent to which a company has financial strength or other resources which can be used across markets and lead to a competitive advantage, i.e. the extent to which the use of financial strength or other resources is possible in individual cases and suitable for contributing to the expansion and/or safeguarding of an ecosystem and thus (as a reinforcing element) to its systemic importance. Ultimately, the factors “financial strength” or “other resources” are intended to capture all the capabilities available to a company, in particular its potential for innovation.
- (608) These factors are taken into account also because of the self-reinforcement effect associated with their use, which poses a threat to competition: On the one hand, the great financial strength of large digital corporations results from the multiple uses of certain resources, as this in particular lowers the costs of market entries for the company. This enables increasingly better access to resources and ultimately an increase in financial strength. On the other hand, the market entry barriers for competitors that have yet to acquire the relevant resources continue to rise, at least in relative terms, so that a competitive advantage can arise with which

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<sup>398</sup> Cf. Facebook press release, 4 December 2020, <https://about.fb.com/de/news/2020/12/guidomaria-kretschmer-startet-facebook-shops/>.

competitors can no longer catch up.

- (609) Within the framework of digital business models, financial resources can be generated on a large scale due to the often high scalability of the business models as well as the low marginal costs<sup>399</sup> in case of an established market position. Such an advantage creates the possibility to buy out innovative competition through high investments or high-priced acquisitions.
- (610) Moreover, the mere presence of large digital corporations in certain markets can already weaken access to financial resources for other companies, creating so-called “kill zones”<sup>400</sup> in which no one wants to invest. This may increase the barriers to market entry for third parties and lead to a reduction in innovative drive, which is increasingly limited to defensive innovations by the addressee of the provision to protect the business model and possibly to (merely) complementary offers by third parties.<sup>401</sup>

**b) Meta’s resources**

- (611) At this point, Meta’s superior access to financial resources (see aa)) and other resources (see bb)) should be specifically highlighted in addition to and in close connection with the resources already mentioned.

**aa) Financial means**

- (612) Meta has great financial strength (see (1)). This gives Meta a wide range of options to act in a competitive environment (see (2)).

**(1) Scope of financial strength**

- (613) Meta’s financial resources are considerable, as shown by various key business figures such as revenue, net income, cash flow and stock market value<sup>402</sup>. The financial strength resulting from this opens up far-reaching possibilities for Meta to obtain equity and debt financing.
- (614) In detail, the developments of Meta’s revenue, net income and cash flow (from operating activities and free) as well as capital expenditures (capex) and research and development expenses in the years 2016 – 2021 are as follows, in billions of US dollars in each case<sup>403</sup>:

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<sup>399</sup> The low marginal costs may, in turn, be significantly related to the existence of “shareable inputs”, i.e. input factors that can be used in several markets or in different business models.

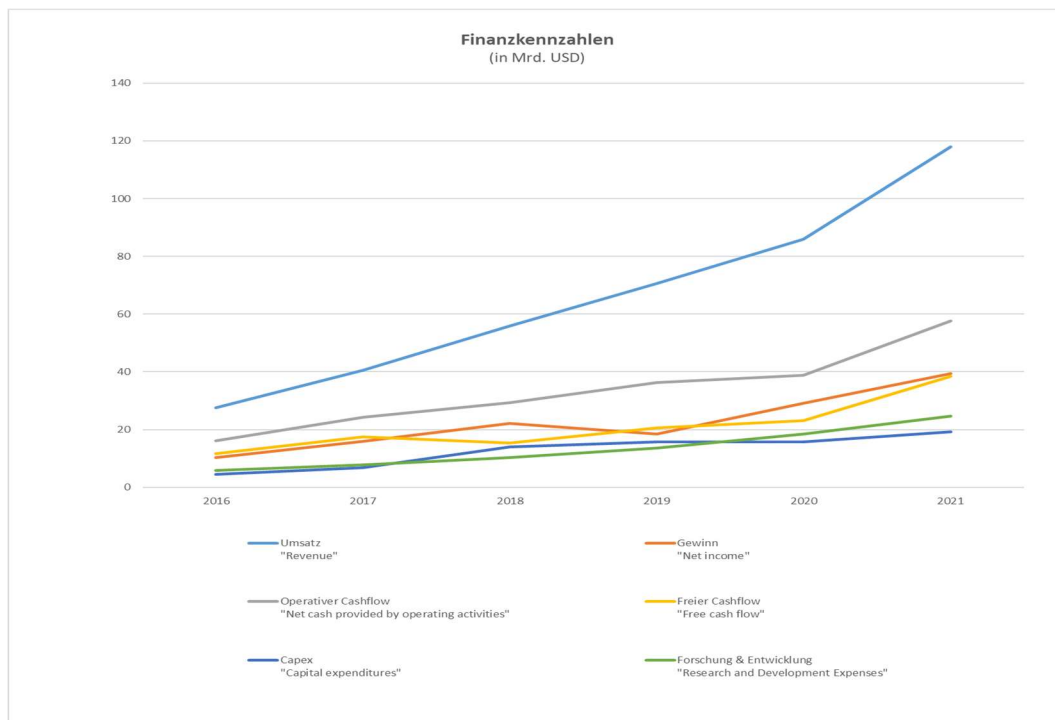
<sup>400</sup> Cf. BMWi, A new competition framework for the digital economy – Report of the Competition Law 4.0 Commission, 2019, p. 65 with further references in fn. 174.

<sup>401</sup> See Stigler Center, Stigler Committee on Digital Platforms – Final Report, 2019, p. 75; M. Bourreau, A. de Stree, Digital Conglomerates and EU Competition Policy, 2019, p. 21 with further references.

<sup>402</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 75.

<sup>403</sup> See the publicly available annual reports for 2016 to 2020.

[Key financial figures (in USD billion)]



Year	2016	2017	2018	2019	2020	2021
Umsatz "Revenue"	27.64	40.65	55.84	70.70	85.97	117.93
Gewinn "Net income"	10.22	15.93	22.11	18.49	29.15	39.37
Operativer Cashflow "Net cash provided by operating activities"	16.11	24.22	29.27	36.31	38.75	57.68
Freier Cashflow "Free cash flow"	11.62	17.48	15.36	20.66	23.03	38.44
Capex "Capital expenditures"	4.49	6.73	13.92	15.65	15.72	19.24
Forschung & Entwicklung "Research and Development Expenses"	5.92	7.75	10.27	13.60	18.45	24.66

(in USD billion in each case)

(615) According to this, turnover and profit, as well as capital expenditures for long-term assets and research and development expenses, already have roughly tripled in the period from 2016 to 2020, while operating and free cash flow have roughly doubled. In 2021, these key figures have once again increased quite significantly.

(616) Overall, Meta is among the companies with the highest revenue and net income in the world. With its revenue of around 86 billion US dollars and its net income of around 29 billion US dollars, Meta ranked 34th in 2020 in terms of revenue and 5th in terms of net income.<sup>404</sup> In

<sup>404</sup> Cf. <https://fortune.com/fortune500/2021/search/> (accessed on 29 November 2021).

2021, Meta generated around 118 billion US dollars in revenue and around 39 billion US dollars in net income. Within just one year, revenue has thus risen again by around 37% and net income by around 35%, despite the fact that the “Reality Labs” unit (AR/VR and “Metaverse” as a future project), which has recently been managed separately from the “Family of Apps” (still the central field of activity including the services *Facebook*, *Instagram*, *Facebook Messenger* and *WhatsApp*), reported a loss (“loss from operations”) of over 10 billion US dollars.<sup>405</sup> With an average of one-third net income on its revenue, Meta achieved a very substantial net income-revenue ratio from 2016 to 2021.

