

Case M.7217 – Facebook / WhatsApp Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/20041

\*\*\* EXCERPTS \*\*\*

#### 1. THE PARTIES

(2) Facebook ... is a provider of websites and applications for mobile devices ("apps") offering social networking, consumer communications and photo/video sharing functionalities. Facebook also provides online advertising space. In particular, Facebook offers the social networking platform "Facebook", the consumer communications app "Facebook Messenger" and the photo and video-sharing platform "Instagram".

(3) WhatsApp is a provider of consumer communications services via the mobile app "WhatsApp". WhatsApp does not sell advertising space.

#### 2. THE CONCENTRATION

(4) The Transaction consists of the acquisition of WhatsApp by Facebook for a purchase price of USD 19 billion.

(6) The Transaction contributes to Facebook's current strategy of focusing its business on mobile development.

(7) First, the Transaction contributes to Facebook's strategy of offering popular and efficient mobile apps around the world. Facebook expects the acquisition of WhatsApp to enable it to gain foothold among younger users, for whom WhatsApp tends to be more popular than Facebook.

(8) Second, from a defensive point of view, the Transaction aims at protecting Facebook's mobile strategy from the perceived threat by the two leading mobile operating systems Android and iOS, which both offer their own consumer communications apps.

#### 3. UNION DIMENSION

(10) ... Cyprus, Spain and the United Kingdom.

#### 4. RELEVANT MARKETS

##### 4.1. CONSUMER COMMUNICATIONS SERVICES

[...]

##### 4.1.2 PRODUCT MARKET DEFINITION

[...]

##### 4.1.2.3. CONCLUSION ON PRODUCT MARKET DEFINITION

(34) ... [T]he Commission will assess the effects of the Transaction in the narrowest relevant product market for consumer communications services, that is the market for consumer communications apps for smartphones.

##### 4.1.3. GEOGRAPHIC MARKET DEFINITION

[...]

(44) In light of the above, the Commission considers that the relevant geographic market for the assessment of the Transaction is at least EEA-wide, if not worldwide.

##### 4.2 SOCIAL NETWORKING SERVICES

(45) A core service offered by Facebook is its online social networking platform, which connects more than 1.3 billion people around the world.

(46) While there is no established definition, social networking services can be generally described as services which enable users to connect, share, communicate and express themselves online or through a mobile app.

(52) The lines between social networking services and consumer communications apps are becoming blurred and each of these services adopts traditional functionalities of the other.

(53) However, the market investigation revealed a number of important differences between social networking services and consumer communications services.

(54) [S]ocial networking services tend to offer a richer social experience compared to consumer communications apps.

(55) [C]onsumer communications apps facilitate instant real-time communication (with handsets ringing and notifications being pushed to recipients). Responses are generally sent promptly allowing a conversation. By contrast, messages in social networks, such as comments on a posting, are not normally expected to be responded to in real time.

(56) [S]ocial networks tend to enable communication and information sharing with a wider audience than consumer communications apps, which are more personal and targeted. ... [E]ven though Facebook Messenger and WhatsApp enable users to create groups, their size is relatively limited.

(59) [S]ocial networking services should not be further segmented according to a platform or an operating system.

(59) ... Respondents to the market investigation generally consider that a distinction could be drawn between social networking services promoting interpersonal contact for private and entertainment purposes (such as Facebook or Google+) and services which are used for professional purposes (such as LinkedIn or Xing). Nevertheless, respondents acknowledge that there are overlaps between the purposes of intended use.

(62) For the purposes of the present case, the exact boundaries of the market for social networking services, in particular whether consumer communications apps such as Facebook Messenger and WhatsApp fall within the scope of such a potential market can be left open, since the Transaction would not give rise to serious doubts as to its compatibility with the internal market under any alternative market definition.

(68) ... [T]he Commission concludes that the geographic scope for the market for social networking services is at least EEA-wide, if not worldwide.

#### 4.3. ONLINE ADVERTISING SERVICES

(72) The Commission has investigated the market definition as regards advertising, since Facebook is currently active in that market. The Commission has not investigated any possible market definition with respect to the provision of data or data analytics services, since neither of the Parties is currently active in any such potential markets.

