

## **Questions that Have Arisen since the EU Decision on the WhatsApp Acquisition by Facebook\***

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ABSTRACT: On October 3<sup>rd</sup>, 2014, the European Commission (EC) concluded the analysis of the transaction by which Facebook, Inc. (“Facebook”, USA) had acquired WhatsApp Inc. (“WhatsApp”, USA) by way of a purchase of shares for US\$ 19 billion, which contributed to Facebook’s strategy of focusing its business on mobile development (Case no. COMP/M.7217). In its decision, the EC stated that the deal would raise no competition concerns and authorised the proposed acquisition of WhatsApp by Facebook concluding that Facebook Messenger and WhatsApp are not close competitors and that consumers would continue to have a wide choice of alternatives for consumer communication apps after the acquisition. The EC analysed potential data concentration issues only within the scope that the acquisition could weigh down competition in the online advertising market. Privacy-related concerns from the increased concentration of data within the control of Facebook because of the deal with WhatsApp are not an EU Competition Law matter. Notwithstanding, just some months after the decision two national competition authorities (Germany and Italy) opened procedures against Facebook. In Germany, the Bundeskartellamt initiated in March 2016 a proceeding against Facebook – Facebook Inc., USA, the Irish subsidiary of the company, and Facebook Germany GmbH, Hamburg – on suspicion that

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Facebook had abused its market power by infringing data protection rules with its specific terms of service on the use of user data. In Italy, in May 2017, the Autorità Garante della Concorrenza e del Mercato (AGCM) fined WhatsApp EUR 3 million for having forced its users to share their personal data with Facebook as a conclusion of two investigations opened in October 2016 concerning infringements of the Consumer Code. The present article proposes to answer three main questions concerning the EC decision on the WhatsApp acquisition by Facebook: (i) Did the EC apply the best tools to analyse the case?; (ii) Could the EC have addressed a decision that would somehow interfere in the privacy field?; and (iii) Could the procedures in Germany and Italy have been avoided?

**KEYWORDS:** Facebook; WhatsApp; Big Data; Competition Law; Privacy; Data Protection.

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