- (617) Cash flow, which is also mentioned in the explanatory memorandum as a suitable criterion for determining financial strength in the digital sector, covers the entire flow of financial resources moving within the company. A distinction is made between operating cash flow, cash flow from investing activities and cash flow from financing activities. The operating cash flow comprises the cash flow from the company’s ordinary business activities and is an indicator of liquidity and the ability to finance internally, i.e., the ability to finance oneself from one’s own business activities without funds from outside. In 2020, Meta’s operating cash flow was already approximately 39 billion US dollars, and in 2021 it was even around 58 billion US dollars,<sup>406</sup> which corresponds to an increase of almost 50% within the last year and shows Meta as an extraordinarily liquid company, even increasingly so.
- (618) In addition to the ability to obtain internal financing, the ability to obtain external financing must also be taken into account when measuring financial strength. One indicator of this is free cash flow. It is used by both debt and equity investors to assess earning power. Free cash flow is calculated as the difference between operating cash flow and capital expenditures for longer-term assets. It indicates the funds actually available to a company to pay out the claims of debt and equity investors. Creditors and shareholders use it to check creditworthiness or to assess the scope for repayments, dividend payments, capital repurchases or mergers and acquisitions. While Meta’s free cash flow was already around 23 billion US dollars in 2020, it was even around 38 billion US dollars in 2021,<sup>407</sup> i.e. it increased by more than two-thirds in the course of 2021. In this respect, Meta’s performance is also still growing strongly and exceptionally well.
- (619) Finally, a meaningful indicator with regard to a company’s financial strength that can be expected in the future is the stock market value. The stock market value (also referred to as market capitalisation) is the arithmetical total value of the shares in circulation of a listed company. It reflects investors’ expectations of a company’s future success. Meta’s stock

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<sup>405</sup> See the publicly available annual report for 2021.

<sup>406</sup> See the publicly available annual reports for 2020 and 2021.

<sup>407</sup> See the publicly available annual reports for 2020 and 2021.



market value was almost one trillion US dollars in the middle of December 2021.<sup>408</sup> Meta was thus one of the ten most valuable companies in the world, together with Amazon, Apple, Alphabet and Microsoft, among others.<sup>409</sup> After the publication of its annual report for 2021 showing, for the first time, rather slightly declining figures of Daily Active Users of the *Facebook* service including *Messenger* in the last quarter (but otherwise, as described, overall outstanding growth in 2021, in particular including further growth in Daily Active People of the entire Family of Apps, i.e. also taking into account *Instagram* and *WhatsApp*, despite already quite significant global coverage), the stock market value of Meta has fallen to 573 billion US dollars<sup>410</sup> by the end of February. However, the major part of the share price loss of around 25% was already attributable to 3 February 2022 alone, i.e. the date of the publication of the annual report. Most recently, the share price was comparatively stable. According to a mid-February 2022 ranking, Meta – at the same time and despite the significant short loss – still ranked 11<sup>th</sup> among the world’s most valuable companies by stock market value with a stock market value of approx. 565 billion US dollars while, for example, Nvidia ranked 8<sup>th</sup> with approx. 613 billion US dollars, hence “only” about 50 billion US dollars more in stock market value.<sup>411</sup>

**(2) Possibilities of usage in competition**

- (620) Meta’s great financial strength opens up a wide range of opportunities for action in the competitive environment, which Meta has already used extensively in the past. In particular, it can be used to secure its own position and expand its own range of activities. In addition, Meta’s great financial strength alone can make real competition in the area of its own core activities more difficult at least.
- (621) In the course of its corporate history, Meta has made a large number of acquisitions. These include not only the widely known acquisitions such as those of *Instagram*, *WhatsApp* or *Oculus*, for billions of dollars each, but also a large number of other acquisitions. Upon request, Meta has reported to the Decision Division and described in detail [50-75] company acquisitions from 2010 to 2020 which fulfil the criteria of an acquisition of control and a purchase price or equivalent of more than 10 million euros. [0-5] transactions in which patents were acquired were also mentioned.<sup>412</sup> Meta has named [0-5] further corresponding company acquisitions for the first three quarters of 2021. All purchase prices here were between [25-125] million euros.<sup>413</sup> As a major recent merger project, Meta has also acquired the company

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<sup>408</sup> Cf. <https://www.google.com/finance/quote/FB:BCBA> (accessed on 20 December 2021).  
<sup>409</sup> Cf. <https://www.pwc.com/gx/en/audit-services/publications/assets/pwc-global-top-100-companies-2021.pdf> (accessed on 29 November 2021).  
<sup>410</sup> Cf. <https://www.google.com/finance/quote/FB:BCBA> (accessed on 28 February 2021).  
<sup>411</sup> Cf. <https://www.bloomberg.com/news/articles/2022-02-17/meta-platforms-falls-from-ranks-of-10most-valuable-companies>.  
<sup>412</sup> Meta, responses to question X.6. of the request for information of 28 January 2021, B6-27/21.  
<sup>413</sup> Meta, responses to question A.IV. of the request for information of 26 October 2021, B6-27/21.

Kustomer for more than 400 million euros.<sup>414</sup>

- (622) According to more detailed information on the acquisitions in Meta’s submissions in conjunction with publicly available information<sup>415</sup>, these were acquisitions to strengthen the core business, i.e., the operation of a social network including a messaging option and powerful financing through advertising, particularly in the early years. In many of these acquisitions, Meta was not only interested in the company itself that was acquired, but highly (also) in the talent that worked for the respective company. Examples are the acquisitions of Parakey<sup>416</sup>, FriendFeed<sup>417</sup>, Octazen Solutions<sup>418</sup>, Divvyshot<sup>419</sup>, Chai Labs<sup>420</sup>, and Hot Potato<sup>421</sup> in the years 2007 to 2010. The acquisitions, for example, of Snaptu<sup>422</sup>, Rel8tion<sup>423</sup> and Beluga<sup>424</sup> in 2011 can be seen in the context of Meta’s intention to develop a mobile version of *Facebook*. In the advertising sector, Meta strengthened itself, among other things, in 2014 with the acquisition of the company LiveRail<sup>425</sup>, which specialised in targeted video advertising, for [...] million euros, and already in 2013 with the acquisition of Atlas Solutions<sup>426</sup>, an online platform that allows users to create their own advertising and organise campaigns and events, for [...] million euros. As early as 2010, Meta also invested [...] million euros in the purchase of the FB.com domain in order to be able to give its employees FB.com email addresses.<sup>427</sup>
- (623) Based on its insights into promising developments in the field of social media and emerging competitors in this area, Meta has made targeted acquisitions to secure and expand its own field of activity. As already described, the acquisition of *Instagram* in particular was intended to ensure that Meta would be able to maintain its position in the mobile and visual sector, which was booming as a result of the triumph of the smartphone, and to expand its position in this area. Prior to that, Meta had already acquired Face.com, a developer of internet applications for facial recognition in photos and artificial intelligence (AI) in the field of social media, for [...] million euros. The acquisition of *WhatsApp* was intended to head off the rapid rise of a competitor that was possibly likely to outflank the company’s own messenger in the long term.

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414 Cf., among others, the press releases in this regard of the Bundeskartellamt of 11 February 2022 and 9 December 2021, as well as of other competition authorities such as, in particular, the EU Commission of 27 January 2022.

415 Cf., e.g., [https://en.wikipedia.org/wiki/List\\_of\\_mergers\\_and\\_acquisitions\\_by\\_Meta\\_Platforms](https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Meta_Platforms).

