'Pay or Okay' Model, Part II: Personalized Advertisements – Competition, Consumer Protection and Unfair Competition Law Concerns

By

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I. Introduction

In November 2023, Meta introduced a subscription policy for processing data for personalized advertisements in the EU, the European Economic Area and Switzerland. Accordingly, the options offered by Meta, known as the 'pay or okay' model, has (i) a paid version (monthly €9.99 on web or €12.99 on mobile applications) of Meta services with no ads, guaranteeing that users' personal data is not processed for advertising purposes; or (ii) a free of charge version, which requires users to "consent" to the processing of their personal data for advertising purposes.

Part I of this paper addressed concerns raised by Meta's 'pay or okay' model regarding personal data protection laws. This second part will examine concerns surrounding Meta's 'pay or okay' policy focusing on potential abuse of Meta's dominant position and its compliance with the Digital Markets Act (DMA). Additionally, it will explain the arguments raised against Meta's new policy under consumer and unfair competition laws. The considerations in these areas are crucial both independently and in connection with data protection rules.

II. Abuse of Dominant Position

In the EU, Art 102 TFEU (Treaty on the Functioning of the European Union) regulates the unilateral anticompetitive acts of companies, prohibiting the ones in dominant position within a market from abusing their position.[1] Determining an abuse of dominant position requires (i) a dominant position, (ii) an abusive behaviour and (iii) an effect on trade between Member States.[2] The last element is generally not a point of contention, as it is generally applicable. For the purpose of this paper, the third element will not be analysed, as the 'pay or okay' model has already been introduced across the whole European Economic Area.

A. Dominant Position

Initially, an indication of a dominant position can be inferred from regulatory tools. Facebook and Instagram, both belonging to Meta, have been designated by the European Commission (EC) as very large online platforms[3] under the Digital Services Act (DSA)[4] and as gatekeepers[5] under the Digital Markets Act.[6]

Furthermore, whether Meta holds a dominant position has been investigated by different authorities such as the European Commission,[7] the German Federal Cartel Office (German FCO)[8] and the U.S. Federal Trade Commission (FTC),[9] all of them deciding that Meta holds a dominant position in the relevant market. Their analysis will be considered regarding the market share and definitions as well as what constitutes a barrier to entry in the relevant market.

1 Simon Vande Walle, 'Exploitative Abuses in EU, German and French Competition Law' *SSRN Electronic Journal 1.*

2 Gabriel Peric, 'EU Competition Law and Abuse of Dominance A Deep Dive into Article 102 of the TFEU' (Örebro Universitet 2022) https://www.diva-portal.org/smash/get/diva2:1691421/FULLTEXT01.pdf.

3 'Digital Services Act: Commission Designates First Set of Very Large Online Platforms and Search Engines' (*European Comission,* 2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2413.

4 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) OJ L 277.

5 'Digital Markets Act: Commission Designates Six Gatekeepers' (*European Comission,* 2023) https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4328.

6 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) OJ L 265.

7 Facebook Marketplace (Case AT.40684) Comission provisional decision [2024] https://ec.europa.eu/competition/antitrust/cases1/202513AT_40684_10582539_13405_4.pdf.

8 Bundeskartellamt (Case B6-22/16) Facebook, Exploitative Business Terms Pursuant to Section 19(1) GWB for Inadequate Data Processing, 6 February 2019; Case Summary: https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2019/B6-22-16.pdf.

9 *FTC v Facebook Inc.* (Case No.: 1:20-cv-03590) U.S. District Court of Columbia, 9 December 2020 https://www.ftc.gov/system/files/documents/cases/051_2021.01.21_revised_partially_redacted_complaint.pdf.

