

DATA DISPATCH

New German rule adds to Big Tech's regulatory plate in June quarter

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Market Intelligence

This article is part of a series that tracks, on a quarterly basis, antitrust investigations into Big Tech by authorities in Europe.

Germany's antitrust regulator flexed recently acquired antitrust powers in the second quarter, adding to an already long list of probes into Big Tech in Europe.

Six investigations into potential anticompetitive activity by large tech companies were opened in the second quarter by the European Commission and national regulators in the U.K. and Germany.

Two of these were opened by Germany's Federal Cartel Office, or FCO, using powers it gained in January which allow it to investigate the entire company. To date, antitrust investigations in Europe have focused on specific business units — such as Apple Inc.'s App Store or Facebook Inc.'s classified ads division, Marketplace.

The German provision is perceived to be targeted primarily at large digital platforms, two German antitrust lawyers told S&P Global Market Intelligence. It gives the FCO greater flexibility in initiating probes by looking at whether the company is of "paramount significance" across markets, rather than having to establish dominance in a particular market.

The new power aims to enable "rapid intervention against anti-competitive behavior," Daniela Seeliger, an antitrust partner at Linklaters, told S&P Global Market Intelligence.

The provision does not give the regulator any new fining powers, but instead means it can block certain behavior, such as conduct which would hinder the business activities of firms that rely on the dominant company's platform.

The FCO has opened investigations into whether Amazon.com Inc., Facebook and Alphabet Inc.-owned Google have paramount significance. Seeliger noted that, although the law does not apply outside Germany, "in practice it will affect a company's business model more generally."

Michael Vetter, a partner at law firm Heuking Kühn Lüer Wojtek, agreed. "Any decision will likely influence a company's behavior also outside Germany," he said.

Big Tech under scrutiny in Europe

Investigations into alleged abuse of dominance and anticompetitive agreements concerning Amazon, Apple, Facebook and Google

Company	Open date	Status	Division under scrutiny
European Commission			
Amazon	Nov. 10, 2020	Open	Buy Box/Prime
Amazon	July 17, 2019	Statement of objections*	Marketplace
Apple	June 16, 2020	Open	Pay
Apple	June 16, 2020	Statement of objections*	App store - music
Apple	June 16, 2020	Open	App store - e-books/audiobooks
Apple	June 16, 2020	Open	App store - general
Facebook	June 4, 2021	Open	Marketplace
UK: Competition and Markets Authority			
Apple	March 3, 2021	Open	App store
Facebook	June 4, 2021	Open	Marketplace and Dating
Google	January 7, 2021	Commitments proposed**	Chrome/Privacy Sandbox
Germany: Federal Cartel Office			
Amazon	May 18, 2021	Open	Entire company***
Amazon	Sept. 3, 2020	Open	Marketplace (agreements)
Amazon	May 15, 2020	Open	Marketplace (price control)
Facebook	Dec. 10, 2020	Open	Entire company***
Google	June 4, 2021	Open	News
Google	May 25, 2021	Open	Data processing terms
Google	May 25, 2021	Open	Entire company***

Data compiled June 16, 2021.
Data as of June 16, 2021.

* The European Commission issues a Statement of Objections if its preliminary finding is that the companies breached antitrust rules.

** Google on June 11 agreed to give the CMA a role in its Privacy Sandbox project.

*** New powers allow the FC0 to assess whether a company has "paramount significance for competition across markets".

Sources: European Commission; CMA; FC0

Other developments in the second quarter include an investigation opened May 25 in Germany into Google's data processing terms.

Meanwhile, existing cases progressed. On April 30, the European Commission sent a 'statement of objections' to Apple, informing the firm of its preliminary view that it abused its dominant position for the distribution of music streaming apps through its App Store.

And most recently, on June 11, Google agreed to allow the U.K. CMA to oversee the company's removal of third-party cookies to ensure it carries out the process in a way that does not harm competition.

The impact of European investigations on Big Tech's global operations varies from case to case, according to Jonas Koponen, an antitrust partner at Linklaters — but they can impact key revenue streams. "Certainly, when authorities decide to take on issues that are important to the business model and they are taken on in an important market ... that should give the company pause for thought," Koponen said.

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