(75) The market investigation conducted for the purpose of reviewing the Transaction clearly confirmed the distinction made in the Commission precedents between the provision of online and offline advertising.

(76) The market investigation also supported to a large extent the existence of a further sub-segmentation of the online advertising market between search and non-search advertising.

(79) In line with its decisions in Google / DoubleClick and Microsoft / Yahoo! Search Business, the Commission concludes that online advertising constitutes a relevant market separate from offline advertising. Whether segments of that market constitute relevant markets in their own right can be left open for the purposes of this decision, because the Transaction would not give rise to serious doubts as to its compatibility with the internal market under any such narrower product market definition.

(83) In line with its decisions in Google / DoubleClick and Microsoft / Yahoo! Search Business, the Commission concludes that the online advertising market and its possible sub-segments should be defined as national in scope or alongside linguistic borders within the EEA.

#### 5. COMPETITIVE ASSESSMENT

(84) The Parties operate two consumer communications apps, Facebook Messenger (which has approximately 300 million

users worldwide and 140 million users in the EEA) and WhatsApp (which has approximately 600 million users worldwide and 80 million users in the EEA).

(85) A number of other players provide consumer communications apps in competition with the Parties in the EEA and worldwide.

(86) On the basis of the results of the market investigation, the Commission notes that the main drivers of the competitive interaction between consumer communications apps appear to be (i) the functionalities offered and (ii) the underlying network.

(87) [C]onsumer communications customers have a broad range of choices when it comes to selecting and using consumer communications apps. Many of them use more than one consumer communications app simultaneously depending on their specific needs (so-called "multi-homing"). ... The functionalities offered are at the heart of the consumer communications apps' value proposition to customers and their improvement in order to gain the largest user base is a key innovation driver. ... reliability ... privacy.

(88) Second, a consumer communications service can offer utility to customers if the people they want to communicate with are also users of that service. Therefore, the relevance of the user base appears to be more important than its overall size. In this context, however, the size of the network of a consumer communications app can have a value for customers in two ways: (i) a larger network implies that it is more likely that existing contacts will already be using a consumer communications app; and (ii) a larger network will afford greater opportunities for contact acquisition and discovery.

(89) Furthermore, perceived trendiness and "coolness" amongst groups of users is also an important factor in attracting new users and thus shaping the competitive landscape.

(90) Finally, price is one factor that influences the popularity of a consumer communications app. Indeed, the users of consumer communications apps tend to be very price-sensitive<sup>41</sup> and expect a consumer communications app to be provided for free.

#### 5.1.3.1. MARKET SHARES

(95) [M]arket shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors.

(96) On the basis of the data provided by the Parties, their combined share in the EEA market for consumer communications apps on iOS and Android smartphones in the period between November 2013 and May 2014 was around 35% (WhatsApp: 23%; Facebook Messenger: 12%), followed by Android's messaging platform (8%), Skype (8%), Twitter (8%), Google Hangouts (8%), iMessage (7%), Viber (6%), Snapchat (4%) and other market players with a share of 3% or less. The Parties submit that they have no reason to believe that their usage of consumer communications apps globally is higher than it is in the EEA.

(97) The Commission notes that the market shares indicated above are likely to underestimate the Parties' position, and present some shortcomings.

(98) In this context the Commission considers that the methodology proposed by the Parties for the calculation of market shares still represents the best (albeit imperfect) available proxy to measure relative market positions in this sector.

(99) Even if the data provided by the Parties were to underestimate the Parties' combined market shares, the Commission notes that the consumer communications sector is a recent and fast-growing sector which is characterised by frequent market entry and short innovation cycles in which large market shares may turn out to be ephemeral. In such a dynamic context, the Commission takes the view that in this market high market shares are not necessarily indicative of market power and, therefore, of lasting damage to competition.

#### 5.1.3.2. CLOSENESS OF COMPETITION

(101) The Commission notes that the Parties' offerings in consumer communications apps are different in several respects.