1. Market Share and Definition

The German FCO decided that Facebook holds a dominant position in the German market for "private social network market with private users." In the EU, market share of 50 percent or above could be indicative of dominant position in the market.[10] The German competition authority found that Facebook's 95 percent market share for daily active users in this market is a crucial element for assessing lawful competition. In reaching that conclusion, the German FCO clarified that Instagram, WhatsApp, Snapchat, YouTube, Twitter, LinkedIn and Xing were excluded from its analysis of the market of social networks because they were considered to only "offer parts of the services of a social network." Thus, the German FCO did not consider them as genuine competitors. It further specified that even if those services were included in the FCO's analysis, Facebook's market share would be significantly beyond the threshold of a dominant position.

Its U.S. counterpart, the FTC, concluded that Facebook holds a market share above 60% for the U.S. "personal social networking" market. As with the German FCO, the FTC similarly excluded WhatsApp, LinkedIn, YouTube and Netflix from its assessment of the market of personal social networking services. At the same time, the FTC indicated that the company viewed its true competitors to be platforms offering features that differ from those of Facebook, rather than platforms offering copycat features. This perspective can be seen through Facebook's acquisition of Instagram and WhatsApp, two platforms that offer distinctly different features compared to Facebook.

The EC, on the other hand, considered the relevant market as "personal social networking services." When making its analysis it has considered "the broader market for personal social networking services including hybrid social media platforms." The hybrid platforms contain differing features from personal social networking services and are used for different purposes. Still, they contain essential features of a personal social networking service, and therefore are considered all together. The mentioned hybrid platforms in the decision are Instagram, Snapchat and TikTok. According to the provisional decision of the EC, Meta holds a high market share sufficient to establish its dominant position in the market for personal social networking services, including hybrid social media platforms.[11] In concluding so, the Commission rejected Meta's analysis of a market for user's time and attention (including YouTube, LinkedIn, X, Vimeo, Reddit, Pinterest, etc.), stating that such a market does not exist.

It seems that various competition authorities and market players define the market for Meta's services differently. Also, it is important to note that the 'social' connection element that is indicated by all authorities within these online services is diminishing in its importance. This is due to the rise of content being curated by artificial intelligence (AI) analysis rather than just users' 'social' interactions.[12] In the Q1 2023 earnings call of Meta, AI recommended content was indicated as 20 percent,[13] whereas by the Q1 2024 earnings call it had already risen to 30 percent.[14] Strikingly for Instagram, it noted that -as a first- more than 50 percent of the content people see are recommended by AI.[15] As a result, the existing market definition of personal social network services by the competition authorities might be becoming less relevant by the day.

2. Barriers to Market Entry

The German FCO noted that the network effects of Facebook are another critical determinant for determining its market dominance. According to the Office, these effects caused competitors such as Google+ to lose market share, and ultimately leave the market. The EC's provisional decision supports this view. It also mentions the attempt to introduce competing services by other firms have also failed and none were able to establish significant market presence.[16] Another important factor stated by both authorities is indirect network effects. These effects are those created by different groups utilizing the network for the purpose of exchanging value; in this case, users and advertisers. The larger the user database of a platform, the more advertisers it can attract. Such indirect network effects make it harder for ad-funded platforms to enter the market. This is because they must enter both the social network user market and the online advertising market.[17]

The U.S. FTC similarly emphasised the significance of network effects as "high barriers to entry." Additionally, the decision of the FTC revealed some interesting insights discovered from Facebook's internal documents. These documents confirm that it is difficult to attract users away from a leading social networking service due to its established social structure, meaning the way users are interacting within the platform such as liking and sharing photos or comments.[18]

Unlike the German FCO and the Commission, the FTC indicated that challenging the dominant

10 Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings OJ C 031.

11 The Commission, Facebook Marketplace 107-111.

12 'The End of the Social Network' [2024] *The Economist* https://www.economist.com/leaders/2024/02/01/the-end-of-the-social-network.

13 META Q1 2023 Earnings Call Transcript, p.2 https://s21.q4cdn.com/399680738/files/doc_financials/2023/q1/META-Q1-2023-Earnings-Call-Transcript.pdf.

