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***Case No COMP/M.7217 - FACEBOOK/ WHATSAPP***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 03/10/2014

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Brussels, 03.10.2014  
C(2014) 7239 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

### **To the notifying party**

Dear Sir/Madam,

**Subject: Case M.7217 – Facebook/ WhatsApp  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

- (1) On 29 August 2014, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, and following a referral pursuant to Article 4(5) of the Merger Regulation, by which Facebook, Inc. ("Facebook", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of WhatsApp Inc. ("WhatsApp", USA) by way of purchase of shares (the "Transaction"). Jointly, Facebook and WhatsApp are designated hereinafter as the "Parties".

#### **1. THE PARTIES**

- (2) **Facebook** (hereinafter also referred to as the "Notifying Party") is a provider of websites and applications for mobile devices ("apps") offering social networking, consumer communications and photo/video sharing functionalities. Facebook also provides online advertising space. In particular, Facebook offers the social networking

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

platform "Facebook", the consumer communications app "Facebook Messenger" and the photo and video-sharing platform "Instagram".

- (3) **WhatsApp** is a provider of consumer communications services via the mobile app "WhatsApp". WhatsApp does not sell advertising space.

## 2. THE CONCENTRATION

- (4) The Transaction consists of the acquisition of WhatsApp by Facebook for a purchase price of USD 19 billion.<sup>2</sup> Pursuant to an Agreement and Plan of Merger and Reorganization signed on 19 February 2014, WhatsApp will successively merge with and into wholly-owned subsidiaries of Facebook. As a result of the Transaction, Facebook will solely control the entity into which WhatsApp will have merged.
- (5) Therefore, the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
- (6) The Transaction contributes to Facebook's current strategy of focusing its business on mobile development. According to Facebook's internal documents, there are two main ways in which the Transaction serves this objective.
- (7) [...].
- (8) [...].

## 3. UNION DIMENSION

- (9) The Transaction does not have a Union dimension within the meaning of Article 1(2) or Article 1(3) of the Merger Regulation as the EU turnover of one of the Parties (WhatsApp) amounted to only EUR [...] in 2013.
- (10) Nonetheless, the Transaction fulfils the two conditions set out in Article 4(5) of the Merger Regulation since it is a concentration within the meaning of Article 3 of the Merger Regulation and it is capable of being reviewed under the national competition laws of three Member States, namely [...].
- (11) On 19 May 2014, the Notifying Party informed the Commission by means of a reasoned submission that the Transaction should be examined by the Commission pursuant to Article 4(5) of the Merger Regulation. A copy of that submission was transmitted to the Member States on 19 May 2014.

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<sup>2</sup> The purchase price comprises: (i) USD 12 billion in Facebook stock shares; (ii) USD 4 billion in cash; (iii) USD 3 billion in Facebook restricted stock units after closing of the Transaction. [T]he valuation of WhatsApp on a value-per-user basis is consistent with valuations for other comparable transactions. [Using] Enterprise Value and Monthly Active User data to compare the Transaction with earlier comparable transactions, such as Rakuten's 2014 acquisition of Viber (for USD 905 million), Facebook's 2012 acquisition of Instagram (for USD 1 billion) and Microsoft's acquisition of Skype (for USD 8.5 billion) [, t]he value-per-user ratio for Facebook's acquisition of WhatsApp [would be] calculated to be USD [42] [This is within the range of prior transactions].  
Likewise, in July 2014, it was reported that the consumer communications app LINE filed for an IPO with a potential valuation of approximately USD 10 billion (<http://www.bloomberg.com/news/2014-07-17/line-is-said-to-pursue-u-s-ipo-with-confidential-filing-to-sec.html>, visited on 24 September 2014), or between USD 10 and 20 billion (<http://www.reuters.com/article/2014/07/18/us-line-ipo-us-idUSKBN0FN01N20140718>, visited on 24 September 2014).  
[...].

- (12) As none of the Member States competent to review the Transaction expressed its disagreement as regards the request to refer the case, the Transaction is deemed to have a Union dimension pursuant to Article 4(5) of the Merger Regulation.

#### **4. RELEVANT MARKETS**

##### **4.1. Consumer communications services**

###### *4.1.1. Introduction*

- (13) The Transaction concerns consumer communications services. Consumer communications services are multimedia communications solutions that allow people to reach out to their friends, family members and other contacts in real time.
- (14) Historically, those services were developed and offered as software applications for personal computers ("PCs"). Gradually, they have shifted away from PCs towards smart mobile devices, in particular smartphones and tablets. Today, consumer communications services are one of the fastest-growing types of mobile apps ("consumer communications apps").
- (15) Consumer communications services can be offered as a stand-alone app (for example, WhatsApp, Viber, Facebook Messenger and Skype), or as functionality that is part of a broader offering such as a social networking platform (for example, Facebook or LinkedIn). Consumer communications services can be differentiated on the basis of various elements.
- (16) First, as regards functionalities, consumer communications apps enable one-to-one and/or group real-time communication in various forms, such as voice and multimedia (text, photo or video) messaging, video chat, group chat, voice call, sharing of location, etc., although not all functionalities are available on all consumer communications apps (in particular, voice calls).
- (17) Second, certain consumer communications apps are available on only one operating system (so called "proprietary apps"), such as Apple's FaceTime and iMessage, while an ever-growing number of consumer communications apps are offered for download on multiple operating systems ("cross-platform apps"). For example, WhatsApp is available on a variety of mobile operating systems, including iOS, Android, BlackBerry 7 and 10, Windows Phone, and Nokia Series 40 (Asha) and 60 (Symbian). Likewise, Facebook Messenger currently runs on Android, iOS, BlackBerry, Windows Phone and certain Nokia Asha handsets.
- (18) Third, certain consumer communications apps are available for all types of devices, while others are not: for example, WhatsApp is only available on smartphones, but not on tablets and PCs, whilst Facebook Messenger is available on smartphones, tablets and PCs.

###### *4.1.2. Product market definition*

###### *4.1.2.1. Notifying Party's view*

- (19) The Notifying Party submits that the relevant product market includes all consumer communications services, without any further sub-segmentation. This is in particular because of the incremental nature of any functional differences, the pace of

development and blurring between the targeted use cases of competing consumer communications apps.

#### 4.1.2.2. Commission's assessment

- (20) The Commission has considered the market for consumer communications services in previous cases, notably in *Microsoft / Skype* and, more recently, in *Microsoft / Nokia*.<sup>3</sup> In the decisions in these cases, the Commission identified separate markets for consumer communications services and enterprise communications services. In addition, while ultimately leaving the market definition open, the Commission investigated whether the consumer communications market should be further segmented by functionality, by platform or by operating system.<sup>4</sup>
- (21) The Commission notes that the segmentation that is most relevant for the assessment of the present case is the segmentation based on platforms, since WhatsApp is offered only for smartphones and it does not have any plan to expand its offering to other platforms. Therefore, the present case can be assessed on the basis of a relevant product market including only consumer communications apps for smartphones.
- (22) On the basis of the results of the market investigation, further segmentations of the market for consumer communications apps on the basis of the operating system or the functionalities offered do not seem to be appropriate.
- (23) Indeed, regarding the operating system, with a few exceptions (notably iMessage), the overwhelming majority of consumer communications apps are offered for download on at least both Android and iOS, which are the operating systems installed on the greatest share of smartphones (together representing over 81% of global smartphone operating systems in use in 2013).<sup>5</sup> The market investigation indicated that, while different operating systems may enable slightly different experiences, consumer communications apps available for different operating systems are normally regarded as a single product by users and providers.<sup>6</sup>
- (24) Moreover, with respect to functionalities, the following should be noted.
- (25) First, the market investigation did not provide any indication that only certain functionalities (text messaging, rather than photo or video messaging or calls) should be considered essential to a consumer communications service. It instead pointed to the fact that, while different services may take different approaches to facilitating

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<sup>3</sup> Commission decision of 7 October 2011 in Case M.6281 – *Microsoft / Skype*; Commission decision of 4 December 2013 in Case M.7047 – *Microsoft / Nokia*.

<sup>4</sup> As regards a segmentation by functionality (i.e., instant messaging (IM), voice calls and video calls), in both decisions the Commission considered such a sub-segmentation, noted that consumers increasingly demand an integrated range of communications functionalities, and that most providers offer the whole range of functionalities, but ultimately left the precise market definition open. As regards a segmentation by platform (PCs, smartphones, tablets, gaming consoles and TVs), the Commission in *Microsoft / Skype* noted that differences existed at that time in terms of quality of the services on the different types of platforms. Finally, as regards a segmentation by OS, while the Commission in *Microsoft / Skype* stressed the limited degree of cross-OS availability, in *Microsoft / Nokia*, it noted that several apps are now available for various mobile OS, although a limited number of apps still remains confined to the OS developer's proprietary OS.

<sup>5</sup> Form CO, paragraph 217, referring to Strategy Analytics, Global Smartphone User Base Forecast by OS for 88 Countries: 2007-2017, June 2013.

<sup>6</sup> Commission pre-notification questionnaire to competitors, question 14; Commission questionnaire Q1 - Questionnaire to competitors, question 13.

consumer communications, that does not put those services into different markets or market segments.<sup>7</sup>

- (26) Second, while all competitors to the market investigation explained that the time and cost associated with the development of each functionality depend on the complexity of the relevant feature, all consumer communications apps providers offer a range of functionalities which greatly overlap with the functionalities offered by Facebook Messenger and WhatsApp.
- (27) Therefore, the Commission considers that for the assessment of the present case the relevant product market should encompass consumer communications apps offered for all operating systems and including all communications functionalities.
- (28) Another issue is whether the product market definition should be broadened to include traditional electronic communications services. Indeed, the functionalities offered by consumer communications apps are also accessible via traditional electronic communications services, such as voice calls, SMS, MMS, or e-mails.
- (29) The majority of the respondents to the market investigation consider that traditional electronic communications services, such as voice calls, SMS, MMS, e-mails, etc., can be regarded as substitutable to the communications functionalities offered by consumer communications apps.<sup>8</sup> However, there are also elements which suggest an imperfect substitutability or complementarity between the two types of services.
- (30) While the two types of services are used for the same general purpose (communication), the overall experience of the user is richer in terms of functionalities in consumer communications apps. Hence, consumer communications apps provide additional functionalities to their users, for example users can see when their contacts are online, when they are typing or when they last accessed the application.
- (31) Moreover, to a great extent, there is a difference in the pricing conditions, since consumer communications apps are mainly offered free of charge and in any event not priced per messages. Although there are offerings of bundles of messages by telecom operators, users are still usually charged separately when they send MMS, messages to other countries or messages from abroad (while roaming), which is not the case with consumer communications apps.
- (32) Finally, telecoms operators who took part in the market investigation consistently explained that there is a competitive interaction between the two services, but only one way (that is, consumer communications apps constrain traditional electronic communications services but not the other way around).
- (33) Nevertheless, the Commission notes that if traditional electronic communications services were to be included in the relevant market, the Parties' combined position on such hypothetical larger market would be weaker. Therefore, the Commission considers that for the purpose of the assessment of the present case the exact product market definition can be left open. Indeed, the Transaction does not raise serious

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<sup>7</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 6.

