

Turkish Competition Authority Initiated an Investigation Against Facebook and WhatsApp

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Background

WhatsApp's updated privacy policy, which was planned to be entered into effect on 8 February 2021, caused a widespread backlash among its users around the world due to its extensive data sharing procedures with Facebook. Almost immediately after WhatsApp released its new privacy policy, the Turkish Competition Authority (TCA) announced that it initiated an ex-officio investigation against the tech giant Facebook, as well as its subsidiary WhatsApp, and also imposed an interim measure requiring WhatsApp to suspend its new policy until the investigation is completed.

Why did the TCA initiate an investigation against Facebook and WhatsApp?

In its public announcement, the TCA indicated that the updated privacy policy of WhatsApp requires users to consent their WhatsApp data being shared with Facebook companies that will cause collection processing and usage of more data by Facebook. Those who do not consent to these updates will not be able to use WhatsApp as of 8 February 2021. Other than the foregoing information, it is not known on which grounds the TCA will build its case against Facebook in this zero price market. However, it is expected that Facebook will be accused of exploitative abuse and TCA will follow a similar route with its German counterpart (*Bundeskartellamt*), which recently concluded a similar investigation against Facebook.

How did Facebook's German investigation go?

At the beginning of 2019, the German watchdog ruled that Facebook is dominant in the social network market and abuses its position. The authority stressed that even though the majority of the users are not aware of, they are only allowed to use Facebook if they consent Facebook to collect an extensive amount of user data from third party sources, allocate these to the users' Facebook accounts and use them for numerous data processing processes. Third-party sources include Facebook's Instagram and WhatsApp, but also third party websites. *Bundeskartellamt* indicated that Facebook's collection of data from external sources (outside Facebook) and merging it with Facebook data constitutes exploitative abuse of the social network market.

As a result of this seminal investigation, *Bundeskartellamt* prohibited Facebook's existing data collection policy with immediate effect and ordered it to submit a revised policy for approval by the agency within 12 months. Although Facebook succeeded in the first round of appeal before the Düsseldorf Courts and managed to suspend the execution of *Bundeskartellamt*'s decision, the final appeal body, the German Federal Court of Justice acknowledged that excessive data collection can be a form of anticompetitive conduct and ruled Facebook to comply with *Bundeskartellamt*'s decision until the appeal process is finalized.

Two investigations at a time: Turkish Data Protection Authority's Investigation against WhatsApp

Following the investigation initiated by the TCA, the Turkish Data Protection Authority (TDPA) also announced that it will investigate WhatsApp's updated policy. In summary, the TDPA stipulated that although users may give consent to Facebook to process their personal data, they may not consent to transfer of such data to another

data controller abroad. The TDPA, among others, will examine whether this practice of WhatsApp violated disclosure with free will requirement and whether it complies with the requirements for transferring data abroad.

Given the interplay between the two investigations initiated by the TCA and TDPA and the cooperation protocol executed between the two authorities encouraging sharing of know-how and expertise, these two investigations are expected to be carried out in coordination by the respective watchdogs. Regardless of the outcome, it is important for authorities to align their approaches towards this data-driven sector to eliminate confusion around this sensitive issue.

Remarks

It looks like the TCA's investigation will spark much controversy, as its German counterpart, in the competition law circles due to the novel nature of its enforcement approach. We will closely follow up the process and continue to update our readers on the developments.

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