14 META Q1 2024 Earnings Call Transcript, p.3 https://s21.q4cdn.com/399680738/files/doc_financials/2024/q1/META-Q1-2024-Earnings-Call-Transcript.pdf.

15 Ibid.

16 The Commission, Facebook Marketplace 111-118.

17 Bundeskartellamt, Facebook 6-7; The Commission, Facebook Marketplace 111-118.

18 U.S. FTC, *FTC v Facebook Inc.* para 6.

position of social networking services is still possible even if solid network effects exist. It mentioned that this could especially be the case during "periods of technological or social transition." For example, TikTok saw a significant rise in users in 2020 during the Covid pandemic and continues to grow rapidly. It successfully entered the social media market and it has even disrupted giants like Instagram and Facebook. Since TikTok's entry, both platforms have transformed the basis of their feed content curation from chronological to algorithmic methodology.[19] Therefore, even though network effects might hinder market entry, when the market is let free, user demand may lead to new entries. Today, some users have novel demands such as the need for smaller online social communities, platforms with niche purposes,[20] and privacy considerations.[21] These novel needs are not compatible with the current architecture of existing social media platforms. Therefore, despite the barriers created by network effects, new competitors could still be encouraged to enter the market.

Another key barrier to market entry, as highlighted by the European Commission, is the data-driven nature of personal and hybrid social networking platforms. These services rely heavily on large volumes of user data and advanced data processing capabilities. Facebook's unmatched access to vast amounts of data, including from third-party sources, gives it a major competitive advantage that is really hard to match by new entrants.[22]

Overall, the competition authorities' findings of Meta and Facebook's large market share, together with the resulting network effects seem to be essential in determining the existence of a dominant position.

B. Abusive Behaviour

The abusive conducts under Art 102 TFEU could be categorized under exclusionary and exploitative abuses. Exclusionary abuses result in a harm in competition by excluding (potential) competitors. Whereas exploitative abuses refer to anticompetitive acts of the dominant company by directly harming its trading partners, either suppliers or customers.[23] The paid option in 'pay or okay' strategies could be assessed for exploitative abuse due to potential excessive pricing, under Article 102(a) of the TFEU.[24] Abuse depends on whether Meta exploits its consumers with excessive fees. According to the CJEU's *Meta* decision, the competition authorities could assess compliance with the General Data Protection Regulation (GDPR)[25] if it is required for determining the abuse of dominant position.[26] However, traditionally this type of exploitative conduct has not been a high enforcement priority within the abuse of dominance investigations of the EC. Likewise, the only guidelines on Art 102 TFEU from the EC simply focuses on exclusionary abuses.[27]

According to the CJEU's leading decision in *United Brands*, there is no specific way to determine exploitative pricing abuses. Still, the case introduces a two-step cumulative test: The initial stage involves determining whether the price is excessive and it considers an analysis of the dominant firms selling price compared to its cost. If it is considered to be excessive, next is an assessment regarding whether the price is unfairly excessive. This is determined by evaluating whether (i) it is unfair in itself or (ii) when compared to the prices of competitive products.[28]

In later cases, the CJEU updated its jurisprudence that the test to determine whether the price is excessive does not have to be a price-cost analysis and other methods, *e.g.*, price comparison with competitive products, could also be used.[29] The excessiveness test and determining whether Meta's fee is itself unfair requires a very detailed economic analysis, which will be left for the competition authorities to conduct. When it comes to a price comparison with competitive products, it is hard to find a comparative product in the same market offering a similar policy. This is because the market for personal social networking services is defined narrowly by competition authorities.

It is important to note that, in a competitive market economy, prices are expected to vary. Therefore, Facebook and Instagram's fees do not need to be the exact same as those charged by its competitors. According to the CJEU, for such price differences to be considered abusive, there should be an "appreciable" difference, as clarified in the *Latvian Copyright Society* case. There is no specific threshold capable of determining if the difference is "appreciably higher."

