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COMPETITION

IS FACEBOOK LYING?

The European Commission has sent a Statement of Objections to Facebook alleging the company provided incorrect or misleading information during the Commission's 2014 investigation under the EU Merger Regulation of Facebook's planned acquisition of WhatsApp.

Competition Commissioner Vestager recalled that: "*Companies are obliged to*

linking WhatsApp user phone numbers with Facebook user identities. WhatsApp explained that this was done with a view to improving the service by, for example, allowing Facebook to offer better friend suggestions or displaying more relevant ads on WhatsApp users' Facebook accounts.

The Commission Statement of Objections takes the preliminary view that, contrary to Facebook's statements and reply during the merger review, the technical possibility of automatically matching Facebook users' IDs with WhatsApp users' IDs already existed in 2014.

At this stage, the Commission has therefore concerns that Facebook intentionally, or negligently, submitted incorrect or misleading information to the Commission, in breach of its obligations under the EU Merger Regulation.

A company's obligation to provide correct and non-misleading information in a merger investigation is obviously essential for DG COMP to review mergers and takeovers effectively. Notifications and information requests are the primary sources of information for the Commission's review of such transactions. Under the tight deadlines of a merger investigation, it is particularly important that the case handlers can rely on the accuracy and completeness of the information provided, regardless of whether it has an impact on the outcome of the assessment.

According to our information, the current investigation is limited to the assessment of breaches of procedural rules and - as the Commission's October 2014 decision to clear Facebook/WhatsApp was based on a variety of factors going beyond the possibility of matching user accounts, - it shall not have an impact on that decision, which remains effective. Our sources also confirm that the current investigation is also unrelated to neighbouring privacy, data protection or consumer protection issues.

Menlo Park's based company has now until 31st January 2017 to respond to the Statement of Objections. If DG COMP's preliminary concerns in this case were confirmed, the Commission could, impose a fine of up to 1% of Facebook's turnover.

In August 2014, Facebook notified DG

give DG COMP accurate information during merger investigations. They must take this obligation seriously. Our timely and effective review of mergers depends on the accuracy of the information provided by the companies involved. In this specific case, the Commission's preliminary view is that Facebook gave us incorrect or misleading information during the investigation into its acquisition of WhatsApp. Facebook now has the opportunity to respond."

When reviewing Facebook's planned acquisition of WhatsApp, DG COMP's officials looked, among other elements, at the possibility of Facebook matching its users' accounts with WhatsApp users' accounts. In its notification of the transaction in August 2014 - and in a reply to a request of information - Zuckerberg's lawyers indicated to the Commission that the company would be unable to establish reliable automated matching between the two social media's user accounts. While the Commission took this information into account in its review of the transaction, it did not only rely on that information when clearing the transaction

In August 2016, WhatsApp announced some updates to its terms of service and privacy policy, claiming the possibility of

“ No match between FB & WA account ? ”



COMP its plans to acquire WhatsApp. Two months later, the Commission cleared the proposed acquisition assessing the impact of the transaction on markets for consumer communications services, social networking services and online advertising services.

With respect to consumer communications services, DG COMP established, based on available information, that Facebook Messenger and WhatsApp were not close competitors and that consumers would continue to have a wide choice of alternative consumer communications apps post-merger. Although consumer communications apps are characterised by network effects, the investigation showed that a number of factors mitigated the network effects in that case.

As regards social networking services, the Commission could conclude that - no matter what the precise boundaries of the market for social networking services are and whether or not WhatsApp is considered a social network - the companies are, if anything, distant competitors.

The transaction raised also no competition concerns with respect to online advertising, as - regardless of whether Facebook would introduce advertising on WhatsApp and/or start collecting WhatsApp user data for advertising purposes - a number of alternative

providers besides Facebook would continue to offer targeted advertising after the transaction and a large amount of internet user data that are valuable for advertising purposes are not within Facebook's exclusive control.

A Statement of Objections is a mere formal step in an investigation, by which the Commission informs the companies concerned of the objections raised against them. The companies have then the right to examine the documents, reply in writing and request an oral hearing to present their comments on the case to representatives of the Commission and the national competition authorities.

While under the merger regulation DG COMP has to respect strict deadlines, this kind of inquiry has no legal deadline and its duration depends on a number of factors, including the complexity of the case, the extent to which the companies concerned co-operate with the Commission and the exercise of the rights of defence.

We shall thus expect, beginning of next year, some interesting news from Zuckerberg lawyers...

