Bundeskartellamt

Case summary 9 December 2024

Microsoft	**Microsoft found to be of paramount significance for competition across markets**
Sector:	Focus on the digital economy
File number:	B6 – 26/23
Date of decision:	27 September 2024

In its decision of 27 September 2024 the Bundeskartellamt determined pursuant to Section 19a(1) of the German Competition Act (GWB) that Microsoft Corporation including all its affiliated companies within the meaning of Section 36(2) GWB (in the following: Microsoft) is of paramount significance for competition across markets. The validity of this decision is limited to five years from the date on which it becomes final.

Background

In January 2021, the 10th amendment to the German Competition Act (GWB Digitalisation Act) entered into force. A key new provision (Section 19a GWB) enables the Bundeskartellamt to intervene earlier and more effectively, in particular against the practices of large digital companies. The main purpose of Section 19a GWB is to capture special positions of market power and their possible anti-competitive effects on and threats to competition in the area of "digital ecosystems" in which individual companies may have a so-called gatekeeper function. Large digital companies which offer a wide variety of products and services can hold an economic position of power across markets which is difficult for competitors to challenge and gives rise to a scope of action that allows the relevant company to further consolidate, expand or otherwise use this position to its own advantage without sufficient control by competition. Such positions of power and their expansion are enhanced by the dynamics of the digital and internet economy, which especially on markets within the meaning of Section 18(3a) GWB lead to accelerated and increased concentration and bring about conglomerate or vertically integrated business structures in which cross-market systems of products and services, which often are scalable and connected in various ways, can be operated and expanded; see the explanatory memorandum to the 10th amendment to the GWB, Bundestag printed paper 19/23492, p. 73. Based on Section 19a GWB the Bundeskartellamt can in

a two-step approach prohibit companies which are of paramount significance for competition across markets from engaging in anti-competitive practices. The first step is to establish the relevant company's status as addressee of Section 19a(1) GWB.

Prior to the proceeding against Microsoft, which is now concluded, the Bundeskartellamt had already determined the paramount significance across markets of Alphabet/Google, Meta/Facebook, Amazon and Apple.

Microsoft's paramount significance for competition across markets

When all relevant circumstances in the present case are considered together, Microsoft has a position of cross-market economic power, which allows for a scope of action across markets that is not sufficiently controlled by competition.

Microsoft is active to a significant extent in markets within the meaning of Section 18(3a) GWB with a large number of products and services. This applies at least to the Windows PC operating system and the Windows Server operating system, the Microsoft 365 productivity software package, the cloud computing service offered under the Azure brand, the professional network LinkedIn, the search engine Bing and Microsoft's products offered in the area of gaming. Each one of these business areas on its own is of considerable importance for Microsoft. When all of Microsoft's business activities are considered together, which is ultimately decisive, they are to be seen as an activity in markets within the meaning of Section 18(3a) GWB, whereby Section 19a GWB is applicable.

In an overall assessment of all relevant circumstances the Bundeskartellamt then examined whether Microsoft is of paramount significance for competition across markets and whether this finding can be formally determined. For the identification as norm addressee the criteria set out in Section 19a(1) sentence 2 GWB had to be taken into account, without these criteria being exhaustive or having to be fulfilled cumulatively. The results of an overall assessment of all relevant circumstances in the present case showed that Microsoft has the characteristics of a company which the legislator intended to address by the special concept of abuse control pursuant to Section 19a GWB.

The core of the digital ecosystem created and operated by Microsoft is its comprehensive cross-market portfolio of products and services which are interconnected in many ways and which cover large parts of the requirements of business customers. No other company offers these products and services in any comparable breadth and depth. Microsoft is the only provider active on all vertically integrated levels of

the software stack for businesses and other large organisations and has thus become a one-stop shop where, with the exception of task-specific applications, business customers can purchase essential parts of their software. Microsoft has succeeded in establishing a kind of market standard which users perceive as almost impossible to avoid. With its extensive portfolio and its control of essential layers of the IT infrastructure, Microsoft shapes large parts of the IT sector and, in a comprehensive sense, offers a structure to which other providers must adapt.

Microsoft is a long-established market leader when it comes to central elements of the software architecture used by large organisations. The historical starting point of the company's paramount significance is the Windows operating system. Based on this system Microsoft has been establishing a dominant position in the market for PC operating systems for many years now. Furthermore, the company has established strong or very strong market positions for server operating systems (Windows server), productivity software (Microsoft 365) and in the area of cloud services (Azure). In line with the function of the criterion in Section 19a(1) sentence 2 no 1 GWB, all of these market positions or positions of power contribute to Microsoft's paramount significance for competition across markets. Within the framework of the authority's examination the question whether Microsoft also has dominant or powerful positions in other areas could thus be left open.

