



EUROPEAN COMMISSION
COMPETITION DG

Directorate R
Unit R.2 COMP-MEETINGS

OPINION

**of the ADVISORY COMMITTEE on MERGERS
AT ITS MEETING OF 1 DECEMBER 2020
CONCERNING A PRELIMINARY DRAFT DECISION RELATING TO
CASE M.9660 – Google / Fitbit**

(Text with EEA relevance)

Rapporteur: Poland

Concentration

1. The Advisory Committee (15 Member States) agrees with the Commission that the notified transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation (EC) No 139/2004 of 20.1.2004 on the control of concentrations between undertakings (the "Merger Regulation")¹.
2. The Advisory Committee (15 Member States) agrees with the Commission that the notified transaction has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

Market definition

Product market definition

3. The Advisory Committee agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the following relevant product markets for:
 - a) The supply of wrist-worn wearable devices (15 Member States agree);
 - b) The supply of licensable OSs for smart mobile devices and the supply of licensable OSs for wrist-worn wearable devices (15 Member States agree);
 - c) The supply of app stores for a given OS platform of smart mobile devices (in particular Android app stores) and the supply of app stores for a given OS platform of wrist-worn wearable devices (in particular app stores for Wear OS and Fitbit devices) (15 Member States agree);

¹ OJ L 24, 29.1.2004, p. 1.

- d) The supply of general search services (15 Member States agree);
- e) The supply of online search advertising services and the supply of online display advertising services (15 Member States agree);
- f) The supply of search ad network services (14 Member States agree. 1 Member State abstains);
- g) The supply of display ads SSP services (14 Member States agree. 1 Member State abstains);
- h) The supply of display ads DSP services (14 Member States agree. 1 Member State abstains);
- i) The supply of display ad network services (14 Member States agree. 1 Member State abstains);
- j) The supply of display ads publisher ad server services (14 Member States agree. 1 Member State abstains);
- k) The supply of display ads advertiser ad server services (14 Member States agree. 1 Member State abstains);
- l) The supply of analytics services (14 Member States agree. 1 Member State abstains);
- m) The supply of health and fitness apps (15 Member States agree);
- n) The retail provision of mobile payment services (15 Member States agree);
- o) The supply of navigation apps offering turn-by-turn navigation (15 Member States agree);
- p) The supply of virtual assistants (15 Member States agree);
- q) The supply of digital music distribution services (15 Member States agree);
- r) The supply of digital translation services (15 Member States agree);
- s) The provision of cloud infrastructure and data analytics (15 Member States agree);
- t) The supply of patient monitoring (15 Member States agree);
- u) The provision of data for medical research and RWE (real-world evidence) (15 Member States agree);
- v) The supply of corporate wellness programmes (15 Member States agree).

Geographic market definition

4. The Advisory Committee (15 Member States) agrees with the conclusions reached by the Commission in the draft Decision in relation to the definition of the relevant geographic market for the markets listed in question 3.

Competitive assessment

5. The Advisory Committee (15 Member States) agrees with the Commission's assessment that the notified transaction would raise concerns as to a strengthening of Google's market position in the supply of online search advertising, online display advertising and the supply of "ad tech services".
6. The Advisory Committee (15 Member States) agrees with the Commission's assessment that the notified transaction would raise concerns regarding the input foreclosure of providers of digital healthcare services caused by restriction of their access to the Fitbit Web API (and, therefore, their access to the data of Fitbit's users).
7. The Advisory Committee (15 Member States) agrees with the Commission's assessment that the notified transaction would raise concerns regarding Google's leveraging of its dominant position in the supply of licensable OSs for smart mobile devices to the market for the supply of wrist-worn wearable devices (and possible segments thereof).
8. The Advisory Committee agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of horizontal effects arising from the combination of Google's and Fitbit's user databases and data collection capabilities for use:
 - a) in the field of general search services (14 Member States agreed. 1 Member State voted against);
 - b) in the field of digital healthcare (13 Member States agreed. 2 Member States abstained).
9. The Advisory Committee agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition:
 - a) in the market for wrist-worn wearable devices and possible segments, as a result of any input foreclosure strategies with regard to Google's Wear OS (15 Member States agreed);
 - b) in the market for wrist-worn wearable devices and possible segments, as a result of any input foreclosure strategies with regard to Google apps and services (Google Search, Google Fit, Google Pay, Google Maps, Google Assistant, Google Play Music/YouTube Music and Google Translate) (14 Member States agreed. 1 Member State abstained);
 - c) in the market for wrist-worn wearable devices and possible segments, as a result of any input foreclosure strategies with regard to Google Play (15 Member States agreed);
 - d) in the market for wrist-worn wearable devices and possible segments, as a result of any possible input foreclosure strategies with regard to Google Search (14 Member States agreed. 1 Member State abstained);

- e) in the markets for the supply of (i) general search services, (ii) virtual assistants, (iii) health and fitness apps, (iv) mobile payment services, (v) digital music distribution services, (vi) navigation apps offering turn-by-turn navigation and (vii) digital translation services (and possible segments thereof), as a result of any input foreclosure strategies with regard to Fitbit's App Gallery (or any successor app store for Fitbit devices) (14 Member States agreed. 1 Member State abstained);
- f) in the markets for the supply of (i) general search services, (ii) health and fitness apps, (iii) mobile payment services, (iv) navigation apps offering turn-by-turn navigation; (v) virtual assistants; (vi) digital music distribution services and (vii) digital translation services (and possible segments thereof), as a result of any access by the merged entity to commercially sensitive information (15 Member States agreed).

Commitments

- 10. The Advisory Committee agrees with the Commission's conclusion that the Ads Commitment as offered by the Notifying Party on 4 November removes concerns as to a strengthening of Google's market position in the supply of online search advertising, online display advertising and the supply of "ad tech services". 11 Member States voted in favour. 2 Member State abstained. 2 Member States voted against.
- 11. The Advisory Committee agrees with the Commission's conclusion that the Web API Access Commitment as offered by the Notifying Party on 4 November removes concerns as to the input foreclosure of providers of digital healthcare services caused by restriction of their access to the Fitbit Web API. 12 Member States voted in favour. 2 Member States abstained. 1 Member State voted against.
- 12. The Advisory Committee agrees with the Commission's conclusion that the Android API Commitment as offered by the Notifying Party on 4 November removes concerns as to Google's leveraging of its dominant position in the supply of licensable OSs for smart mobile devices to the market for the supply of wrist-worn wearable devices. 12 Member States voted in favour. 2 Member States abstained. 1 Member State voted against.
- 13. The Advisory Committee agrees with the Commission that, subject to the full compliance with the final commitments offered by the Notifying Party on 4 November 2020, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it. 11 Member States voted in favour. 2 Member States abstained. 2 Member State voted against.

Compatibility with the internal market and the Agreement on the European Economic Area

- 14. The Advisory Committee agrees with the Commission that the notified concentration must therefore be declared compatible with the internal market and the Agreement on the European Economic Area² in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the Agreement on the European Economic Area. 11 Member States voted in favour. 1 Member State abstained. 3 Member State voted against.

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² OJ L 1, 3.1.1994, p.3.