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A Preliminary Assessment

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The EU's Investigation Into Microsoft *Teams*: A Preliminary Assessment

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Abstract

EU has opened an antitrust investigation into Microsoft's policy of including the communication software *Teams* in its *Office 365* packages. Very little is known about the case and the alleged grievances, as only a short press statement is available. This identifies *Office 365* as dominant, and the integration of *Teams* as directed at monopolizing the market for communication software and shielding *Office 365* from competition. The first comports badly with market data, and the latter points to a case that has less to do with *Teams* and more with *Office 365* and a ring-fencing strategy, shielding Microsoft's core business.

Introduction

It came somewhat unexpectedly when DG COMP, EU's competition arm, in June 2024 issued a Statement of Objection (SO)² to Microsoft for having included *Teams* in its *Office 365* package.³ The former refers to video communication software, while the latter pertains to a collection of cloud-based productivity software, which includes *Outlook*, *Word*, *PowerPoint*, and *Excel*. Combining these applications into a single suite may potentially violate Article 102, but only if the suits create anti-competitive effects and do not represent a new and unique product or offer any significant benefits to consumers. From the standpoint of users, the suits do appear to be both innovative and appealing. However, releasing a SO is only done if DG COMP's file shows a problem, thereby justifying the progression of a case.

Nevertheless, the SO remains unexpected, as the Digital Market Act⁴ (DMA) has been given so much prominence lately that it is surprising, yet in a positive way, that DG COMP has found time

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² Case AT.40721 - *Microsoft Teams I* and AT.40873 - *Microsoft Teams II*.

³ The *Office 365* packages consist of two offerings, *Office 365* and *Microsoft 365*, where the former is a suite of cloud-based business applications (*Outlook*, *Excel*, *Word*, etc.), and the latter is a bundle of *Office 365* and the Windows Operating System. As there is no indication of DG COMP taking issue with the latter, only references to *Office 365* will be made.

⁴ 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).

to enforce Article 102 and pursue more traditional cases. Furthermore, it is widely known that Microsoft took proactive measures in July 2023 to address the issue by providing a version of *Office 365* without *Teams*, so potentially resolving any worries. Evidently, not adequately persuasive. Alternatively, DG COMP has adopted the notion that you cannot absolve yourself of previous violations by modifying your future behavior.⁵ On the other hand, the timing of the situation is more comprehensible, as Commissioner Vestager's term is ending, making it important to resolve the pending cases before her successor takes over. This also suggests that considerable time and effort has been dedicated to the case and the SO, reducing the likelihood that DG COMP may abandon the case or have reservations about its merits.

1. Little Is Known About The Case And The Involved Markets

Only a brief press release⁶ is available, offering very little information, e.g., on DG COMP's take on the involved product markets and their geographical scope. DG COMP does describe the products involved, *Teams* and *Office 365*, and how the former is a cloud-based communication and collaboration tool, offering functionalities such as messaging, calling, video meetings, and file sharing that links Microsoft's and third-party workplace tools and other applications. DG COMP refers to *Teams* as a communication and collaboration product and has, in previous cases,⁷ defined an EU-wide market for this, with a segmentation between consumer and business communication. It is likely that these market definitions are reused, and *Teams* is considered a communication and collaboration product targeting corporate users, available and competing at the EU level or possibly globally.

DG COMP describes *Office 365* as a widely used business application software and discusses the trend among suppliers, such as Microsoft, to transition towards providing software as a service (SaaS). This involves hosting the software on the supplier's chosen cloud infrastructure and offering it to customers through a monthly subscription fee. Although the concept of competition is theoretically possible, DG COMP believes that Microsoft has effectively undermined it by bundling apps together in a single package. DG COMP refers to this as a suite-centric business model, where different types of software are combined into one product. Since 2019,⁸ Microsoft has included *Teams* in *Office 365* jointly with e.g., *Word*, *Excel*, *PowerPoints*, and *Outlook*. In previous cases,⁹ DG COMP has defined a global market for productivity software for PCs, with a possible segmentation of software type and separate markets for business users and mobile devices.