Filippo Giuffrida Répaci

SECURITY

PROVISIONAL AGREEMENT OF FIREARMS DIRECTIVE

After a year of discussions, the Parliament and the Council have finally reached a provisional political agreement on the Firearms Directive, as proposed by the Commission in November 2015. The purpose of the revision is to make it harder to legally acquire high capacity weapons in the European Union, to allow better tracking of legally held firearms thus reducing the risk of diversion into illegal markets, and to strengthen cooperation between Member States.



President Juncker recalled how hard it was to reach a deal that

"reduces the risk of shootings in schools, summer camps or terrorist attacks with legally held firearms. Of course we would have liked to go further, but I am confident that the current agreement represents a milestone in gun control in the EU."

The provisional political agreement retains a majority of what the Commission originally proposed, such as the ban of automatic firearms transformed into semi-automatic firearms, the inclusion of collectors and museums in the scope of the directive, the regulation of alarm and acoustic weapons, the regulation of Internet sales, the regulation of deactivated weapons and more exchange of information between Member States.

At the same time, the Commission regrets that some parts of its proposal, such as a complete ban of the most dangerous semi-automatic firearms, including all semi-automatic firearms of the AK47 or AR15 families and a ban

of assault weapons for private collectors were not supported by the Parliament and the Council. The Commission also regrets that the magazine size was not limited to 10 rounds for all semi-automatic firearms. However, considering that the overall package is an improvement compared to the current situation, the Commission can accept the compromise found.

The preliminary political agreement reached by the Parliament, the Council and the Commission early December, was confirmed by the COREPER just before Christmas and it is now subject to confirmation by the EU Parliament's Internal Market Committee at its meeting in January, and subsequently to a plenary vote of the European Parliament and formal approval by the EU Council of Ministers.

Filippo Giuffrida Répaci

PARTENARIAT UE/OIM

L'UE et l'Organisation internationale pour les migrations (OIM) viennent de



lancer une initiative pour la protection des migrants le long des routes migratoires de Méditerranée centrale et leur réinsertion en Afrique.

Le fonds fiduciaire pour l'Afrique de la UE, l'Allemagne, l'Italie et l'OIM ont lancé un projet pour aider les pays africains à faire face aux besoins urgents de protection et aux décès de migrants le long des routes migratoires en Méditerranée centrale et améliorer la gouvernance des migrations. Le nouveau fonds fiduciaire de l'UE et l'initiative de l'OIM, dotés de 100 millions d'euros, couvriront le Sahel, la région du Lac Tchad et les pays voisins, y compris la Libye.

Federica Mogherini a souligné que l'Union européenne a voulu ainsi tenir ses promesses: "Notre objectif premier est de sauver des vies en mer, de protéger les plus vulnérables, de fournir des solutions alternatives à la migration et, en définitive, d'améliorer la vie des individus. Nous allons continuer sur cette voie."

Neven Mimica, le commissaire européen pour la coopération

internationale et le développement, a rappelé que: "Les migrants se retrouvent souvent bloqués le long des routes migratoires, incapables d'aller plus loin. Loin de chez eux et sans argent, ils sont confrontés à des choix difficiles pour survivre ou poursuivre leur chemin. Ils sont victimes de réseaux criminels et font l'objet de trafics ou de traites de toutes sortes. La migration n'est pas une affaire de chiffres, mais d'êtres humains."

Le directeur général de l'OIM, Lacy Swing, a ajouté que: "L'OIM se réjouit de renforcer son partenariat avec l'UE et avec ses États membres africains dans une vision partagée d'un monde dans lequel les migrants se déplacent par choix et non poussés par le désespoir."

Frank-Walter Steinmeier, le ministre allemand des affaires étrangères, a rappelé que l'Allemagne a l'intention de contribuer avec 48 millions d'euros au fonds fiduciaire: "Aucun pays ne peut à lui tout seul s'attaquer aux causes qui poussent les migrants à quitter leur pays. Nous devons donc améliorer la gestion de la migration au niveau européen et au niveau mondial. En collaboration avec l'Union européenne, des États membres de l'UE et l'OIM, nous sommes en train de réunir plusieurs éléments importants pour y parvenir, dans le cadre d'une approche régionale impliquant 14 pays partenaires africains. Notre première priorité reste de dissuader les candidats au départ d'emprunter des routes extrêmement dangereuses et d'assurer aide et protection à ceux qui sont partis."

