



Case summary

30 June 2022

Meta (formerly Facebook)	Paramount significance for competition across markets formally determined
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Sector:	Main focus: digital economy
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File number:	B6 – 27/21
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Date of decision:	2 May 2022
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In its decision dated 2 May 2022, the Bundeskartellamt has determined pursuant to Section 19a(1) of the German Competition Act (GWB) that Meta Platforms, Inc. including its affiliates within the meaning of Section 36(2) GWB (in the following: Meta) is of paramount significance for competition across markets. The validity of this decision is limited to five years from the date on which it becomes final. On 3 May 2022, Meta waived its right to appeal the decision. Therefore, the decision is final.

Background

In January 2021, the 10th amendment to the German Competition Act (GWB Digitalisation Act) entered into force. A key new provision (Section 19a GWB) enables the Bundeskartellamt to intervene earlier and more effectively, in particular against practices of large digital companies.

The main purpose of Section 19a GWB 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. 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 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; see for all of the above explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 73.

Based on the new provision under Section 19a GWB the Bundeskartellamt can in a two-step approach prohibit companies which are of paramount significance for competition across markets from engaging in anti-competitive practices. The first step is to establish the relevant company's status as addressee of Section 19a(1) GWB.

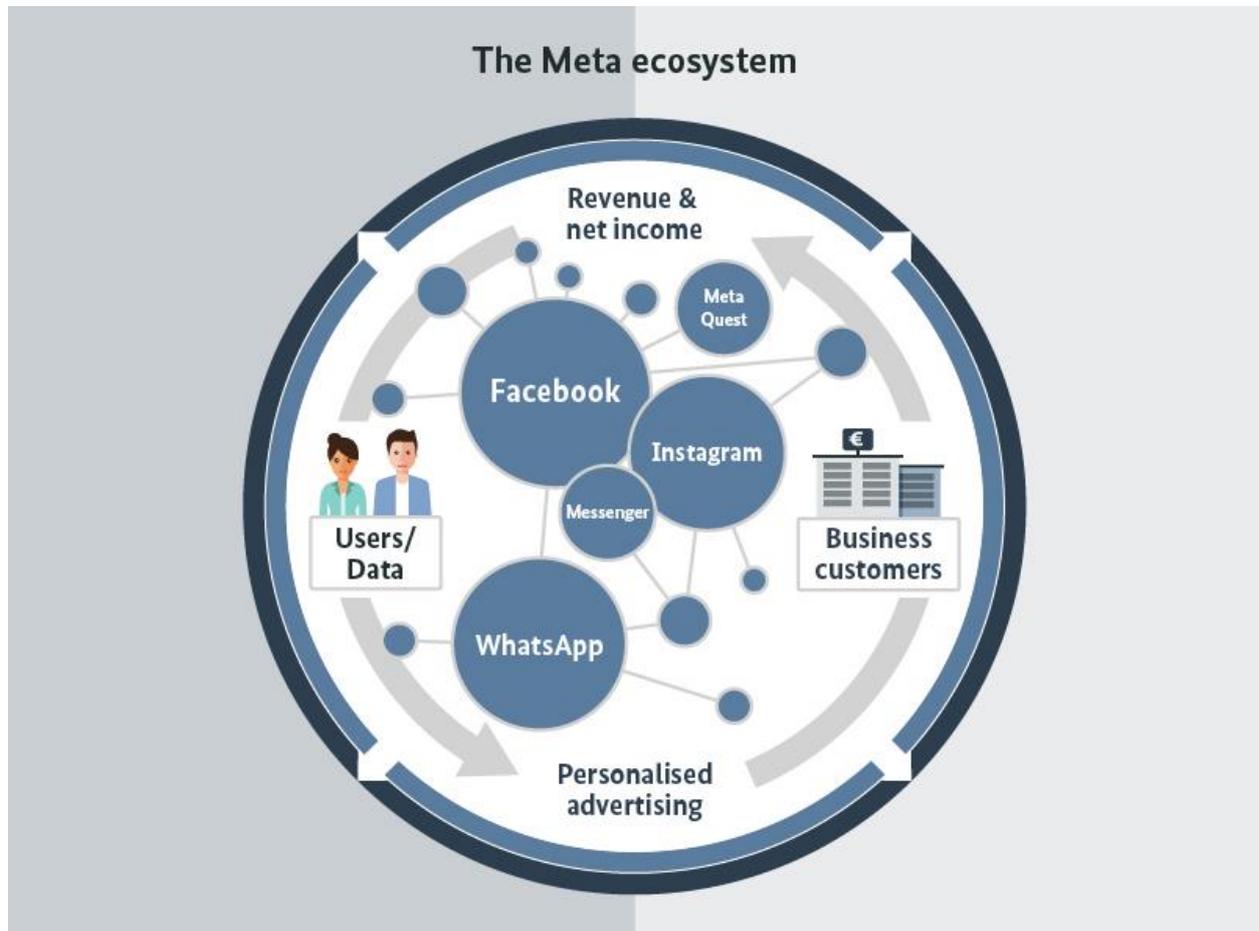
Meta's paramount significance for competition across markets

According to the Bundeskartellamt's investigations, 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.