416 Cf. <https://about.fb.com/news/2007/07/facebook-acquires-startup-parakey/>.

417 Cf. <https://about.fb.com/news/2009/08/facebook-agrees-to-acquire-sharing-service-friendfeed/>.

418 Cf. <https://gigaom.com/2010/02/19/facebook-acquires-contact-importing-startup-octazen/>.

419 Cf. <https://www.cnet.com/news/facebook-buys-photo-service-divvyshot/>.

420 Cf. <http://allthingsd.com/20100815/exclusive-facebook-snaps-up-chai-labs/>.

421 Cf. <https://techcrunch.com/2010/08/20/facebook-buys-hot-potato/>.

422 Cf. <https://venturebeat.com/2011/03/20/facebook-acquires-israeli-mobile-app-startup-snaptu/>.

423 Cf. <http://allthingsd.com/20110125/facebook-acquires-mobile-advertising-company-out-of-stealth-mode/>.

424 Cf. <https://techcrunch.com/2011/03/01/facebook-beluga/>.

425 Cf. <https://techcrunch.com/2014/08/14/facebook-400m-500m-acquisition-of-video-ad-tech-startup-liverail-is-now-official/>.

426 Cf. <https://techcrunch.com/2013/02/28/facebook-acquires-atlas/>.

427 Cf. <https://techcrunch.com/2010/11/15/facebook-acquired-fb-com-from-the-american-farm-bureau/>.

With *Oculus* and several other acquisitions, such as Downpour Interactive, Unit 2 Games Limited and BigBoxVR in the first half of 2022 for a total of [...] million euros, which can be assigned to the area of the development of products for virtual reality (VR) or augmented reality (AR), Meta not only wants to strengthen itself in the hardware area. Meta rather sees in VR/AR the access path to the internet of the future in particular for social exchange, which is advertised as “Metaverse”.<sup>428</sup> The acquisition of CTRL Labs, which developed interfaces for the control of computers only with the help of thoughts, for [...] million euros in 2019 can also be seen as a particularly large acquisition in this direction. The acquisition of AI.Reverie, which specialised in simulations for training artificial intelligence, in the summer of 2022 for [...] million euros can probably also be seen as an addition in this area. Furthermore, Meta acquired numerous relevant patents [...] The acquisition of [...] employees of the manufacturer of solar-powered drones Ascenta<sup>429</sup> in 2014, with which Meta could also bring the internet to regions of the world that are not (sufficiently) accessible via other technologies, can be considered a move into the direction of gaining its own direct access to users’ access to the internet as well.

- (624) Thanks to its great financial strength, Meta could and can afford to make costly losses or to operate services that are unprofitable in themselves and to invest large sums in research and development. In addition to services such as *Instagram* or offerings such as those of *Oculus* (today: Meta Quest), which not only expand Meta’s offering but also contribute to earnings, *WhatsApp* in particular, as by far the most expensive acquisition in the company’s history with an acquisition price of far more than 10 billion euros and billions of users worldwide since 2014, is essentially financed from revenues in other areas [...] With the acquisition of the company Kustomer for more than 400 million euros [...] messaging [...] for contact between companies and their end customers [...] *WhatsApp* (as well as *Facebook Messenger* alongside it) [...] CTM ads [...] In addition, Meta invests not only in concrete application-related research and development, but also, especially with regard to the possibilities in the field of data processing, in broad research also in the form of (purely) scientific work<sup>430</sup>, from which it is at least not immediately apparent what concrete economic benefit – if any – can be derived in the future.
- (625) In addition, over the years, Meta has also repeatedly sought to acquire other companies which have, from Meta’s point of view, developed increasingly successful offerings in the area of social media. The most prominent examples of this are probably Meta’s interest in Snapchat<sup>431</sup>, especially in 2013, and its interest in the predecessor of *TikTok*, Musical.ly<sup>432</sup>, in 2016.

<sup>428</sup> Cf. <https://aboutFacebook/>.

<sup>429</sup> Cf. <https://www.theguardian.com/technology/2014/mar/28/facebook-buys-uk-maker-solar-powered-drones-internet>.

<sup>430</sup> Cf. <https://research.fb.com/>.

<sup>431</sup> Cf. <https://www.faz.net/aktuell/wirtschaft/netzwirtschaft/der-facebook-boersengang/foto-app-snapchat-rejected-billion-offer-from-facebook-ab-12663712.html>.

<sup>432</sup> Cf. <https://www.buzzfeednews.com/article/ryanmac/zuckerberg-musically-tiktok-china-facebook>.

Reportedly, a billion-dollar price was offered by Meta at least for the acquisition of *Snapchat*. After these two cases did not result in a takeover, Meta has developed its own offerings and made them available to its users, as already described. These offerings are intended to cover the offerings of Snapchat (e.g., “Status” and “Stories”) and *TikTok* (especially “Reels”) at various places in Meta’s overall offering.

- (626) Finally, Meta’s great financial strength, especially in areas in which Meta is already represented with strong services or offerings, can mean that the intensity of competition is also limited because any challengers can hardly obtain the funds required for alternative offerings. In this respect, it is argued that the mere presence of large digital corporations in certain fields of activity already weakens the access to financial resources for other companies. The great financial power of the large digital corporations could lead to so-called “kill zones”<sup>433</sup> in which no one wants to invest. This would ultimately increase the barriers to market entry for third parties and lead to a reduction in the innovative drive, which would be increasingly limited to defensive innovations by the addressee of the provision to protect the business model and, possibly, to (merely) complementary offers by third parties.<sup>434</sup>

**bb) Other resources**

- (627) In addition to its great financial strength, Meta also has a large number of other resources relevant for competition (see (1)). Meta can use these in many ways in competition as well (see (2)).

**(1) Available resources**

- (628) In addition to the many opportunities generally provided by its great financial strength, Meta also has a large number of concrete resources, which it can deploy in competition. In addition to the opportunities already described in more detail above, which Meta has in particular due to its large user base, its broad and integrated product portfolio, its large data pool and its existing relationships with business customers, Meta’s considerable resources can also be identified at an intermediate level, so to speak. These are, in particular, the personnel available to the company as a whole, its position in the field of research and development as well as its technology as a whole, including the availability of a large number of patents, and the attractive individual brands that Meta unites under its umbrella, with not only a large number of users in total, but also a large number of users in each case.
- (629) Not only the number of users, but also the number of Meta’s employees has increased

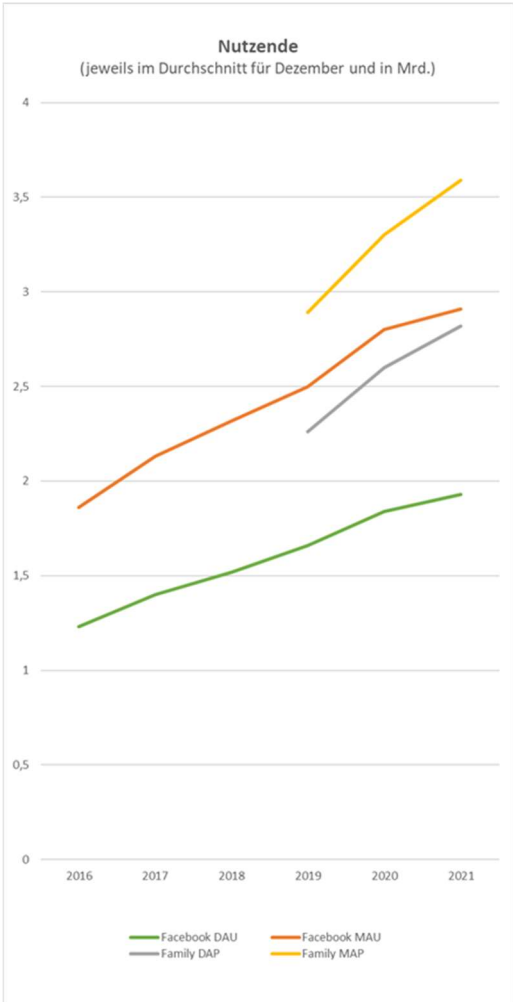
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<sup>433</sup> Cf. BMWi, A new competition framework for the digital economy – Report of the Competition Law 4.0 Commission, 2019, p. 65 with further references in fn. 174.