(102) These differences relate to: (i) the identifiers used to access the services (phone numbers for WhatsApp, Facebook ID for Facebook Messenger);<sup>48</sup> (ii) the source of the contacts (the user handset's address book for WhatsApp, all Facebook users in Facebook Messenger); (iii) the user experience (which is richer in Facebook Messenger given the integration with the core aspects of Facebook social network); (iv) the privacy policy (contrary to WhatsApp, Facebook Messenger collects data regarding its users and uses them for the purposes of its advertising activities);<sup>49</sup> and (v) the intensity with which the apps are used (with many more messages per active user being exchanged through WhatsApp than through Facebook Messenger).<sup>50</sup>

(103) All these elements make the look and feel of the Parties' consumer communications apps different in the views of the respondents to the Commission's market investigation. The only factors on the basis of which WhatsApp and Facebook Messenger were considered close competitors by certain respondents are the communications functionalities offered and the size of their respective networks.

(104) However, the Commission notes that there is no feature offered by Facebook Messenger or WhatsApp which is not offered also by other market players.<sup>52</sup> Moreover, the Commission notes a significant overlap exists between the networks of WhatsApp and Facebook<sup>53</sup> which could rather point to a complementarity in the use of the two apps rather than to close competition.

(105) Furthermore, the EEA market for consumer communications apps features a significant degree of "multi-homing", that is, users have installed, and use, on the same handset several consumer communications apps at the same time.<sup>54</sup> In particular, WhatsApp and Facebook Messenger have been reported as being the two main consumer communications apps simultaneously used by the majority of the users in the EEA.<sup>55</sup> This fact suggests that the two consumer communications apps are to some extent complementary, rather than being in direct competition with each other.

(106) On the basis of their characteristics, WhatsApp's offering seems to be closer to that of Viber and of other similar consumer communications apps which use phone numbers or email addresses to let users access the services and do not require the "affiliation" to a social network, as is the case for Facebook Messenger or Twitter. In contrast, Facebook Messenger seems to be in closer competition with services offered by Google Hangouts or Twitter, since to access the consumer communications service users are required to register on a social network or in any event for a broader range of services (such as email).

(107) In light of the above, the Commission considers that Facebook Messenger and WhatsApp are not close competitors.

#### 5.1.3.3. CONSUMERS' ABILITY TO SWITCH PROVIDERS

(108) The majority of respondents to the Commission's market investigation indicated that post-Transaction there will remain a number of alternative providers of consumer communications apps.

(109) In line with the Notifying Party's arguments, the Commission has found in its market investigation that there are no significant costs preventing consumers from switching between different consumer communications apps. ... low price ... easily downloadable ... pass from one to another in no-time ... [minimal] learning costs ... Fifth, information about new apps is easily accessible given the ever increasing number of reviews of consumer communications apps on app stores.

(110) In this context, the Commission notes that customers of consumer communications apps normally multi-home.<sup>60</sup> This means that, when they try new consumer communications apps, users do not generally stop using the consumer communications apps they were previously using. On the basis of the data provided by the Notifying Party, approximately 83% of EEA users of consumer communications apps use more than one service per month, and approximately 54% use more than one such service on a daily basis

(111) The Commission also notes that neither Facebook Messenger nor WhatsApp are pre-installed on a large basis of handsets.<sup>64</sup> Software pre-installation can make switching more difficult, in view of users' inertia which leads to the so-called "status quo bias."<sup>65</sup> In this case, however, users normally have to actively download both Facebook Messenger and WhatsApp.

(113) ... In the present case, the Commission has not found any evidence suggesting that data portability issues would constitute a significant barrier to consumers' switching in the case of consumer communications apps.

(115) In light of the above, the Commission considers that, with the exception of network effects, there is no significant barrier to switching for users in the market for consumer communications apps.

#### 5.1.3.4. GENERAL BARRIERS TO ENTRY AND EXPANSION

(116) The consumer communications apps market has been characterised by disruptive innovation. ... BlackBerry ... Telegram ... WhatsApp itself was launched in 2009, when the shift of users of consumer communications services from PC to smartphone started, and today it has approximately 600 million active users.

(117) In this context and in line with the Notifying Party's arguments, the Commission has found in its market investigation that there are no significant "traditional" barriers for a new consumer communications app to enter the market, that is, to be offered to users for download.

(119) Developing and launching a consumer communications app does not require a significant amount of time and investment.

(121) [T]he Commission considers that the Transaction is unlikely to give rise to an increase in entry barriers, as the Parties do not have control over any element influencing entry.