<sup>8</sup> Commission pre-notification questionnaire to competitors, question 10; Commission questionnaire Q1 - Questionnaire to competitors, question 9.

doubts as to its compatibility with the internal market even on the basis of the narrowest product market definition limited to consumer communications apps for smartphones and excluding traditional communication services.

#### 4.1.2.3. Conclusion on product market definition

- (34) In the light of the above, taking into account that the Parties' combined position would be attenuated in a market including traditional electronic communications services, the Commission will assess the effects of the Transaction in the narrowest relevant product market for consumer communications services, that is the market for consumer communications apps for smartphones.

#### 4.1.3. Geographic market definition

##### 4.1.3.1. Notifying Party's view

- (35) According to the Notifying Party, the geographic scope of the market for consumer communications apps is EEA-wide, if not worldwide. Indeed, the functionality provided by consumer communications apps is inherently cross-border. As consumers are free to install any app they want, the geographic scope for either demand or supply of consumer communications apps is not limited to the Member State where the consumer acquires connectivity to her/his device. Moreover, developers distribute similar products to all of their customers regardless of their geographic location. According to the Notifying Party, the fact that the market shares of Facebook and WhatsApp may vary significantly between different Member States does not change that conclusion, and neither does the existence of national "app stores".

##### 4.1.3.2. Commission's assessment

- (36) In previous decisions, while ultimately leaving the exact geographic market definition open, the Commission found that a number of factors suggested that the geographic market for consumer communications apps would be at least EEA-wide, if not worldwide.<sup>9</sup> The factors pointing to such conclusion included the lack of legal or technical barriers restricting the use or trade of consumer communications apps, the lack of differences in terms of quality, price and features (with the exception of some geographic areas), the identical users' habits in consumer communications apps within the EEA and worldwide and, finally, the fact that suppliers of consumer communications apps provide their services on a global level with limited differentiation in the quality and the features in the EEA.<sup>10</sup>
- (37) The market investigation conducted in the present case revealed that no major differences exist in the offering of consumer communications apps across the world. All respondents stated that the consumer communications apps they offer do not differ depending on the region or country concerned, either in terms of price, functionalities, platforms or operating system.<sup>11</sup> This is consistent with the fact that all consumers with

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<sup>9</sup> See Commission decision of 7 October 2011 in Case M.6281 – *Microsoft / Skype*, paragraphs 66, 68; Commission decision of 4 December 2013 in Case M.7047 – *Microsoft / Nokia*, paragraph 81.

<sup>10</sup> See Commission decision of 7 October 2011 in Case M.6281 – *Microsoft / Skype*, paragraphs 65-66.

<sup>11</sup> Commission pre-notification questionnaire to competitors, question 15; Commission questionnaire Q1 - Questionnaire to competitors, question 15. One competitor explained that certain factors may vary depending on the region/country concerned, such as marketing costs, language, legal and regulatory aspects, communication environment and the differences in specifications of each operating system.

unrestricted access to the Internet are in principle free to download and install any app they want, irrespective of their geographic location anywhere in the world.

- (38) However, certain consumer communications apps enjoy a greater reach than others in certain world regions. For example, WhatsApp is widespread in the EEA, but not so much in the USA; LINE and WeChat are particularly popular in Asia. The Commission considers that the different degree of penetration is the indication of different competitive dynamics, which could be explained by different consumer preferences,<sup>12</sup> regulatory environment and marketing efforts. In particular, in the EEA customers enjoy freedoms of movement and communicate across borders much more than in other regions of the world. However, when using cross-border mobile communications services EEA customers, unlike US ones for instance, still incur roaming and international charges. This creates a specific environment for the proliferation of consumer communications apps.
- (39) Moreover, the Parties' market shares are greater in the EEA than at worldwide level.
- (40) In this context, while there are indications that the geographic scope of the consumer communications apps market could be global, the Commission considers that the relevant geographic market for the assessment of the case is EEA-wide in line with a more conservative approach.
- (41) As regards the possibility of an even narrower geographic definition within the EEA, while the degree of penetration of the Parties' apps differs from one Member State to the other, the Parties' apps tend to be consistently number 1 and number 2 in all large Member States (except for Spain and France).<sup>13</sup> In smaller Member States, other market players have stronger market positions than either or both of the Parties.<sup>14</sup>
- (42) Moreover, the fact that WhatsApp is not free but is subject to a subscription fee in some Member States (currently, Italy and the United Kingdom)<sup>15</sup> is not sufficient to justify the definition of national markets, since WhatsApp has introduced such subscription-based business model on an experimental basis only for users of iOS and Android phones in certain countries (where the payment infrastructure currently allows it) with the aim of potentially extending it to further countries.
- (43) Finally, the main factors relevant for the assessment of the Transaction (such as closeness of competition, customer switching, entry barriers) do not differ according to the Member State concerned. In particular, if the factors taken into account by the

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<sup>12</sup> For example, stickers in consumer apps proved to be particularly popular with the users in Asia.

<sup>13</sup> On the basis of the market share data provided by the Notifying Party (in this regard see Section 5.1.2), in the period between November 2013 and May 2014 in Spain WhatsApp was the market leader ([30-40]%), followed by Twitter ([10-20]%), LINE ([10-20]%), Google Hangouts ([5-10]%) and Facebook Messenger ([5-10]%). In France the market leaders were Android's messaging platform and Facebook Messenger (both [10-20]%), followed by WhatsApp.

<sup>14</sup> For example, the market leader is Viber in Croatia and Greece, Android's messaging platform in Denmark and Snapchat in Norway. In Hungary, Poland and Lithuania, Facebook Messenger is the market leader, while WhatsApp is at best the third player. In Ireland and in the Netherlands, WhatsApp is the market leader and Facebook Messenger is the third player.

<sup>15</sup> Users of iPhones and Android phones in Germany and Spain also paid a subscription fee until spring 2014. Outside of the EEA, WhatsApp currently charges a subscription fee to users in the USA and in Canada.



Commission in its analysis of the Transaction were considered at national (as opposed to EEA) level, the Commission's conclusions would not change.

#### 4.1.3.3. Conclusion on geographic market definition

(44) In light of the above, the Commission considers that the relevant geographic market for the assessment of the Transaction is at least EEA-wide, if not worldwide.

## 4.2. Social networking services

### 4.2.1. Introduction

(45) A core service offered by Facebook is its online social networking platform, which connects more than 1.3 billion people around the world.

(46) Online social networking services are a relatively recent phenomenon with a majority of today's providers having launched their services in the 2000s.<sup>16</sup> Their business models and functionalities vary considerably and are constantly evolving. While there is no established definition, social networking services can be generally described as services which enable users to connect, share, communicate and express themselves online or through a mobile app.

(47) The vast majority of social networking services are provided free of monetary charges. They can however be monetised through other means, such as advertising or charges for premium services.

### 4.2.2. Product market definition

#### 4.2.2.1. Notifying Party's view

(48) According to the Notifying Party, Facebook's social networking service consists of the following core functionalities: user profile,<sup>17</sup> newsfeed,<sup>18</sup> and timeline.<sup>19</sup>

(49) The Notifying Party explains that Facebook's users can express themselves in a variety of ways, including by posting pictures or links to their timelines, commenting on or "liking" other user's activities, or playing games connected to Facebook. In this way, Facebook provides a rich social experience organised around users' and their friends' online identities. In the Notifying Party's view, the other services that are characterised as social networks (such as Google+, LinkedIn, MySpace, Pinterest and InterNations) offer similarly rich experiences.

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<sup>16</sup> For example, LinkedIn, Facebook and Google+ launched their social networking services in 2003, 2004 and 2011, respectively.

<sup>17</sup> User profile corresponds to the user online identity, providing information on the user's jobs, school/university attended, relationship status, birthday, major life events, etc., as well as likes and interests (that is, music, movies, etc.). A user can generally select to which degree the information in its profile is accessible to the public.

<sup>18</sup> Newsfeed is a regularly updating personalised display of stories (that is, posts, photos, etc.) from friends, pages, and other entities to which the user is connected.

<sup>19</sup> Timeline enables users to organise and display the events and activities that matter most to them (for example, interests, photos, education, work history, relationship status, and contact information), such that they can curate their memories in a searchable personal narrative that is organised chronologically.

- (50) The Notifying Party does not pronounce itself on the existence of a distinct market for social networking services. However, the Notifying Party submits that in any event WhatsApp is not active in such potential market in competition with Facebook. This is notably due to the lack of core social networking functionalities in WhatsApp. In particular, WhatsApp is focussed on facilitating fast and simple communications between users and does not enable users to create detailed profiles containing a number of data fields like date of birth, relationship status, job status, etc., time-lines or news feeds, or to post information, explore other users' networks (that is, through visible "friend lists") or carry out many of the other features that form part of the social networking user experience.

#### 4.2.2.2. Commission's assessment

- (51) The overwhelming majority of respondents to the market investigation indicate that the essential functionalities of a social networking service include creation of a public or semi-public profile and list of friends/contacts.<sup>20</sup> Other important features include exchanging messages (one-to-one, one-to-group or one-to-many), sharing information (for example, posting pictures, video or links), commenting on postings and recommending friends. A service does not necessarily have to have all of these functionalities to be qualified as a social network.
- (52) As concerns the comparison of social networking services with consumer communications apps, the respondents to the market investigation noted that there is a certain overlap in the functionalities of these two types of services. The lines between social networking services and consumer communications apps are becoming blurred and each of these services adopts traditional functionalities of the other. Most importantly, similarly to social networks, consumer communications apps enable users to exchange content (text messages, video, audio and photos) with other people.
- (53) However, the market investigation revealed a number of important differences between social networking services and consumer communications services.
- (54) On a general level, social networking services tend to offer a richer social experience compared to consumer communications apps. For example, the users of social networks are able to indicate their interests, activities or life events, create photo albums and express opinions on other users' postings (for example, by commenting or "liking"). Also, in social networks, a user's contact list is by default visible to other users which facilitates adding new contacts. The functionalities of consumer communications apps today are more limited and focus on enabling basic communication between users rather than creating a richer experience around their digital identity.
- (55) Also, while both social networks and consumer communications apps enable communication between users, the communications functionalities and their usage differ. Hence, consumer communications apps facilitate instant real-time communication (with handsets ringing and notifications being pushed to recipients). Responses are generally sent promptly allowing a conversation. By contrast, messages in social networks, such as comments on a posting, are not normally expected to be responded to in real time.

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<sup>20</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 16.