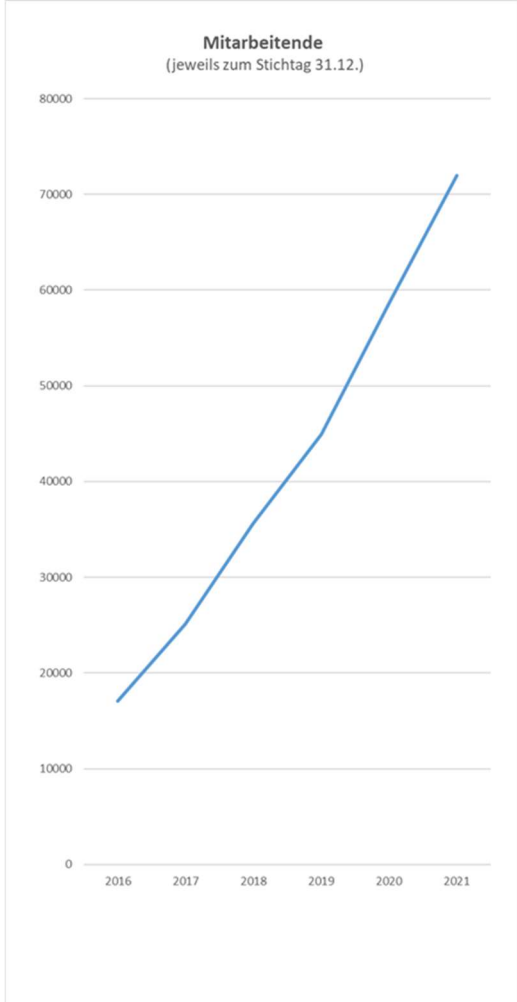
<sup>434</sup> See Stigler Center, Stigler Committee on Digital Platforms – Final Report, 2019, p. 75; M. Bourreau, A. de Stree, Digital Conglomerates and EU Competition Policy, 2019, p. 21 with further references.

significantly in the years from 2016 to 2021. With around 3.6 billion Family Monthly Active People (MAP), i.e. concretely identified individuals who use *Facebook, Instagram, Messenger* and/or *WhatsApp*<sup>435</sup>, roughly one in two people worldwide (excluding China) used a Meta service at least once a month at the end of 2021, regardless of age or world region. At the same time, already by the end of 2020, almost 60,000 people were working for Meta, which is more than three times as many as at the end of 2016. By the end of 2021, Meta’s headcount had continued to grow substantially by more than 13,000 – this corresponds to approx. 23% – in just one year to a total of about 72,000.<sup>436</sup> These are, for example, nearly ten times as many employees as *Twitter* (over 7,500), well over ten times as many as *Snap* (over 5,500) and more than twenty times as many as *Pinterest* (over 3,200) each employed at the end of 2021.<sup>437</sup>

[Users (in each case average number in December in billion)]



[Employees (in each case as at 31 December)]



435 For details and limitations of the MAP and DAP calculation, see, for example, page 5 of the publicly available annual report for 2020. As far as can be seen, no distinction is made between personal accounts and business accounts. However, the latter are likely to account for only a small fraction in terms of numbers.

436 See the publicly available annual report for 2021.

437 See the respective publicly available annual reports for 2021.

Users	2016	2017	2018	2019	2020	2021
Facebook DAUs	1.23	1.40	1.52	1.66	1.84	1.93
Facebook MAUs	1.86	2.13	2.32	2.50	2.80	2.91
Family DAP				2.26	2.60	2.82
Family MAP				2.89	3.30	3.59
December average in billions in each case						

	2016	2017	2018	2019	2020	2021
Employees (31 December)	17048	25105	35587	44942	58604	71970

(630) As shown in the context of Meta’s financial resources, in 2020 Meta also spent three times as much money on research and development as it did in 2016, totalling about 18.5 billion US dollars. In 2021, Meta increased its research and development spending again to about 24.5 billion US dollars, thus by about a third in this year alone.<sup>438</sup> Meta’s spending for research and development alone is thus, for example, more than double the total revenue – not just the corresponding spending – of Twitter (about 5.1 billion US dollars), Snap (about 4.1 billion US dollars) and Pinterest (about 2.6 billion US dollars) together in 2021.<sup>439</sup> In 2017, Meta ranked 22<sup>nd</sup> in an international comparison of companies with the highest expenditures in the “Research” area and development, in particular also with numerous companies from the automotive and pharmaceutical sectors among the leading 25. In 2018, Meta even ranked 14<sup>th</sup>.<sup>440</sup> In the research area alone, more than 850 people work for Meta.<sup>441</sup> In the area of research and development, Meta also conducts not only concrete application-related research, as already mentioned, but also research that can rather be classified as scientific.<sup>442</sup>

(631) Meta’s research activities are spread across various topics in computer science with clear links to the social media activity and the company’s concrete plans in this area. The company itself lists the topics in alphabetical order as “AR/VR”, “Artificial intelligence”, “Blockchain & Cryptoeconomics”, “Computational Photography & Intelligent Cameras”, “Computer Vision”, “Data Science”, “Databases”, “Economics & Computation”, “Human Computer Interaction & UX”, “Machine Learning”, “Natural Language Processing & Speech”, “Networking & Connectivity”, “Security & Privacy” and “Systems & Infrastructure”.<sup>443</sup> Meta employees have contributed to more than 3,000 scientific articles for journals and conferences.<sup>444</sup> Research on

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438 See the publicly available annual report for 2021.  
 439 See the respective publicly available annual reports for 2021.  
 440 See <https://www.strategyand.pwc.com/gx/en/insights/innovation1000.html>.  
 441 Cf. <https://research.fb.com/people/>.  
 442 See, e.g., <https://research.fb.com/wp-content/uploads/2021/11/Parallel-Bayesian-Optimization-of-Multiple-Noisy-Objectives-with-Expected-Hypervolume-Improvement.pdf>.  
 443 Cf. <https://research.fb.com/>.  
 444 Cf. <https://www.lens.org>.

artificial intelligence (AI) is one of the focal points. Yann LeCun<sup>445</sup>, who received the Turing Prize<sup>446</sup> in 2018 for his work on neural networks, is one of the most renowned AI researchers in the world working for Meta as Chief AI Scientist. About a third of all scientific articles to which Meta employees have contributed can be attributed to this area. Beyond the area of more fundamental research, Meta also has, for example, broad and in-depth expertise in many applied areas of software development and data processing, as evidenced by the nearly 100 open source libraries<sup>447</sup> that Meta currently provides and that are primarily developed by Meta employees.

