



Case summary

23 November 2022

Meta (formerly Facebook)	Linkage of Meta Quest (formerly Oculus) with the Facebook network
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Sector:	digital economy
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File number:	B6 – 55/20
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Date of decision:	-
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For the time being, the Bundeskartellamt does not object to Meta Platforms, Inc. (Meta) selling its VR headsets Quest 2 and Quest Pro also in Germany. With the introduction of the Meta account, it is no longer necessary to register with a Facebook account to use these headsets. Meta will, subject to certain exceptions, also keep the data gathered from the use of its virtual reality products separate from data gathered from its other services for the time being unless the users consent to having their data combined by linking their accounts.

The proceeding is not concluded, however. Most importantly, it remains to be clarified to which extent data processing across services can be permissible with or – for certain purposes (e.g. security purposes) – without the users’ consent. This matter will be thoroughly investigated in the course of the parallel proceeding B6-22/16. The Bundeskartellamt also reserves its right to continue monitoring the availability and the specific design of users’ options, also with regard to the combined use of Meta and VR services.

Background

When the Quest 2 headset was introduced, Meta intended to make it mandatory for users to have or create a Facebook account in order to set up the headset. This was met with scepticism by many interested users.

In late 2020 the Bundeskartellamt initiated a proceeding against Meta for making the use of Oculus conditional on the existence of a Facebook account. Initially, this proceeding was solely based on the abuse control provisions under Section 19 of the German Competition Act (GWB) and Article 102 TFEU

(see [press release of 10 December 2020](#)). In early 2021 – immediately after the introduction of Section 19a GWB – the Bundeskartellamt included the new legal basis in its proceeding ([see press release of 28 January 2021](#)). As a precautionary measure, Meta had voluntarily refrained from selling its new VR headsets in Germany already before the proceeding was initiated.

In its decision of 2 May 2022 the Bundeskartellamt established that Meta is a *company of paramount significance across markets* ([see press release of 4 May 2022](#)). This finding is a prerequisite for the Bundeskartellamt to take measures based on Section 19a(2) GWB. Meta did not appeal the decision, which is therefore final. Meta has expressed its interest in an amicable solution in the Facebook/Oculus matter.

Subject of the proceeding and interim results

The subject of the proceeding is the linkage of different offers and corresponding data processed by a norm addressee pursuant to Section 19a GWB. The investigation is primarily focussing on the criteria of Section 19a(2) sentence 1 number 3 (a) GWB (linking the use of an offer to the use of another offer) and Section 19a(2) sentence 1 number 4 (a) GWB (data processing across services). In the data-driven economy, there is often a close link between the combined use of services and data linkage across sources.

