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Competition and Consumer Policy in Digital Markets – Note by Germany

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1. Protecting competition means protecting consumers

1. Competition law is a key instrument for protecting consumers and ensuring fair market outcomes. Competition forces companies to compete for customers by offering lower prices, better quality, a wider choice and constant innovation. Consumer welfare therefore remains a central principle in the enforcement of competition rules.

2. Conversely, businesses that are not exposed to competition do not have to try to win over customers. This is particularly true in digital markets. Their specific characteristics, most notably network effects, economies of scale, barriers to market entry and winner-takes-all tendencies, make them prone to entrenched market power. The extensive reach and capabilities of large digital companies can leave consumers in a vulnerable position. Against this backdrop, effective competition becomes even more crucial for consumer welfare in digital markets.

3. In recent years, several jurisdictions have introduced novel legislation for digital markets that has been designed with consumer protection in mind. The EU's Digital Markets Act (DMA) established a targeted set of obligations for designated "gatekeepers", which have been binding since March 2024. These obligations are intended to benefit the Union's economy as a whole and ultimately the Union's consumers.¹ Similarly, the abuse control provision for large digital players in Section 19a of the German Competition Act (GWB), which was introduced in early 2021, aims to strengthen consumers' freedom of choice, among other things.²

4. In Germany, consumer protection law is enforced by the Federal Office of Justice (*Bundesamt für Justiz*) in inner-European cross-border cases, while purely national cases are addressed by the affected entities under civil law. The Bundeskartellamt's primary focus is not consumer protection. However, it can highlight practices that do not comply with existing consumer protection law by conducting inquiries in specific sectors or interpreting data protection law provisions in its competition law proceedings.

5. This contribution aims to share the Bundeskartellamt's experience at the interface between protecting competition and safeguarding consumers' interests. It discusses the link between consumers' online privacy and competition as well as the limitations to consumers' freedom of choice and autonomy in digital markets. In cases where the behaviour in question is linked to competition (especially where the behaviour has the potential to impede competitors or exploit consumers), issues such as misleading consumers through a lack of transparency, nudging practices and dark patterns are also addressed in this contribution.

¹ See Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (Digital Markets Act), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R1925>, recital 8.

² See Deutscher Bundestag, Drucksache 19/25868, 13 January 2021, available at: <https://dserver.bundestag.de/btd/19/258/1925868.pdf>, p. 9 (in German).

2. The competitive impact of providing consumers with control over the processing of their data

6. The collection and processing of user data by businesses is not a new phenomenon. Customer data have long been an important source of information for businesses. However, the digital economy and especially advances in information technology have fundamentally changed the way data can be collected, processed and commercially exploited across nearly all sectors. Today, businesses are able to process vast amounts of data within a very short amount of time.

7. If customers are given the option to control their privacy level, privacy can become an important competitive factor. Although consumers typically prefer services that offer better privacy conditions, they do not always act accordingly (“privacy paradox”). And in reality, digital services do not always allow for optimal privacy: a lack of transparency, the excessive collection of personal information and linking data from separate services without user consent are just some of the issues consumers face today in the digital world.

2.1. Shortcomings in consumer online privacy

8. To identify violations of consumer protection laws and provide recommendations for action, the Bundeskartellamt can launch sector inquiries. In various such inquiries, the Bundeskartellamt has detected possible infringements of consumer protection law as well as violations of the General Data Protection Regulation (GDPR). Combined with impediments to competitors or exploitative behaviour towards consumers, violations of such laws may have a competitive dimension.