Translated to DG COMP's Microsoft Teams antitrust investigation, the case would probably involve the products markets for a) communication and collaboration products for business and b) productivity software for PCs,¹⁰ with a possible sub-segmentation of the latter into the different types of

⁵ The press release indicates the changes as insufficient to address DG COMP's concerns, but as these are not clearly outlined, several explanations might be present.

⁶ IP/24/3446 - Commission sends Statement of Objections to Microsoft over possibly abusive tying practices regarding Teams.

⁷ See, e.g., Case M.8124 – *Microsoft/LinkedIn*, recital 19 and 27-28; Case M.7047 – *Microsoft/Nokia*, recital 43-45, and 81; and Case M.6281 – *Microsoft/Skype*, recital 17 and 67.

⁸ According to DG COMP's press statement, *Teams* was included in 2019, but it's understood how this might have happened earlier.

⁹ See, e.g., Case M.10290 – *Microsoft/Nuance*, recital 71-79; Case M.8124 - *Microsoft/LinkedIn*, recital 19-25; COMP/M.7047 – *Microsoft/Nokia*, recital 51; and Case COMP/M.3216 – *Oracle/PeopleSoft*, recital 15.

¹⁰ According to the press release, Microsoft is dominant in the product market for SaaS productivity applications for professional use, indicating a narrower market than productivity software for PCs. However, in Case M.10290 – *Microsoft/Nuance*, recital 70, DG COMP did not appear to see a significant difference between on-premises and online software.

software. Furthermore, it is likely that both markets, at a minimum, are EU-wide but probably globally. Moreover, would they primarily cater to corporate customers.

However, it is important to note that these statements are based on assumptions until more information is provided. In any case, if accurate, this would entail a scenario where a communication and collaboration tool (*Teams*) is integrated with productivity software (*Office 365*) and provided as a package. This implies that there could potentially be two instances of abusive tying, rather than just one. The first instance is the incorporation of *Teams* into *Office 365*, while the second instance involves the consolidation of many distinct products into a unified suite, known as *Office 365*. However, as later clarified, there is no evidence of DG COMP expressing concern specifically about *Office 365*, but rather about the addition of *Teams* in 2019.

2. Contemplating DG COMP's grievances raises questions

Tying distinct items is a traditional violation of Article 102 TFEU, which entails exploiting a dominating position in one market to establish an anti-competitive exclusion in another. Regarding the first point, the press statement describes Microsoft as the leading company globally in the market for SaaS productivity apps for professional usage. This fulfills the first requirement. However, when considering the second aspect, specifically the anti-competitive impacts, it becomes less clear how DG COMP perceives the case, and thus raises the initial question.

2.1. The tying arrangement must have the capacity to significantly alter market shares

The presence of anti-competitive consequences does not always mean that competition in the adjacent market is fully eliminated. However, DG COMP is required to provide a clear explanation of how and why the tying practice severely hinders rivals. In this instance, DG COMP is required to provide a clear and coherent explanation of how the incorporation of *Teams* into *Office 365* could potentially result in a progressive monopolization of the market for communication and collaboration goods.

Granted, leveraging market power between adjacent markets is a classic example of abusive practice, in particularly in the digital economy,¹¹ and the leading case is, ironically, *Microsoft I*¹² (2004), where Microsoft illegally tied its *MediaPlayer* with its Operating System (*Windows*). The foreclosure risk must be real, and if, e.g., end-users can easily download alternatives,¹³ either supplementing *Teams* or replacing it, would this be unfeasible. It must be assumed that DG COMP has accounted for this in the SO, but currently, the matter remains unsettled, warranting comments.

