

**Case summary**

31 March 2016

Clearance of merger between online dating platforms

Sector: Online dating platforms

Ref: B6-57/15

Date of Decision: 22 October 2015

The Bundeskartellamt has cleared in second phase proceedings the planned acquisition of EliteMedianet GmbH, Hamburg ("EliteMedianet") by the investment house Oakley Capital with its investment fund OCPE II Master LP, London. In Germany, EliteMedianet operates the online dating platforms *ElitePartner.de* and *AcademicPartner.de*. Oakley Capital is also active in this business sector with its *Parship.de* platform acquired in March 2015. Following an in-depth examination the acquisition is not expected to significantly impede effective competition.

The proposed merger affects the national market for online dating platforms which, according to the authority's investigations, includes so-called matchmaking services as well as so-called dating services and is characterised by strong product differentiation and a large number of market participants. The Bundeskartellamt did not include social media such as e.g. Facebook in the market. The question of whether so-called casual/adult dating platforms and traditional matchmaking agencies are to be included in the market can be left open.

The essential task of online dating platforms is to facilitate personal and private contacts between their users, mainly between women and men. The objective of the platforms is thus to bring together two sides with well-defined user groups. The online dating platforms participating in the merger and several other market participants charge fees payable by both user groups which can vary significantly from one user group to the other, and also from one platform to the other. Furthermore, the market for online dating platforms includes a variety of business models e.g. models where only one user group pays or those where fees are only charged for specific functionalities and where additional revenue is generated from advertising.

In the case of the so-called matching platforms constellation that is applicable to online dating platforms, it is possible in the Bundeskartellamt's view to define the market without differentiating

between the different market sides, if the perspective of both user groups with regard to functional substitutability is essentially identical (cf. case summary of 25 June 2015 – B6-39/15 – *Immonet/Immowelt* and case summary of 5 August 2015 – B8-67/15 – *P7S1/Verivox* for matching platforms that take the form of transaction platforms). The fact that the product consists of the intermediary activity of matching women and men, and therefore necessarily requires the participation of both sides, suggests that the market can be considered to be a single product market. Also from the perspective of the opposite market side, which is decisive under the demand-side substitutability concept, it appears to be unnecessary for the case in question to differentiate between the two market sides. The opposite side of the market in this case is represented by women and men who are looking for a partner and who are currently customers for this intermediation service. If they switched to any of the possible alternative suppliers, both user groups would inevitably meet again.

Furthermore, in its market definition the Bundeskartellamt did not differentiate between the different business and payment models as, according to the authority's investigations, customers considered these to be interchangeable. The same applies in particular to the platforms that are solely financed by advertising and offer intermediation services to both user groups free of charge, as well as to business models where only one side does not have to pay fees. Despite the fact that their users do not have to pay for such products they are an essential part of the market and play a crucial role, in particular in the functioning of online markets such as the online dating market. From the Bundeskartellamt's point of view it cannot be denied that the free online services which are financed by advertising or premium functions also qualify as a market.¹ In dealing with Internet platforms it would in any case be reasonable to consider that the relationship between a platform and a user group that does not have to pay a monetary fee qualifies as a market activity within the meaning of the German competition act (GWB), if the platform connects the user group with another user group that is liable to make a payment.

However, advertising as an (additional) source of financing creates a further platform placed on top of the dating platform. This platform provides advertisers with an opportunity to capture the attention of the dating user groups. It can therefore be referred to as an "audience providing platform" or "advertising platform". Audience providing platforms added an additional market side by making a strategic financing decision. From the perspective of the other user group(s), however,

¹ Different opinion on hotel platforms held by Düsseldorf Higher Regional Court, decision of 9 January 2015, VI Kart 1/14, marginal note 43 – *HRS*.

this is not an essential component of the product offered. This side of the market, considered by the authority as part of the online advertising markets, should therefore be assessed separately.

The definition of the product market for online dating platforms should be limited to dating and matchmaking services and should not be divided further according to the type and differentiation of the services offered. In particular, no differentiation can be made between dating and matchmaking services. According to the authority's investigations the additional product properties of a matchmaking service, i.e. personality tests, the suggestion of partners on the basis of special algorithms, the objective to establish a long-term relationship often pursued by matchmaking services and the differences in pricing, do not cater to any more special demand than the one addressed by dating services with a simpler structure. This also applies to platforms that are tailored to specific target groups. Furthermore, the purpose of the widely used concept of multi-homing, where several platforms are used alongside each other, is not to cover any complementary requirements (on different markets), but to increase the probability of finding a match. As their purpose of use is clearly different, social networks should not be included in this market.

Based on these findings the merger is not expected to significantly impede competition. The market for online dating platforms is not threatened by market 'tipping' which involves the creation of a dominant position. Post-merger, the parties will not have a market position which, in view of the indirect network effects in place, can be expected to lead to an increasing concentration or monopolisation trend involving the market exit of competitors to the benefit of the parties. Neither can unilateral or coordinated effects be expected to occur which would significantly impede competition.

It is difficult to keep track of the large number of businesses that are active in the German market for online dating platforms. On the basis of their turnovers it is clear that the matchmaking services of the parties, *Parship.de* and *ElitePartner.de* as well as *AcademicPartner.de*, are the leading (paid access) platforms. Another high-turnover platform is *FriendScout24* which belongs to the US group IAC InterActiveCorp. Further platforms operated by this group in Germany are *Neu.de*, *Partner.de* and the mobile platform *tinder.com*, a new entrant. Some other platforms operating in Germany belong to Affinitas GmbH, i.e. *eDarling.de* and *PrestigeSingles.de*. A large number of special platforms must also be taken into account, e.g. *christ-sucht-christ.de* (Christian dating) or *50plus.de*.

