



'Threads' of Regulation: Meta's Data Combining Between Instagram and Threads Under Scrutiny with Interim Measures Decision Taken by the Turkish Competition Board

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Introduction

On February 22, 2024, the Turkish Competition Authority ("**Authority**") published the Turkish Competition Board's ("**Board**") reasoned decision¹ concerning the request for interim measures within the scope of Article 9(4) of Law No. 4054 on the Protection of Competition ("**Law No. 4054**") regarding Meta Platforms, Inc.'s ("**Meta**") data combining conduct between its newly launched application, Threads, and Instagram.

The Authority mainly scrutinized whether Meta violated Article 6 of Law No. 4054 by linking Threads, which was launched in Türkiye in July 2023, with Instagram. During the process, Meta made updates as of November 2023, allowing Threads profiles to be deleted without the need for the user to delete the associated Instagram account. Accordingly, Meta assessed that the current situation does not require interim measures in terms of the tying allegations, stating that it has already made sufficient improvements in the application.

On the other hand, the Board determined during the pre-investigation² that Meta combined the data obtained through Threads with the data obtained through Instagram and concluded that the potential anti-competitive effect of this conduct necessitates further detailed evaluation within the scope of an investigation, taking into account the obligations imposed on Meta to terminate the data combining conduct in its previous decision concerning Meta ("**Meta/WhatsApp**").³

¹ The Board's decision dated 08.02.2024 and numbered 24-07/125-50 ("**Decision**").

² The Board launched the pre-investigation through its decision dated 03.08.2023 and numbered 23-36/667-M ("**Pre-Investigation**").

³ The Board's decision dated 20.10.2022 and numbered 22-48/706-299.

In light of the information obtained within the scope of the file, the Board concluded to take interim measures against Meta, which was found to be in a dominant position in the social media market, which was broadly defined to include Instagram during the Pre-Investigation, to prevent the combining of the data obtained by Meta through Threads with the data obtained from Instagram in order to prevent competition violations that may occur in the relevant market subject to the investigation and the irreparable damages that may be caused by them until the final decision is taken.

I. Meta's Data Combining Conduct

Threads was launched globally in July 2023, initially with the exception of the European Union ("**EU**"), a decision which the Board considered stemmed from the regulations introduced for digital markets in the EU. Referencing the Digital Markets Act ("**DMA**"), the Board stated that Meta must have had to fulfil the obligations stipulated by the DMA in order to make Threads available in the EU. Having said that, as Meta expressed during the Pre-Investigation its aim to launch Threads to users in the EU by the end of 2023 and later announced the availability of Threads in the EU on December 14, 2023, the Board concluded that Meta has rendered Threads compliant with the relevant obligations under the DMA.

In terms of the data combining policies of the two applications in Türkiye, the Board noted that **(i)** sign-in information, **(ii)** account number, **(iii)** name and username, **(iv)** profile information such as profile photo, bio and connections, **(v)** followers, **(vi)** accounts followed, and **(vii)** age information on Instagram are listed among the data stated to be transferred from Instagram to Threads under Instagram's Help Centre. Furthermore, Meta explained in its response petition that users who create a Threads profile based on their Instagram accounts are informed that Threads and Instagram personal data can be combined during the Threads profile creation phase.

In addition, the Board remarked that the data from Threads may also be transferred to Instagram to personalize and improve experiences on Instagram, as well as to increase and security and integrity of the services. Indeed, it is stated that Meta can collect information such as which articles a user who forgets to log out of their Threads account and then visits a new website reads at what time of the day.

The Board then expressed that the following information will be collected through Threads and used to provide, personalise, and improve Threads and other Meta products (including streamlined personalization of the experience on Threads and Instagram) to measure and analyse the performance of Meta products and to provide other business services (including advertising):

- Data provided by the user when using or interacting with Threads,
- Information provided when creating a Threads profile,
- Content and interactions created when using Threads,
- Information about followers, other users and communities that are connected and interacted with,
- Information about third-party services and third-party users who interact with Threads, and

- Application, browser, and device information.

It is further stated that users must accept the Threads Privacy Policy and Threads Additional Privacy Policy in order to use Threads' services under Article 6 of Threads' Terms and Conditions.

II. The Board's Commentary on Proceedings Concerning Meta

Before proceeding with its assessment on the interim measures within the scope of the case at hand, the Board first recalled its findings in *Meta/WhatsApp*, explaining that Meta's data collection policy in terms of all its products and services, including Meta's "core services" such as Facebook, WhatsApp, Instagram and Messenger, is based on the terms of service and privacy policies of each product, and within the scope of this policy, Meta collects a wide variety of data from its products under different categories. Moreover, the Board stated that with the help of the data it collects, Meta enables users to access and discover content personalised to their interest on one hand, and advertisers to grow their business and reach audiences that are likely to be interested in its products or services on the other. Based on the information it receives, Meta is able to offer such tailored experiences, innovative advertisements, and ad measurement solutions. The Board also conveyed that it was emphasised in *Meta/WhatsApp* that Meta uses the data it collects to personalise the features and content it offers (such as the News Feed, Instagram Feed, Instagram Stories, and ads of a user) and make recommendations to its users on aspects such as groups, events, or topics the user may be interested in or prefer to follow.