19 Kate Lindsay, 'TechScape: TikTok took over social media with its uncanny algorithm – but at what cost?' *The Guardian* (London, 12 September 2023) https://www.theguardian.com/technology/2023/sep/12/techscape-tiktok-algorithm-social-media-war-facebook-instagram-youtube. accessed 27 July 2025.

20 Brian X Chen, 'The Future of Social Media Is a Lot Less Social' *The New York Times* (19 April 2023) https://www.nytimes.com/2023/04/19/technology/personaltech/tiktok-twitter-facebook-social.html accessed 27 July 2025.

21 Exploding Topics, 'The Future of Social Media (2025-2027)' (Exploding Topics, 2 years ago) https://explodingtopics.com/blog/future-of-social-media accessed 27 July 2025.

22 The Commission, Facebook Marketplace 111-118.

23 Walle (n 2) 4.

24 Consolidated Version of the Treaty on the Functioning of the European Union, 26.10.2012, C 326/47.

25 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119.

26 CJEU Case C-252/21 *Meta Platforms Inc and Others v Bundeskartellamt* [2023] ECLI:EU:C:2023:537.

27 Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings [2009].

28 CJEU Case 27/76 *United Brands Company and United Brands Continental BV v Commission of the European Communities. Chiquita Bananas* [1978] ECLI:EU:C:1978:22 para 252.

29 CJEU Case C-177/16 (Latvian copyright Society) *Autortiesību un komunicēšanās konsultāciju aģentūra/Latvijas Autoru apvienība v Konkurences padome* [2017] ECLI:EU:C:2017:689 para 37.

Rather, according to the Court, the difference will be deemed appreciable "if it is both significant and persistent on the facts to the market in question."[30]

Even if excessive pricing is not a very often imposed abuse under EU competition law, the subscription policy of Meta for €12.99 (on mobile applications) could be examined as an exploitative abuse. Although a detailed economic analysis would be carried out by the competition authorities, it is noteworthy that the price applies only to an ad-free service, while user tracking for other purposes would still continue.[31] At the same time, it is not enough that the price is simply higher than those of competitive services but there must be an "appreciably higher" difference.

III.
The Digital Markets Act (DMA)

The DMA is introduced to enhance competition and fairness in digital markets by regulating the behaviour of large online platforms designated as gatekeepers. It aims to ensure that these platforms act fairly and allow for market contestability according to clearly defined criteria. Meta has been designated as a gatekeeper by the European Commission, which also issued the first decision (23 April 2025) finding non-compliance with the DMA, imposing a fine of €200 million on Meta. The decision finds Meta's 'pay or okay' model in breach of Art 5(2) of the DMA.[32]

Unlike traditional competition law which is an *ex post* intervention to anti-competitive acts, the DMA provides *ex ante* regulation to large online platforms on how they are allowed to operate in the EU.[33] In that regard, the DMA considers accumulation and aggregation of data across services for advertising forms a competition advantage, posing a barrier to entry.[34] Accordingly, Art 5(2) of the DMA prohibits the gatekeepers from combining and cross-using personal data on their services with data gathered through third parties or other services of the gatekeeper. This is unless the users are given a specific choice and consent to those acts. With the explicit reference of the provision, it is understood that such consent must be GDPR compliant.[35] Most importantly according to the GDPR, consent must be freely given.[36] The DMA provides a mechanism to ensure that consent is freely given: Where the user refuses consent to the combination of its personal data, it should offer "a less personalised but equivalent alternative." Also, using the core platform service or its functionalities should not be dependent on that consent.[37]

Meta's 'pay or okay' subscription policy gave users the choice to either pay for a non-personalized ad-free service (without any processing of personal data) or consent to processing their personal data, including its combination, for personalized advertising. When users refuse to consent and pay for a subscription, they would have to bear the combination of their personal data for personalized advertising. They were not given a choice to opt for a less personalized but equivalent alternative, therefore the EC considered Meta in breach of the DMA. This was not considered a freely given choice.[38] It could be observed that the rationale of the DMA considered by the Commission and the opinion of the European Data Protection Board (EDPB) on consent and pay models (17 April 2024) are in parallel when it comes to requiring the services to offer a less personalized option.[39] Similarly, the EDPB indicated that there should exist an alternative which is free of charge and contains less or no processing of personal data.[40] The alignment of principles and rules across different regulatory devices significantly enhances the effectiveness and consistency of enforcement.

