



Case No M.8228

facebook®



GCLC lunch talk -- 10 July 2017

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All views expressed in this presentation are strictly personal

Facebook memories - 2014



Facebook 😊 feeling inspired with Mark Zuckerberg.

August 29, 2014 at 12:54am 🌐

Today we have notified the acquisition of WhatsApp to the European Commission.



European Commission

October 3, 2014 at 12:31am 🌐

Today we authorised under the EU Merger Regulation, the proposed acquisition of WhatsApp Inc. by Facebook, Inc., both of the United States. Facebook (via Facebook Messenger) and WhatsApp both offer applications for smartphones (so-called "apps") which allow consumers to communicate by sending text, photo, voice and video messages.

... [See More](#)

Clearance decision



European
Commission

- **Consumer communication services**
 - Not close competitors; other consumer communication apps available
- **Social networking services**
 - Unclear whether WhatsApp competes in this space; distant competitors
- **Online advertising**
 - Other players offering online advertising; valuable user data available to Facebook's competitors

Issue of automated user matching

Facebook memories - 2016

European
Commission



Facebook shared a link

August 25, 2016

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Looking ahead for WhatsApp

Today, we're updating WhatsApp's terms and privacy policy for the first time in four years, as part of our plans to test ways for people to communicate with businesses in the months ahead. The updated documents also reflect that we've joined Facebook and that we've recently rolled out many new features, like end-to-end encryption, WhatsApp Calling, and messaging tools like WhatsApp for web and desktop. You can read the full documents [here](#). We're notifying everyone on the latest supported versions of our app about these updates, and you'll be asked to tap 'Agree' to accept the updated terms.

BLOG.WHATSAPP.COM

Article 14 decision (process)

- **August 2016: update of WhatsApp privacy policy**
 - Shows possibility to link a WhatsApp user's mobile number with a Facebook user's identity(ies)
- **December 2016: Statement of Objections**
 - Alleged two breaches of Article 14 of the EUMR
 - Already made it clear that no impact on clearance decision
- **May 2017: Article 14 decision**
 - Finds two separate infringements of Article 14
 - Imposes a fine of EUR 110 million

Article 14 decision (substance)

- **Information provided by Facebook was incorrect and/or misleading**
 - Reliable automated matching of user profiles of different apps (Facebook's identities and WhatsApp's user mobile number) not technically possible
 - Based on evidence gathered during its investigation, Commission concluded that such matching was possible already in 2014
 - Two separate infringements
 - Form CO and reply to RFI
- **Facebook acted at least negligently**
 - Facebook was aware of this possibility

- **Cap**

- 1% of undertaking's turnover (in year preceding Commission decision) per infringement
- 1% Facebook's 2016 turnover: around € 250 million

- **Criteria**

- "*Nature, gravity and duration of infringement*"
- No fining guidelines
- No precedents under 2004 EUMR (only for "gun-jumping")
- General principles: non-discrimination, proportionality, deterrence
- Facebook's cooperation

- **Alleged gun-jumping**
 - Altice (SO issued on 18 May)
 - Canon (SO issued on 6 July)

- **Alleged provision of incorrect or misleading information**
 - Merck and Sigma-Aldrich (SO issued on 6 July)
 - General Electric (SO issued on 6 July)