

The announcement does not have any impact on the Commission's decision to approve the Facebook/WhatsApp merger in 2014<sup>1</sup>. The 2017 infringement decision against Facebook concerned incorrect or misleading information provided by Facebook during the Commission's review of the WhatsApp transaction<sup>2</sup>. This information related to the technical (im)possibility to automatically match user identifiers across Facebook and WhatsApp. The incorrect information provided by Facebook did not have an impact on the merger clearance decision since the Commission had also carried out an 'even if' assessment that assumed user matching as a possibility.

Without prejudice to the powers of the Commission as guardian of the Treaties, the monitoring and enforcement of the General Data Protection Regulation<sup>3</sup> falls under the competence of national authorities and courts.

The Commission may only assess whether digital mergers resulting in the aggregation of datasets give rise to competition issues. For example, in its recent review of Google's acquisition of Fitbit, the Commission identified competition concerns related to data aggregation, which Google addressed by offering suitable remedies<sup>4</sup>.

On 15 December 2020, the Commission presented its proposal for a Digital Markets Act<sup>5</sup>. The Digital Markets Act aims to ensure fair and open digital markets. It establishes a set of narrowly defined objective criteria for identifying large online platforms that qualify as so-called 'gatekeepers'. Gatekeepers offering core platform services online, such as social networking or number-independent interpersonal electronic communications services, must abide by specific obligations. These include obligations regarding the combination of personal data<sup>6</sup>.

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<sup>1</sup> Commission decision of 3 October 2014 in case M.7217 – Facebook / WhatsApp

<sup>2</sup> Commission decision of 17 May 2017 in case M.8228 – Facebook / WhatsApp

<sup>3</sup> OJ L 119, 4.5.2016, p. 1

<sup>4</sup> Commission decision of 17 December 2020 in case M.9660 – Google / Fitbit

<sup>5</sup> Proposal for a regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act); COM/2020/842 final

<sup>6</sup> e.g. see Article 5(a)