

BGH decision on the market position of Facebook

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BGH decision on Facebook confirms allegations of abuse of a dominant market position

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Facebook

The BGH's decision on the admissibility of the Federal Cartel Office's decision represents a turning point in dealing with global Internet services, which have been able to dictate their usage and data protection provisions to users due to their dominant position. Without effective control over their data and against the background of the lock-in effect, the BGH recognizes an exploitation of users on Facebook that is relevant under antitrust law. In the future, the Facebook Group, as the dominant network operator, will be obliged either to give users fair options with regard to the use of their personal data, so that they can decide for themselves on the personalization of their data or in the future to refrain from using the data and this also not to be exchanged within the Facebook Group.

The decision of the Federal Court of Justice initially represents an emergency decision. However, it means that the decision of the Federal Cartel Office to prohibit Facebook from further processing the data without further consent from the user can be enforced again. In this respect, there are significant effects on the company's data processing practice to an extent not previously known. Facebook has a 12-month deadline for implementation, although an implementation plan must be submitted beforehand. Ultimately, the data processing and the exchange of data between different services of the Facebook Group should in future only be based on corresponding consents, which do not have to be given as a lump sum when using the service, but must be obtained separately from the users. The refusal of individual consent must not result in the service being unusable. Voluntariness and being informed are prerequisites.

Johannes Caspar, Hamburg's representative for data protection and freedom of information: "The decision of the Federal Court of Justice marks a turning point: the compulsion to give a blanket consent, in which users had to accept a buy-out of their data for an entry ticket at the door to the Facebook network belong to the past. So far, market power generates data power, which in turn creates more market power. The decision of the BGH now points in a different direction. Facebook will

have to realize that the time for this business model is running out. The fact that this approach comes from competition watchdogs, but not from the responsible data protection supervisory authorities, will not change this result. Overall, the decision brought about the principle of the interrelationship between competition and data protection law. Competition and data protection authorities have worked together successfully in the past. It can be expected that this will be intensified in the future.”

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