Press release

Bundeskartellamt / Digital economy

Bundeskartellamt reviews Apple’s tracking rules for third-party apps

Bonn, 14. June 2022: The Bundeskartellamt has initiated a proceeding against the technology company Apple to review under competition law its tracking rules and the App Tracking Transparency Framework. In particular, Apple’s rules have raised the initial suspicion of self-preferencing and/or impediment of other companies, which will be examined in the proceeding.

Apple introduced the App Tracking Transparency Framework for third-party apps with its updates iOS 14.5, iPadOS 14.5 and tvOS 14.5 in April 2021. It establishes certain preconditions for user tracking as defined by Apple by third-party apps. Advertisers or app publishers, for example, can use tracking to display targeted advertising on websites and apps or to track and use user data for other purposes. These options can be particularly relevant to providers of third-party apps in case their business models rely on apps which are available free of charge, but financed through advertising.

Andreas Mundt, President of the Bundeskartellamt: “We welcome business models which use data carefully and give users choice as to how their data are used. A corporation like Apple which is in a position to unilaterally set rules for its ecosystem, in particular for its app store, should make pro-competitive rules. We have reason to doubt that this is the case when we see that Apple’s rules apply to third parties, but
not to Apple itself. This would allow Apple to give preference to its own offers or impede other companies. Our proceeding is largely based on the new competencies we received as part of the stricter abuse control rules regarding large digital companies which were introduced last year (Section 19a German Competition Act - GWB). On this basis, we are conducting or have already concluded proceedings against Google/Alphabet, Meta/Facebook and Amazon.”

Already based on the applicable legislation, and irrespective of Apple’s App Tracking Transparency Framework, all apps have to ask for their users’ consent to track their data. Apple’s rules now also make tracking conditional on the users’ consent to the use and combination of their data in a dialogue popping up when an app not made by Apple is started for the first time, in addition to the already existing dialogue requesting such consent from users. The Identifier for Advertisers, classified as tracking, which is important to the advertising industry and made available by Apple to identify devices, is also subject to this new rule. These rules apparently do not affect Apple when using and combining user data from its own ecosystem. While users can also restrict Apple from using their data for personalised advertising, the Bundeskartellamt’s preliminary findings indicate that Apple is not subject to the new and additional rules of the App Tracking Transparency Framework.

The Bundeskartellamt is taking action against the conduct of Apple as a company which can possibly be classified as having paramount significance for competition across markets. The proceeding initiated today is thus subsequent to the proceeding initiated against Apple on 21 June 2021 to determine its paramount significance for competition across markets pursuant to Section 19a(1) GWB (see press release of 21 June 2021), which is not yet concluded. The examination of Apple’s tracking rules is based on Section 19a(2) sentence 1 GWB and Article 102 TFEU. In this context, the possibilities for Apple itself to combine data across services and users’ options regarding the processing of their data by Apple can be relevant, just like the question whether these rules may lead to a reduction of users’ choice of apps financed through advertising.

Background information: Section 19a GWB

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 authority to intervene earlier and more effectively, in particular against the practices of large digital companies. In a two-step procedure the Bundeskartellamt
can prohibit companies which are of paramount significance for competition across
markets from engaging in anti-competitive practices.

Based on this new tool under competition law the authority has already initiated
proceedings and made initial decisions against Facebook/Meta (see press releases of
28 January 2021, 4 May 2022), Amazon (see press release of 18 May 2021) and