#### 5.1.3.5. NETWORK EFFECTS

(127) Network effects arise when the value of a product/service to its users increases with the number of other users of the product/service.<sup>75</sup>

(128) The Commission notes that, in the present case, both Parties have large networks of users: WhatsApp had close to 600 million users and Facebook Messenger had close to 300 million users in July 2014 worldwide.<sup>76</sup>

(129) ... [T]he Commission considers that in the present case network effects exist in the market for consumer communications apps.

(130) The existence of network effects as such does not a priori indicate a competition problem in the market affected by a merger. Such effects may however raise competition concerns in particular if they allow the merged entity to foreclose competitors and make more difficult for competing providers to expand their customer base. Network effects have to be assessed on a case-by-case basis.

(132) [The] threat from new players constitutes and is likely to keep constituting a significant disciplining factor for the merged entity, regardless of the size of its network.

(133) [T]he use of one consumer communications app (for example, of the merged entity) does not exclude the use of competing consumer communications apps by the same user. ... Also, using multiple consumer communications apps is easy, since a user does not have to log in each time, when switching an app, and the messages are "pushed" (that is, delivered automatically) onto a user's device. Hence, the fact that a large number of users will be on the merged entity's network is unlikely to preclude them from using also competing consumer communications apps.

(134) ... [T]he Parties do not control any essential parts of the network or any mobile operating system. Users of consumer communications apps are not locked-in to any particular physical network, hardware solution or anything else that needs to be replaced in order to use competing products.

(135) Therefore, the Commission considers that, while network effects exist in the market for consumer communications apps, in the present case, on balance, they are unlikely to shield the merged entity from competition from new and existing consumer communications apps.

(140) [E]ven if some integration of WhatsApp with Facebook were to take place post-Transaction, it would be mitigated by the fact that there is already a significant overlap between the networks of WhatsApp and Facebook. ... [P]re-existing network effects would be unlikely to be substantially strengthened by the Transaction.

(141) With only one exception, all competing providers of consumer communications apps considered that the Transaction would not have a negative impact on competition in the consumer communications market. Only telecoms operators indicated that the Transaction would give rise to negative effects in the market for consumer communications apps. For

the reasons outlined above, however, these concerns are not considered to be well-grounded.

(142) [T]he Commission considers that the Transaction does not give rise to serious doubts as regards its compatibility with the internal market with respect to the market for consumer communications apps.

## 5.2. SOCIAL NETWORKING SERVICES

(143) Facebook operates the world's largest social network which connects over 1.3 billion users worldwide and 230 million in the EEA. As explained in section 4.2, social networking services enable users to connect, share, communicate and express themselves in a digital environment.

(144) During the market investigation, several third parties argued that (i) absent the Transaction WhatsApp would become a provider of social networking services in competition with Facebook; or that (ii) WhatsApp is already a provider of social networking services competing with Facebook.

(145) No indication was found of WhatsApp's plans to become a social network which would compete with Facebook absent the merger.

(146) [I]n this section 5.2 the Commission examines the likely competitive effects of the Transaction under a broader definition of the potential market for social networking services assuming that both WhatsApp and Facebook were actual competitors in that market.

(148) The results of the market investigation indicate that the companies which are most clearly perceived by respondents as providers of social networking services are Facebook, Google+, LinkedIn, Twitter and MySpace.

(150) If consumer communications apps were included in the potential market for social networking services, the number of alternative providers would expand substantially. In particular, it would encompass such market players as WhatsApp, LINE, WeChat, iMessage, Skype, Snapchat, Viber, and Hangouts. The market would also potentially include other non-consumer communications services providers which enable interaction and exchange of content between users, such as YouTube.

(152) [I]f the potential market for social networking services includes consumer communications apps such as WhatsApp, there are a significant number of alternative service providers, which are used by consumers interchangeably.

### 5.2.3. CLOSENESS OF COMPETITION

(153) Both WhatsApp and Facebook are similar in that they allow interaction and sharing of information and content (such as pictures) between users. At the same time, both services display significant differences.