The DMA also indicates that the equivalent alternative should not be different or of inferior quality of service unless that would be directly caused by not being able to process personal data as in Art 5(2) of the DMA.[41] Here, the gatekeeper is expected to prove the direct link between the rejection of consent to processing data as in Art 5(2) of the DMA and the degraded quality in service.[42] What would be considered different or inferior is not certain at this point. In November 2024, Meta announced a change in its subscription policy in Europe where the free version of its services will contain the option to opt for less personalized ads. The EC or the EDPB have not commented on this new approach yet. However, Meta mentioned that the less personalized version will include unskippable ad breaks.[43] It might be argued that this disrupts the quality of the service. At the same time, it has probably emerged as a solution to recoup profits lost from not being able to process

30 CJEU *Latvian Copyright Society* paras 52-55.

31 Alessia D'Amico and others, 'Meta's Pay-or-Okay Model An Analysis under EU Data Protection, Consumer and Competition Law' [2024] *Technology and Regulation* 266-267.

32 European Commission, 'Commission Implementing Decision of 24 April 2024 pursuant Article 5(2) of the DMA (Case DMA.100055 – Meta)' C(2025) 2091 final; 'Commission Finds Apple and Meta in Breach of the Digital Markets Act' (European Comission, 2025) https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1085.

33 'Digital Markets Act Briefing' (European Parliament, 2022) https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)690589.

34 Recital 36 of the DMA.

35 See Part I of the article for a deeper analysis of valid consent under the GDPR.

36 Art 4(11) of the GDPR; Recital 37 of the DMA makes explicit reference to the other features of consent such as being specific, informed and unambiguous as structured in the GDPR. The recital also indicates the fact that rejecting consent should not be harder than giving consent.

37 Recital 36 of the DMA.

38 'Commission Finds Apple and Meta in Breach of the Digital Markets Act' (n 25).

39 'Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms-Adopted on 17 April 2024' (European Data Protection Board, 2024) https://www.edpb.europa.eu/system/files/2024-04/edpb_opinion_202408_consentorpay_en.pdf.

40 *Ibid.*

41 Recital 37 of the DMA.

42 Alessia D'Amico (n 32) 270.

43 'Facebook and Instagram to Offer Subscription for No Ads in Europe' https://about.fb.com/news/2024/11/facebook-and-instagram-to-offer-subscription-for-no-ads-in-europe/ accessed 30 July 2025.

personalized ads. Whether such technical constraint deriving from financial concerns would be acceptable as "a direct consequence of the gatekeeper not being able to process such personal data"[44] is yet to be seen. In fact, the DMA recognises that compliance with some of its obligations, including the ones under Art 5, could affect the economic viability of gatekeepers.[45] In that regard, only under "exceptional circumstances beyond the gatekeeper's control," the Commission could decide to suspend that obligation, in whole or in part, upon request. The EC must state the extent and duration of the suspension.[46] Here, the economic sustainability of the gatekeeper is not considered *ex ante*, but only upon the implementation of the obligation.[47] Other than under exceptional circumstances, the gatekeeper's economic viability is not a concern under the DMA. According to the Commission's decision, gatekeepers cannot demand the preservation of their pre-DMA profits as a prerequisite for regulatory compliance.[48]

