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The Turkish Competition Authority concludes abuse of dominance investigation into tying and data combination practices following acceptance of commitments by a Big Tech platform (*Meta*)

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Threads Unraveled: The Turkish Competition Board Concludes Abuse of Dominance Investigation Against Meta Platforms Inc. concerning Allegations of Tying and Data Combination Practices Based on Acceptance of Commitments*

This article summarizes the Turkish Competition Board's (the "**Board**") decision against Meta Platform Inc. ("**Meta**") whereby the Board closed the abuse of dominance investigation upon its acceptance of Meta's commitments. The investigation focused on allegations that Meta abused its dominant position through (i) tying its newly-launched Threads application with Instagram and (ii) combining user data from both applications. On November 7, 2024, the Board decided that Meta's commitments are sufficient to address the competition concerns. The decision is highly significant as it highlights the TCA's approach concerning data combination and tying practices in digital markets and the broader concept of key competition concerns in connection to data-driven market dominance.

Background

The decision follows the fine against Meta ¹ for non-compliance with the interim measures imposed on February 8, 2024 ². The Board had ordered Meta to take interim measures to prevent the combining of the data obtained through Threads with the data obtained from Instagram (and vice versa). Although Meta had introduced an "account-free usage" option for Threads, the Board deemed the measure insufficient as it did not fully address the investigation's core concern regarding data combination. In response, Meta temporarily shut down its Threads service in Türkiye and started negotiations with the TCA to end the investigation and, if possible, re-launch Threads.

The Board's decision separately assesses whether Meta's commitments duly address tying and data combination concerns.

Meta's Commitments on Tying Practices

The Board identifies tying as a manifestation of leveraging. It explores in detail the theoretical framework of both leveraging and tying as a theory of harm in digital markets. The Board does not define leveraging as a specific theory of harm on its own but rather uses the term as a category that brings together multiple different theories of harm and multiple types of conduct such as tying, self-preferencing, and margin squeeze. Leveraging relates to anti-competitive conduct of a dominant undertaking operating in overlapping multiple related markets - either vertically or horizontally - with the aim of extending its market power into related markets.

Tying practices as a form of leveraging by dominant undertakings may result in anti-competitive effects

1. The Board's decision of 14.03.2024 (24-13/256-M).

2. The Board's decision of 08.02.2024 (24-07/125-50).

if certain conditions are met: (i) the tying and tied products must be two distinct products and (ii) the tying practice must be likely to result in anti-competitive market foreclosure. To identify anti-competitive tying the Board explores the following circumstances: (i) the existence of two separate products, (ii) the presence of force/coercion to accept the tie, (iii) dominance in the tying product market, and (iv) the elements of anti-competitive effects. The Board notes that characteristics of services in digital markets - such as economies of scale and scope, low marginal costs and network effects - make tying strategies harder to detect in digital markets.

The Board concluded that: (i) the fact that Meta does not offer the Threads product independently from Instagram (Meta requiring users to create an Instagram account to Access Threads) may lead to anti-competitive effects aimed at preserving market power in the tying product market, (ii) competition in the tied product market in which Threads operates may be restricted due to Meta's existing market power and (iii) Meta requiring users to register in Instagram in order to use the Threads application leads to a restriction of user choice.

Even though Meta introduced some changes to its business model during the course of the investigation (the requirement to delete Instagram when deleting Threads was removed), the Board explored the necessity of having an Instagram account for the use of Threads in detail. One of Meta's primary defenses revolved around the argument that Threads was built on the infrastructure of Instagram and Threads was not introduced as a separate application, but rather a new feature to an already existing product. However, the Board considered Threads and Instagram applications as two separate products that are offered together, taking into consideration that (i) they can be downloaded independently from the app store and (ii) have distinct interfaces and icons. Also, the Board considered Threads and Instagram to operate within distinct product markets, based on (i) their differing functionalities, (ii) intended purposes, and (iii) the specific consumer demands they are designed to fulfill. Although Meta did not explicitly force users to sign-up for Threads, the requirement to have an Instagram account to sign-up for Threads was considered a form of coercion since users that wanted to use Threads had to download Instagram.

The Board addressed potential anti-competitive effects by evaluating (i) the potential of the market

power to transfer to the tied product market, (ii) the exclusion of competitors in the tied product market, (iii) the preservation of market power in the tying product market, and (iv) the negative impact of tying on innovation. The Board concluded that the inability of users to access Threads without an Instagram account serves to preserve Meta's market power in the tying product market. On the other hand, there is also the risk that the Meta may use tying practices to block entries into the market where it is already dominant. This could restrict competitors from establishing a market presence and increase the appeal of Meta's platforms, ultimately leading to exclusionary outcomes.

During the interim measures stage, the "account-free usage" option for Threads did not offer the same features to end users and was therefore not accepted by the Board. The Board concluded that since users cannot actively interact with others, this presented a limited experience that did not provide the core functionalities such as sharing content, user interactions, and following other users of the Threads application. Although this option was intended to eliminate the requirement of having an Instagram account to use Threads, the practical limitations meant that users were steered toward the full experience, which still necessitated an Instagram account. After long deliberations with the TCA, Meta re-worked the "account-free usage" option and committed to eliminating the necessity for users to create an Instagram account to use the Threads application.