2.2. A quick Google search questions the foreclosure risk

DG COMP's investigation into *Teams* originated in complaints filed by Slack Technologies, Inc, and Alfaview GmbH, offering the alternative communication platforms *Slack* and *Alfaview*, and it

¹¹ For further on leveraging conducts in the digital economy, see, e.g., Friso Bostoen - *Abuse of Platform Power*, Concurrences 2023, chapter 5 or Christian Bergqvist and Eliza Fauestnelli, *Leveraging Conducts in the Digital Economy: A Competition and Regulatory Perspective*, contribution to Andrej Savin and Jan Trzaskowski, Research Handbook on EU Internet Law, 2nd Edition, Edward Elgar 2023.

¹² Case COMP/C-3/37.792 - *Microsoft*. Upheld on appeals as case T-201/04 – *Microsoft*.

¹³ See, e.g., Case COMP/C-3/39.530 – *Microsoft* (tying)), recital 45; Case COMP/C-3/37.792 Microsoft, 858-871; Case AT.40099 - *Google Android*, recital 856 and 1305 for example of cases the effect from download, as alternative distribution methods, has been contemplated. See also Case M.6281 – *Microsoft/Skype*, recital 218-219, where downloads were accepted as an alternative. Upheld on appeals as Case T-79/12 - *Cisco Systems Inc*, para 79 and 96.

would thus rest upon DG COMP to explain how Microsoft's actions impede these. Undoubtedly, there are benefits to having *Office 365* pre-installed, but if consumers can readily download and depend on alternative software, the likelihood of foreclosure becomes less persuasive. *Teams* is known to have cross-platform compatibility with certified partners, which is also a feature that helps popular rivals like *Zoom* and *Webex*. In the news release, DG COMP highlights that Microsoft enforces interoperability restrictions on *Teams*' rivals and its own products. This might significantly simplify DG COMP's requirement to provide evidence, but only if there is also a change in market shares. However, the possibility of foreclosure is still difficult to determine.

Zoom is perhaps more favored among end-users compared to *Teams*, and it is often used in conjunction with or as an alternative to *Teams*, suggesting that market shares are not being transferred. This pertains to individuals who are not business clients. Conducting a quick online search for "top 25 team communication apps for businesses in 2024" (excluding paid links) uncovers a ranking that positions *Teams* in seventh position, much trailing behind Slack. Undoubtedly, DG COMP is likely utilizing significantly more intricate data than a quick study from Google. However, setting that aside for now, it is still unclear how Microsoft's actions could result in the exclusion of other products in the market for communication and collaboration tools. This does not weaken the merits of the investigation. However, it is crucial to reassess Microsoft's probable motives and see the potential that the case may be less about *Teams* and the market for communication and collaboration tools, and more about Microsoft's standing in other domains.

3. Microsoft's motive might explain what the case is really about

The press statement provides scant, if any, concrete information regarding Microsoft's rationale for engaging in abusive behavior. Essentially, the purpose is not important because abuse does not necessarily involve evil intent. As previously mentioned, the abuse occurs when market dominance is used to gain an advantage in related markets, which is a common form of abuse. Nevertheless, it is important to clarify how Microsoft's integration of *Teams* might potentially foreclose the market for communication and collaboration tools, prompting us to consider potential objectives.

3.1. A case that has more to do with Office 365 than Teams

Revisiting the press release and DG COMP's wordings indicates an abuse with two objectives, where the first is restricting competition in the market for communication and collaboration products, and the second is defending the market position in productivity software. We already know that Microsoft is viewed as dominant in the latter, potentially even super dominant,¹⁴ and it's also understood how *Office 365* is a core activity of Microsoft. DG COMP may be concerned about Microsoft's potential to exploit its market dominance by incorporating *Teams* into *Office 365*, thereby expanding into the communication and collaboration products market. The secondary aim is to prevent this expansion from becoming a gateway for Microsoft to enter the productivity software market. In simpler terms, Microsoft's interest in the market for communication and collaboration tools may be primarily driven by the need to safeguard their core businesses, such as *Office 365*, and the significant revenue generated by these products.