- (632) As a result of acquisitions and its own research and development activities, Meta holds more than around 7,500 patents in the USA.<sup>448</sup> Roughly half of these contain the term “social network” at least once in the text, and slightly less than half of them contain the term “user profile” and slightly less than a quarter the term “virtual reality”. Another frequently used term in the text of around 700 patents is “neural network”. Particularly in the area of “virtual reality”, there has been a significant increase in recent years. While Meta held only slightly more than 100 patents containing this term in the text until the end of 2017, over 1,500 more have been added since then. Based on their categorisation, most of the patents held by Meta in the USA can be assigned to the area of “social networking” with around 1,500, followed by the areas of “messaging within social networks” and “user profiles configuring for program initiating / information retrieval by personalised querying” with around 750 patents each.
- (633) Meta also has its own large-scale technology, via which its own services are offered. This was particularly illustrated by the simultaneous outage of virtually all Meta services in early October 2021.<sup>449</sup> By the end of 2020, Meta was already operating seven data centres in the USA and three in Europe, with more in the planning or construction stages, including one for Singapore.<sup>450</sup> At the same time, Meta was already involved in twelve submarine cables in 2017.<sup>451</sup> According to a press release from the spring of 2020, Meta was even planning, at least at that time, to lay a submarine cable around Africa with a length of approximately 37,000 km to connect African countries and the Middle East, at an estimated cost of approximately 1 billion US dollars.<sup>452</sup> In addition, Meta operates, for example, its own DNS servers for resolving domain name requests.<sup>453</sup>
- (634) After all, world-famous brands with world-famous logos and a large number of users each are

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445 Cf. <https://ai.Facebook/people/yann-lecun/>.

446 Cf. <https://awards.acm.org/about/2018-turing>.

447 Cf. <https://opensource.Facebook/projects>.

448 Cf. <https://www.lens.org> [...].

449 Cf. <https://www.heise.de/news/Der-Facebook-Ausfall-und-die-ungeahnten-Folgen-6221349.html>.

450 Cf. <https://www.datacenterknowledge.com/facebook/facebook-plans-huge-expansion-already-massive-georgia-data-center>.

451 Cf. <https://blog.telegeography.com/telegeographys-content-providers-submarine-cable-holdings-list>.

452 Cf. <https://www.bbc.com/news/technology-52676253>.

453 Cf. <https://www.heise.de/news/Der-Facebook-Ausfall-und-die-ungeahnten-Folgen-6221349.html>.

united under the Meta umbrella, first and foremost the brands “Facebook”, “Instagram” and “WhatsApp”, but also “Facebook Messenger” and “Oculus”. *Facebook* can be considered the epitome of the social network, and depending on the world region or country, *WhatsApp* and *Facebook Messenger* can be seen as the epitome of the messenger. Among other things, *Instagram* has coined the term “instagramability”, i.e., the suitability of a photo (originally of a place) for release on *Instagram*. Oculus has a well-known name in the gaming scene. In a ranking of the most valuable brands worldwide by brand value for the year 2021, *Facebook* was among the top ten and improved by two places compared to 2020, when it was already among the top ten, with *Facebook* increasing its brand value by more than 50%.<sup>454</sup> The “thumbs up” logo or the term “liking” have also found their way into (electronic) everyday use beyond Facebook. With regard to the constantly increasing number of users of Meta’s services despite already very large coverage, even revelations and scandals have not been able to do lasting damage to the brands, the good image of which Meta is in addition constantly striving to maintain.

## (2) Possibilities of usage in competition

- (635) The other resources available to Meta in addition to its great financial strength also offer the company special opportunities in competition. On the one hand, they enable the company in particular to respond effectively to offerings competitors are (increasingly) successful with. On the other hand, they also enable the company to pursue medium and long-term projects, which require a great amount of preparatory work. At the same time, the constant expansion of Meta’s technical capabilities opens up the possibility not only of becoming more independent of third-party technology, but also of creating new access paths of its own to its services. In this context, the other resources specifically addressed here interact closely with the resources already described above – namely, in particular, the large user base, the network offering, the data inventory, the existing relationships with business customers, and the large financial strength. Thus, the other available resources additionally strengthen Meta’s already excellent opportunities not only to secure its position in the field of social media, but also to successively expand it further and to push competition to the fringes of its own field of activity.
- (636) As described, Meta has responded to competitors’ moves with its own offers several times in the past when it was not possible to acquire the competitor or the offer. Examples already mentioned are e.g. the offer of a “Status”, “Stories” or “Reels” on Meta’s services. Meta had and still has a considerable research and development budget, including qualified employees, at its disposal for such developments. These, in turn, can draw on a great amount of existing know-how as well as on Meta’s own technology, patents and a large database. At the same time, when introducing new offerings, Meta can directly reach a large number of users via its

<sup>454</sup> Cf. <https://www.kantar.com/de/inspiration/brand/brandz-top100-2021>.



established brands, who are already familiar with the basic functions of the respective Meta offering, and can also directly monetise these in the overall system due to the already existing relationships with business customers or advertisers. Accordingly, the hurdles for introducing new products at Meta are low. In this context, Meta has also already used its extensive capabilities in such a way that it first offered new offerings as standalone apps in order to provide a direct response to a corresponding offering from competitors and to learn more about the specific use of the offering before Meta included it in its familiar services.<sup>455</sup> In a similar sense, with its large number of users worldwide and in many countries, Meta is particularly well suited to make new offers available initially only to a subset of users – be it only in certain countries<sup>456</sup> or only to a subset of users in a particular country<sup>457</sup> – before making it available to all users. This enables Meta to assess the acceptance of new offerings accurately and to make any necessary adjustments very soon and precisely without impairing the acceptance or use of its offerings as a whole.

(637) In addition, Meta’s strength in resources enables it to pursue medium and longer-term goals in particular. Meta’s activities in the area of e-commerce can also be seen as a medium-term project. Due to the Covid-19 pandemic in particular, this area has rapidly gained importance.<sup>458</sup> In this regard, there are special opportunities in particular for the “social commerce”<sup>459</sup> sector for example in terms of the further development of influencer marketing and its already strongly visual character. Meta’s established position in the field of social media with strong brands and large resources opens up a wide range of activity opportunities for the company. Probably Meta’s most prominent long-term goal is the development of an Internet 2.0, advertised by Meta as “Metaverse”, which is supposed to supplement or even replace reality by a virtual reality. According to public announcements, Meta intends to hire 10,000 employees in the EU in order to work on this.<sup>460</sup> In addition to the acquisition of Oculus and other relevant companies, the numerous patents and research work with relevant references also point into a corresponding direction. A concrete example of how Meta’s expertise in the field of AI and its large database can interact is the “Learning from Videos” project.<sup>461</sup> Here, Meta uses the large number of videos published by users of Meta services to understand the content of videos by means of self-supervised learning<sup>462</sup>. Recommendation algorithms for its Reels product on *Instagram* are a possible application area mentioned by Meta. In the context of

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<sup>455</sup> Cf. “Slingshot” (Snapchat), “Lasso” (TikTok), or “Hobbi” (similar to Pinterest).

<sup>456</sup> Cf. currently “Pay” or “Checkout”, neither of which is yet available in Germany.

<sup>457</sup> Cf. <https://www.techradar.com/news/world-of-tech/facebook-users-to-test-new-features-1091602>.

<sup>458</sup> Cf. <https://www.dw.com/de/corona-sorgt-f%C3%BCr-beispiellosen-boom-beim-onlinehandel/a-56348180>.

<sup>459</sup> Cf. [https://de.wikipedia.org/wiki/Social\\_Commerce](https://de.wikipedia.org/wiki/Social_Commerce).

<sup>460</sup> Cf. <https://abcnews.go.com/Lifestyle/wireStory/facebook-plans-hire-10000-europe-build-Metaverse-80639042>.

<sup>461</sup> Cf. <https://ai.Facebook/blog/learning-from-videos-to-understand-the-world/>.