(154) The Facebook user experience centres around the newsfeed

(155) ... timeline ... enabling [users] to curate their memories in a searchable personal narrative that is organised chronologically

(156) In contrast, WhatsApp does not offer homepages, feeds or timelines to its users. Users are not able to organise and curate memories and create personal narratives. While WhatsApp has a status functionality, it is being used only by 7% of its EEA-users, according to WhatsApp's estimates. Indeed, WhatsApp offers a light and simple communications tool built for real-time messaging, which is, according to the data presented in paragraph (56), predominantly one-to-one.

### 5.2.4. POTENTIAL INTEGRATION OF WHATSAPP AND FACEBOOK

(159) [D]uring the market investigation third parties expressed concerns regarding potential integration between the Parties post-Transaction, including WhatsApp's integration with the Facebook social network. ... The integration of WhatsApp could strengthen Facebook's position in the potential market for social networking services by adding additional users and/or functionalities to the Facebook social network.

(162) [E]ven if an integration of WhatsApp with Facebook were to take place, it would be mitigated by the fact that a large number of WhatsApp's active users (73– 84%) are already users of Facebook.

#### 5.2.5. CONCLUSION ON SOCIAL NETWORKING SERVICES

(163) Based on the results of the investigation and the analysis above, the Commission considers that the Transaction would not give rise to serious doubts as to its compatibility with the internal market as regards the potential market for the provision of social networking services.

#### 5.3. ONLINE ADVERTISING SERVICES

(164) For the purposes of this decision, the Commission has analysed potential data concentration only to the extent that it is likely to strengthen Facebook's position in the online advertising market or in any sub-segments thereof. Any privacy-related concerns flowing from the increased concentration of data within the control of Facebook as a result of the Transaction do not fall within the scope of the EU competition law rules but within the scope of the EU data protection rules.

(165) Since only Facebook, and not WhatsApp, is active in the provision of online advertising services, the Transaction does not give rise to any horizontal overlaps in the market for online advertising or in any sub-segment thereof.

(166) ... [S]ince WhatsApp does not currently collect any user data that are valuable for advertising purposes, the Transaction does not increase the amount of data potentially available to Facebook for advertising purposes.

(167) However, the Commission has examined whether the Transaction could nevertheless have the effect of strengthening Facebook's position in the online advertising market, thereby raising serious doubts as to its compatibility with the market. For this purpose, the Commission has analysed two main possible theories of harm, according to which Facebook could strengthen its position in online advertising by: (i) introducing advertising on WhatsApp, and/or (ii) using WhatsApp as a potential source of user data for the purpose of improving the targeting of Facebook's advertising activities outside WhatsApp. Each of these two possible theories of harm is examined below.

##### 5.3.2. WHATSAPP AS A POTENTIAL PROVIDER OF ONLINE ADVERTISING SPACE

(168) According to this possible theory of harm, post-Transaction, the merged entity could introduce targeted advertising on WhatsApp by analysing user data collected from WhatsApp's users (and/or from Facebook users who are also WhatsApp users). This would have the effect of reinforcing Facebook's position in the online advertising market or sub-segments thereof.

(179) ... [T]he Commission notes that, regardless of whether the merged entity will introduce advertising on WhatsApp, there will continue to be a sufficient number of other actual and potential competitors who are equally well placed as Facebook to offer targeted advertising.

##### 5.3.3. WHATSAPP AS A POTENTIAL SOURCE OF USER DATA VALUABLE FOR ADVERTISING PURPOSES

(180) According to this possible theory of harm, post-Transaction, the merged entity could start collecting data from WhatsApp users with a view to improving the accuracy of the targeted ads served on Facebook's social networking platform<sup>101</sup> to WhatsApp users that are also Facebook users.

(184) A number of respondents to the market investigation stated that they expect the Transaction to materially strengthen Facebook's position in the provision of online advertising services as a result of the increased amount of data which will come under Facebook's control.

(187) In any event, even if the merged entity were to start collecting and using data from WhatsApp users, the Transaction would only raise competition concerns if the concentration of data within Facebook's control were to allow it to strengthen its position in advertising.

##### 5.3.4. CONCLUSION ON ONLINE ADVERTISING SERVICES

(190) Based on the results of the market investigation and the analysis outlined above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as regards the market for the provision of online advertising services, including its potential sub-segments.