- (56) Moreover, social networks tend to enable communication and information sharing with a wider audience than consumer communications apps, which are more personal and targeted. For example, postings on a social network are generally shared with all contacts of a user (unless restricted), while communication on such consumer communications apps as Facebook Messenger and WhatsApp occurs mainly on a one-to-one basis (more than [90-100]% of all messages are one-to-one). Also, even though Facebook Messenger and WhatsApp enable users to create groups, their size is relatively limited (on average in the EEA, [0-5] users for WhatsApp and [0-10] users for Facebook Messenger). By contrast, social networks enable creation of larger groups which can consist of users who do not directly know each other (for example, an event or an interest group).
- (57) The Commission further assessed whether it is appropriate to segment social networking services according to the platform (that is, PC, smartphone and tablet) or the operating system (such as Windows, Mac, Android or iOS) on which they are available.
- (58) Respondents to the market investigation generally consider a social networking service which is offered on several platforms or on several operating systems to be a single service. From a supply side perspective, while the development of a social networking service for a particular platform or operating system requires time and resources, these do not appear to be significant enough to support the existence of separate markets. Finally, most social networks are accessible on multiple platforms and operating systems.
- (59) Therefore, social networking services should not be further segmented according to a platform or an operating system. Finally, social networking services could be further differentiated depending on their intended use. Respondents to the market investigation generally consider that a distinction could be drawn between social networking services promoting interpersonal contact for private and entertainment purposes (such as Facebook or Google+) and services which are used for professional purposes (such as LinkedIn or Xing). Nevertheless, respondents acknowledge that there are overlaps between the purposes of intended use.
- (60) In the present case, it can be left open whether social networking services should be segmented according to the intended use since no competition concerns arise under any alternative market definition.
- (61) Based on the above, the Commission concludes that while consumer communications apps like Facebook Messenger and WhatsApp offer certain elements which are typical of a social networking service, in particular sharing of messages and photos, there are important differences between WhatsApp and social network services, as described in paragraphs (50) and (53)-(56).

#### 4.2.2.3. Conclusion on product market definition

- (62) For the purposes of the present case, the exact boundaries of the market for social networking services, in particular whether consumer communications apps such as Facebook Messenger and WhatsApp fall within the scope of such a potential market can be left open, since the Transaction would not give rise to serious doubts as to its compatibility with the internal market under any alternative market definition.

### 4.2.3. *Geographic market definition*

#### 4.2.3.1. Notifying Party's view

(63) The Notifying Party does not take a firm view as to the geographic dimension of the market for social networking services.

#### 4.2.3.2. Commission's assessment

(64) It is common for the same social networking services to be available throughout the world, or at least in most geographic regions, given the global scope of the Internet.

(65) Respondents to the market investigation state that there are generally no differences in a social networking service offered in different geographic regions or countries, in particular in terms of price, functionalities, platforms and operating systems served. However, it appears that limited adjustments such as language and minor functionalities are present. Other possible differences include marketing costs, legal/regulatory requirements and customers' preferences.

(66) Moreover, the Parties' market shares are greater in the EEA than at worldwide level

(67) In this context, while there are indications that the geographic scope of the market for social networking services could be global, the Commission considers that the relevant geographic market for the assessment of the case is EEA-wide in line with a more conservative approach.

#### 4.2.3.3. Conclusion on geographic market definition

(68) In light of the above, the Commission concludes that the geographic scope for the market for social networking services is at least EEA-wide, if not worldwide.

## 4.3. **Online advertising services**

### 4.3.1. *Introduction*

(69) Facebook's activities in the advertising sector consist of the provision of online (non-search) advertising services on Facebook's core social networking platform,<sup>21</sup> both on PCs and on mobile devices.<sup>22</sup> By contrast, Facebook does not currently serve any ads on its Facebook Messenger app.

(70) For the purpose of its online advertising activities, Facebook collects data regarding the users of its social networking platform and analyses them in order to serve advertisements on behalf of advertisers, which are as much as possible "targeted" at each particular user of its social networking platform. However, Facebook does neither sell any of the user data it collects nor provides data analytics services to

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<sup>21</sup> Since 2013, Facebook also serves ads to users of its photo and video sharing platform, Instagram, in the USA. In September 2014, Facebook began to introduce limited ads on Instagram in the United Kingdom. [...].

<sup>22</sup> In addition, Facebook is active in intermediation in online advertising through LiveRail (acquired on 14 August 2014), and Facebook Audience Network (currently in beta testing, but which Facebook anticipates launching by year end 2014). Facebook is also active in the provision of online display ad serving technology, through Atlas Solutions (acquired on 28 February 2013) and LiveRail.

advertisers or other third parties as a stand-alone product separate from the advertising space itself.<sup>23</sup>

- (71) WhatsApp does not currently sell any form of advertising and does not store or collect data about its users that would be valuable for advertising purposes (for example, concerning age, verified name, gender, social group, activities, consuming habits or other characteristics).<sup>24</sup> Moreover, messages that users send through WhatsApp are not stored in WhatsApp's servers, but only on the users' mobile devices or elected cloud.
- (72) The Commission has investigated the market definition as regards advertising, since Facebook is currently active in that market. The Commission has not investigated any possible market definition with respect to the provision of data or data analytics services, since, subject to paragraph (70) above, neither of the Parties is currently active in any such potential markets.

#### 4.3.2. *Product market definition*

##### 4.3.2.1. Notifying Party's view

- (73) According to the Notifying Party, given the continuous evolution of online advertising it is not appropriate to differentiate between the various types of online advertising. As regards the possibility to define a separate market for online advertising on social networking websites, the Notifying Party takes the view that there is no basis for defining such a market, in particular because advertisers place ads within a broad range of online publishers within any given advertising campaign.

##### 4.3.2.2. Commission's assessment

- (74) In previous decisions, the Commission distinguished between the provision of online and offline advertising space.<sup>25</sup> The Commission also considered whether the market for online advertising could be sub-segmented into search and non-search advertising, but ultimately left this question open.<sup>26</sup> The Commission also assessed whether, within online advertising, mobile (search or non-search) advertising constitutes a product

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<sup>23</sup> Facebook makes available certain non-personally identifiable data (aggregate or anonymous data) to advertisers to help measure the effectiveness of their ads. For example, Facebook shares basic ad performance information with advertisers, such as the number of people who saw or clicked on their ads, the cost of those ad placements, and the number of people who “converted,” for example, by visiting the advertiser’s website after viewing an ad on Facebook. See <https://www.facebook.com/about/privacy/advertising>. However, Facebook does not share personally identifiable information with advertisers absent user consent. Moreover, Facebook shares data with third-party service providers that help Facebook and advertisers measure the effectiveness of advertising campaigns on online or offline sales or app downloads. Finally, Facebook complies with requests for access to user data made by law enforcement agencies, courts and other agencies with a legal right to require such access.

<sup>24</sup> WhatsApp currently only stores limited information about its users (namely, user name, picture, status message, phone number and the phone numbers in the user's phone book).

<sup>25</sup> See Commission decision of 18 February 2010 in Case M.5727 – *Microsoft / Yahoo! Search Business*, paragraph 61; Commission decision of 11 March 2008 in Case M. 4731 – *Google / DoubleClick*, paragraphs 45-46; 56.

<sup>26</sup> See Commission decision of 18 February 2010 in Case M.5727 – *Microsoft / Yahoo! Search Business*, paragraphs 71-75; Commission decision of 11 March 2008 in Case M. 4731 – *Google / DoubleClick*, paragraphs 49-56.

market separate from static online (search or non-search) advertising.<sup>27</sup> The Commission noted that mobile and static online advertising currently present significant differences, which may diminish at some point in the future, but left open whether a distinction should be made.<sup>28</sup>

- (75) The market investigation conducted for the purpose of reviewing the Transaction clearly confirmed the distinction made in the Commission precedents between the provision of online and offline advertising.<sup>29</sup>
- (76) The market investigation also supported to a large extent the existence of a further sub-segmentation of the online advertising market between search and non-search advertising. Indeed, the majority of the advertisers who took part in the market investigation considered that search and non-search ads are not substitutable as they serve different purposes (for search ads, mainly generating direct user traffic to the merchant's website, while, for non-search ads, mainly building brand awareness) and, as a result, most advertisers would not be likely to switch from one type to another in the event of a 5-10% price increase.<sup>30</sup> Similarly, the majority of the competitors who took part in the market investigation submitted that search and non-search ads are not substitutable from an advertiser's point of view.<sup>31</sup>
- (77) In addition, the Commission also examined whether a separate product market should be defined for the provision of online non-search advertising services on social networking websites. However, the results of the market investigation were mixed in this regard. A number of respondents considered that other forms of non-search advertising are not as effective as advertising on social networking websites and notably on Facebook, due to Facebook's large and highly engaged audience and its ad targeting opportunities. However, other respondents took the view that many other advertising platforms offering non-search ads are equally well-placed to serve non-search needs.<sup>32</sup>
- (78) As regards a possible distinction between online advertising on different platforms (PCs vs. mobile devices), the results of the market investigation were also mixed. While some respondents highlighted the differences between advertising on different platforms (for example, in terms of technical characteristics, user experience and ad profitability), other respondents submitted that they are essentially substitutable.<sup>33</sup>

#### 4.3.2.3. Conclusion on product market definition

- (79) In line with its decisions in *Google / DoubleClick* and *Microsoft / Yahoo! Search Business*, the Commission concludes that online advertising constitutes a relevant

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<sup>27</sup> See Commission decision of 4 September 2012 in Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, paragraphs 153-159; Commission decision of 18 February 2010, Case M.5727 – *Microsoft / Yahoo! Search Business*, paragraphs 77-81.

<sup>28</sup> See Commission decision of 4 September 2012 in Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, paragraphs 158-159.

<sup>29</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 30; Commission questionnaire Q2 - Questionnaire to advertisers, question 3.

<sup>30</sup> Commission questionnaire Q2 - Questionnaire to advertisers, question 4.

<sup>31</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 31.1.

<sup>32</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 32; Commission questionnaire Q2 - Questionnaire to advertisers, question 5.

<sup>33</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 33.

market separate from offline advertising. Whether segments of that market constitute relevant markets in their own right can be left open for the purposes of this decision, because the Transaction would not give rise to serious doubts as to its compatibility with the internal market under any such narrower product market definition.

#### 4.3.3. *Geographic market definition*

##### 4.3.3.1. Notifying Party's view

(80) The Notifying Party does not take a firm view as to the geographic dimension of the market for online advertising or its possible sub-segments.

##### 4.3.3.2. Commission's assessment

(81) In previous decisions, the Commission concluded that the market for online advertising space is to be divided alongside national or linguistic borders within the EEA, although it ultimately left the geographic market definition open in one case.<sup>34</sup> Factors pointing to a national or linguistic geographic market definition included customers' purchasing preferences and languages, and the presence of support and sales networks located at national level.<sup>35</sup>

(82) The market investigation in this case generally confirmed the Commission's previous findings as regards the geographic market definition for online advertising. The majority of the respondents to the market investigation stated that advertisers typically purchase online advertising space and conduct advertising campaigns on a national (or linguistic) basis, although a number of respondents also pointed out that, depending on the type of campaign, global companies may also procure advertising space on a broader geographic scale (EEA-wide or even worldwide).<sup>36</sup> Moreover, the majority of the respondents submitted that prices for online advertising tend to differ depending on the country, based on a number of factors, such as demand and supply, local market conditions, Internet penetration rate, etc.<sup>37</sup>

##### 4.3.3.3. Conclusion on geographic market definition

(83) In line with its decisions in *Google / DoubleClick* and *Microsoft / Yahoo! Search Business*, the Commission concludes that the online advertising market and its possible sub-segments should be defined as national in scope or alongside linguistic borders within the EEA.