L'Italie contribue à l'initiative à hauteur de 22 millions d'euros étant fermement décidée, selon M. Alfano, à inscrire ses actions: "dans les stratégies européennes qui ont pour but de s'attaquer aux causes premières des flux massifs de migrants. Le fonds de l'UE est un outil fondamental pour faire face à l'urgence de ce défi, dans l'esprit d'un véritable partenariat avec les pays africains, consacré dans la déclaration de La Valette."

Pendant trois ans, les actions se

concentreront sur les aspects suivants:

- renforcer la protection et l'assistance aux migrants vulnérables et bloqués le long des routes migratoires, afin de répondre aux besoins immédiats en nourriture et en eau, ainsi qu'en soins médicaux et psychosociaux, et de fournir des abris temporaires à environ 60 000 migrants;
- favoriser les retours volontaires avec de l'assistance pour près de 24.000 migrants de pays de transit ou de destination en Afrique (en particulier la Libye, le Niger et le Mali);
- parvenir à une réinsertion durable pour près de 24 000 migrants de retour d'Afrique qui bénéficieront de conseils et de soutien à la réinsertion dans leur pays d'origine;
- améliorer les politiques et les réponses des gouvernements et des parties prenantes à travers la consolidation de la législation, des politiques ou des procédures et le renforcement de l'action des acteurs locaux;
- donner accès à des informations précises sur la migration, pour réduire les risques inhérents à la migration clandestine, attirer l'attention sur les droits et les devoirs des migrants au sein des communautés d'accueil, et contrer les récits négatifs qui présentent la migration comme une charge ou un danger pour les pays d'accueil;
- améliorer les données sur les flux, les routes et les tendances migratoires.

L'initiative fait suite à la déclaration politique et au plan d'action de La Valette, comme convenu entre l'UE et les partenaires africains en novembre 2015 et dans le cadre de partenariat avec les pays tiers au titre du programme européen en matière de migration.

Lorenzo Scattini

EU GPS GALILEO GOES LIVE

On 15 December 2016, Europe's satellite navigation system Galileo started offering its initial services to public authorities, businesses and citizens.



Commission Vice-President Sefcovič recalled how geo-localisation is at the heart of the ongoing digital revolution with new services that transform our daily lives. The responsible for the Energy Union also stated that: *"Galileo will increase geo-location precision ten-fold and enable the next generation of location-based technologies; such as autonomous cars, connected devices, or smart city services. Today I call on European entrepreneurs and say: imagine what you can do with Galileo – don't wait, innovate!"*

Elzbieta Bieńkowska, Commissioner for Internal Market, Industry, Entrepreneurship and SMEs, explained that Galileo offering initial services is a major achievement for Europe and a first delivery of its recent Space

Strategy and the result of a concerted effort to design and build the most accurate satellite navigation system in the world.

Galileo will initially start to deliver, in conjunction with GPS, support to emergency operations such as the Search and Rescue Service (SAR). People placing a distress call from a Galileo-enabled beacon can now be found and rescued more quickly, since the detection time will be reduced to only 10 minutes. This service should be later improved by notifying the sender of the emergency call that he/she has been located and help is underway.

The Galileo Open Service will also offer a free mass-market service for positioning, navigation and timing, through Galileo-enabled chipsets in smartphones or in car navigation systems. A number of such smartphones have been on the market since autumn 2016 and they can now use the signals to provide more accurate positions. By 2018, Galileo will also be found in every new model of vehicle sold in Europe, providing enhanced navigation services to a range of devices as well as enabling the eCall emergency response system.

Through its high precision clocks, the EU GPS is also supposed to enable more resilient time synchronisation of banking and financial transactions, telecommunications and energy distribution networks such as smart-grids.

Offering a particularly robust and fully encrypted service, Galileo

will also support public authorities such as civil protection services, humanitarian aid services, customs officers and the police during national emergencies or crisis situations, such as terrorist attacks, to ensure continuity of services.

The Declaration of Galileo Initial Services means that its satellites and ground infrastructure are now operationally ready, although, not available all the time. That's why during the initial phase, the first Galileo signals will be used in combination with other satellite navigation systems, like GPS.

In the coming years, new satellites will be launched to enlarge the Galileo constellation, which will gradually improve Galileo availability worldwide. The constellation is expected to be completed by 2020 when Galileo will reach full operational capacity.

At the moment, the Galileo constellation consists of 18 satellites, all of which are already in orbit. So far, the first Galileo smartphone by Spanish company BQ is already available on the market and other manufacturers are expected to follow suit. It will allow also application developers to test their ideas on the basis of real signal.

Galileo Initial Services are managed by the European GNSS Agency while the overall Galileo programme is run by the European Space Agency (ESA).

Cecilia Lazzaroni

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