

Sector inquiry into Smart TVs

In December 2017 the Bundeskartellamt launched a sector inquiry into smart TVs to examine consumer protection aspects. Smart TVs offer users an Internet connection and additional functions such as e.g. electronic program guides, HbbTV or apps. These devices thus also have the technical capacity to record, process and transmit data about the user's behaviour. It is not easy or even impossible for the consumer to know to what extent this occurs when he or she installs and uses a smart TV. Smart TVs now account for the largest share of all television sets on the market and represent a technical object of everyday life which can be found in nearly every household. In order to limit the extent of the investigations, so-called set-top boxes (e.g. Apple TV or amazon fire TV) were not included in the sector inquiry.

1. Legal background

Since the 9th amendment to the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen, GWB) in 2017 the Bundeskartellamt can conduct an investigation into a specific sector of the economy where it has reasonable grounds to suspect substantial, permanent or repeated infringements of consumer protection law provisions which harm the interests of a large number of consumers (Section 32e (5) GWB).

Indications about such infringements in the smart TV sector were obtained from reports in the media and from a civil action between a consumer association and a major TV manufacturer. These sources raise a number of issues about the timely information of customers and the security and lawful processing of user data. Were deficits to be found, these would potentially be in breach of the General Terms and Conditions and data protection provisions. However, the Bundeskartellamt's current scope of competence (Sections 32ff GWB) does not allow it to act against any possible breaches of this kind as it has not yet been assigned with the necessary powers of intervention in consumer protection issues.

2. Subjects of investigation

One of the matters under investigation is whether there is a legal basis for the specific collection of user data. Another issue under examination is whether and how the data obtained is shared. In this respect the provisions of the General Data Protection Regulation which has been in force since 25 May

2018 is to be closely examined. In addition, the terms of use and data protection provisions used by the TV manufacturers or other service providers are to be carefully examined.

3. Aims of the sector inquiry

The primary aim of the Smart TVs sector inquiry is to uncover and specify possible violations of consumer law provisions. The facts established by the sector inquiry will increase transparency about how smart TVs function, which can provide consumers with the necessary criteria on whether they can buy and operate such devices without hesitation or whether in some cases precautionary measures are advisable, e.g. settings should be changed or certain functions not used. Another objective of the inquiry is to find out what measures TV manufacturers and other service providers (can) take to guarantee the security of user data. The results of the inquiry could possibly also provide the manufacturers with concepts for voluntary adjustments.

4. Stage of proceedings

In May 2018, following preliminary talks with TV manufacturers, a data protection authority and a consumer protection authority, around 30 suppliers were questioned in a first inquiry. The aim of the first inquiry was to find out who supplies and places smart TVs on the German market, what proportion of the devices have smart functions and who develops software and apps for the smart TVs. In the next stage of the inquiry the Bundeskartellamt will take a close look at the conduct of the largest suppliers in an extensive questionnaire. An analysis of the sector inquiry and first results are envisaged for 2019.

Date: October 2018