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<sup>34</sup> See Commission decision of 4 September 2012 in Case M.6314 – *Telefónica UK / Vodafone UK / Everything Everywhere / JV*, paragraphs 226-229; Commission decision of 18 February 2010 in Case M.5727 – *Microsoft / Yahoo! Search Business*, paragraphs 91-93; Commission decision of 11 March 2008 in Case M.4731 – *Google / DoubleClick*, paragraphs 83-84.

<sup>35</sup> *Ibid.*

<sup>36</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 34; Commission questionnaire Q2 - Questionnaire to advertisers, question 7.

<sup>37</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 35; Commission questionnaire Q2 - Questionnaire to advertisers, question 8.

## 5. COMPETITIVE ASSESSMENT

### 5.1. Consumer communications services

#### 5.1.1. Introduction

- (84) The Parties operate two consumer communications apps, Facebook Messenger (which has approximately [250-350] million users worldwide and [100-200] million users in the EEA) and WhatsApp (which has approximately 600 million users worldwide and [50-150] million users in the EEA).
- (85) A number of other players provide consumer communications apps in competition with the Parties in the EEA and worldwide. These include integrated companies active also in the provision of smartphone hardware and operating systems, such as Apple with iMessage, BlackBerry with BBM, Samsung with ChatON, Google with Google Hangouts and the Android messaging platform, Microsoft with Skype. Competing consumer communications apps are also provided by mobile network operators along with traditional telecommunications services: examples of these apps are Joyn (the brand name of the Rich Communication Services program launched by the GSM Association ("GSMA") for the creation of inter-operator communication services over the Internet),<sup>38</sup> Libon by Orange and Tuenti by Telefónica. Finally, many other providers of consumer communications apps are active on the market, such as LINE, Viber, Threema, Telegram, Snapchat and WeChat.
- (86) On the basis of the results of the market investigation, the Commission notes that the main drivers of the competitive interaction between consumer communications apps appear to be (i) the functionalities offered and (ii) the underlying network.<sup>39</sup>
- (87) First, consumer communications customers have a broad range of choices when it comes to selecting and using consumer communications apps. Many of them use more than one consumer communications app simultaneously depending on their specific needs (so-called "multi-homing").<sup>40</sup> In this context, consumer communications apps compete for customers by attempting to offer the best communication experience. The functionalities offered are at the heart of the consumer communications apps' value proposition to customers and their improvement in order to gain the largest user base is a key innovation driver. In this regard, according to the market investigation, important areas of improvement include: (i) reliability of the communications service, which has a direct impact on the service's reputation and its appeal to users; and (ii) privacy and security, the importance of which varies from user to user but which are becoming increasingly valued, as shown by the introduction of consumer communications apps specifically addressing privacy and security issues and by WhatsApp's plan to introduce [...] (see paragraph (169) below).
- (88) Second, a consumer communications service can offer utility to customers if the people they want to communicate with are also users of that service. Therefore, the relevance of the user base appears to be more important than its overall size. In this context, however, the size of the network of a consumer communications app can

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<sup>38</sup> Such services are currently offered in the EEA by Deutsche Telekom, Orange, Vodafone and Telefónica.

<sup>39</sup> See the replies of the overwhelming majority of respondents to the market investigation - Commission questionnaire Q1 - Questionnaire to competitors, question 36.

<sup>40</sup> See paragraph (105) below.



have a value for customers in two ways: (i) a larger network implies that it is more likely that existing contacts will already be using a consumer communications app; and (ii) a larger network will afford greater opportunities for contact acquisition and discovery.

- (89) Furthermore, perceived trendiness and "coolness" amongst groups of users is also an important factor in attracting new users and thus shaping the competitive landscape.
- (90) Finally, price is one factor that influences the popularity of a consumer communications app. Indeed, the users of consumer communications apps tend to be very price-sensitive<sup>41</sup> and expect a consumer communications app to be provided for free. This is a standard practice in the industry, with virtually all consumer communications apps not charging any fees. There are few exceptions to this: Threema, which offers increased security of communications, and partially WhatsApp, which can be downloaded against an annual subscription fee of around EUR 0.89 in Italy, the United Kingdom, Canada and the United States.<sup>42</sup>
- (91) In this respect, the Commission notes that WhatsApp was previously charging subscription fees also in Germany and Spain. However, WhatsApp cancelled subscription fees in these two Member States in the first half for 2014 for several reasons, among which: [...].

#### 5.1.2. *Notifying Party's view*

- (92) The Notifying Party takes the view that market shares are of limited use for the assessment of the Transaction, since it concerns services which are characterised by ease and rapidity of entry and fast growth, as well as multi-homing, and which are mainly offered for free.
- (93) The Notifying Party claims that, regardless of any analysis of market shares, the Transaction will not result in any anticompetitive horizontal unilateral effects. Indeed the market would be characterised by the presence of many other alternative service providers and the Parties' would not be close competitors.
- (94) Moreover, barriers to entry and expansion for competitors and switching costs for customers would be very low, so that any attempt of the merged entity to leverage its market position could be easily countered. In particular, should the merged entity introduce or raise its prices or stop innovating, customers could easily switch to competing services which are available free of charge and which will provide new features and better quality services.

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<sup>41</sup> This has been supported also by a customer survey submitted to the Commission by a competitor in the context of the market investigation.

<sup>42</sup> For the majority of all other consumer communications apps, monetisation is achieved not through fees but through advertising, stickers and in-app purchases. Facebook Messenger is not currently monetised: it is funded by the monetisation of Facebook's networking platform through advertising.

### 5.1.3. Commission's assessment

#### 5.1.3.1. Market shares

- (95) According to the Horizontal Merger Guidelines, market shares and concentration levels provide useful first indications of the market structure and of the competitive importance of both the merging parties and their competitors.<sup>43</sup>
- (96) On the basis of the data provided by the Parties, their combined share in the EEA market for consumer communications apps on iOS and Android smartphones in the period between November 2013 and May 2014 was around [30-40]% (WhatsApp: [20-30]%; Facebook Messenger: [10-20]%), followed by Android's messaging platform ([5-10]%), Skype ([5-10]%), Twitter ([5-10]%), Google Hangouts ([5-10]%), iMessage ([5-10]%), Viber ([5-10]%), Snapchat ([0-5]%) and other market players with a share of [0-5]% or less. The Parties submit that they have no reason to believe that their usage of consumer communications apps globally is higher than it is in the EEA.
- (97) The Commission notes that the market shares indicated above are likely to underestimate the Parties' position, and present some shortcomings.<sup>44</sup> During the market investigation, the Commission attempted to collect additional metrics to measure the competitive importance of players in the market for consumer communications apps. However, no reliable dataset could be produced. For example, assessing the traffic volumes of consumer communications apps was vitiated by the lack of data from some providers and inconsistent recording methods (for example, in relation to the number of messages sent, messages received, group messages, etc.).<sup>45</sup>

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<sup>43</sup> See *Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings* ('Horizontal Merger Guidelines'), OJ C 31, 5.2.2004, p. 5, paragraph 14.

<sup>44</sup> First, they are based on Onavo data, an app owned by Facebook which tracks "reach data" (that is, the percentage of panelled users that have used an app over 30 days) only on iOS and Android smartphones. Second, they do not properly measure the effective use of the services, but rather the penetration rate of an app among users (the so called "reach"). Third, they overestimate the strength of smaller market players since it suffices that a user uses an app one day over a month for a share of usage to be attributed to an app during that given month. Fourth, they assume that 75% of iPhone users use iMessage since Onavo cannot collect iMessage data. Fifth, the Parties have included players which offer communications functionalities integrated in their social networking apps, such as LinkedIn and Twitter, regardless of whether the app was used for communication purposes or not.

<sup>45</sup> Certain third parties indicated that the best metric to measure competitive forces would be monthly minutes of use (how long a user engages with the app), as this metric captures (i) the importance of the application to the end consumer (i.e. consumer engagement) and (ii) its potential value either through direct monetisation from the consumer or indirectly through advertising. However, the Commission, on the basis of the results of the market investigation, does not consider this metric to be particularly meaningful to weigh relative market positions in the market for consumer communications apps. Indeed, what actually matters for consumer communications apps is not the length of the communications itself, which could depend on exogenous factors such as the relationship between the users of the service. User engagement with a service is better demonstrated by the fact that the service is actually used every month and day or by the number of messages, if it did not present the issues indicated in paragraph (98). In any event, the Commission notes that irrespective of the methodology used for calculating market shares, Facebook Messenger and WhatsApp would still be number 1 and number 2 in the EEA and at worldwide level.

- (98) In this context the Commission considers that the methodology proposed by the Parties for the calculation of market shares still represents the best (albeit imperfect) available proxy to measure relative market positions in this sector.
- (99) Even if the data provided by the Parties were to underestimate the Parties' combined market shares, the Commission notes that the consumer communications sector is a recent and fast-growing sector which is characterised by frequent market entry and short innovation cycles in which large market shares may turn out to be ephemeral. In such a dynamic context, the Commission takes the view that in this market high market shares are not necessarily indicative of market power and, therefore, of lasting damage to competition.<sup>46</sup>
- (100) In order to assess the impact of the Transaction for consumers, the Commission has examined the competitive constraints that the Parties exert on each other pre-merger as well as those that they will continue to face post-merger.

#### 5.1.3.2. Closeness of competition

- (101) The Commission notes that the Parties' offerings in consumer communications apps are different in several respects. These differences are mainly the result of Facebook Messenger being a stand-alone app which has been developed from functionalities originally offered by the Facebook social network.<sup>47</sup>
- (102) These differences relate to: (i) the identifiers used to access the services (phone numbers for WhatsApp, Facebook ID for Facebook Messenger);<sup>48</sup> (ii) the source of the contacts (the user handset's address book for WhatsApp, all Facebook users in Facebook Messenger); (iii) the user experience (which is richer in Facebook Messenger given the integration with the core aspects of Facebook social network); (iv) the privacy policy (contrary to WhatsApp, Facebook Messenger enables Facebook to collect data regarding its users that it uses for the purposes of its advertising activities);<sup>49</sup> and (v) the intensity with which the apps are used [...].<sup>50</sup>
- (103) All these elements make the look and feel of the Parties' consumer communications apps different in the views of the respondents to the Commission's market investigation. The only factors on the basis of which WhatsApp and Facebook Messenger were considered close competitors by certain respondents are the communications functionalities offered and the size of their respective networks.<sup>51</sup>

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<sup>46</sup> See Case T-79/12 *Cisco Systems Inc v Commission* [2013], paragraph 69.

<sup>47</sup> Facebook Messenger was first released on 9 August 2011 for iOS and Android.

<sup>48</sup> To enable communication functionalities, consumer communications apps require the creation of an account with a unique user identifier. Depending on the consumer communications app, existing mobile phone numbers or email addresses can serve as user IDs (for example, WhatsApp, Viber); certain consumer communications apps require instead the creation of a new user identifier (for example, Facebook Messenger, Skype). These different technical features affect the whole functioning of the consumer communications app and in particular the selection of the list of contacts with which communication is established: such contacts may derive from the handset's native address book (as in case of WhatsApp and Viber) or from other users of the related social network (such as on Facebook Messenger) or users of the messaging application (for example, Skype).

<sup>49</sup> [...].

<sup>50</sup> [...].

<sup>51</sup> In this regard see Section 5.1.3.5.