As for proceedings against Meta in other jurisdictions, the Board noted Bundeskartellamt's Facebook/Oculus investigation, which was initiated in 2020 regarding whether Meta's tying of Oculus virtual reality products with its social media platform, Facebook, gives rise to a violation of competition.⁴ In this scope, the Board referred to Bundeskartellamt's declaration of Meta as a company of paramount significance across markets, and conclusion that Meta is in a dominant position in the social media market in Germany, with an important position in the emerging virtual reality market.⁵

The Board expressed that Bundeskartellamt may prohibit the imposition of terms and conditions on data processing policies that "*create or appreciably raise barriers to entry or lead to such a result, in particular by conditioning the use of services on the user's agreement on the processing of data from other services of the undertaking or from third-party providers, without giving users sufficient choice as to whether, how and for what purpose such data are processed*".⁶ Moreover, the Board underlined that Bundeskartellamt focused on the fact that Facebook and Oculus are different services, that adequate choice must be provided to users in the data processing policies for these services, the choice

⁴ Oculus, which used to be operated separately from Facebook, began to be offered as an additional function on Facebook's social network under "Facebook Reality Labs". The use of "Quest 2 VR" goggles is conditional on having a Facebook account.

⁵ During the investigation, Meta committed to allow users to open a "Meta account" separate from their Facebook and Instagram accounts and to use Oculus products (Quest 2 and Quest Pro goggles) through this account.

⁶ German Competition Act (GWB), Section 19a (2)(4)(a).

architecture and consent requests, as well as the limited purposes for which it is permissible to continue to combine their data without their consent.⁷

III. Assessment on Interim Measures

In accordance with the findings in *Meta/WhatsApp*, as well as those of Bundeskartellamt, the Board reiterated that Meta, as a long-standing player in the market, has a wide, comprehensive, and detailed data accumulation, which allows it to track user preferences and requests in a timely manner, and enables it to develop and design products and services in line with user preferences. The size and diversity of Meta's user base, in addition to the presence of users from all ages also appeal advertisers to Facebook and Instagram.⁸ This is due to the fact that the data power gained through the size of the user base is used to improve the business and services offered, and is also crucial for services offered by the advertiser in related markets, which enables platforms offering zero-price services to generate revenue through targeted advertising.

The Board remarked that the fact that advertisers are increasingly turning to Meta products due to Meta's user portfolio not only allows Meta to generate more revenue and therefore, allocate more resources to develop services, but also makes it difficult for competitors to access advertisers and therefore, financial resources. Hence, given that indirect network effects also exist in the market, the Board concluded that this situation creates a barrier to entry and makes it difficult for potential competitors in the social media market to attract advertisers to finance their services.

Moreover, the Board explained that Meta's operations as an ecosystem with its core and related services contribute to each service offered by Meta, enabling it to transfer the strength and know-how gained from one service to other, and reinstating its market position and power in terms of each service it offers. Therefore, the Board held that the data combining which may arise from the data transfer mechanism between Instagram and Threads may result in either the creation or increasing of barriers to entry in the market, or usage of data obtained through services in which market power is held in different markets, which may give rise to the significant hindering of competition.

These evaluations, in addition to the Board's assessment that Meta enjoys a dominant position within the scope of the ongoing investigation, were held to strengthen the existence of potential anti-competitive effects the data combining will cause in the market in Türkiye. As such, the Board concluded that combining the data obtained by Meta through Threads and Instagram will **(i)** serve to maintain and further strengthen Meta's current dominant position in the market, **(ii)** result in exclusionary practices,

⁷ Bundeskartellamt and Meta are awaiting the conclusion of the Court of Justice of the European Union's ("*CJEU*") assessment of the "Facebook data processing policies" to finalise this aspect of the investigation. In the meantime, the parties have agreed that, until the date of the CJEU judgment, data obtained under Oculus in relation to users accessing virtual reality products using a separate Meta account will be kept separate from data obtained from other Meta services.

⁸ As stated by Meta within the scope of the Pre-Investigation, advertisements are currently not offered on Threads.

and (iii) raise concerns such as prevention of consumers' free choice due to the obligation imposed on users to accept Threads' terms of use and privacy policies in order to be able to use Threads.

IV. Conclusion

In conclusion, the Board held that, as there is a high possibility of damage to the competitive environment and mostly irreparable consequences in the market in case of delay in interfering with potential competition concerns in digital markets, interim measures must be taken against Meta to prevent the combining of data by Meta obtained through Threads and Instagram under Article 9(4) of Law No. 4054 to prevent such irreparable damages which may result from the data combining, which has been previously determined to be a violation of competition by the Board in Meta/WhatsApp, and concluded that such interim measures may eliminate potential anti-competitive concerns that may arise during the ongoing investigation until the final decision is rendered by the Board.

The Decision underscores the complexities inherent in regulating digital markets and the need for a nuanced approach balancing market dynamics with regulatory oversight. By addressing potential anti-competitive effects while acknowledging the complexities of the rapidly evolving digital landscape, the Board seeks to ensure a level playing field for market stakeholders while fostering innovation and consumer choice.

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