

February 7, 2019

Business practices that violate data protection regulations and a fair competition exclude each other

Today's decision of the German antitrust authorities, the Bundeskartellamt¹, considers essential parts of Facebook's business model to be inadmissible. The decision is based on the massive collection of data about users outside Facebook, from other companies of the Facebook Group companies such as WhatsApp and Instagram on the one hand, and from countless third-party websites on the other.

The merging of data without the knowledge of the user, the lacking of transparent procedures and the lacking or ineffective consent of the user are not permissible from a data protection point of view and constitute offenses of abuse of competition. The exchange of data between Facebook and its subsidiaries, such as WhatsApp, is a data transfer that requires a legal basis. There is no intra-enterprise doctrine in data protection and the mere existence of an economic unit is not enough to exchange user data at will.

The action of the Bundeskartellamt is a consistent reaction to Facebook's strategy to achieve growth at the expense of data and consumer protection, which is aimed against fair competition. This shows how closely data protection and competition law have grown together in the meantime.

Prof. Dr. Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information, commented: "Today's decision makes it clear that business practices that are contrary to data protection and fair competition are mutually exclusive. Facebook will have to take into account the user's right of self-determination when merging data from third party sources, also for reasons of competition. Data protection and consumer protection cannot be permanently undermined in the EU. It is remarkable that the Group now refers to the European General Data Protection Regulation and the competence of the Irish Data Protection Commission. There are already numerous cases in which Facebook and various subsidiaries are accused of significant violations of EU data protection law. Moreover, it is a mistake to believe that these proceedings would be decided solely by the Irish Data Protection Commission. As the lead authority, the latter must prepare a draft decision, but where other data protection authorities do not agree, the European Data Protection Committee shall have decision-making powers."

Press contact:

Martin Schemm

Phone: +49 40 428 54-4044

E-Mail: presse@datenschutz.hamburg.de

¹https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Meldungen%20News%20Karussell/2019/07_02_2019_Facebook.html