- (104) However, the Commission notes that there is no feature offered by Facebook Messenger or WhatsApp which is not offered also by other market players.<sup>52</sup> Moreover, the Commission notes a significant overlap exists between the networks of WhatsApp and Facebook<sup>53</sup> which could rather point to a complementarity in the use of the two apps rather than to close competition.
- (105) Furthermore, the EEA market for consumer communications apps features a significant degree of "multi-homing", that is, users have installed, and use, on the same handset several consumer communications apps at the same time.<sup>54</sup> In particular, WhatsApp and Facebook Messenger have been reported as being the two main consumer communications apps simultaneously used by the majority of the users in the EEA.<sup>55</sup> This fact suggests that the two consumer communications apps are to some extent complementary, rather than being in direct competition with each other.
- (106) On the basis of their characteristics, WhatsApp's offering seems to be closer to that of Viber and of other similar consumer communications apps which use phone numbers or email addresses to let users access the services and do not require the "affiliation" to a social network, as is the case for Facebook Messenger or Twitter. In contrast, Facebook Messenger seems to be in closer competition with services offered by Google Hangouts or Twitter, since to access the consumer communications service users are required to register on a social network or in any event for a broader range of services (such as email).
- (107) In light of the above, the Commission considers that Facebook Messenger and WhatsApp are not close competitors.

#### 5.1.3.3. Consumers' ability to switch providers

- (108) The majority of respondents to the Commission's market investigation indicated that post-Transaction there will remain a number of alternative providers of consumer communications apps.<sup>56</sup> The Commission has investigated whether consumers can easily switch to these providers, with the result of constraining the behaviour of the merged entity.
- (109) In line with the Notifying Party's arguments, the Commission has found in its market investigation that there are no significant costs preventing consumers from switching between different consumer communications apps.<sup>57</sup> This is for the following reasons. First, all consumer communications apps are offered for free or at a very low price.<sup>58</sup>

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<sup>52</sup> Moreover, the greatest share of the Parties' traffic is constituted by text messages, a functionality offered by all market players.

<sup>53</sup> See paragraph (140) below.

<sup>54</sup> When multi-homing, customers choose the consumer communications app to use on a communication-by-communication basis depending on the urgency, purpose and nature of the communication, the fact that the addressee of the message uses a certain consumer communications app and other preference factors.

<sup>55</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 37.

<sup>56</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 46, although some questioned their ability to recreate in a short time the network externalities reached by the Facebook and WhatsApp. In this regard, see Section 5.1.3.5.

<sup>57</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 42. See also Case T-79/12 *Cisco Systems Inc v Commission* [2013], paragraph 79.

<sup>58</sup> See paragraph (90).

Second, all consumer communications apps are easily downloadable on smartphones and can coexist on the same handset without taking much capacity. Third, once consumer communications apps are installed on a device, users can pass from one to another in no-time.<sup>59</sup> Fourth, consumer communications apps are normally characterised by simple user interfaces so that learning costs of switching to a new app are minimal for consumers. Fifth, information about new apps is easily accessible given the ever increasing number of reviews of consumer communications apps on app stores.

(110) In this context, the Commission notes that customers of consumer communications apps normally multi-home.<sup>60</sup> This means that, when they try new consumer communications apps, users do not generally stop using the consumer communications apps they were previously using. On the basis of the data provided by the Notifying Party, approximately [80-90]% of EEA users of consumer communications apps use more than one service per month, and approximately [50-60]% use more than one such service on a daily basis.<sup>61</sup> The existence of multi-homing has been acknowledged by the overwhelming majority of the respondents to the market investigation.<sup>62</sup> According to these respondents, users have installed on their smart-phones three or more consumer communications apps and on average use two or more apps every month.<sup>63</sup>

(111) The Commission also notes that neither Facebook Messenger nor WhatsApp are pre-installed on a large basis of handsets.<sup>64</sup> Software pre-installation can make switching more difficult, in view of users' inertia which leads to the so-called "*status quo* bias."<sup>65</sup> In this case, however, users normally have to actively download both Facebook Messenger and WhatsApp. Users are therefore also more likely to actively download a competing consumer communications app in case of subsequent dissatisfaction with the Parties' services, or preference for multi-homing.

(112) The Commission also considers that the Transaction is unlikely to give rise to an increase in switching costs. None of the Parties has control over the operating system of a smartphone, and therefore none of them could make it more burdensome for users to switch between different consumer communications apps.

(113) Several telecom operators indicated that switching costs for consumers would be represented by the loss of all data and interaction history when changing consumer communications app. In the present case, the Commission has not found any evidence suggesting that data portability issues would constitute a significant barrier to consumers' switching in the case of consumer communications apps. Indeed, communication via apps tends to consist to a significant extent of short, spontaneous chats, which do not necessarily carry long-term value for consumers. In any event,

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<sup>59</sup> This is also supported by a customer survey submitted to the Commission by a competitor in the context of the market investigation.

<sup>60</sup> See paragraph (105).

<sup>61</sup> Form CO, paragraph 4.

<sup>62</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 44.

<sup>63</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 44.

<sup>64</sup> Facebook estimates that its social networking app is pre-installed in only approximately 10% of the smartphone devices sold in the EEA in 2014, while WhatsApp has only an agreement with Nokia for the pre-installation of its app on some of Nokia's models via a soft-launcher (that is, a pre-installed icon which, when tapped, redirects the user to the app store to download the application).

<sup>65</sup> See Commission decision of 16 December 2009 in Case C-3/39.530 - *Microsoft (Tying)*.

data portability is unlikely to prevent switching since the messaging history from a consumer communication app remains accessible on a user's smartphone even if the user starts using a different consumer communications app, as long as the user does not decide to delete such history or to uninstall the app. Finally, the contact list of a WhatsApp user can be ported: a competing app would have access to it, subject to a user's authorisation.

- (114) The market investigation has however revealed that switching providers may be difficult in terms of convenience due to the need for the users to recreate their network.<sup>66</sup> Such network effects will be analysed in the next Section 5.1.3.5.
- (115) In light of the above, the Commission considers that, with the exception of network effects, there is no significant barrier to switching for users in the market for consumer communications apps.<sup>67</sup>

#### 5.1.3.4. General barriers to entry and expansion

- (116) The consumer communications apps market has been characterised by disruptive innovation. For example, BlackBerry launched the first successful smartphones with integrated consumer communications app and had a very significant market position. However BlackBerry Messenger was available only for BlackBerry smartphones and lost importance with the emergence of multi-platform apps once Android and iOS devices gained a larger part of the smartphone market. Another example of successful entry sustained by the responsiveness to a new customer need is Telegram, a consumer communication app that was launched in September 2013 and had over 35 million monthly active users by March 2014, primarily due to its new feature of message encryption. WhatsApp itself was launched in 2009, when the shift of users of consumer communications services from PC to smartphone started, and today it has approximately 600 million active users. Similar market dynamics can be found with respect to LINE and WeChat, which were both launched in 2011 and each of which has now more than 400 million active users worldwide.
- (117) In this context and in line with the Notifying Party's arguments, the Commission has found in its market investigation that there are no significant "traditional" barriers for a new consumer communications app to enter the market, that is, to be offered to users for download.
- (118) First, the market for consumer communications apps is dynamic and fast-growing. In 2013, the use of messaging and social apps grew by 203%, more than any other type of apps. This growth is expected to continue in the future.<sup>68</sup> New consumer

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<sup>66</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 42.

<sup>67</sup> In this regard the Commission notes that the vast majority of the traffic on the Parties' consumer communications apps (about [90-100]%) is represented by one-to-one messages. Group messages constitute a small proportion of the Parties' traffic: [10-20]% for WhatsApp and [5-10]% for Facebook Messenger. Moreover, group chats tend to be between a relatively small number of users (on average in the EEA, [0-5] users for WhatsApp and [0-10] users for Facebook Messenger (the larger number of users in group chats on Facebook Messenger is likely to derive from the greater social networking functionalities)). In this context the Commission considers that a potential migration of one-to-one traffic is more relevant to constrain the merged entity and therefore there is no need to assess whether customers' switching is more difficult for group functionalities.

<sup>68</sup> Report by mobile analytics firm Flurry (<https://software.intel.com/en-us/blogs/2014/01/13/mobile-app-growth-continues-to-rise>).

communications apps are continuously offered for download to customers and are expected to be launched also in the future.<sup>69</sup>

- (119) Developing and launching a consumer communications app does not require a significant amount of time and investment. According to the information provided by the Notifying Party, the time and cost of launching and operating a new mobile consumer communications app can be relatively low, the main cost being server capacity which increases with scale. For example, WhatsApp developed the first version of its app over a period of six months and it cost less than USD [...] in capital, operational and employee costs. The majority of the respondents to the market investigation acknowledged that developing and launching on the market a consumer communications app is fairly easy.<sup>70</sup>
- (120) Second, there are no known patents, know-how or IPRs that would constitute barriers to entry, and the technologies implemented in consumer communications apps are increasingly standardised. This has been confirmed by the respondents to the market investigation.<sup>71</sup> In any event, WhatsApp does not hold any patents on which messaging technologies may read; whilst Facebook has some patents, none of these has been declared essential to any standard.
- (121) Third, the Commission considers that the Transaction is unlikely to give rise to an increase in entry barriers, as the Parties do not have control over any element influencing entry. In the first place, the Parties do not have control over the operating system of smartphones, and are not therefore in the position to foreclose access to the final user of the consumer communications service. In the second place, email addresses, phone numbers and other elements which could be used as identifiers to access competing apps are ultimately controlled by the users. In the third place, the handsets' native address book for phone numbers or email addresses which could be used to build up a communication network is potentially available to all rival consumer communications apps providers.
- (122) A few respondents to the market investigation indicated that barriers to entry would be represented by lack of data portability and interoperability between different consumer communications apps. Data portability issues are addressed in paragraph (113). With regard to interoperability (i.e., the ability of users of an app to reach and communicate with users of another app), the Commission notes that interoperability is not currently offered by any of the Parties' main competitors on smartphones, and in particular it was not an element that sustained the entry and expansion of WhatsApp, Facebook Messenger or other popular consumer communications apps. Only the Joyn initiative of the GSMA sets certain criteria for telecoms operators in order to provide an interconnected IP communications platform to customers. The Commission understands that the respondents' concern in this regard relates to the ability of new entrants to challenge existing players with an established underlying network of users and therefore to the issue of network effects which is analysed in Section 5.1.3.5.
- (123) In any event, the Commission notes that the Transaction should not have any impact on the interoperability issues described above, unless Facebook decided to merge the

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<sup>69</sup> Commission questionnaire Q1 - Questionnaire to competitors, questions 52 and 53.

<sup>70</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 47, they indicated that attracting users would be difficult given the presence of network effects. In this regard, see Section 5.1.3.5.

<sup>71</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 50.

two platforms or to allow cross-platform communication. As explained further below (paragraphs (137)-(140)), these forms of integration appear to be significantly more challenging from a technical perspective than what has been submitted by some third parties.