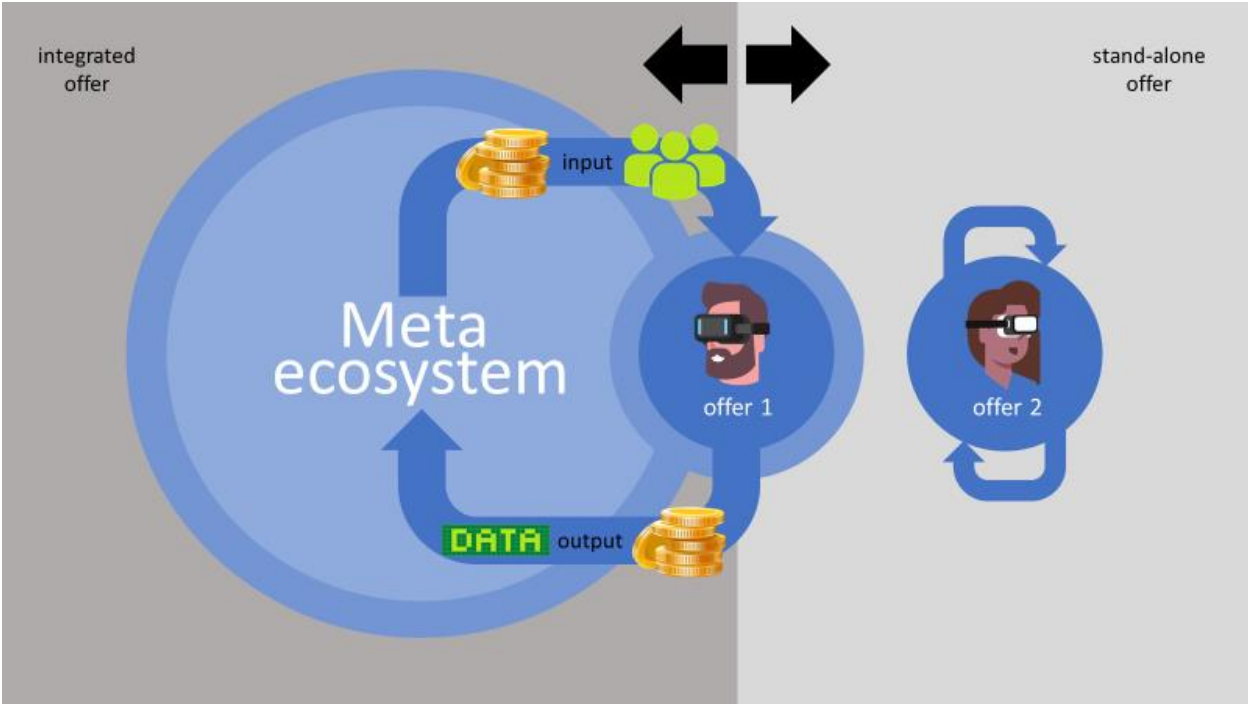
Combined use of services

In the legislator’s intent, the more general Section 19a(2) sentence 1 number 3 GWB is aimed in particular at preventing measures to expand and strengthen an undertaking’s ecosystem within the meaning of Section 19a GWB by “enveloping” markets in which the undertaking is not dominant by applying anti-competitive measures, for example predatory pricing strategies, exclusivity agreements or offers that are linked or bundled with other offers (so-called “platform envelopment”).¹ The provision includes examples regarding the linking or bundling of different offers to further specify its legislative intent. Pursuant to Section 19a(2) sentence 1 number 3 (a) GWB, which is relevant in this case, a company of paramount significance for competition across markets can be prohibited from linking the use of an offer provided by the undertaking to the automatic use of another offer provided by the undertaking which is not necessary for the use of the former offer, without giving users sufficient choice as to whether and how they want to use the other offer.

¹ Government bill, Bundestag printed paper 19/23492, p. 75 and 76.

Meta’s VR products are to be considered as separate offers existing independently of the company’s other offers, in particular the social network Facebook. However, by making it mandatory to register with a Facebook account to use these products, these offers would in fact be linked even though this is not strictly required for technical or other reasons.

For Section 19a(2) sentence 1 number 3 (a) GWB to apply, the undertaking does not have to be dominant on either of the markets affected by the linking of offers. Generally, for Section 19a GWB to apply, the undertaking in question does not necessarily have to have a dominant position.² In addition, the scope of application of Section 19a(2) sentence 1 number 3 (a) GWB is specifically intended to go beyond the classic “leveraging” of a dominant position and covers measures to expand and strengthen a norm addressee’s ecosystem by integrating new offers to the potential mutual benefit of both the newly integrated offer and the rest of the ecosystem. This is because such bundled offers tie users more closely to the ecosystem, thus raising the barriers to market entry for competitors. As a consequence, competition is largely limited to the margins of the ecosystem.



² Recommended resolution and report by the Committee on Economic Affairs and Energy, Bundestag printed paper 19/25868, p. 113.

The current proceeding has led to the use of Quest VR headsets no longer being conditional on the existence and use of a Facebook account. Instead, both new and existing customers will have the option to create and use a stand-alone Meta account for using the Quest headsets. In the Accounts Center provided by Meta, users can later opt to link their Meta account to (or separate it from) any Facebook or Instagram account they may have.

Pursuant to Section 19a(2) sentence 1 number 3 (a) GWB, however, it is not sufficient to merely give users choice regarding the use of offers. The choice must in fact be sufficient with regard to the criteria outlined in the German Competition Act. This requires, inter alia, that selection menus give users a true choice rather than push them towards additional offers.³ Choice is also potentially insufficient if options are more difficult to find or click.

