



OPINION

of the ADVISORY COMMITTEE on MERGERS

given at its meeting of 27 April 2017

regarding a draft decision relating to

CASE M.8228 – FACEBOOK / WHATSAPP (ART.14(1) PROC.)

Rapporteur : FRANCE

1. The Advisory Committee agrees with the Commission that Facebook supplied, at least negligently, incorrect or misleading information in the Form CO in case M.7217 – *Facebook/WhatsApp* in violation of Article 14(1)(a) of the Merger Regulation¹ and Article 4(1) of the Implementing Regulation².
2. The Advisory Committee agrees with the Commission that Facebook supplied, at least negligently, incorrect or misleading information in the Reply of 23 September 2014, provided in response to the request for information of 18 September 2014 pursuant to Article 11(2) of the Merger Regulation in case M.7217 – *Facebook/WhatsApp* in violation of Article 14(1)(b) of the Merger Regulation.
3. The Advisory Committee agrees with the Commission that fines should be imposed on Facebook pursuant to Article 14(1)(a) and Article 14(1)(b) of the Merger Regulation.

¹ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the "Merger Regulation") (OJ L 24, 29.1.2004, p. 1).

² Commission Regulation (EC) No 802/2004 of 21 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "Implementing Regulation") (OJ L 133, 30.04.2004, p. 1-39), as amended by Commission Regulation (EC) No 1033/2008 (OJ L 279, 22.10.2008, p.3-12) and by Commission Implementing Regulation (EU) No 1269/2013 of 5 December 2013 (OJ L 336, 14.12.2013, p. 1-36).