



Case summary

5 January 2022

Bundeskartellamt determines Google’s paramount significance for competition across markets

Sector: Main focus: digital economy

File number: B7 – 61/21

Date of decision: 30 December 2021

The Bundeskartellamt has determined pursuant to Section 19a(1) of the German Competition Act (GWB) that Alphabet Inc. including its affiliates within the meaning of Section 36(2) GWB (in the following “Google”) is of paramount significance for competition across markets. The validity of the decision is limited to five years from the date on which it becomes final, i.e. until 4 January 2027.

Subject of the proceeding:

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

The main purpose of Section 19a GWB is to identify positions of particular market power and their possible anti-competitive effects on and risks to competition in the area of “digital ecosystems” in which individual companies may have a so-called gatekeeper function.¹ 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

¹ See statement of legislative intent on the 10th amendment to the Act against Restraints of Competition, Bundestag printed paper 19/23492, p. 73.

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 as defined in Section 18(3a) GWB lead to accelerated and increased concentration and bring about conglomerate or vertically integrated business structures² 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.³

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.

In its decision of 30 December 2021 the Bundeskartellamt determined in a first step that Google is of paramount significance for competition across markets. In other proceedings initiated by the Bundeskartellamt against Google, which may draw on this decision, the authority is currently examining Google's data processing terms (file number B7-70/21, [see press release of 25 May 2021](#)) and the Google News Showcase service (file number V-43/20, [see press release of 4 June 2021](#)).

Identification as norm addressee pursuant to Section 19a(1) GWB

Following several discussions, extensive surveys carried out at Google and various market players as well as after analysing a number of publicly available sources, the Bundeskartellamt determined in an overall assessment of all relevant facts that Google is of paramount significance for competition across markets.

² See statement of legislative intent on the 10th amendment to the Act against Restraints of Competition, Bundestag printed paper 19/23492, p. 73.

³ See statement of legislative intent on the 10th amendment to the Act against Restraints of Competition, Bundestag printed paper 19/23492, p. 73.

According to the Bundeskartellamt's findings, Google's operations on multi-sided markets ("platform markets") within the meaning of Section 18(3a) GWB involving Google Search, among other services, are substantial and thus Section 19a GWB is generally applicable. Most of Google's services are available to private users free of charge and are financed by advertising.

An overall assessment of all the facts relevant to the case has shown that Google holds an economic position of power across markets which gives rise to a scope of action across markets that is insufficiently controlled by competition. In particular, Google offers a wide range of services that are highly sought after and widely used and with such a product range and its expansion it is able to benefit from economies of scope and set rules for other businesses across markets; in doing so, Google can access a broad and deep database and further consolidate, expand or otherwise use its position to its own advantage without sufficient control by competition.

One important aspect in the overall assessment was that Google offers a number of at least highly sought-after services, such as in particular Google Search, YouTube, Chrome, Android and Play Store. Holding more than 80 per cent of the market shares, Google has according to the Bundeskartellamt's findings a dominant position in relation to its users at least on the German market for general search services, and is the main search advertising provider. In a quantitative assessment the Bundeskartellamt also took account of the fact that Google Search, YouTube, Android and Chrome attract high numbers of daily and monthly active users. In this context, the Bundeskartellamt paid particular attention to Google's high level of vertical integration and the fact that a large number of its services are otherwise interconnected across markets and are of a complementary nature. For instance, Google can offer its mobile operating system Android and a number of services, some of which already widely used and others new, as Android apps via its own app store "Play Store". Based on agreements on preinstallations and default settings concluded with original equipment manufacturers Google can also have such apps preinstalled and pre-set on Android devices. In addition, it was taken into account that Google also offers strong-selling and far-reaching advertising services. The company's revenues derived from online advertising amounted to around 147 billion US dollars in 2020, which was approx. 80 per cent of its

total turnover.⁴ Google Display Network sites reach over 90 per cent of internet users worldwide.⁵

In its overall assessment the Bundeskartellamt also took into account that in combination with its advertising services Google is often in a position to set rules for its (potential) users and advertising customers across markets in many parts of its ecosystem. For instance, Google uses its advertising services to market not only almost exclusively its own wide-reaching advertising inventory, especially in Google Search and on YouTube, but also third-party advertising inventory. In addition, with regard to open display advertising Google offers a range of different highly sought-after and far-reaching advertising services on all levels of the supply chain. In various parts of its “digital ecosystem” Google has significant influence over third-party access to its users and advertising customers (e.g. via Google Search, YouTube, Android, Play Store or its advertising services). In this respect, these services can be described as “infrastructure” since, for one thing, a large number of other services can to a great extent only be offered using Google’s services and, for another, Google’s services are of great importance for the business activities of third parties. The Bundeskartellamt also took into consideration that in offering a range of different services across markets and improving and expanding such services Google can profit from economies of scope. Google has the possibility to cross-promote its services, support their widespread use especially through agreements with original equipment manufacturers (OEMs) on preinstallations and default settings (in Android, for example), steer users who use one of its services to other services offered by the company and to penetrate new markets with service expansions and additions that reach across markets or market levels.