The Board concluded that the commitments submitted by Meta are sufficient to address potential competition concerns arising from tying in the tied and tying markets since Threads will be available for use independently of the Instagram product and previously restricted user choice will be reinstated.

Meta's Commitments on Data Combination

Products and services offered by digital platforms are generally classified as zero-priced products and services, since users benefit from these products and services without paying a monetary fee, but in

exchange for the data they provide. Therefore, today, the competitive strength of undertakings is increasingly measured by the amount, diversity, and quality of the data they possess. This means that data provides a significant competitive advantage in the market. Unfair practices, or abuse of such critical input can restrict competition in the market or create barriers to entry or growth within the market.

Data combination can be assessed under both exclusionary and exploitative harm theories. The practice can be considered as an exploitative abuse under competition law, in the context of "excessive pricing" and/or "unfair commercial terms." Exploitative abuse can occur with (i) the restriction of consumers' free choice, (ii) the loss of consumer control over data, (iii) data combination without adequate information, or (iii) the disproportionate data collection. Data combination practices can also lead to the exclusion of competitors in the market where the service is offered through (i) the creation or increase of existing entry barriers, (ii) the inability of competitors to access equivalent data, and (iii) the leveraging effect of data.

In light of the above, the Board concluded that: (i) Meta's data combination mechanisms may result in the creation of entry barriers, (ii) the reinforcement of existing ones, or (iii) the use of data collected through services with market power in a manner that negatively affects competition in different markets. At the same time, this conduct raises exclusionary competition law concerns such as leveraging to maintain and further strengthen Meta's current market position as well as broader issues related to limiting consumers' freedom of making independent choices.

The Board had previously imposed certain obligations on Meta to cease data combining practices across its core platforms.³ The Board found that, by combining data across its various core platforms, Meta not only strengthened its market position but also made it more difficult for competitors to access advertisers and financial resources. The Board determined that for the infringement to end Meta must (i) ensure that users are in full control of their data, (ii) Meta must not combine data obtained through Threads with Instagram of other core services without explicit

consent and (iii) end users must be provided with a less personalized but equivalent alternative that allows them to freely choose whether to participate in the data combination practices or not. The service must be provided on equal terms to all users, with no difference in quality and functionality, regardless of whether they consent to data combination or not (except for differences directly resulting from the data combination).

The Board particularly emphasized the importance of informing users on their options with regards to the use of their data and users' freedom in making choices. In light of this, one of the core aspects that the Board focused on related to the fact that the user must provide explicit consent after being fully informed and provided with a specific choice. The consent must be (i) specific to a particular subject, (ii) based on informing, and (iii) be given freely and voluntarily. When consent is requested, a proactive, user-friendly solution should be provided to the end user, allowing them to give, modify, or withdraw their consent in a clear, explicit, and understandable manner. In this sense, the online interface should not be designed in a way that deceives, manipulates, or otherwise disrupts or weakens the ability of end users to freely give their consent. Additionally, the process of giving consent should not be more difficult than withholding it.

Meta committed to cease its data combination practices from its Threads and Instagram (unless explicitly consented). The Board concluded that the commitments submitted by Meta are sufficient to address potential data combination concerns since users will have full control over their personal data when signing up for Threads, as the application will no longer combine personal data with information from their Instagram accounts, unless users provide explicit consent. The commitments will apply both to users signing up for the Threads application for the first time, and to users whose accounts were deactivated following the removal of Threads in Türkiye.

The Board assessed in detail the way in which the consent will be provided and whether the commitments provide users with the option to freely participate in Meta's services. For a user to freely give their consent, it is important for them to know what they are consenting to. The user is expected to have full knowledge not only about the specific subject but also about the consequences of their

3. The Board's decision of 20.10.2022 (22-48/706-299).

consent (including for what purposes the personal data will be used). The Board concluded that under Meta's commitments (i) users are fully informed and able to fully and properly exercise their free will and (ii) the commitments offered to end users who do not consent to the combination of data are not provided with services that are different or of a lower quality compared to the service provided to users who consent to data combination.

Conclusion

The Board concluded the investigation without

See also:

The Turkish Competition Authority adopts interim measure against a Big Tech firm for abusive leveraging practices (*Meta*) – 8 February 2024, Art. 118402

The Turkish Competition Authority adopts interim measures proposed by a Big Tech company to remedy its abusive data combining practices (*Meta*) – 8 February 2024, Art. 122116

imposing an administrative monetary fine since it found Meta's commitments to be sufficient to address the identified competition concerns. The case shows once again that the Board prioritizes the scrutinization of data combining and tying practices by dominant platforms in digital markets. The decision is highly significant as the Board's detailed theoretical assessment provides a glimpse in its approach concerning data combination and tying practices in digital markets and the broader concept of key competition concerns in connection to data-driven market dominance.

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