<sup>462</sup> Cf. [https://de.wikipedia.org/wiki/Selbst%C3%BCberwachtes\\_Lernen](https://de.wikipedia.org/wiki/Selbst%C3%BCberwachtes_Lernen).

augmented reality solutions and smart glasses, however, it is also conceivable that Meta will use this technology to apply it to videos made using the camera of the glasses.<sup>463</sup>

- (638) Finally, the expansion of Meta’s own technology enables Meta to provide its services as independently as possible from third parties and to open up new access paths to the users of its services. Due to its holdings in submarine cables, for example, Meta can ensure that data traffic between its data centres can flow unimpededly by other data flows. With its own data centres and its own DNS servers, Meta is able to map out other central functions for smooth data traffic and independent data storage. Plans such as laying a submarine cable around Africa or developing drones that enable autonomous internet access, if realised, would open up further regions of the world and users to Meta. Efforts to promote eyeglasses as the primary means of accessing the internet or Meta’s services can also be seen in this context, following the launch of the “Portal” product – a device in tablet form – and the failed introduction of a “Facebook Phone”.

## 6. Overall assessment/result

- (639) Thus, in the overall assessment of all circumstances relevant in this individual case, Meta Platforms, Inc. is to be seen as a company of paramount significance for competition across markets within the meaning of Section 19a(1) GWB.
- (640) In summary, this significance essentially results from Meta Platforms, Inc.’s largely complete and paramount occupation of the entire digital demand of social media, including adjacent services, which are – in a closely interwoven and well-resourced ecosystem – offered worldwide to several billion private users from all age and target groups as well as to business user groups consisting of, for example, advertisers and service providers, content providers, news and product providers, website and software developers. This holds the potential to significantly restrict competition in the affected markets and economic sectors, which also can be observed.
- (641) Meta’s position of power with regard to private end customers is characterised first and foremost by the long lasting and stable market dominance or quasi-monopoly position of the social network and core service *Facebook* as a combination of network and multi-sided market with stable user numbers of [20-30] million daily active users in Germany and with a strong tendency towards market tipping. The social network, which is set up worldwide and used by billions of users, is already an essential part of a portfolio-like bundling on the Facebook platform with considerable economies of scope resulting from a broad spectrum of further end-customer services that are functionally linked to the social network via a user account or are easily accessible while using the social network and are constantly being expanded. These

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<sup>463</sup> Cf. <https://www.theverge.com/2021/3/12/22326975/facebook-training-ai-public-videos-digital-memories>.

services include, among others, Facebook Marketplace, Facebook Watch, Facebook News, Facebook Rooms, the recently launched Shops service, Facebook Games, and the Facebook Horizon VR area, which is currently under development.

- (642) The social photo and video service *Instagram*, which is technically operated on the Facebook platform and functionally offered on an app and under a brand intertwined with *Facebook*, consists of a similarly broad and constantly expanding portfolio-like range of end-customer services and functionalities, such as Instagram Stories, Instagram Reels, Instagram Shopping and Instagram Video. *Instagram* by now achieves similarly high user numbers as *Facebook*. In addition, Meta's portfolio includes another offer with extremely large user numbers, namely *WhatsApp*, by far the most important messenger service worldwide (around [...] billion monthly active users) and in Germany (around [...] million monthly active users), supplemented by *Facebook Messenger*, which is integrated into *Facebook*. Furthermore, with the Meta Quest (formerly Oculus) services, Meta covers a broad product portfolio of VR services with social media references and with its own gaming software, an Oculus store and popular VR glasses such as the Quest 2.
- (643) All platforms are used by different groups of business customers, who are offered a bundle of services. On *Facebook*, for example, content and product providers use the Facebook pages to present themselves, they get in touch with private users via their newsfeed and can analyse the use of their page with various tools. In this respect, *Facebook* forms an important communication space, which is of great importance in particular to press and news providers as part of the exchange of opinions taking place on the social network and which is indispensable for them.
- (644) All business customers can place ads on the Meta services, track users via Facebook analytics tools and [...] offer products for sale [...] for example via "Shops". *Instagram* as well is highly geared towards commercial users and offers them a wide variety of opportunities to initiate or conclude business with other users. Meta messenger services are also of great importance in B2C communication. Finally, the Facebook developer platform and the Facebook Reality Lab offer software, app, and website developers and operators services for the development, distribution and monetisation of their products.
- (645) Meta's services are monetised in a stable manner through social media advertising, which is offered by Meta with at least a very strong market position on the affected advertising market as part of the multi-sided markets *Facebook* and *Instagram* and which is a strong and increasing source of financing. The vertically integrated advertising services on *Facebook* and *Instagram*, which are indispensable for advertisers for social media campaigns, are closely linked with the services for private users via indirect network effects in the multi-sided market and, in addition, form an essential link to further services for business customers; they can, for example, enter into direct communication with the recipient via the messenger services as part

of the advertising (“click-to-message”) or sell the product via “Shops”.

- (646) The entire Meta ecosystem is strongly data-driven, in particular due to its highly personalised services, which are offered in a data-driven business model of also highly personalised social media advertising. Sound – and thus valuable – user data that are collected on the basis of extremely large user numbers derived from a variety of intensively used services and functionalities “fuel” the ecosystem. These data are highly relevant for competition for the entire ecosystem in terms of its safeguarding, expansion and monetisation and constitute a superior resource. In addition, the Meta ecosystem is characterised by stable and great financial strength as well as market capitalisation, by very high user numbers worldwide and by other valuable resources that can be deployed throughout the ecosystem.
- (647) This strong position of the Meta ecosystem in the entire social media sector, including closely related services, and the competitive advantages resulting from this strong position lead to limitations of and threats to competition, the very issue to be addressed in determining a position of paramount significance for competition across markets under Section 19a(1) GWB.
- (648) The reason for this is that competition in the comprehensive, constantly growing Meta ecosystem in the entire economic sector of social media is only possible in certain specific areas, resulting in the fact that Meta’s position of power is difficult or impossible to challenge. In this context, the ecosystem considerably reinforces the tendency towards blurred market boundaries and markets that are linked in many ways, which already exists in the internet economy and in the social media sector, by bundling on the platforms and partly by deeply embedding them in the network functionalities of *Facebook* or *Instagram* services and functionalities which are offered as separate products on separate markets by competitors. At the same time, the product “social network” and ultimately also the market on which such services are offered are defined by constantly expanding for example the product range of the social network *Facebook* and linking and expanding complementary services on *Instagram*. Thus, Meta itself defines and constantly expands the market boundaries and blurs the boundaries to adjacent markets. None of the competitors in the social media sector is able to offer a similar portfolio and thus the competitors have no other choice but to remain active only in certain specific areas of the ecosystem.
- (649) Due to the fact that competition is limited to the fringes, it is difficult or impossible to challenge the Meta ecosystem. Challenging this ecosystem would be possible only if competitors were able to win and also poach from Meta a considerable number of users, e.g. through innovation and a broad product range. However, this is not likely to happen in the present case since the Meta ecosystem is characterised by strong lock-in effects and thus considerable barriers for users to switch providers.
- (650) In particular, this is a result of the intensive direct network effects occurring with all Meta

services which establish considerable barriers for private users to switch providers since their normally numerous contacts also have to be persuaded to use other services. At the same time, these direct network effects also have a strong feedback loop effect since the value of the social network increases with the growing number of users and the increased intensity of use, thus attracting an extremely high number of users. In the recent past, this feedback loop effect has become clearly visible both with regard to *Facebook* and *Instagram* (see paras. (180) and (183) above) and forms the main basis for the tendency towards monopolisation in the market for social networks.