9. One of the problems encountered by the Bundeskartellamt in its sector inquiries is the excessive collection of data, which is often accompanied by a lack of transparency or even a lack of information about the data being collected. When consumers shop online, for example, credit checks are often performed that use additional data which are not required to check the buyer’s creditworthiness (e.g. the address, the frequency of relocations, the time the order was placed and even the buyer’s age). Credit agencies collect vast amounts of such data from exchanges with retailers and payment service providers.³ Messenger and video services also tend to gather excessive data. For example, when users synchronise their contact list, the services sometimes collect the data of contacts who have not yet registered with them. The Bundeskartellamt has found that this practice may violate the GDPR if it is employed on a permanent basis. This may be relevant from a competitive point of view because clear provisions, information and greater transparency could make the issue of data protection a more important factor for users to consider when choosing one messenger service over another. As a result, providers would in turn have a greater incentive to ensure a high level of data protection.⁴

10. Another issue is that users often receive only limited information about who they are actually entering a contract with, who will have access to their data and how their data may potentially be used. In many cases, mobile app users are not sufficiently informed as

³ See the report on the sector inquiry “Scoring in online shopping”, available at: https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Sektoruntersuchungen/Sektoruntersuchung_Scoring.pdf?__blob=publicationFile&v=2, pages 81-84 (legal assessment, possible violations of GDPR articles), page 48 (data collection) and page 57 (valuation of certain criteria by credit agencies).

⁴ See the Bundeskartellamt’s press release presenting the results of its sector inquiry into messenger and video services, available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/17_05_2023_SU_MD.html?nn=298574.

to whether the app store provider or the app publisher is responsible for possible warranty claims. Numerous mobile apps do not inform users about how and to what extent using the app gives third parties such as Google access to personal data. At times, user control over the processing of personal data at the operating system level in Android and iOS appears insufficient.⁵ Similarly, credit checks are sometimes performed without users being informed beforehand, leaving them with no opportunity to prevent their data being used in this way.⁶

2.2. The interplay between data protection and competition law

11. Access to the personal data of users can be essential for a company's market position. Therefore, the way a company handles its users' personal data is relevant not only from a data protection perspective, but also in terms of strengthening its competition position. Large companies are better placed than smaller firms to collect and amass valuable customer data in vast amounts. Moreover, when competitors comply with data protection law while dominant companies in a certain sector are less mindful of privacy, the dominant firms may gain an even greater competitive advantage. As a result, this may reinforce their market dominance. Access to data, above all in the case of online platforms and networks, has been classified as a relevant factor for market dominance under Section 18(3a) GWB. Companies that are dominant in a certain sector have the opportunity to use exploitative practices to the detriment of their users, which at the same time also impedes competitors that are not able to collect data in similar amounts.

12. Even though the Bundeskartellamt has no enforcement powers in relation to consumer protection, the authority can still help prevent large digital players from gaining even more dominance through excessive data collection and processing. If the behaviour in question is linked to competition law (in particular, if the behaviour has the potential to impede competitors or exploit consumers), the Bundeskartellamt can initiate competition law proceedings, taking into account consumer protection regulations, such as the GDPR.

13. The Facebook case is a prominent example. According to Meta's (formerly Facebook's) original terms and conditions, users could either agree to vast amounts of their personal data from various sources being combined or choose not to use Facebook at all. In February 2019, the Bundeskartellamt prohibited Meta from combining such data without user consent. Despite lodging an appeal against this decision, Meta engaged in intensive negotiations with the Bundeskartellamt regarding possible measures to implement the authority's decision. In October 2024, the Bundeskartellamt deemed Meta's measures to be sufficiently effective and closed the case, while Meta withdrew the pending appeal before the Düsseldorf Higher Regional Court, thus making the decision final. As a result, using Facebook no longer requires users to consent to Meta linking data from different sources to their user accounts.

14. During the proceedings, the Bundeskartellamt regularly exchanged views with the data protection authorities as the interplay between competition and data protection in these proceedings was a new aspect at the time. In assessing whether Meta's terms of use were

⁵ See the Bundeskartellamt's press release presenting the results of its sector inquiry into mobile apps, available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2021/29_07_2021_SU_Mobile_Apps.html?nn=50032.