- (124) As regard expansion, consumer communications apps are also generally characterised by ease of distribution. Once a consumer communications app is available in an app store, customers wishing to download that app have only to click on it to install it on their device. The fact that neither Facebook Messenger nor WhatsApp is pre-installed on a large base of handsets also implies that distribution of rival apps is not made more difficult by potential barriers created by a "*status quo bias*".
- (125) Consumer communications apps also appear to proliferate through word of mouth. If users like a consumer communications app, they will inform their contacts and usage will spread. Consumer communications apps may therefore grow quickly in terms of user base. For example, WhatsApp reached one million users in a few months after its launch in 2009. Likewise, some of the Parties' competitors gained a significant number of new users following WhatsApp's four hour service outage that occurred on 22 February 2014. For example, Telegram<sup>72</sup> and LINE<sup>73</sup> gained 5 million and 2 million new users respectively in the 24 hours following WhatsApp's outage. Finally, Kik Messenger was released in 2010, had 10 million users in April 2012 and reached 100 million in December 2013.
- (126) However, a number of competitors who replied to the Commission's market investigation submitted that a significant barrier to entry and expansion is constituted by the presence of established players with a large user base and network effects in consumer communications apps.<sup>74</sup> A competing consumer communications app would have to build a significant user network in order to become attractive to consumers. Network effects are analysed in detail in the Section 5.1.3.5.

#### 5.1.3.5. Network effects

- (127) Network effects arise when the value of a product/service to its users increases with the number of other users of the product/service.<sup>75</sup>
- (128) The Commission notes that, in the present case, both Parties have large networks of users: WhatsApp had close to 600 million users and Facebook Messenger had close to [250-350] million users in July 2014 worldwide.<sup>76</sup>
- (129) Respondents to the market investigation indicated that the size of the user base and the number of a user's friends/relatives on the same consumer communications app is of important or critical value to customers of consumer communications apps.<sup>77</sup> These

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<sup>72</sup> See <http://thenextweb.com/facebook/2014/02/21/whatsapp-lost-500000-users-to-telegram-but-most-others-seem-happy-to-stay/>.

<sup>73</sup> See <http://thenextweb.com/asia/2014/02/25/line-says-it-added-2m-users-and-saw-record-growth-in-useurope-following-whatsapp-outage/>.

<sup>74</sup> Commission questionnaire Q1 - Questionnaire to competitors, questions 47, 48, 49 and 50.

<sup>75</sup> A typical example is a telephone network. The more people have a telephone, the more valuable it is for each of them to have a telephone since the number of people they can call increases. As the network becomes more attractive, more people join, in a positive feedback loop.

<sup>76</sup> Facebook's social network users account for approximately 1.3 billion.

<sup>77</sup> Commission questionnaire Q1 - Questionnaire to competitors, questions 36.3 and 36.4.



parameters increase the utility of the service for a user since they increase the number of people he or she can reach. Therefore, the Commission considers that in the present case network effects exist in the market for consumer communications apps.

- (130) The existence of network effects as such does not *a priori* indicate a competition problem in the market affected by a merger. Such effects may however raise competition concerns in particular if they allow the merged entity to foreclose competitors and make more difficult for competing providers to expand their customer base. Network effects have to be assessed on a case-by-case basis.
- (131) In the present case, there are a number of factors which mitigate the role of network effects in impeding entry or expansion.
- (132) First, as mentioned in paragraph (118), consumer communications apps are a fast-moving sector, where customers' switching costs and barriers to entry/expansion are low. In this market any leading market position even if assisted by network effects is unlikely to be incontestable. The market of consumer communications apps has a long track record of entry by new players. Also, competing consumer communications apps are able to grow despite network effects, both over time<sup>78</sup> and following disruptions in the market.<sup>79</sup> Such threat from new players constitutes and is likely to keep constituting a significant disciplining factor for the merged entity, regardless of the size of its network.
- (133) Second, the use of one consumer communications app (for example, of the merged entity) does not exclude the use of competing consumer communications apps by the same user. A majority of users of consumer communications apps in the EEA have installed and are using two or more consumer communications apps (see paragraph (109)). Multi-homing is facilitated by the ease of downloading a consumer communications app, which is generally free, easy to access and does not take up much capacity on a smartphone. Also, using multiple consumer communications apps is easy, since a user does not have to log in each time, when switching an app, and the messages are "pushed" (that is, delivered automatically) onto a user's device. Hence, the fact that a large number of users will be on the merged entity's network is unlikely to preclude them from using also competing consumer communications apps.
- (134) Third, as mentioned in paragraph (121), the Parties do not control any essential parts of the network or any mobile operating system. Users of consumer communications apps are not locked-in to any particular physical network, hardware solution or anything else that needs to be replaced in order to use competing products. While some third parties noted that the merged entity would control and limit portability of data (such as message history), this is unlikely to result in a lock-in of users, who typically retain access to message history on their handset even if they start using another consumer communications app. In addition, the merged entity would have no means to preclude competitors from recreating a user's network on WhatsApp since it is based on a user's phone book, which will remain available to any actual or potential competitor. Lastly, as mentioned in paragraph (111), neither Facebook Messenger nor

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<sup>78</sup> For example, both LINE and WeChat launched in 2011, and today, after three years, each of them counts more than 400 million active users worldwide.

<sup>79</sup> See for some examples, paragraph (125). Also, after the announcement of WhatsApp's acquisition by Facebook and because of privacy concerns, thousands of users downloaded different messaging platforms, in particular Telegram which offers increased privacy protection.

WhatsApp are pre-installed on a large base of handsets, and therefore there is no "status quo bias" potentially affecting consumers' choices.

- (135) Therefore, the Commission considers that, while network effects exist in the market for consumer communications apps, in the present case, on balance, they are unlikely to shield the merged entity from competition from new and existing consumer communications apps.
- (136) For the sake of completeness, the Commission has examined whether the Transaction is likely to lead to any merger-specific substantial strengthening of network effects. Network effects could be strengthened if the Transaction were to combine the separate user networks of WhatsApp and Facebook into one, substantially larger network. Such a combination would necessarily require some kind of integration between the Parties' services.
- (137) During the market investigation, several third parties suggested that some form of integration of WhatsApp with Facebook (including Facebook Messenger) is likely following the Transaction. For example, one of the suggested forms of integration was cross-platform communication between WhatsApp and Facebook, enabling WhatsApp and Facebook users to communicate with each other. Third parties stated that it would be relatively easy for Facebook to implement such integration from a technical perspective.
- (138) The Notifying Party submitted that integration between WhatsApp and Facebook would pose significant technical difficulties. Notably, integration of WhatsApp's and Facebook's networks would require matching WhatsApp users' profiles with their profiles on Facebook (or *vice versa*). This would be complicated without the users' involvement since Facebook and WhatsApp use different unique user identifiers: Facebook ID and mobile phone number, respectively.<sup>80</sup> Consequently, Facebook would be unable to automatically and reliably associate a Facebook ID with a valid phone number used by a user on WhatsApp. Matching of WhatsApp profiles with Facebook profiles would most likely have to be done manually by users,<sup>81</sup> which in the Notifying Party's view is likely to result in a significant backlash from both users of Facebook and WhatsApp who do not want to match their accounts. Finally, the Notifying Party stated that, beyond the difficulties in matching user IDs, significant engineering hurdles would have to be overcome to enable cross-platform communications, reflecting the fundamentally different architecture of Facebook and WhatsApp (including the former being cloud-based, the latter not).
- (139) Based on the above, the Commission considers that technical integration between WhatsApp and Facebook is unlikely to be as straightforward from a technical perspective as presented by third parties. Moreover, it would pose a business risk for the merged entity as users could switch to competing consumer communications apps.

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<sup>80</sup> While some Facebook users choose to indicate their mobile phone numbers in their Facebook profiles (around [30-40]% of Facebook users have done so in the EEA and [50-60]% worldwide), Facebook does not validate these numbers. Hence they may be outdated, not be mobile numbers or contain other errors.

<sup>81</sup> In particular, WhatsApp users would either have to indicate their phone number in their Facebook profile (if they have one) or to register on Facebook (if they do not yet have a profile). Similarly, Facebook users would have to introduce and/or validate the mobile phone number which they use on WhatsApp.

(140) In any event, even if some integration of WhatsApp with Facebook were to take place post-Transaction, it would be mitigated by the fact that there is already a significant overlap between the networks of WhatsApp and Facebook. Indeed, on the basis of the estimates provided by the Notifying Party,<sup>82</sup> in the period between December 2013 and April 2014, between [20-30]% and [50-60]% of WhatsApp users already used Facebook Messenger and between [70-80]% and [80-90]% of WhatsApp users were Facebook users and were therefore already within the reach of Facebook Messenger. Conversely, over the same period 60% to 70% of Facebook Messenger active users already used WhatsApp. Therefore, the net gain in terms of new members to the communications network would be much more limited than the addition of WhatsApp users to the Facebook user base would suggest. This means that pre-existing network effects would be unlikely to be substantially strengthened by the Transaction.

#### *5.1.4. Conclusion on consumer communications services*

(141) With only one exception, all competing providers of consumer communications apps considered that the Transaction would not have a negative impact on competition in the consumer communications market. Only telecoms operators indicated that the Transaction would give rise to negative effects in the market for consumer communications apps. For the reasons outlined above, however, these concerns are not considered to be well-grounded.

(142) In light of the findings above, the Commission considers that the Transaction does not give rise to serious doubts as regards its compatibility with the internal market with respect to the market for consumer communications apps.

## **5.2. Social networking services**

### *5.2.1. Introduction*

(143) Facebook operates the world's largest social network which connects over 1.3 billion users worldwide and [200-300] million in the EEA. As explained in section 4.2, social networking services enable users to connect, share, communicate and express themselves in a digital environment.

(144) During the market investigation, several third parties argued that (i) absent the Transaction WhatsApp would become a provider of social networking services in competition with Facebook; or that (ii) WhatsApp is already a provider of social networking services competing with Facebook.

(145) As regards the first claim concerning potential competition, the Commission collected and assessed relevant evidence, [...]. No indication was found of WhatsApp's plans to become a social network which would compete with Facebook absent the merger. Indeed, the focus of WhatsApp has traditionally been on offering a light and simple communications service on smartphones only.

(146) Concerning the claim regarding actual competition between WhatsApp and the Facebook social network, as set out in section 4.2, the Commission does not take a final view on the existence and exact boundaries of the potential market for social networking services, which are continuously evolving. Nevertheless, in this section

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<sup>82</sup> Estimates calculated on the basis of Onavo data.

5.2 the Commission examines the likely competitive effects of the Transaction under a broader definition of the potential market for social networking services assuming that both WhatsApp and Facebook were actual competitors in that market.