In the overall analysis the Bundeskartellamt also considered that due to the large number of the often highly sought-after and far-reaching services that are connected with and complement each other, Google has access to a broad and deep database, which most notably consists of user data. Using various identifiers allows Google to bundle and unambiguously assign the data

⁴ Google’s 2020 annual report, pp. 33 ff., available at: https://abc.xyz/investor/static/pdf/20210203_alpha-bet_10K.pdf (last accessed on 30 December 2021).

⁵ <https://support.google.com/google-ads/answer/117120?hl=en> (last accessed on 30 December 2021).

collected through the relevant services to users not only across services but partly also across devices. Taking into account Google's range of services as well as its possibilities to combine data across services and partly also across devices, the company's access to a database of great breadth⁶ and depth⁷ is in its entirety and specific form of special relevance for competition since it gives rise to Google's paramount position across markets.

In the above context it was also relevant for the Bundeskartellamt that Google's potential resulting from its access to data and the associated competitive advantages are further enhanced by the fact that the data and other resources available to Google, such as the Google brand, can be used as "shareable input" across markets and reused any number of times. This makes it even easier to operate, improve and expand existing services or develop new ones.

In its decision the Bundeskartellamt lastly also took account of Google's considerable financial means which in the past were also used for internal research and development activities and for a number of corporate acquisitions. Google is expected to also enjoy considerable financial flexibility in the future. At the time of the decision Google's market capitalisation was almost two trillion US dollars. This ranks Google among investors' top 10 highest rated companies in the world, next to Amazon, Apple, Meta and Microsoft.⁸

Additionally, the Bundeskartellamt also took into consideration that Google Search's significance, in particular, goes beyond merely economic aspects and extends into social life as a whole. Being by far the largest and most important search engine in the world, Google plays a key role in terms

⁶ The "breadth" of the database refers to the number of users whose data Google collects. A "broader" database means that information on more users is available, which in turn tends to result in increased representativeness and on average in more data being available per service or in total across all services, see *Krämer, Schnurr, Micova* (Centre on Regulation in Europe), *The Role of Data for Digital Markets Contestability*, September 2020, pp. 55 f.

⁷ The "depth" of the database describes the quality of the data which can be reflected in the total amount of data available on a uniquely identified user, the data's timeliness, accuracy and/or level of detail or granularity. A "deeper" database therefore means that on average the amount of data available per user is larger and the data are of higher quality, timelier, more accurate and/or more detailed or granular, see loc. cit.

⁸ On market capitalisation of Alphabet Inc. see <https://www.google.com/finance/quote/GOOGL:NASDAQ> and the corresponding pages for the other companies mentioned (last accessed on 30 December 2021).

of participation in social life in Germany and across the world. Taking into account the additional issue of social participation in the context of the assessment under competition law is, for one thing, in line with the case law relating to Section 19 GWB handed down by the German Federal Court of Justice (BGH).⁹ For another, such issues are also referenced in the legislative materials on Section 19a GWB.¹⁰

The proceeding:

In its decision of 30 December 2021 the Bundeskartellamt determined that Google is of paramount significance for competition across markets. On 4 January 2022 Google decided not to appeal the decision. The decision is therefore final.

Alphabet Inc. and Google Germany GmbH:

Alphabet Inc. is a publicly listed holding company based in Mountain View (USA) which was founded in 2015 to restructure the then existing Google Group. Alphabet's subsidiaries are active in various technology sectors and Google offers in particular internet services and software products through them.

Google is represented in Germany by Google LLC's subsidiary, Google Germany GmbH, Hamburg. In addition to Google LLC, the parent company currently indirectly controls four other companies and their respective subsidiaries as sole shareholder via XXVI Holdings Inc.

The business segments "Google Services" and "Google Cloud" are assigned to Google LLC. Google Services includes products and services such as Android, Chrome, Gmail, Google Drive, Google Maps, Google Photos, Google Play, Search, YouTube and Google hardware (Pixel smartphones,

⁹ Federal Court of Justice, decision of 23 June 2020, KVR 69/19, WuW 2020, 525 para 124 – Facebook.

¹⁰ Recommended resolution on the 10th amendment to the Act against Restraints of Competition, Bundestag printed paper 19/25868, p. 7.

Chromecast, Google TV and Google Nest Hub). Google's services are mainly financed by advertising.¹¹

In addition, Google also provides a range of different advertising services for the marketing of its own and third-party online advertising inventory as well as associated services, such as the tracking of user behaviour.

All other business activities outside Google LLC (so-called "Other Bets") are assigned to other companies. Google's "Other Bets" activities are manifold and include undertakings focusing on internet access (Access or Google Fiber), smart home applications (Nest), artificial intelligence "AI" (DeepMind) as well as biotechnology companies (Verily), driverless cars (Waymo), delivery drones (Wing) and venture capital companies (GV and CapitalG).

Google's worldwide revenue amounted to 183 billion US dollars in 2020.

¹¹ The main exception is the still unprofitable cloud segment which accounts for around 10 per cent of total sales revenues. In this area Google's business model is to generate revenues directly from the provision of third-party services. See Google's 2020 annual report, pp. 7, 40, available at: https://abc.xyz/investor/static/pdf/20210203_alphabet_10K.pdf (last accessed on 30 December 2021).