⁶ See the Bundeskartellamt's press release presenting the results of its sector inquiry "Scoring in online shopping", available at: https://www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2024/19_06_2024_SU_Scoring.html?nn=224162.

abusive, the Bundeskartellamt used elements of the GDPR as a reference for weighing the interests of Facebook and its users. In July 2023, the Court of Justice of the European Union expressly endorsed this approach.⁷ The Bundeskartellamt can therefore also take data protection law provisions into account in decisions under competition law if there is a link to competition. In this case, such a link arose from Facebook’s superior market power: Facebook users were practically not able to switch to other social networks.⁸

15. With the introduction of Section 19a GWB in early 2021, the interplay between data protection and competition law has become much simpler to navigate. The abuse control provision, which is specifically tailored to large digital players, allows issues relating to consumer data privacy to be solved without directly invoking the GDPR. This possibility was used in the Google data proceedings, which were concluded with a settlement in October 2023. As part of the settlement, Google agreed to commitments giving users better control over how their data are processed. The Bundeskartellamt declared these commitments binding.⁹

16. In these proceedings, the Bundeskartellamt’s competition concerns focused on situations where Google intended to combine personal data from one Google service with personal data from other Google or non-Google sources or use these data across separately provided Google services. Google committed to provide users with the possibility to give their free, specific, informed and unambiguous consent to the processing of their data across services. The consent prompts Google now has to display for this purpose must be designed so as not to encourage users in a manipulative way to consent to cross-service data processing (avoiding “dark patterns”).

17. For the core platform services listed in the European Commission’s (EC’s) designation decision under the DMA (Google Shopping, Google Play, Google Maps, Google Search, YouTube, Google Android, Google Chrome and Google’s online advertising services), such an obligation already results from Article 5(2) DMA. Throughout the proceedings, the Bundeskartellamt worked closely with the EC and applied Section 19a GWB in parallel to the enforcement of the DMA to the processing of data across services carried out by more than 25 other services (including Gmail, Google News, Assistant, Contacts and Google TV). As a result, the right of users to determine how their data are used is better protected.

3. Limiting consumers’ choice

18. Mandatory registration with one service in order to use another or single sign-on systems are also located at the interface between consumer protection and competition. Users may be compelled to create accounts or automatically register with affiliated services they would not otherwise choose to use. Mandatory registration can therefore significantly restrict users’ freedom of choice and autonomy in digital markets. At the same time, it allows companies to effectively make access to multiple independent services dependent

⁷ The Düsseldorf Higher Regional Court, responsible for Meta’s appeal, had referred this question to the Court of Justice of the European Union.

⁸ See the Bundeskartellamt’s press release of 10 October 2024: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/10_10_2024_Facebook.html?nn=295782.

⁹ See the Bundeskartellamt’s press release of 5 October 2023: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/05_10_2023_Google_Data.html?nn=55030.

on participation in their own ecosystem. This practice can increase switching costs, reduce interoperability and strengthen user lock-in. From a competition point of view, market-dominant firms may use mandatory registration or single sign-on mechanisms to envelop new markets or leverage their market power in one sector to gain an advantage in another, thereby strengthening their competitive position across adjacent digital markets. Such strategies can create barriers to entry for smaller competitors, limit consumer choice, and further consolidate the influence of large technology companies over user data and digital ecosystems as a whole.

19. Against this background, the Bundeskartellamt's proceedings against Meta concerning the practice of linking its virtual reality (VR) headsets with the social network Facebook have given consumers more choice by allowing them to use Meta's VR headsets without having to create a Facebook account. The proceedings were initiated in late 2020. After the introduction of Section 19a GWB in early 2021, this new provision was included as an additional legal basis. The proceedings resulted in Meta addressing the Bundeskartellamt's competition concerns. In November 2022, the competition authority announced that it did not object to the introduction of Meta's VR headsets in Germany.¹⁰

20. The Bundeskartellamt's competition concerns focused on the two topics social media and VR. Meta's ecosystem is the key player in social media due to its large user base. Originally, Meta intended to make having or creating a Facebook account mandatory for users to set up its newest VR headset. Users would have had no choice but to register with a Facebook account. This could have impeded competition in social media and VR.