As the paid option is not considered an equivalent alternative, the appropriateness of the fee charged is not analysed by the EC. The fact that the fee has not been examined under the DMA by the Commission does not exclude the possibility of its investigation under Article 102 TFEU or other EU legislation. Nevertheless, it is worth noting that the preventive obligations imposed by the DMA may offer a swifter regulatory response. While it might seem like the case-by-case analysis provided by Art 102 of the TFEU is a more flexible approach, for the current case an analysis of the excessiveness of the fee as in Art 102 of the TFEU could have been a more intrusive regulatory instrument. The DMA also provides a framework for addressing fairness in the digital services market, with due consideration to the unique features of these services (in this case the barriers of entry resulting from the accumulation of personal data). In addition, their consistency with GDPR consent principles underscores a strategically coordinated approach to digital regulation within the EU.[49]

IV.
Consumer Protection and Unfair Commercial Practices

The 'pay or okay' policy has also been a concern of the European Consumer Organization (BEUC), an association comprising 45 consumer organisations from 31 countries. Its aim is safeguarding the concerns of consumers. In November 2023, the BEUC filed a complaint about Meta's 'pay or okay' scheme before the Consumer Protection Authorities (CPC).[50] The CPC is a network formed by the EU to address consumer protection issues. Through this network, issues or complaints are dealt by relevant national authorities in a coordinated fashion. The BEUC claims that Meta's 'pay or okay' model involves unfair commercial practices which violate European consumer laws in several ways.

They claim:

a) It is an aggressive practice to block access to Facebook and Instagram until users have made a choice between paying or consenting. The sense of urgency and persistence forces consumers to choose an option they may not be willing to make in normal circumstances.

b) It is probable that many consumers think the paid option of Meta's services is privacy-safe. However, Meta might still be collecting and processing personal data for purposes other than advertising.

c) The information provided by Meta is misleading and incomplete as it presents the 'okay' option as free whereas consumers are actually paying with their personal data.

d) Consumers do not have a real choice here. Meta has substantial market power and strong network effects where consumers would not want to lose their connections formed over time. The resulting high fees for the privacy safe paid option discourages users from withdrawing consent to personalized advertisements. Hence, consumers are not offered a genuine choice.[51]

While the first claim relates to aggressive practice as in Art 8 of the Unfair Commercial Practices Directive (UCPD),[52] the next two refer to a misleading action as enshrined under Art 6 of the UCPD, whereas the last claim is relevant to a breach of the GDPR. In both instances under the UCPD, the directive requires that the commercial practice has caused or is likely to cause the consumer to take a transactional decision they would not have taken otherwise.[53] The consumer within the directive is considered as an average consumer who is reasonably well-informed

44 Recital 36 of the DMA.

45 Art 9(1) of the DMA.

46 *Ibid.*

47 Mikolaj Barczentewicz, 'The EU's DMA Enforcement Against Meta Reveals a Dangerous Regulatory Philosophy' (20 June 2025) https://truthonthemarket.com/2025/06/20/the-eus-dma-enforcement-against-meta-reveals-a-dangerous-regulatory-philosophy/ accessed 30 July 2025.

48 The Commission, Meta para 154.

49 Malte Frank and Emma Lewis, 'The European Commission's Challenge to Consent or Pay-Demystifying The Digital Markets Act?' (2024) 47 World Competition 427 www.ycombinator.com/blog/content/files/2024/06/RemedyFest-Final-Report.pdf.

50 'Consumer Groups File Complaint against Meta's Unfair Pay-or-Consent Model' (BEUC Press Releases, 2023) https://www.beuc.eu/press-releases/consumer-groups-file-complaint-against-metas-unfair-pay-or-consent-model#:~:text=Meta is breaching EU consumer,incomplete information in the process.

51 *Ibid.*

52 Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') OJ L149/22.