With all its activities in the social media sector – Facebook, Instagram, Facebook Messenger and WhatsApp – Meta is active to a significant extent on network or multi-sided markets ("platform markets") within the meaning of Section 18(3a) GWB and thus Section 19a GWB is generally applicable. Most of Meta's services are available to private users free of charge and are financed through advertising.

The finding that Meta is of paramount significance for competition across markets is based on an overall assessment of all relevant facts taking into account the factors set out in Section 19a(1) sentence 2 nos. 1 to 5 GWB. With regard to Meta, the company's dominant position (no. 1), its vertical integration and its conglomerate links (no. 3) as well as its access to data (no. 4) are especially important in the overall assessment. Intermediation power and the power to set rules (no. 5), at least in some areas, as well as considerable resources at its disposal (no. 2) add to Meta's particular economic power.

Altogether, 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.



Key aspects of the ecosystem

Specifically, Meta at first holds a dominant position on the platform and network market for social networks for private users in Germany with its core service Facebook; 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).

Furthermore, 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).

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).

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 the Facebook and Instagram shops linked to advertising space (Section 19a(1) sentence 2 no. 5 GWB).

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).

Relevance of these aspects for competition

The strong position of the Meta ecosystem in the entire social media sector, including closely related services, based on these factors 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.

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.

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.

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 and forms the main basis for the tendency towards monopolisation in the market for social networks.

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. 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.

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. 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.

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.

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.

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.

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.

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 ("click-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.

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.

Meta Platforms, Inc. and Facebook Germany GmbH

Meta Platforms, Inc., Menlo Park, USA, is the Meta group's US American parent company established in 2004 under the name "TheFacebook, Inc.". Together with its subsidiaries, the company develops and operates digital products, online services and applications for smartphones ("apps") as well as online advertising products worldwide. The company is publicly traded and more than 90 percent of its shares are in free float. However, CEO Mark Zuckerberg holds more than 50 percent of voting rights. The Meta group includes a multitude of subsidiaries and in 2021 the company employed almost 72,000 employees worldwide.

Meta is known in particular for its services Facebook (including the Facebook Messenger), Instagram and WhatsApp. With features like “Stories” and “Reels” or offers like “Watch” or “Shops” the company continuously expands its range of services. As major project for the future Meta invests in particular in hardware and software for a “metaverse”, i.e. an extensive VR world. Meta’s efforts in this regard include its acquisition of Oculus (now: Meta Quest), a manufacturer of VR headsets and technology.

Meta’s services are used by more than 3.5 billion people worldwide. Its services are also widely used in Germany. Owing to its large user base and the user data available to the company, Meta is also the leading provider of social media advertising, which is the company’s almost exclusive source of revenue. In 2021 Meta’s revenue and net income increased again in year-on-year comparison by more than a third to almost 118 billion US dollars and almost 40 billion US dollars respectively.

Facebook Germany GmbH represents the Meta group in Germany. It supports Meta Platforms Ireland Ltd. as the operator of the services Facebook, Instagram and now also Meta Quest in Europe as well as the service Workplace outside the USA and Canada in the areas of advertising, communication and public relations. The mobile messenger app WhatsApp is offered in Germany by Meta’s subsidiary WhatsApp Ireland Ltd.

The proceeding

Initially, in early 2021, as part of its case B6 – 55/20 concerning the linkage between Oculus (now: Meta Quest) and the Facebook network ([see press release of 10 December 2020](#)), the Bundeskartellamt already also initiated an assessment on whether or not the conditions of the recently introduced Section 19a GWB apply ([see press release of 28 January 2021](#)) and questioned the company for the first time in this regard. After separating the proceeding to specifically assess Meta’s status as norm addressee pursuant to Section 19a(1) GWB, the Bundeskartellamt used a multitude of publicly available sources, including the information published by Meta itself, and also questioned competitors, media/digital agencies, publishers and Meta (again). In two hearing rounds Meta was given the possibility to provide both written and oral statements. Based on its investigations, the Bundeskartellamt formally determined in its decision dated 2 May 2022 that Meta is of paramount significance for competition across markets; on 3 May 2022, Meta waived its right to appeal the decision ([see press release of 4 May 2022](#)). Therefore, the decision is final.