

Re.: BEUC calls for a cross-institutional scrutiny of Facebook's data practices

Dear Commissioner Jourová,

I am writing on behalf of BEUC, The European Consumer Organisation. We would like to ask you to start a European cross-institutional examination about the most efficient ways to ensure that Facebook stops exploiting consumers across all Member States.

Our request is based on the recent action by the Consumer Protection Co-operation Network (CPC-Net) on unfair terms and conditions, and the legal actions against Facebook currently undertaken by public authorities in three countries (Germany, Belgium, Italy), which may lead to better protection of consumers in these countries and point to the need for a European response.

On 6 February 2019, the German Federal Cartel Office issued a prohibition decision against Facebook for abuse of dominance in the market of social networks.¹ This decision sets an important precedent since it is the first one to bridge the enforcement of consumer, data protection and competition laws in the digital economy. The German decision comes in addition to the ruling of the Court of First Instance of Brussels of 16 February 2018, upon an action of the Belgian Data Protection Authority², and a decision of 29 November 2018 of the Italian Competition Authority³, which address similar illegal behaviour by Facebook but on the grounds of EU data protection and EU consumer law respectively.

These decisions are very positive for consumers. They also clearly demonstrate the limits of national enforcement in cases of Europe-wide illegal practices and the fragmentation of enforcement due to the application of different legal concepts.

The need for a coherent enforcement approach for the data economy between regulators and across Member States is obvious. In particular, BEUC calls on the European Commission to explore – with relevant authorities – how to deal with a concrete commercial behaviour that simultaneously breaches different areas of EU law.

Over the years, Facebook has gained an anti-competitive advantage over its competitors by infringing both data protection and consumer laws. Facebook would not have been able to amass all the data it uses to boost its advertising services without violating people's data protection, privacy and consumer rights by imposing illegal terms of service. This has proven to be the case by the judgement of the Tribunal de Grande Instance of Paris on 9 April 2019 in an action brought by French consumer group UFC-Que Choisir declaring illegal an extensive list of contract terms under multiple laws. This makes it a case for consumer, data protection and competition authorities.

¹https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2019/07_02_2019_Facebook.html

²<https://www.theguardian.com/technology/2018/feb/16/facebook-ordered-stop-collecting-user-data-fines-belgian-court>

³<http://www.agcm.it/media/comunicati-stampa/2018/12/Uso-dei-dati-degli-utenti-a-fini-commerciali-sanzioni-per-10-milioni-di-euro-a-Facebook>

Consumers expect authorities not to shield themselves behind a narrowly-defined view of their competences. They expect authorities to adapt and act to protect them against abuses committed by firms. These firms are too often perceived to be above the law due to the power and influence they have over the life of Europeans. The Consumer Protection Cooperation Network (CPC-net) action of last week, which forced Facebook to comply with EU consumer law, is a good example of that.

The action nevertheless showed the limits of current enforcement structures. There is limited exchange between different competent authorities to develop solutions that are capable of getting a company to comply with different pieces of EU law.

Therefore, BEUC strongly recommends the European Commission engages with Member State authorities, namely the Consumer Protection Cooperation Network (CPC-net), the European Data Protection Board (EDPB) and the European Competition Network (ECN) regarding Facebook's practices. The objective should be to develop a methodology for cross-sector scrutiny to tackle multi-disciplinary illegal practices in the most efficient way to protect Europeans. This of course should be without prejudice to any eventual investigation that can be undertaken by the European Commission in the exercise of its competence to enforce Article 102 TFEU.

The outcome of this process should be a consistent and coordinated strategy for EU enforcement to deal with similar cases where there is a conflation of data protection, competition and consumer protection issues. This would be a logical and necessary consequence of the transition from the "tangible" to the data economy which requires a new European enforcement culture and architecture.

I remain at your, and your services, disposal should you require any further information from BEUC and our members.

Please be informed that we have sent this letter also to Commissioner Vestager.

Yours sincerely,

Monique Goyens
Director General

Cc:

- Tiina Astola, Director General, DG Justice and Consumers
- Alexandra Jour-Schröder, Deputy-Director General, DG Justice and Consumers
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