

Business practices that violate data protection and fair competition are mutually exclusive

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Today's decision by the Federal Cartel Office considers essential parts of Facebook's business model to be inadmissible. The decision affects the massive collection of data about users outside of Facebook, on the one hand by other companies in the Facebook group such as WhatsApp and Instagram, on the other hand on countless third-party websites.

The merging of data behind the user's back, the non-transparent procedures and the lack of or ineffective consent from the user are not permissible from a data protection point of view and are now also punished as facts of abuse of competition. The exchange of data between Facebook and its subsidiaries such as WhatsApp is a data transmission that requires a legal basis. There is no group privilege in data protection and the mere existence of an economic entity is not enough to exchange user data at will.

The Cartel Office's action is a logical response to Facebook's strategy of achieving growth at the expense of data and consumer protection, and is therefore directed against fair competition. This shows how closely data protection and competition law have grown together.

For this Prof. Dr. Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information: "Today's decision makes it clear: Business practices that violate data protection and fair competition are mutually exclusive. When merging data from third-party sources, Facebook will have to take into account the user's right to self-determination, also for reasons of competition. Data protection and consumer protection cannot be circumvented in the EU in the long term. It is remarkable that the group now refers to the European General Data Protection Regulation and the jurisdiction of the Irish Data Protection Commission. There are already numerous proceedings relating to allegations of significant violations of EU data protection law by Facebook and various subsidiaries. Furthermore, it is a mistake to think that these procedures are decided solely by the Irish Data Protection Commission. As the lead authority, this must draw up a draft decision. If other data protection authorities do not agree, the decision-making authority lies with the European Data Protection Board."

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