21. Pursuant to Section 19a GWB, a company of paramount significance for competition across markets (Meta was designated as such in May 2022) can be prohibited from linking the use of one of its offers to the automatic use of another one of its offers that is not necessary for the use of the former offer, unless it gives users sufficient choice as to whether and how they want to use the latter offer. According to the criteria outlined in the German Competition Act, sufficient choice requires, among other things, selection menus to give users genuine options rather than pushing them towards additional offers. The choice given to users may also be insufficient if the options are more difficult to find or select.¹¹

22. The proceedings resulted in consumers being able to use Meta's VR products on a standalone basis. For both existing and new customers, using Meta's VR headsets no longer requires the existence and use of a Facebook account.

4. Misleading or steering consumers

23. Further overlaps between consumer protection and competition law can be identified in cases involving a lack of transparency or misleading consumers, for example through certain ranking practices, nudging or dark patterns.

¹⁰ See the Bundeskartellamt's press release of 23 November 2022: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/23_11_2022_Facebook_VR_Brillen.html?nn=55030.

¹¹ See the Bundeskartellamt's case summary (B6-55/20) of 23 November 2022: <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2022/B6-55-20.pdf?blob=publicationFile&v=3>.

4.1. Lack of transparency

24. A lack of transparency can harm consumers by preventing them from making informed decisions and reducing their trust in digital services. Especially in the context of online shopping, comparison websites and user reviews can increase transparency by comparing offers and providing additional product information. However, consumers may be misled by certain ranking practices or come across false product reviews.

25. Comparison websites, in particular, can reduce the time and effort consumers spend searching for information and support better purchasing decisions. However, their value to consumers depends on several factors, including market coverage, ranking algorithms and the quality of information provided. In its 2020 sector inquiry into comparison websites¹², the Bundeskartellamt found that some platforms covered the relevant market very well, while others — particularly in the insurance and hotel sectors — excluded important providers. Only a limited number of websites made this sufficiently transparent to consumers, for example by publishing negative lists. In some cases, rankings were influenced by commissions paid by providers. This may be misleading for consumers, especially when information about the impact of commissions is only provided in a general or insufficiently visible manner. The inquiry also revealed that in some cases, advertisements were not labelled as such.

26. The Bundeskartellamt advised consumers not to let themselves be pressured by claims such as “low in stock” and other possibly misleading information about product availability. Rankings should always be taken with a grain of salt. Consumers should also keep in mind that identical results on several different comparison websites may be the result of these websites cooperating with each other, sharing databases and calculation tools. This can lead to different, supposedly independent comparison websites that only differ in name.

27. User reviews may also play a key part in helping consumers make a decision when shopping online. In October 2020, the Bundeskartellamt presented the results of its sector inquiry into online user reviews.¹³ The inquiry mainly focused on how fake or manipulated reviews influence online purchases. It revealed that the number of genuine reviews is too low in many sectors. At the same time, fake reviews are not uncommon online. The issues detected include consumers being deceived by dubious providers who write fake reviews or pay others to write them, service providers who specialise in selling positive reviews, reviews that are artificially generated by bots, and platforms that do very little to combat fake reviews.

28. The Bundeskartellamt advised consumers to look out for specific signs, such as overblown language or recurring patterns, to better identify fake reviews. Reading as many different reviews as possible is also a good way to spot fake reviews.

29. Problems related to data protection can also be relevant in terms of competition. In the Facebook proceedings (see above), many users were not aware that the social network’s terms of use also enabled data from third-party sources, such as websites that embedded

¹² See the Bundeskartellamt’s press release presenting the results of its sector inquiry into comparison websites, available at: https://www.bundeskartellamt.de/EN/Consumer_protection/Protecting_Consumer_Rights/ComparisonWebsites/ComparisonWebsites_node.html.

¹³ See the Bundeskartellamt’s press release presenting the results of its sector inquiry into online user reviews, available at: https://www.bundeskartellamt.de/EN/Consumer_protection/Protecting_Consumer_Rights/OnlineUserReviews/OnlineUserReviews_node.html.