A consideration of turnover only would neglect the competitive potential of the advertising-financed platforms and the new entrants that (still) provide services free of charge. From the per-

spective of a user-based analysis, market leadership is seen differently than suggested by a consideration of turnover-based market shares. Moreover, fast growing mobile applications that are optimised for smartphones, such as e.g. *lovoo.de* and *tinder.com*, have increasingly gained importance. In addition, differences in user-based market shares result from different key figures considered for Internet-based services. Possible key figures are the number of registered members, the "unique (monthly) visitors", or a figure determined individually. If, however, only the user-based market shares are considered, it must be noted that a sustainable monetarisation of the services may not yet be in place, which could weaken the competitive potential. In the view of the Bundeskartellamt, the market share *per se* ultimately only provides limited indications for the competitive assessment of an existing market position or a market position that will result from a merger.

A more important indicator of the trend towards concentration in the market seems to be the issue of whether there are indirect network effects that can cause a positive feedback loop to the benefit of a specific business and trigger the so-called market tipping. Platform markets with pronounced two-sided indirect network effects are often characterised by a relatively strong trend towards concentration as the members of one user group immediately benefit from an increase in membership of the other group. The value of the platform thus increases with an increasing number of users on both sides, which in turn attracts more users. The value of competing platforms can thus decrease and, in the extreme case, their exit from the market can result in a monopoly (market tipping). With regard to the assessment of the market power of a specific business, this self-reinforcing feedback loop is, however, ambivalent as it must be taken into account that through the feedback loop the indirect network effects can result in very rapid changes in the market, in particular due to the highly innovative Internet dynamics. This is why even smaller competitors can grow their businesses relatively fast and expand their market shares significantly due to the improved possibility to internalise the network effects and the increasing dynamic attraction of a platform service. All platforms in the market can thus generally benefit from the feedback loop effect.

However, if a platform is able to stand out against other competing platforms due to the positive feedback loop effects, market tipping and the creation of a dominant position will become more likely. At this point the (user-based) market share lead is relevant. However, an overall assessment must take account of potential counteracting factors which can slow down the feedback loop effect, as well as Internet-specific barriers to market entry and the dynamics of the Internet. In the case of the online dating platforms, all of these factors indicated that it was unlikely that the parties had a dominant position in the market and that market tipping was imminent.

In the present case no sufficient lead of the parties' platforms could be established based on their user numbers. On the contrary, there are other platforms with a large number of users and sufficient monetisation which can also benefit from indirect network effects. The ambivalent effect of the indirect network effects can be clearly demonstrated in the market, e.g. in the case of the market entry of the mobile platform *tinder.com* which very quickly reached millions of users.

Other essential market conditions also indicate that there is no strong feedback loop effect. Factors that counteract the self-reinforcing feedback loop process of a single platform and make market tipping appear unlikely are first of all the high degree of platform differentiation in the market for online dating platforms and the users' multi-homing practice this involves. The degree of platform differentiation refers mainly to the strategic positioning or market positioning of the platforms, above all on the basis of heterogeneous customer preferences that can be observed in online dating platforms. Differentiated platforms each address specific user groups and aim at accommodating their heterogeneous preferences. This counteracts the tipping effect as the heterogeneous user preferences make it appear unlikely that all or at least almost all users will use only one platform.

According to the authority's investigations the market for online dating platforms is thus also characterised by clearly predominant multi-homing behaviour of both user groups. It is therefore unlikely that the competitive platforms that are currently active in the market will leave the market resulting in a concentration to the benefit of the parties. Moreover, multi-homing by both user groups has lowered the barriers to market entry so that platforms newly entering the market are not forced to poach users from other platforms. According to the authority's findings this effect is significantly reinforced by the prevailing new customer business in the online dating platform sector as the permanent renewal of the platforms' user base prevents a customer lock-in effect. A new platform will therefore not pursue the primary objective of competing for existing customers, which is why it will not be necessary to poach users from other platforms.

Neither can it be expected that competition will be significantly impeded by non-coordinated effects, irrespective of the risk of tipping. The merger will not result in more room for price increases, although the parties' dating platforms are relatively close competitors in terms of their objectives, target groups, service and pricing and achieve high turnover shares in the matchmaking segment. The investigations have shown that the customers are price sensitive. Also, the Bundeskartellamt has found that the barriers to market entry are low in the sector of online dating platforms (an Internet-specific phenomenon), although considerable marketing activities are essential for a successful platform. Apart from traditional marketing activities such as print media and TV advertis-

ing, so-called word-of-mouth marketing and viral marketing can be used for Internet-based services where it can generate a high level of customer awareness with (very) limited marketing budgets.

Finally, the current changes in the use of online dating platforms based on the Internet's innovative power indicate that there is no uncontrolled scope of action in this sector. However, in the Bundeskartellamt's view only specific, identifiable innovative dynamics can actually control the scope of action of a leading platform. A mere general assumption that Internet dynamics exist cannot be used as an argument against market dominance.

In the present case, however, the investigations have specifically indicated the existence of substantial competition in innovation which can have an effect on the basic structures of the online dating platforms and which will not be affected by the merger. These dynamics are mainly reflected by the development of mobile applications within the context of the general move towards mobile applications, as illustrated by the highly successful dating platform *Tinder.com* which is exclusively available and optimised for mobile devices. *Tinder* enables its users to search for people looking for a date within a specific radius of their current location. This also affects the incumbent online dating platforms as the success of such dating apps could fundamentally challenge the web-based business model that is largely based on longer computer sessions.