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Bundeskartellamt / Digital economy

Statement of objections issued against Google's data processing terms

Bonn, 11 January 2023: On 23 December 2022 the Bundeskartellamt sent Alphabet Inc., Mountain View, USA, Google Ireland Ltd., Dublin, Ireland, and Google Germany GmbH, Hamburg, Germany, its preliminary legal assessment in the proceeding initiated due to Google's data processing terms. At this stage of the proceeding, the Bundeskartellamt assumes that the new provisions for large digital companies (Section 19a of the German Competition Act, GWB) are applicable and Google thus has to change its data processing terms and its associated practices.

Andreas Mundt, President of the Bundeskartellamt: *"Google's business model relies heavily on the processing of user data. Due to its established access to relevant data gathered from a large number of different services, Google enjoys a strategic advantage over other companies. Google's practices must be measured against the requirements under the new competition rules for large digital companies. The company has to give users sufficient choice as to how their data are processed."*

Based on its current terms, Google can combine a variety of data from various services and use them, for example, to create very detailed user profiles which the company can exploit for advertising and other purposes, or to train functions provided by services. The company's terms set out that Google may, for various purposes, collect and process data across services, for example by way of its numerous own, partly very widely used services, such as Google Search, YouTube,

Google Play, Google Maps and Google Assistant, but also by way of numerous third-party websites and apps. This also concerns data from Google's so-called background services, including the Google Play services, which to some extent gather data from Android devices on a regular basis.

The Bundeskartellamt has reached the preliminary conclusion that, based on the current terms, users are not given sufficient choice as to whether and to what extent they agree to this far-reaching processing of their data across services. The choices offered so far, if any, are, in particular, not sufficiently transparent and too general. According to the Bundeskartellamt's current assessment, sufficient choice particularly requires that users are able to limit the processing of data to the specific service used. In addition, they also have to be able to differentiate between the purposes for which the data are processed. Moreover, the choices offered must not be devised in a way that makes it easier for users to consent to the processing of data across services than not to consent to this. General and indiscriminate data retention and processing across services without a specific cause as a preventive measure, including for security purposes, is not permissible either without giving users any choice. Therefore, the Bundeskartellamt is currently planning to oblige the company to change the choices offered.

In December 2021, the authority already determined that Google is of paramount significance for competition across markets pursuant to Section 19a GWB. Under these circumstances, the new provision for large digital companies allows the Bundeskartellamt to prohibit such companies from engaging in certain anti-competitive practices.

In its proceeding, the Bundeskartellamt bases its assessment on German competition law. The European Digital Markets Act (DMA), which is exclusively enforced by the European Commission, is also likely to apply to certain Google services in the future. While the DMA also includes a provision which addresses the processing of data across services, this applies only if so-called core platform services, which still have to be designated by the European Commission, are involved. The present proceeding based on the national provision under Section 19a GWB partially exceeds the future requirements of the DMA. In this regard, the Bundeskartellamt is in close contact with the European Commission.

The Bundeskartellamt is conducting an administrative proceeding against Google. The statement of objections outlining detailed reasons is a first intermediate step which gives the company the opportunity to comment in detail on the authority's preliminary assessment and to present further reasons justifying its practices or

suggestions to dispel the Bundeskartellamt's concerns. The proceeding may result in the authority discontinuing the case, the company offering commitments or the competition authority prohibiting Google's practices. A final decision in this matter is expected to be issued in 2023.

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