### 5.2.2. *Competitive landscape*

- (147) A large number of companies offer online services which include a social networking functionality. These services are highly differentiated in their nature and focus. For example, social networking services may be designed for keeping in touch with friends and family, establishing professional contacts, reconnecting with classmates, sharing content (pictures, music, etc.) or pursuing a common interest.
- (148) The results of the market investigation indicate that the companies which are most clearly perceived by respondents as providers of social networking services are Facebook, Google+, LinkedIn, Twitter and MySpace.<sup>83</sup> The services of these providers facilitate a rich social experience characteristic of a typical social network by enabling users to create their digital identity and to interact in a variety of forms in reflection of their preferences and interests.
- (149) Some respondents to the market investigation stated that also consumer communications apps such as WhatsApp are active in providing social networking services, in particular since they enable information and content sharing between users, including groups.
- (150) If consumer communications apps were included in the potential market for social networking services, the number of alternative providers would expand substantially. In particular, it would encompass such market players as WhatsApp, LINE, WeChat, iMessage, Skype, Snapchat, Viber, and Hangouts. The market would also potentially include other non-consumer communications services providers which enable interaction and exchange of content between users, such as YouTube.
- (151) Given the high degree of differentiation between the above-mentioned providers, they are not used exclusively by consumers but rather in a complementary manner depending on a specific need. Indeed, as mentioned in paragraph (109), users of consumer communications apps extensively multi-home. In addition, the respondents to the market investigation confirm that users of consumer communications apps to a large extent also tend to use (other) social networking services.<sup>84</sup> This is corroborated by the considerable overlap existing between the user bases of WhatsApp and Facebook.<sup>85</sup>
- (152) Consequently, if the potential market for social networking services includes consumer communications apps such as WhatsApp, there are a significant number of alternative service providers, which are used by consumers interchangeably.

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<sup>83</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 17.

<sup>84</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 82.

<sup>85</sup> [70-90]% of WhatsApp active users are also Facebook users (paragraph 220 of the Form CO).

### 5.2.3. *Closeness of competition*

- (153) Both WhatsApp and Facebook are similar in that they allow interaction and sharing of information and content (such as pictures) between users. At the same time, both services display significant differences.
- (154) The Facebook user experience centres around the newsfeed, which is the core feature of a user's homepage on the Facebook website and mobile app. The newsfeed is a regularly updating dynamic display of stories from friends, pages, and other entities to which the person is connected. It includes posts, photos, event updates, group memberships, and other activities. Each user's newsfeed is personalised based on his or her interests and the sharing activity of his or her friends and connections.
- (155) Another core feature of the Facebook social network is the timeline that allows users to organise and display the most important events and activities, enabling them to curate their memories in a searchable personal narrative that is organised chronologically. Users choose the information to share on their timeline, such as their interests, photos, education, work history, relationship status, and contact information, and users control with whom content is shared on their timeline.
- (156) In contrast, WhatsApp does not offer homepages, feeds or timelines to its users. Users are not able to organise and curate memories and create personal narratives. While WhatsApp has a status functionality, it is being used only by [5-10]% of its EEA-users, according to WhatsApp's estimates. Indeed, WhatsApp offers a light and simple communications tool built for real-time messaging, which is, according to the data presented in paragraph (56), predominantly one-to-one.
- (157) The fact that WhatsApp and Facebook are not close substitutes is further evidenced by the Notifying Party's data showing that a considerable number of users of one service also use the other service.<sup>86</sup> This suggests that the needs fulfilled by each service are different.
- (158) Therefore, given the considerable differences between the functionalities and focus of WhatsApp and Facebook, the Commission concludes that these providers are not close competitors in the potential market for social networking services.

### 5.2.4. *Potential integration of WhatsApp and Facebook*

- (159) As described in section 5.1.3.5, during the market investigation third parties expressed concerns regarding potential integration between the Parties post-Transaction, including WhatsApp's integration with the Facebook social network. Such integration could, for example, take the form of cross-platform communication between WhatsApp and Facebook, enabling Facebook posts, status updates etc. to be delivered to WhatsApp, posting to Facebook from WhatsApp, or merging both services into one single platform. The integration of WhatsApp could strengthen Facebook's position in the potential market for social networking services by adding additional users and/or functionalities to the Facebook social network.

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<sup>86</sup> According to the Notifying Party, [60-70]% of Facebook active users were WhatsApp users and [70-90]% of WhatsApp active users are also Facebook users (paragraph 220 of the Form CO).

- (160) As explained in paragraphs (138)-(139), the Commission takes into account that there are likely to be significant technical hurdles to enable the integration of WhatsApp and Facebook. In particular, such integration would likely require involvement of users of both WhatsApp and Facebook to match/create their profiles on both platforms. Any forced transfer of WhatsApp users onto the Facebook social network (for example, by compelling WhatsApp users to register on Facebook) may alienate users and cause their outflow to competing consumer communications apps. Moreover, enabling cross-platform communication would necessitate substantial re-engineering of the services and re-writing of their code, given the differences in their architecture.
- (161) The current plans of Facebook, as evidenced by its submissions to the Commission, public statements and internal documents, do not provide support for a future integration of WhatsApp with Facebook of the sort that would strengthen Facebook's position in the potential market for social networking services.
- (162) In any event, even if an integration of WhatsApp with Facebook were to take place, it would be mitigated by the fact that a large number of WhatsApp's active users ([70-90]%) are already users of Facebook. Therefore, potential net gain in terms of new members to the social network would be much more limited than the addition of WhatsApp users to the Facebook user base (also considering that addition of all users is unlikely).

#### *5.2.5. Conclusion on social networking services*

- (163) Based on the results of the investigation and the analysis above, the Commission considers that the Transaction would not give rise to serious doubts as to its compatibility with the internal market as regards the potential market for the provision of social networking services.

### **5.3. Online advertising services**

#### *5.3.1. Introduction*

- (164) For the purposes of this decision, the Commission has analysed potential data concentration only to the extent that it is likely to strengthen Facebook's position in the online advertising market or in any sub-segments thereof. Any privacy-related concerns flowing from the increased concentration of data within the control of Facebook as a result of the Transaction do not fall within the scope of the EU competition law rules but within the scope of the EU data protection rules.
- (165) Since only Facebook, and not WhatsApp, is active in the provision of online advertising services, the Transaction does not give rise to any horizontal overlaps in the market for online advertising or in any sub-segment thereof.
- (166) Moreover, WhatsApp does not currently collect data about its users concerning age, verified name, gender, social group, activities, consuming habits or other characteristics that are valuable for advertising purposes. Also, WhatsApp does not store messages once they are delivered, and a message is sent only to and from the handsets that are associated with the mobile phone numbers used. Once a user's message has been delivered WhatsApp has no record of the content of that message. Therefore, since WhatsApp does not currently collect any user data that are valuable

for advertising purposes, the Transaction does not increase the amount of data potentially available to Facebook for advertising purposes.

(167) However, the Commission has examined whether the Transaction could nevertheless have the effect of strengthening Facebook's position in the online advertising market, thereby raising serious doubts as to its compatibility with the market. For this purpose, the Commission has analysed two main possible theories of harm, according to which Facebook could strengthen its position in online advertising by: (i) introducing advertising on WhatsApp, and/or (ii) using WhatsApp as a potential source of user data for the purpose of improving the targeting of Facebook's advertising activities outside WhatsApp. Each of these two possible theories of harm is examined below.

### 5.3.2. *WhatsApp as a potential provider of online advertising space*

(168) According to this possible theory of harm, post-Transaction, the merged entity could introduce targeted advertising on WhatsApp by analysing user data collected from WhatsApp's users (and/or from Facebook users who are also WhatsApp users). This would have the effect of reinforcing Facebook's position in the online advertising market or sub-segments thereof.<sup>87</sup>

#### 5.3.2.1. Notifying Party's view

(169) According to the Notifying Party, no market for advertising, however defined, would be affected by the Transaction, because WhatsApp does not currently sell ads. As explained in its blog, WhatsApp does not allow ads because it believes that they would disrupt the experience that it wants to deliver to its users.<sup>88</sup> [...]

(170) Moreover, the Notifying Party submits that Facebook has no current plans to introduce advertising on WhatsApp post-Transaction. While WhatsApp is exploring further monetisation avenues for the medium term (in addition to subscription fees), such as [...],<sup>89</sup> these do not entail the introduction of advertisements on WhatsApp.

#### 5.3.2.2. Commission's assessment

(171) According to data provided by the Notifying Party, Facebook's market shares are equal to or above [20-30]% in a number of Member States in a potential market for overall online advertising,<sup>90</sup> as well as in potential sub-segments, such as online non-search advertising.<sup>91</sup>

(172) A number of respondents to the market investigation stated that they expect the Transaction to materially strengthen Facebook's position in the provision of online

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<sup>87</sup> One respondent also suggested that Facebook could split WhatsApp into two different versions, one operating on the basis of a subscription fee and one to be monetised with ads. The Commission's assessment set out below also applies to this possible scenario.

<sup>88</sup> See <https://blog.whatsapp.com/245/Why-we-dont-sell-ads>.

<sup>89</sup> [...].

<sup>90</sup> Bulgaria ([30-40]%), Croatia ([20-30]%), Romania ([40-50]%) and Slovenia ([20-30]%). Market shares have been calculated on the basis of IAB Europe data.

<sup>91</sup> Belgium ([20-30]%), Bulgaria ([50-60]%), Croatia ([60-70]%), Finland ([20-30]%), Germany ([20-30]%), Greece ([20-30]%), Ireland ([30-40]%), Romania ([40-50]%), Slovakia ([20-30]%) and Slovenia ([40-50]%). Market shares relate to the market for online display advertising. Market shares have been calculated on the basis of IAB Europe data.

advertising services,<sup>92</sup> although only very few claimed that this would happen as a result of Facebook introducing advertising on WhatsApp.<sup>93</sup>

- (173) As regards the ability of the merged entity to introduce targeted advertising on WhatsApp, this would theoretically be possible, subject to WhatsApp changing its privacy policy. Moreover, in order to collect sufficient data to serve targeted ads, [...].
- (174) However, as regards the incentive of the merged entity to introduce advertising on WhatsApp, many respondents pointed out that, by doing so, WhatsApp would deviate from the "no ads" product strategy that it has followed so far, which may prompt certain users who feel that the ads disrupt their experience to switch to competing apps free of ads (for example, Viber).<sup>94</sup> Moreover, the Commission notes that the need to retract WhatsApp's current plan to introduce [...] may reduce Facebook's incentive to introduce ads on WhatsApp, since abandoning end-to-end encryption could create dissatisfaction among the increasing number of users who significantly value privacy and security. As mentioned in paragraph (116) above, Telegram's success in attracting users (with 35 million monthly active users reached just six months after the launch of the app) is believed to be primarily due to its message [...] feature.<sup>95</sup> Privacy concerns also seem to have prompted a high number of German users to switch from WhatsApp to Threema in the 24 hours following the announcement of Facebook's acquisition of WhatsApp.<sup>96</sup>
- (175) Moreover, Facebook's internal documents, which the Commission reviewed for the purpose of assessing the Transaction, [...].
- (176) In any event, even if the merged entity were to introduce advertising on WhatsApp, the Transaction would only raise competition concerns if post-Transaction there were not to be a sufficient number of effective alternatives to Facebook for the purchase of online advertising space.
- (177) In this regard, most of Facebook's advertising customers who took part in the market investigation recognised the importance of advertising on Facebook, due to its large

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<sup>92</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 77; Commission questionnaire Q2 - Questionnaire to advertisers, question 10.

<sup>93</sup> Most of the respondents who expect Facebook's position in advertising to be materially strengthened stated that this would be the result of Facebook having access to an increased amount of user data. This claim is addressed below (section 5.3.3).