Based on the user dialogues presented in the course of the proceeding and initial information about the actual use of the Meta account, the Bundeskartellamt currently assumes that the envisioned process of setting up and registering for the use of the latest Quest headsets principally gives users in Germany a choice within the meaning of Section 19a(2) sentence 1 number 3 (a) GWB. However, the Bundeskartellamt will continue to monitor Meta's activities and the development of the virtual reality sector as a whole and request further action from Meta where necessary.

Linking of data

Section 19a(2) sentence 1 number 4 (a) GWB also applies, because data gathered from the use of the VR headsets will be extensively linked across services if users opt to register for the headsets with their Facebook account, which, after Meta had originally planned this to be a mandatory registration method, is now optional. According to this provision, norm addressees can be prohibited from making the use of services conditional on the user agreeing to the processing of data from other services of the undertaking or a third-party provider without giving the user sufficient choice as to whether, how and for what purpose such data are processed.

Meta's virtual reality products and the social network Facebook are different services within the meaning of the provision, i.e. sufficient choice has to be granted also with regard to data processing across services.

³ Recommended resolution and report by the Committee on Economic Affairs and Energy, Bundestag printed paper 19/25868, p. 116.

The choice architecture and requests for consent as well as the question of which, if any, limited purposes would allow the linking of data also without users' consent are currently the subject of the implementation process of the Bundeskartellamt's decision in case B6-22/16 ("Facebook data proceeding"). The aim is to develop principles going beyond the specific scope of said proceeding which are also relevant to the present case. In this context, it has to be considered that Section 19a(2) sentence 1 number 4 (a) GWB applies in principle to any data processing activity across services provided by a norm addressee and that, like Section 19a(2) sentence 1 number 3 (a) GWB, this provision applies irrespective of whether any of the services in question has a dominant position.

This means that the question of when sufficient choice can be deemed to exist also with regard to the flow of data remains open. However, Meta has expressly confirmed to the Bundeskartellamt that for the time being and with regard to users using a separate Meta account, there will be no flow of data between the virtual reality services and other services without the users' consent, with the exception of purposes Meta considers legitimate (security, Family Analytics, Operational Service Loggings and legal matters). These purposes for data processing without the user's consent will have to be examined in the course of the ongoing proceedings.

Meta Platforms, Inc.

Meta Platforms, Inc., Menlo Park, USA, established in 2004 under the name "TheFacebook, Inc.", is the US American parent company of Marc Zuckerberg's Meta group. 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 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. As a major project for the future Meta invests in particular in hardware and software for a "metaverse", i.e. an extensive virtual 3D world. Meta's efforts in this regard include its acquisition of Oculus (now: Meta Quest), a manufacturer of 3D headsets and technology, and various manufacturers of content, especially games, for its own store.

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 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 achieved a revenue of almost 118 billion US dollars and a net income of almost 40 billion US dollars. Recently, Meta has seen a slight decrease in its revenue, and, in particular due to the company's significant efforts in the virtual reality sector, a significant drop in its net income, and the company has cut a larger number of jobs. Other well-known US digital companies have also been under pressure recently and have announced cost-cutting programmes in the recent past.

Quest 2 / Quest Pro

Quest 2 and Quest Pro are virtual reality headsets sold by Meta which can be used as stand-alone devices, i.e. without other hardware like gaming computers or games consoles. Meta considers these headsets as the future key access point to the internet, prospectively in the form of one or more virtual worlds ("metaverses"), possibly even ahead of smartphones. Content for Quest headsets can be purchased first and foremost from the proprietary Meta store, similar to smartphone apps. The Quest 2 is deemed an excellent VR product based on its price/performance ratio (including the range of content offered), and Meta's headsets are said to have a market share of up to 90%. As an alternative to the Quest 2, the Chinese company ByteDance recently launched the Pico 4 after its predecessor product Pico Neo 3. ByteDance is known internationally in particular for its TikTok service. The headsets made by ByteDance are already available in Germany.