Microsoft's products are interconnected in many ways, which means the company benefits from considerable economies of scope. The natural core of Microsoft's portfolio consists of operating systems, the cloud service as well as productivity, communication and collaboration software. However, the structures, relationships and incentives are much more comprehensive. In the context of business customers, in particular, Microsoft's product range is not only very comprehensive but also closely integrated in a technical sense as the individual products often share several integration points with other Microsoft products. At the same time some Microsoft products depend on other Microsoft products which they need in order to be able to provide the full range of functionalities or even for the use of a Microsoft product in the first place. Other, more economic factors create a pull effect towards Microsoft. First of all, Microsoft, as a provider of a large product portfolio, benefits from the fact that many customers seek to limit as much as possible the number of their contractual partners for the provision of software. In addition, Microsoft can make a business decision to technically combine different functionalities and sell them as a product bundle. In line with its suite-centric business model the company's products are constantly being developed and complemented by integrating new functionalities, applications and services. Based on the bundled provision of a very comprehensive, assorted range of complementary products and services, including the combination of new products with

products that are already widely used or even considered by businesses as indispensable, Microsoft is in a position to ensure in a very short period of time that its products are widely used.

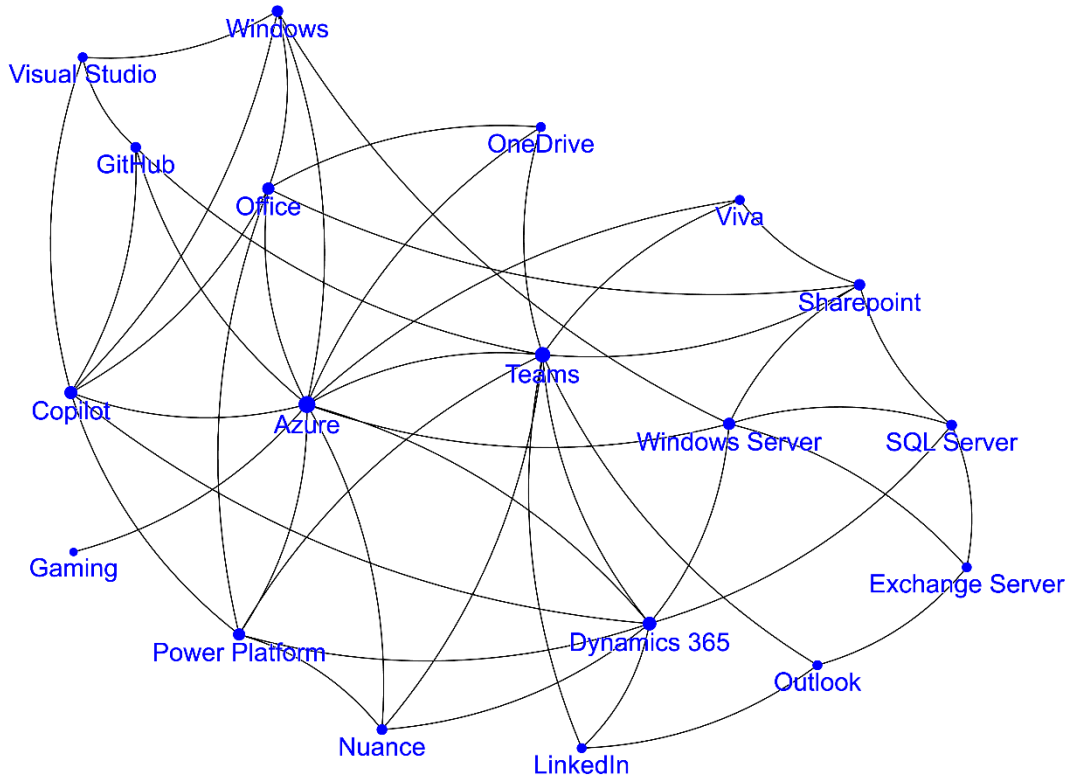


Figure 1: Elements of Microsoft's ecosystem of products for business customers

By embedding products in the sense of technical integration, providing economic incentives or otherwise combining products, Microsoft can use strategic options to systematically penetrate markets, reduce market opportunities for competitors and keep users in its own system or steer them towards its own products even in an environment which is characterised by rapid technological development. The pull effect achieved by these economies of scope is illustrated by the success of the office communication software Teams. According to information from customers and competitors, decisive factors in this success were the integration of the software into Microsoft's ecosystem and the fact that it is sold as part of a package.

Many products offered by Microsoft are essential not only for professional customers but also for private users. The company's business activities also cover other areas such as gaming and professional networks, where Microsoft also has a strong position. Its software offering for private customers is also technically integrated in many ways. Furthermore, by pre-installing certain products and using default settings in the

Windows operating system, Microsoft can benefit from what is referred to as the default effect and ensure greater use of its own products.

Third parties can develop their own software based on Microsoft products such as the Windows operating system. On the one hand, Microsoft benefits from the appeal of what in this respect is a generally open system. The emerging wider range of available applications increases the appeal of the ecosystem even further. Economies of scope and network effects can be effective beyond Microsoft's own offering. On the other hand, competition is threatened by the fact that Microsoft can make it harder for third-party developers which depend on Microsoft to enter the market or that Microsoft favours its own products where this appears to be advantageous for the company. In this respect it is also important to note that Microsoft often assumes a dual role as the company not only sets the framework conditions for third-party developers but also competes with them and is able to exert a significant influence on the business activities of third-party developers based on the design of its product portfolio.