Facebook’s interfaces such as the “Like” or “Share” buttons, to be shared with Meta and that simply visiting a website with an embedded “Like” button would already start the flow of data. It was not even necessary to hover over or click on the button. Most users were unaware that Meta could collect their data from such websites, allocate them to their Facebook accounts and use them for numerous data processing purposes.

4.2. Nudging and dark patterns

30. Furthermore, practices such as nudging and the use of dark patterns can undermine consumer autonomy by exploiting cognitive biases, hiding relevant information or steering users toward choices that mainly benefit the platform provider. Companies can use a sophisticated interface design and behavioural insights to influence consumer decisions. Especially when such practices are adopted by companies with a strong market position, competition concerns may arise. Digital players with significant market power can use nudging and steering techniques to lock users into their ecosystems, strengthen their market position and limit consumer choice.

31. The Bundeskartellamt’s Apple ATTF proceedings, which were initiated in June 2022 and are still ongoing, deal, among other things, with the design of consent request options that enable well-informed consumer choice. For publishers, Apple’s “App Tracking Transparency Framework” (ATTF), implemented in April 2021, makes data access conditional upon users consenting to their data being used and combined across companies. In its preliminary legal assessment, the Bundeskartellamt found, among other things, that Apple may be applying different criteria to third-party app providers than to itself when requesting user consent. According to the preliminary assessment, the consent prompts provided by Apple were designed to encourage users to allow Apple to process their data. The consent prompts for third-party apps, on the other hand, may steer users towards refusing data processing by these app providers. Third-party app providers are especially affected since their business models often depend on data-based advertising opportunities, which could be jeopardised if users do not consent to their data being accessed.¹⁴

5. Conclusion and outlook

32. The issues consumers face in the digital landscape often revolve around a lack of transparency (misleading information about products, fake reviews), excessive data collection, problematic data processing (linkage of data from different providers, cross-use of data by a single provider) as well as the use of nudging practices and dark patterns to lock users into digital ecosystems. The protection of consumers is the responsibility of different authorities and civil actors that enforce consumer protection law, data privacy law and the DSA, for example. When competition is limited and competitors are impeded, competition authorities can also take these consumer protection issues into account when assessing whether a certain behaviour is anti-competitive.

33. To handle the specific characteristics of digital markets in a better way, competition authorities are increasingly relying on new tools tailored to large digital players. At the European level, the DMA is producing first tangible results with measurable impact for

¹⁴ See the Bundeskartellamt’s press release of 13 February 2025: https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2025/02_13_2025_ATTF.html?nn=52004.

consumers, such as standard browsers or search engines having to display choice options.¹⁵ Where the DMA does not cover a specific service or conduct, competition law can help provide a solution. The German Section 19a GWB places a strong focus on ecosystems. Its flexibility enables earlier and more effective intervention, even before markets reach the brink of “tipping” – a very valuable quality given the highly dynamic nature of digital markets.

34. Emerging technologies such as AI have the potential to aggravate some of the issues listed above for the authorities responsible for consumer protection. For example, fake reviews can be generated by AI chatbots at lightning speed, personal data are a highly valuable commodity for training AI models and big data enables even more linkages and cross-use of data. In this context, the flexible nature of Section 19a GWB can be especially useful. In particular, Section 19a GWB covers the entire undertaking, including all its services, regardless of whether they are new or old. In addition, it does not require proof of a dominant position – an advantage which, given the fast-paced nature of developments in the AI sector compared to other digital markets, cannot be stressed enough.

¹⁵ Firefox indicates that after browser choice screens rolled out due to the obligations of the DMA becoming applicable to designated gatekeepers since 7 March 2024, the number of Firefox daily active users on iOS were 113 % higher in the EU than it would have been without the DMA: <https://blog.mozilla.org/netpolicy/2026/05/11/six-million-selections-later-how-the-dma-is-giving-people-browser-choice>.