- (651) The broad and constantly growing portfolio of services bundled on or linked with *Facebook* or *Instagram*, including *WhatsApp* and *Facebook Messenger*, is also able to retain end users in the ecosystem and enhance the lock-in effect. The ecosystem forms a space in which users create their user profiles which are particularly complex with regard to *Facebook*, set for themselves certain communication and consumption patterns and develop reproducible behavioural routines and routines of use. These patterns are considerably influenced by predefined user interfaces and default settings. The users' behaviour is strongly guided and formed in this way. By deliberately navigating users on the platforms and by personalising the services using the extensive user data available as well as by providing incentives for users to upload their own personal data and content, also including photos and videos, to the platform, Meta is able to navigate users to certain and also new services and functionalities and to tie them to the system. This danger can be exemplified by the introduction of Facebook Watch (paras. (374) et seqq. above). The more services included in the system and the broader the spectrum of use, the higher the switching costs become for users since this would require them to comprehensively reorganise and newly establish the individual patterns and behaviours in – possibly several different – alternative social media.
- (652) The lock-in effects result in the fact that competitors can gain a significant number of users only if they are able to offer highly innovative services for which users are willing to accept the loss of their network and take on the efforts involved in switching provider. However, the Meta ecosystem and its exceptional resources make it possible for the company to counter innovations by competitors at an early stage and, due to its large number of users and data available, to slow them down. In this respect, Meta profits quite considerably from the very fact that it has positioned itself in the entire sector of social media with its services *Facebook*, *Facebook Messenger*, *WhatsApp* and *Instagram* and that it is thus able to use its technical and financial resources to respond quickly and in a targeted fashion to innovations, reflecting the target group and the functionality concerned, to offer its own innovations to its large user base and in this way counter and slow down competitive moves at an early stage across all its services. The Decision Division has identified several examples of cases in which this risk has already become real in the past (paras. (391) et seqq.). In addition, Meta can use its resources

to acquire promising innovative companies at high sales prices and take over, develop or shut down their innovations. There are examples of this, too (paras. (400)(400) et seq.).

- (653) Furthermore, competitors in the social media sector are not able to monetise their social media in an equally stable manner since advertisers are dependent on using the Meta services, which form a “walled garden”, to place their ads for their social media campaigns and thus spend most of their social media budgets on Meta. This is another result of the large number of users tied to Meta, the great intensity of use of the Meta services and the ecosystem’s large granular database. This also contributes to pushing competitors and competition to the fringes of the system created by Meta.
- (654) Meta’s system with its popular services thus also opens up important sales channels and sales markets for companies for which such channels are important to achieve business success. Meta is to a considerable extent able to set the rules for the use of these channels and can thus considerably influence the business success of its business customers. In this regard, it is especially *Facebook* that forms a leading communicative space which in particular also plays an important role in the public discourse on political, social, cultural and economic issues. News providers in particular rely on participating in this public discourse and thus depend on being found and visible on the platform. The rules for being found and visible on the platform and the framework for participating in this communicative space are set by Meta.
- (655) In this context, it also has to be considered that the importance of the digital ecosystem operated by Meta, with the social network Facebook at the centre and additional social media such as *Instagram* and messenger services such as *WhatsApp*, goes beyond merely economic aspects and extends into social life as a whole. Due to Meta’s formative influence on the online communicative space, the company plays an important role in social participation in the form of participating in digital communication and networking as well as in shaping public opinion in an open and pluralistic society in the digital age. In this regard, the findings of the German Federal Constitutional Court (BVerfG) that in all areas of life, fundamental services for the general public are increasingly provided on the basis of extensive personal data collections and data processing measures by private, often powerful companies in the markets, which have a significant influence on the formation of public opinion, the allocation and denial of chances, participation in social life or also elementary activities of daily life, applies particularly to social networks.<sup>464</sup> As the operator of the by far largest and most important social network in the world, Meta plays a key role in this sense for social life in Germany and across the world. Taking into account the additional issue of social participation within the framework of the assessment under competition law is, for one thing, in line with the

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<sup>464</sup> Cf. Federal Constitutional Court, decision of 6 November 2019 – 1 BvR 16/13, NJW 2020, 300 para. 85 – *Right to be forgotten I*.

case law relating to Section 19 GWB handed down by the German Federal Court of Justice (BGH).<sup>465</sup> For another, such issues are also referenced in the legislative materials on Section 19a GWB.<sup>466</sup> They may therefore also be used for the overall assessment to determine a paramount market position within the meaning of Section 19a(1) GWB.

- (656) For advertisers, the Meta services are an essential and indispensable channel to sell their products by reaching their potential buyers through the services that are particularly offered to private users. This also allows Meta to decide on the form and the visibility of the products on the platform and in this way to shape the companies' access to their customers in line with Meta's own business interests.
- (657) Closely tying companies, which are practically always advertisers, to the Meta services allows Meta to consistently expand its services also in this regard. The main focus here is developing the advertising services into an expansive space for business communications and sales, which – with the considerable support of Meta's database – covers a product's entire purchasing process, the so-called "customer journey". In this context, the market boundaries between advertising markets and product sales markets are once again blurred since the advert itself already makes it possible to start the communication process to initiate the transaction ("call-to-message"), to place the product in the shopping cart on the business customer's website or on "Shops", or, in some cases, to already directly "check-out", i.e. to complete the transaction. This not only leads to a further intensification of the already existing dependence of advertisers on Meta as a sales channel, but makes it more difficult for competitors who solely rely on traditional advertising space to challenge the ecosystem also in this respect.
- (658) All in all, due to the already existing strong ties between the various and generally very large user groups and the cross-market services, it has become very difficult to challenge the Meta ecosystem through competition. With its stable and growing resource base, Meta has the possibility to continuously expand its ecosystem, possibly even creating a "metaverse" operated through proprietary VR and AR hardware.

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<sup>465</sup> Cf. Federal Court of Justice, decision of 23 June 2020 – KVR 69/19 – *Facebook*, para. 124.

<sup>466</sup> Cf. resolution recommendation of the Economic Committee on the 10th amendment to the GWB, Bundestag printed paper 19/25868, p. 7.

### C. Discretion

- (659) The decision declaring Meta Platforms, Inc.'s status as addressee of Section 19a GWB, which is to be limited to 5 years pursuant to Section 19a(1) sentence 3 GWB, is made in the exercise of the Bundeskartellamt's due discretion. The Decision Division can issue a fixed-term declaratory decision without infringing its scope of discretion.
- (660) This is because special abuse control pursuant to Section 19a(2) GWB is necessary, suitable and appropriate to address the competitive threats posed by the Meta ecosystem.
- (661) According to the legislative materials, the elements of Section 19a(2) GWB are particularly intended to counteract concentration and expansion tendencies of the norm's addressees which are not based on competition on the merits and which are particularly capable of extending their position of power beyond market boundaries or of securing their unassailability.<sup>467</sup> They therefore aim to limit economic positions of power, serve to keep markets open and protect possibilities to take antitrust action.<sup>468</sup> Because of the already existing damage and threat to competitive processes in the affected economic sector of social media described above, as well as the continuous and highly dynamic expansion of the Meta ecosystem into neighbouring areas, there is therefore a public interest in the Bundeskartellamt's special abuse control pursuant to Section 19a(2) GWB in addition to general abuse control pursuant to Section 19 GWB, Article 102 TFEU and Section 20 GWB.
- (662) Despite Meta's existing dominant position on the market for social networks for private users in Germany, general abuse control pursuant to Section 19 GWB and Article 102 TFEU is not sufficiently efficient. This is because general abuse control in its core does not address the cross-market effects and threats of Meta's special position of economic power and its expansion to further areas, but addresses the scope of action related to a specific market. It therefore cannot focus on the entire ecosystem.<sup>469</sup> In addition, it is also necessary to take more effective and targeted action against some practices, in particular on the basis of the examples provided under Section 19a(2) GWB, which indicate abuses and thus help to speed up proceedings.<sup>470</sup> This is particularly necessary in view of the highly dynamic development of the Meta ecosystem in the digital economy, as described above, both in terms of services and resources.
- (663) This also includes the binding decision determining Meta Platforms, Inc.'s status as norm

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<sup>467</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 77; resolution recommendation of the Economic Committee, Bundestag printed paper 19/25868, pp. 7, 112.

