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Facebook accepts a EUR 9.6 million fine for failing to notify GIPHY acquisition in Austria

Konstantin Köck (PWC Legal) · Sunday, July 4th, 2021

According to a recent press release by the Austrian Federal Competition Authority (AFCA), in the course of a general market and media monitoring AFCA became aware of the merger between the two US-based companies Facebook and GIPHY, which took place in May 2020, and consequently initiated investigations based on suspicion of a violation of the standstill obligation, as the merger had not been notified in Austria.

The merger should have been notified in Austria as it meets the criterion of the value of transaction threshold. This notification threshold was introduced in 2018 in particular for mergers whose economic or competitive significance is not primarily reflected in the turnover of the companies involved but is reflected in a high transaction value of at least EUR 200 million. According to media Facebook bought GIPHY for USD 400 million.

Additionally, GIPHY has significant domestic activities in Austria, which is another criterion besides the value of transaction threshold. With this regard, not only the direct use via GIPHY's own website and app must be taken into account, but also users of other services, third-party websites, and apps that integrate GIPHY by using application programming interfaces (e.g. Facebook, Signal, Snapchat).

If all notification criteria are met, a planned merger has to be notified in advance with the AFCA and may not be executed before its clearance. Violation of this obligation constitutes a violation of the Cartel Act, which can lead to fines up to 10% of last year's total turnover.

According to AFCA, Facebook fully cooperated and made a request for an amicable conclusion of the proceedings ("settlement"). A settlement is possible in all proceedings regarding violations of the Cartel Act or European competition law. Cooperation can lead to a reduction of up to 20% of the fines to be imposed. In the end, Facebook accepted a fine of EUR 9.6 million requested by the AFCA for failing to notify Giphy's acquisition in Austria.

According to AFCA, the merger shall become notified in the near future, so that a substantive review of the (already executed) merger can be conducted.

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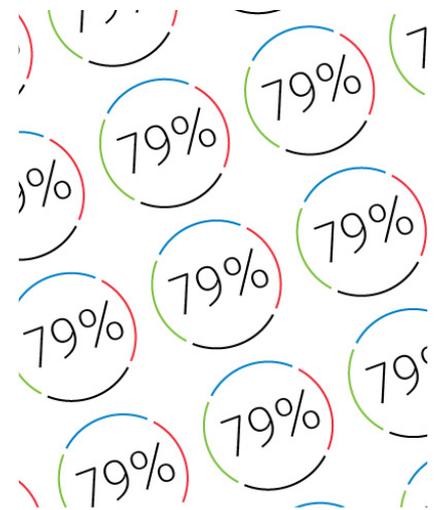
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