

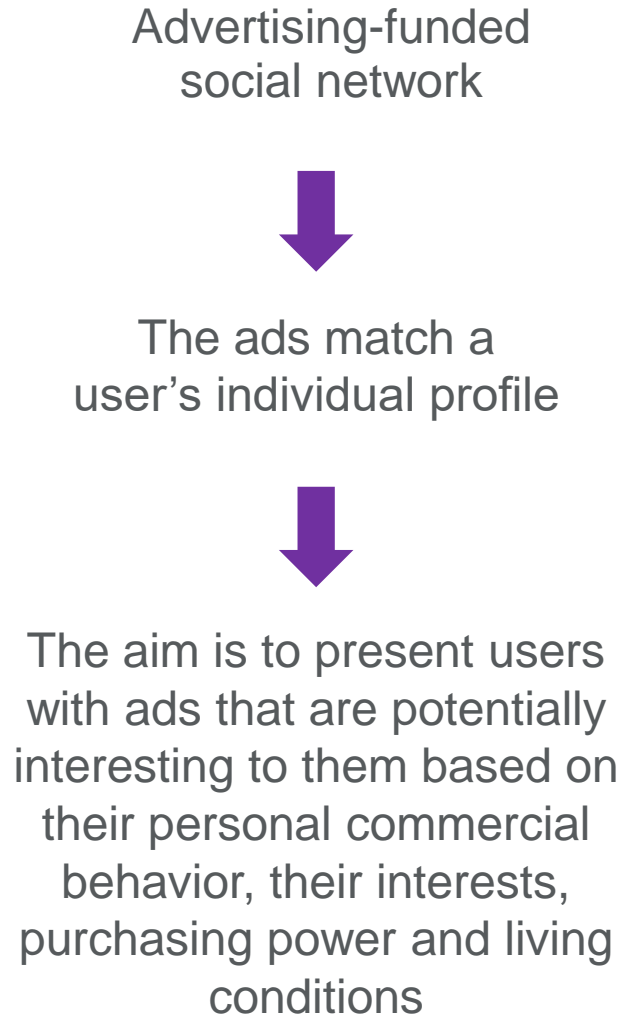
When competition meets data protection

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The **facebook**.case

Facebook's business model



So it is expected that Facebook collects and processes some personal data

But how much?

State of facts

Facebook collects and combines personal data from



But also from



Basically any website or app that uses Facebook's Application Programming Interfaces (APIs)



Unique database for each individual user assigned to the Facebook user account, containing the online behavior of users within and outside Facebook

All of this being based on the user's **voluntary consent** to the terms and conditions required in order to use Facebook as an usual user of the social network

Ok, so this is a GDPR issue. How is competition law involved?

Dominance



**Market
share of
daily active
users**

Over 95%



G+ is already off the market

Separate markets due to high degree of product differentiations

Why is Facebook dominant?

- Strong direct network effects
- Indirect network effects because of the advertising-funded business model
- Difficulties associated with switching to another social network – the lock-in effect



Barriers to enter market

Abusive data policy

Using and implementing the policy which allows Facebook to collect user and device-related data from sources outside Facebook and to merge it with data collected on Facebook



Abuse of dominant position
on the social network market in the
form of
exploitative business terms

- Terms and conditions applied in a manifestation of market power or superior power of the party using the terms
= unbalanced negotiation



The purpose of data protection law is to ensure an appropriate balancing of interests between data controllers and data subjects

GDPR assessment

- **Bundeskartellamt** - Facebook's comprehensive processing of personal data from other corporate services and Facebook Business Tools enabling profiling and "device fingerprinting" **violates GDPR and is subject to the affected users' consent**
 - **There is no effective consent** pursuant to Art. 6 (1a) of GDPR
 - **Facebook does not need to process data to fulfill its contract** pursuant to Art. 6 (1b) of GDPR
 - **None of the stipulations of Art. 6 (1c-e) of GDPR apply to justify data processing for special purposes**
 - **Facebook's interest does not outweigh other interests** (Art. 6 (1f) of GDPR)

Next steps

- Facebook services such as WhatsApp or Instagram can continue to collect data, but they cannot be combined and assigned to a Facebook user account unless users give their *voluntary consent*

***Voluntary* means that the use of Facebook's services must not be subject to the users' consent**

- Facebook must **adapt its terms of service** accordingly and **discontinue** the conduct objected to within a period of 12 months
- Facebook can **develop and submit** to the Bundeskartellamt **solutions to continue to collect and combine data, but substantially restricted** – within the next 4 months

Facebook's opinion

- **Popularity is not dominance** – the competitors are underestimated
- Information about users' privacy and controls have been **improved** after GDPR
- Soon – **introducing *Clear History*** tool for users to be able to see the information Facebook gets from other websites and services and disassociate it from the account
- Using information **to tailor each person's Facebook experience** and **to protect people's safety and security**

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