<sup>468</sup> Cf. government explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 77.

<sup>469</sup> Cf. also Meta's comments in its statement on the document outlining the preliminary assessment of 23 December 2021, para. 72 and para. 161.

<sup>470</sup> Cf. resolution recommendation of the Economic Committee, Bundestag printed paper 19/25868, p. 113.



addressee with regard to its corporate activities, which is valid for a period of 5 years from the date on which the decision becomes final (Section 19a(1) sentence 3 GWB). In view of the need to accelerate proceedings, this measure is also appropriate as it enables the Decision Division to quickly and specifically address and prohibit harmful conduct pursuant to Section 19a(2) GWB in efficient administrative proceedings within this period, without having to examine the (market) specific status as norm addressee in each case. Without a far-reaching preliminary determination of the status as norm addressee, effective abuse control in the area of the digital economy affected in the present case and with regard to the undertaking in question would not be adequately ensured.

- (664) In the present case, the decision is also proportionate because the competitive problems described above are not expected to improve significantly in the next 5 years. The continuous expansion and reinforcement of the Meta ecosystem characterised by network effects described above rather suggest that the competitive problems will intensify. This is due in particular to the close ties between a large number of users and the Meta services which have been established for years and to the self-reinforcing effects, also in terms of data advantages and monetisation benefits. Conversely, the fixed-term nature of the decision leads to a mandatory review of the status as norm addressee after 5 years, so that changed competitive conditions can be adequately taken into account.
- (665) Finally, it must be taken into account that the undertaking is only subject to official abuse control and that no direct prohibitions of conduct, which can also be pursued under civil law, follow from its status as a norm addressee. This justifies placing the undertaking and all its activities under special abuse control.
- (666) In the exercise of its due discretion, the Decision Division issues the decision to Meta Platforms, Inc. and to Facebook Germany GmbH. Meta Platforms, Inc. is the ultimate parent of the Meta group of companies and thus a suitable addressee of the determination of the status as norm addressee pursuant to Section 19a(1) GWB, which encompasses the entire group. In addition, it can exert influence on all subsidiaries and work towards compliance with the obligations associated with being a norm addressee. Since Section 19a GWB is a national provision which has direct effects for the Meta group in Germany, the German subsidiary, Facebook Germany GmbH, is particularly affected by the decision, so that it is deemed expedient to address the decision to this entity as well.

**D. Fees**

- (667) The decision on fees is based on Section 62(1) sentence 2 no. 2 GWB. Pursuant to Section 62(2) sentence 1 GWB, the amount of the fee is determined according to the personnel and material expenses of the Decision Division and the economic significance of the proceedings. Pursuant to Section 62(2) sentence 2 no. 2 GWB, the fee rates may not exceed 25,000 euros in the case of Section 19a GWB. If the personnel or material expenses of the competition authority are exceptionally high in an individual case, taking into account the economic importance of the action subject to the fee, the fee may be doubled pursuant to Section 62(2) sentence 3 GWB. Pursuant to Section 62(2) sentence 4 GWB, the calculated fee may be reduced to one tenth for reasons of equity.
- (668) The subject of the proceedings is the determination of Meta's paramount significance for competition across markets. This results in particular from Meta's central position in the social media sector as a whole, which is based on several large services with a large number of associated offerings. Meta operates a strong, data-driven ecosystem in the entire area of ad-financed social media, which, due to high retention effects vis-à-vis private users and business customers, bears the risk of permanently pushing other competitors and competition largely to subareas and, thus, to the fringes of the ecosystem, significantly jeopardizing their innovative strength. The economies of scope also facilitate the consistent expansion and consolidation as well as the financing of the ecosystem. As a result, Meta's ecosystem holds a position which extends across various markets with blurring market boundaries and which is difficult or impossible for other companies to challenge. In view of these circumstances and the fact that the activity on markets within the meaning of Section 18(3a) GWB forms the core area of Meta's considerable economic activity, the economic importance of the proceedings must be deemed considerably above average.
- (669) In order to ensure that the decision is adequately substantiated, comprehensive investigations had to be carried out, which resulted in personnel and material expenses that were considerably above average. This involved carrying out extensive research of public sources, including information published by Meta itself, and extensively questioning Meta, including the evaluation of numerous documents obtained from other proceedings of the Decision Division containing information on Meta. In particular, this also included questioning competitors and digital and media agencies, predominantly by issuing formal requests for information with detailed questionnaires, and publishers by sending requests for information. In the present case, taking into account the economic significance of the proceedings, which is considerably above average, the administrative expense involved justifies [...].
- (670) The parties against whom the decision of the competition authority has been issued are liable for the fee pursuant to Section 62(6) sentence 1 no. 2 alt. 2 GWB in conjunction with Section

62(1) sentence 2 no. 2 GWB. Pursuant to Section 62(6) sentence 3 GWB, they are jointly and severally liable.

- (671) The fee is due upon service of this decision and must be paid within one month of such service into the account of the Federal Cash Office

**Bundeskasse – Dienstort Trier**  
**Deutsche Bundesbank, Filiale Saarbrücken**  
**IBAN: DE81 5900 0000 0059 0010 20**  
**BIC: MARKDEF 1590**

Please indicate the following cash reference number as the purpose of payment:

**810600444800**

- (672) Please note that your payment cannot be processed without the cash reference number.
- (673) If the fee has not been paid by the expiry of one month after the date of service, a late payment surcharge of one percent of the amount in arrears will be levied for each month of arrears or part thereof. Bank charges are generally incurred for transfers from abroad. In such cases it must be ensured that the Bundeskartellamt's account is credited with the full fee.

## Information on the right to appeal

The decision is eligible for appeal. The appeal must be filed with the Bundeskartellamt, Bonn, within a period of one month beginning with the formal service of the decision. However, it is sufficient if it is received by the court of appeal, the German Federal Court of Justice, Karlsruhe, within this period.

The appeal must be substantiated. The statement of the grounds of appeal must be filed with the Bundeskartellamt or the court of appeal. The time limit for filing the statement of grounds of appeal is two months. It commences with the formal service of the contested decision and may be extended on application by the chairperson of the court of appeal. The statement of the grounds of appeal must contain a statement of the extent to which the decision is contested and its amendment or revocation is requested, and state the facts and evidence – including any new facts and evidence – on which the appeal is based.

The parties must be represented by a lawyer for the filing and substantiation of the appeal.

Topel

Gleave

Häfele

You are informed that the full text of the decision will be published on the internet. You are therefore requested to inform the Decision Division in writing, within seven days of formal service of this decision, whether the decision contains business secrets which must be deleted before publication. Please give reasons why any deletions you may wish to make are business secrets. If the competent Decision Division does not receive any message from you within seven days, the Bundeskartellamt will assume that this decision does not contain any business secrets and will publish it.

To protect information, some footnotes were also deleted in this version.

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