In addition, certain respondents suggested that Facebook could increase WhatsApp's subscription fee, as a result of which WhatsApp's users would switch to Facebook, thereby increasing Facebook's subscribers and, thus, Facebook's advertising revenues and/or power vis-à-vis advertisers. However, respondents did not provide any evidence that users would switch to Facebook in response to a potential increase in WhatsApp's subscription fees. Quite the contrary, as explained above in Section 5.1.3.2, the Commission has found that WhatsApp is not the closest competitor to Facebook Messenger (let alone to Facebook's social networking site). In any event, even if such increase in WhatsApp's subscription fee and subsequent user switching were to take place, as will be explained further below, the market investigation indicated that a sufficient number of alternative providers of online advertising will remain active post-Transaction alongside Facebook.

<sup>94</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 79.1.

<sup>95</sup> See <https://telegram.org/faq#security>; <http://techcrunch.com/2014/03/24/telegram-hits-35m-monthly-users-15m-daily-with-8b-messages-received-over-30-days/>; <http://www.theverge.com/2014/2/25/5445864/telegram-messenger-hottest-app-in-the-world>.

<sup>96</sup> See <http://techcrunch.com/2014/02/21/bye-bye-whatsapp-germans-switch-to-threema-for-privacy-reasons/>; <http://www.sueddeutsche.de/digital/seit-facebook-deal-whatsapp-konkurrent-threema-verdoppelt-nutzerzahl-1.1894768>.



and highly engaged user base, its ad targeting opportunities and the generally high return on investment.<sup>97</sup> However, all of these respondents also considered that there are (and will be, post-Transaction) a sufficient number of alternative providers of advertising services that compete with Facebook.<sup>98</sup> These include Google (comprising Google Search, Google+ and YouTube), Yahoo!, MSN and local providers.<sup>99</sup> More in general, customers did not raise any particular concerns with regard to the effect of the Transaction on the online advertising market.

(178) Similarly, most of the competitors who replied to the market investigation considered that a sufficient number of alternative providers of advertising space will remain in competition with Facebook post-Transaction.<sup>100</sup>

(179) Therefore, the Commission notes that, regardless of whether the merged entity will introduce advertising on WhatsApp, there will continue to be a sufficient number of other actual and potential competitors who are equally well placed as Facebook to offer targeted advertising.

### 5.3.3. *WhatsApp as a potential source of user data valuable for advertising purposes*

(180) According to this possible theory of harm, post-Transaction, the merged entity could start collecting data from WhatsApp users with a view to improving the accuracy of the targeted ads served on Facebook's social networking platform<sup>101</sup> to WhatsApp users that are also Facebook users.

#### 5.3.3.1. Notifying Party's view

(181) The Notifying Party submits that the data that WhatsApp has access to is at best of marginal utility for Facebook's advertising purposes and would not enhance Facebook's ability to target advertisements on its services.<sup>102</sup> Today, the only data that WhatsApp has about its users is their names and the mobile phone numbers with which the accounts are associated. This data is available to all suppliers of apps installed on users' handsets, including Facebook. [...]

(182) According to the Notifying Party, the Transaction would not impact the type of data that WhatsApp collects and stores. Facebook has publicly made it clear that it has no current plans to modify WhatsApp's collection and use of user data.<sup>103</sup> As with all Facebook services, to the extent an affiliate of Facebook engages in any sharing of

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<sup>97</sup> Commission questionnaire Q2 - Questionnaire to advertisers, questions 5-6.

<sup>98</sup> Commission questionnaire Q2 - Questionnaire to advertisers, question 13.

<sup>99</sup> Commission questionnaire Q2 - Questionnaire to advertisers, questions 9, 13.

<sup>100</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 78.

<sup>101</sup> A similar theory could hypothetically apply with respect to Facebook's photo and video sharing platform Instagram, given that Facebook recently started introducing advertising on Instagram in the EEA (see footnote 21 above).

<sup>102</sup> WhatsApp users may add public-facing photos, their names and status messages. However, they cannot add any further data such as birth date, address, etc. that assist in identifying the user.

<sup>103</sup> After the announcement of the Transaction, WhatsApp's CEO Jan Koum stated on WhatsApp's blog that "[r]espect for [users'] privacy is coded into our DNA, and we built WhatsApp around the goal of knowing as little about [users] as possible." He added that "[i]f partnering with Facebook meant that we had to change our values, we wouldn't have done it." See <http://blog.whatsapp.com/529/Setting-the-record-straight>.

data with another affiliate, it will do so in a manner consistent with the promises the relevant affiliates have made to users and with notice to the extent required by law.

(183) As a result, in the view of the Notifying Party, the Transaction will not have any effect on the data potentially available for Facebook's use in targeting ads.

#### 5.3.3.2. Commission's assessment

(184) A number of respondents to the market investigation stated that they expect the Transaction to materially strengthen Facebook's position in the provision of online advertising services as a result of the increased amount of data which will come under Facebook's control.<sup>104</sup> In particular, as explained above (paragraph (137)), certain respondents suggested that post-Transaction Facebook would integrate its social networking platform and consumer communications app with WhatsApp and described a number of alternative forms that such integration could take. According to these respondents, such integration would allow Facebook to have access to additional data from WhatsApp users to be monetised through advertising.

(185) As regards the ability of the merged entity to collect data from WhatsApp users who also have a Facebook account and use them for advertising on Facebook, this would require, first, a change in WhatsApp's privacy policy. Second, this would require Facebook, regardless of whether or not it would carry out some form of integration with WhatsApp, to match each user's WhatsApp profile with her/his Facebook profile, provided she/he has one. While certain respondents argued that such matching would be easily achievable, the Notifying Party submitted that there are major technical obstacles thereto.<sup>105</sup> Third, in order to collect data from WhatsApp text messages, Facebook would have to retract WhatsApp's current plan to introduce [...].

(186) As regards the incentive of the merged entity to start collecting data from WhatsApp users (for example, age, gender, country, message content), a number of respondents pointed out that, if the merged entity were to do so, this may prompt some users to switch to different consumer communications apps that they perceive as less intrusive.<sup>106</sup> Moreover, the Commission notes that, as explained above (174), the need to abandon WhatsApp's plan for [...] may reduce Facebook's incentive to start collecting data from WhatsApp messages.

(187) In any event, even if the merged entity were to start collecting and using data from WhatsApp users, the Transaction would only raise competition concerns if the concentration of data within Facebook's control were to allow it to strengthen its position in advertising.

(188) In this regard, the Commission refers to the results of the market investigation presented above (paragraph (177)), which indicate that, post-Transaction, there will remain a sufficient number of alternative providers of online advertising services. In

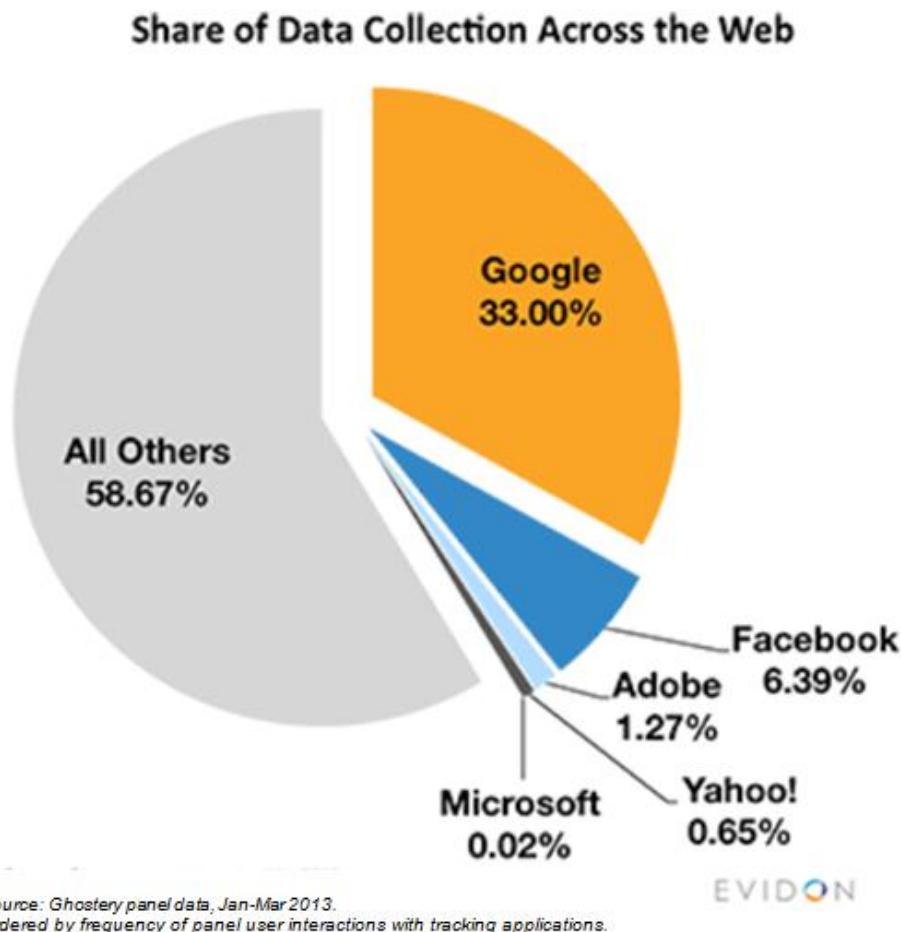
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<sup>104</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 77.

<sup>105</sup> As explained above (paragraphs (138) and (160)), according to the Notifying Party, the fact that Facebook Messenger and WhatsApp use different identifiers (Facebook ID in the case of Facebook and mobile phone numbers in the case of WhatsApp) makes it impossible to match a user's WhatsApp account with that user's Facebook account on an automated basis. That matching would need to be done manually by each WhatsApp user or by each of Facebook Messenger user and would entail a series of steps which, according to the Notifying Party, most users would be reluctant to take.

<sup>106</sup> Commission questionnaire Q1 - Questionnaire to competitors, question 79.2.

addition, the Commission notes that there are currently a significant number of market participants that collect user data alongside Facebook. These include, first of all Google, which accounts for a significant portion of the Internet user data and, in addition, companies such as Apple, Amazon, eBay, Microsoft, AOL, Yahoo!, Twitter, IAC, LinkedIn, Adobe and Yelp, among others. The graph below provides an overview of the estimated share of data collection across the web:<sup>107</sup>



(189) Therefore, the Commission notes that, regardless of whether the merged entity will start using WhatsApp user data to improve targeted advertising on Facebook's social network, there will continue to be a large amount of Internet user data that are valuable for advertising purposes and that are not within Facebook's exclusive control.

#### 5.3.4. Conclusion on online advertising services

(190) Based on the results of the market investigation and the analysis outlined above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market as regards the market for the provision of online advertising services, including its potential sub-segments.

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<sup>107</sup> The data in this graph originate from an external market intelligence company and have been produced for purposes unrelated to the assessment of the Transaction. Those data are presented here for purely illustrative purposes and are without prejudice to any possible market definition as regards the provision of data, which, as explained above paragraph (72) is not covered by the Commission's assessment in the present decision.

## 6. CONCLUSION

(191) For the above reasons, the European Commission has decided not to oppose the Transaction and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission  
(Signed)  
Joaquín ALMUNIA  
Vice-President*