Microsoft's ecosystem is of paramount importance for the market entry of other software developers and also influences their business activities. This applies in particular to developers of business applications, and also to developers active in the area of gaming. These factors provide Microsoft with considerable power to set the rules. With its predominant PC operating system and its own cloud service, the company provides essential "infrastructures" for third-party developers and also offers them a comprehensive development environment, which in turn makes it more likely that the software developed will be tailored to Microsoft's ecosystem. With GitHub, Microsoft controls the most important platform for hosting services and cooperating in software development projects. Microsoft decides on the design of important technical interfaces and controls key distribution channels such as the Microsoft Store, the Azure Marketplace and the Xbox Store.

For various products the company has succeeded in establishing a kind of market standard other developers must comply with, for example in the area of productivity software. As Microsoft's software is omnipresent in companies, third-party developers are usually forced to integrate their own software with this standard. This is another area in which Microsoft has considerable power to set the rules, for example by the way it designs interfaces or by specifying certain file formats.

Based on its well-established strong position, Microsoft has for decades repeatedly succeeded not only in growing into new markets created by new technologies but also in building up strong positions in these markets in a short period of time. This is exemplified in the areas of cloud services and artificial

intelligence. The fact that computing power and applications are increasingly moved into the cloud does not call into question the key importance of Microsoft's products and services. Rather, Microsoft has succeeded in playing a leading role in this area as well. The company has not only managed to transfer its previous on-premise business to its own cloud services. The investigations have in fact shown that within the context of the "cloudification" of businesses' IT systems, Microsoft's applications are more widely used while, conversely, hardly any Microsoft products are being replaced by products from other providers. Similar findings apply to the use of artificial intelligence. The disruptive potential of AI currently does not seem to enable other companies to break up Microsoft's established positions. On the contrary, through cooperation projects and its own developments Microsoft has managed to play a pioneering role and to further upgrade existing products by integrating AI. By comprehensively integrating AI into existing systems it is possible for Microsoft to further develop artificial intelligence as well as improve and market its own applications. Microsoft benefits from the fact that it can offer services across all layers of the AI stack. In particular the enormous computing capacities the company can offer based on its Azure cloud make Microsoft an interesting cooperation partner for start-ups, which require large amounts of computing power to train and provide their AI models.

Microsoft's financial power as one of the most valuable companies worldwide also enables it to make large and very large acquisitions, by which entire business fields can be opened up or expanded. Among other areas, this concerns Office applications, the major strategic topics of cloud services and AI, the creation of a complete ad tech stack, the path to becoming the leading provider of communication software, entry into social media, integration of the most popular video games, tools for developers and connection with the developer community as well as software which today is part of Microsoft's Power Platform. Due to its enormous financial resources and the company's large number of specialised software developers, Microsoft is also able to grow organically and quickly into new markets and use strategic opportunities.

Its large user base, in particular business customers, and the company's strong and in many cases long-standing customer relationships provide Microsoft with decisive advantages in marketing new products, which can thus quickly achieve a substantial reach.

Access to data relevant for competition is also an important resource. Microsoft can access data in many ways and use them to train AI models. Furthermore, based on its business activities involving companies from many sectors of the economy, Microsoft has unique access to metadata, in particular, which offer the company insights into the development of many software markets and entire economic sectors.

Metadata can provide a decisive advantage when it comes to identifying strategically important future markets and developing and marketing product innovations.

The overall importance and structure of Microsoft's ecosystem can result in threats to competition, which the special provisions of Section 19a GWB seek to address. Microsoft's comprehensive, conglomerate and vertically integrated product portfolio creates the risk that a scope of action across markets which is not sufficiently controlled by competition enables the company to further consolidate, expand or otherwise use its position of power to its own advantage. Competitors in some areas, in particular in the area of new, innovative products and services, find themselves at a significant structural disadvantage. At the same time, the corporate structures identified in the present case, combined with the mechanisms of digital markets, result in the fact that the core of Microsoft's position of power is almost unassailable.

Course of the proceeding

The Bundeskartellamt initiated the proceeding to determine Microsoft's paramount significance for competition across markets within the meaning of Section 19a(1) GWB on 28 March 2023. The authority then conducted extensive investigations not only of Microsoft itself but also among medium-sized and large companies which are (potential) customers of software providers in general and of Microsoft's products in particular. The authority also surveyed providers of office communication software and large IT providers offering a wide range of products and services in particular for business customers, and whose business areas, at least to some extent, are in competition with Microsoft. Microsoft was given ample opportunity to comment and provide both written and oral statements. In its decision of 27 September 2024 the Bundeskartellamt determined, based on its investigations, that Microsoft is of paramount significance for competition across markets. The authority's decision is final.