



EUROPEAN COMMISSION
COMPETITION DG

Directorate R
Unit R.2 COMP-MEETINGS

OPINION

of the ADVISORY COMMITTEE on MERGERS

at its meeting on 14 JANUARY 2022

CONCERNING A DECISION IN CASE M.10262 – META (FORMERLY FACEBOOK) / KUSTOMER

MEETING BY AUDIO CONFERENCE – via “Skype for Business”

<p>Rapporteur: Spain</p>

Concentration

1. The Advisory Committee (16 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.

Market definition

Product market definition

2. 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 CRM software (16 Member States agree);
 - b) The supply of B2C communication services (16 Member States agree);
 - c) The supply of online display advertising (15 Member States agree. 1 Member State abstains).

Geographic 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 relevant geographic market for the following product markets for:
 - a) The supply of CRM software (i.e. at least EEA-wide, if not worldwide) (16 Member States agree);

¹ OJ L 24, 29.1.2004, p. 1.

- b) The supply of B2C communication services (i.e. at least EEA-wide, if not worldwide) (16 Member States agree);
- c) The supply of online display advertising (i.e. either national or following linguistic borders within the EEA) (15 Member States agree. 1 Member State abstains).

Competitive assessment

- 4. The Advisory Committee (16 Member States) agrees with the Commission's assessment that the notified transaction would likely (and even with strong probability) significantly impede effective competition, as a result of vertical non-coordinated effects arising from the targeted input foreclosure of providers of CRM software caused by restriction or degradation of their access to Meta (formerly Facebook)'s B2C communication channels.
- 5. 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 non-coordinated effects arising from the combination of Meta's and Kustomer's databases and data collection capabilities for use in the supply of online display advertising (i.e. by strengthening Meta (formerly Facebook)'s market position). 14 Member States agree. 2 Member States abstain.
- 6. The Advisory Committee agrees with the Commission's assessment that the notified transaction is unlikely to significantly impede effective competition, as a result of conglomerate effects arising from any bundling of online display advertising and CRM software by the merged entity. 14 Member States agree. 2 Member States abstain.

Commitments

- 7. The Advisory Committee agrees with the Commission's conclusion that the API Access Commitment as offered by the Notifying Party on 20 December 2021 removes concerns as to the input foreclosure of providers of CRM software caused by restriction or degradation of their access to the Meta (formerly Facebook)'s B2C communication channels. 14 Member States agree. 2 Member States abstain.
- 8. The Advisory Committee agrees with the Commission that, subject to the full compliance with the final commitments offered by the Notifying Party on 20 December 2021, the notified transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it. 13 Member States agree. 3 Member States abstain.

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

- 9. 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. 13 Member States agree. 3 Member States abstain.

² OJ L 1, 3.1.1994, p.3.