53 Art 6 and 8 of the UCPD.

and observant.[54]

Aggressive practices impair or are likely to impair the consumer's freedom of choice. It could be committed by harassment, coercion or undue influence.[55] Undue influence is indicated as exploiting a position of power. It does so by applying pressure that significantly restricts the consumer's capacity to make an informed choice.[56] This should be in a way to make the consumer feel uncomfortable as well as to cause confusion in relation to the transaction decision.[57] Pay or okay may be referred to as an aggressive action because of the fact that the notification of the new policy has disrupted or blocked access to the service itself. This could be regarded as an undue influence considering the user dependency to access the platform (*e.g.*, for social or commercial reasons) and no prior knowledge was provided regarding the new policy.[58] As the consumer's screen was locked until they made a choice, this urgency would lead them to make a "forced subscription."[59] These could make the consumer uncomfortable and confuse them to consent to the processing and combination of their personal data, therefore impairing their free will to make a choice.

Regarding misleading actions as in the UCPD, the directive requires there to be factual information and for this information either to be (i) false or (ii) likely to deceive the consumer even if the information is correct. In this case, the subscription presented as ad-free may deceive the consumer that there would be no tracking and profiling activities in the platform. In reality, Meta still pursues tracking for different purposes such as to improve Meta's products, for analytics and for personalizing user's experience other than with ads.[60] However, an average consumer that is well informed and observant may be expected to know that an ad-free platform does not equate to a completely tracking-free service. In addition, the fact that consumers are told they will continue to use the services for free is contested. First, because the "free" may give the impression users give nothing in exchange whereas they actually provide their personal data. This argument may be a bit far-fetched compared to the rest. Second, because this is not simply continuing to use the platforms for free. Actually, Meta was forced to change its policy because it has been processing personal data with invalid legal grounds under the GDPR.[61]

In addition, European consumer laws require an informed and fair choice. Free and informed consent is also a prerequisite as a legal basis for processing personal data under Art 4(11) of the GDPR. Therefore, the BEUC's assessment asserts that the violation of GDPR should be considered as an unfair and illegal practice under consumer protection law as well.[62]

V.
Conclusion

While data protection rights seem to set the primary focus on the 'pay or okay' debate for personalized ads, competition and consumer protection laws also warrant significant discussions. As has been discussed the conflicts in these fields also interact with data protection laws.

The main conditions for abuse of dominant position include both the dominant position of the platform and an abuse of competitively concerning activities regarding personalized ads. It is challenging to establish the dominant position of a firm in the personal social media services market, particularly concerning market definition and share. Network effects are considered as the main barrier to market entry by competition authorities in this particular case. The abuse of a social media platform for processing and combining personal data for advertising under a 'pay or okay' policy may be scrutinized within excessive pricing as in the TFEU. To date excessive pricing has not been imposed much by the European Commission to determine an abuse under the TFEU and it requires deep economic analysis.

The adoption of the DMA has provided specific constraints to large platforms called gatekeepers in order to provide contestability and fairness in the market. Under the regulation, combination and cross-use of personal data is contingent upon user's consent. The DMA lays down the conditions for the validity of consent including it being compliant with the GDPR. The Commission decided that Meta's 'pay or okay' model did not comply with its obligations under the DMA for valid consent. Meta had already updated its 'pay or okay' policy before the decision of the EC. As of today, the conformity of the revised policy with the DMA has not yet been subject to formal scrutiny.

The consumer and unfair competition law claims add substance to the discussion on the user's rights perspective. Consumer organizations claim that 'pay or okay' is an aggressive and misleading practice that does not provide a genuine choice to consumers. ■

54 Recital 18 of the UCPD.

55 Art 8 of the UCPD.

56 Art 2 of the UCPD.

57 Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market OJ C 526/1.

58 Alessia D'Amico (n 31) 264.

59 BEUC, An assessment of Meta's new paid-subscription model from a consumer law perspective (2023) 8.

60 BEUC Assessment 6.

61 BEUC Assessment 6-7.

62 BEUC Assessment 9; Natasha Lomas, 'European Consumer Groups Band Together to Fight Meta's Self-Serving Ad-Free Sub -- Branding It "unfair" and "Illegal"' (*TechCrunch*, 2023) https://techcrunch.com/2023/11/29/beuc-cpc-meta-complaint/ accessed 30 July 2025.