¹⁴ In Case M.8124 - *Microsoft/LinkedIn*, recital 292, is Microsoft's market shares in productivity software indicated as above 90-100 %.

3.2. The modified theory of harms is part of a broader framework

Obviously, it's somewhat speculative to submit that DG COMP's investigation might be more about *Office 365* than *Teams*, based solely on a brief press statement, but it would allow for some notable observations.

To begin, if the sole purpose of monopolizing the market for communication and collaboration products is to isolate the fundamental activities in productivity software for personal computers, then the actual foreclosure would be less relevant. The anti-competitive effect will be brought about if competitor offerings, like *Slack* and *Alfaview*, desist or are delayed in extending their offerings in communication and collaboration goods to productivity software. In spite of the fact that the possibility of foreclosure cannot be completely ruled out, it is no longer difficult to comprehend why Microsoft's conduct could be considered anti-competitive and detrimental to the welfare of consumers. If the unbundled version of *Office 365* is not drastically discounted, then delivering *Office 365* on a la carte, with or without *Teams*, would not be sufficient to minimize the anti-competitive effect. It's understood¹⁵ that while Microsoft offers *Office 365* without *Teams*, the discount is limited, and potentially, this could amplify, rather than alleviate, the anti-competitive effect. This would emerge if the competitors, to match the discounted price and remain competitive, forego profits that could have facilitated an expansion into the market for productivity software. It remains unknown if DG COMP is using the unbundling against Microsoft, claiming it to feed the overall policy of isolating the core business.

Secondly, while the monopolization of adjunct markets is a classic theory of harm in EU competition law, DG COMP, in recent years, has progressively turned its concerns to the more defensive ring-fencing of the core business. This motive played limited roles in *Microsoft*¹⁶ (2004) and *Google Shopping*¹⁷ (2017) but came into prominence with *Google Android*¹⁸ (2018).¹⁹ Here, Google had tied a suit of Google offerings, including *Google Search*, with its Operating System for Smartphones (*Android*) to secure default status for these. Smartphones progressively serve as the point of origin for internet searches, and this migration could undermine Google's role as the internet gatekeeper, making it imperative for Google to take protective measures. Defensive motives were also identified in *Microsoft/Activision Blizzard*²⁰ (2023), where DG COMP contemplated if Microsoft, by acquiring a leading gaming studio, could protect its Operating System (*Windows*).

This scenario may potentially arise if Microsoft were to diminish the interoperability of well-liked games with alternative operating systems, hence diminishing players' inclination to depend on them. Nevertheless, Microsoft has mitigated this risk by making commitments. DG COMP may have reformulated its objections, focusing specifically on productivity software designed for business customers. This highlights a pattern in which Microsoft strategically isolates its primary business from rivals and the competitive landscape.

¹⁵ Microsoft announces changes to Microsoft 365 and Office 365 to address European competition concerns. press statement 31 August 2023 indicates the discount as EUR 2 per month.

¹⁶ Case COMP/C-3/37.792 - *Microsoft*, recital 971-977. The matter did not play any role in the case before the General Court.

¹⁷ Case AT.39740 - *Google Search (Shopping)*, recital 342. The motive was rejected on appeals in case T-612/17 - *Google and Alphabet v Commission*, para 456-457.

¹⁸ Case AT.40099 - *Google Android*, recital 115-116. Upheld on appeals as case T-604/18 - *Google and Alphabet v Commission*, para 149.

¹⁹ The motive also played a role in M.10615 - *Booking/Etraveli*. See, e.g., recitals 197 and 202.

²⁰ Case M.10646 - *Microsoft/Activision Blizzard*, recital 614 and 641.

4. Next phase and path forward

An analysis of Microsoft's objectives could shed light on several crucial inquiries in DG COMP's inquiry into *Teams*, such as the profitability of Microsoft's actions and the potential insignificance of end-users being able to access alternative options. Otherwise, the foreclosure risk would be implausible, weakening the case. It would align well with DG COMP's enforcement goal in the digital economy, but there are still unanswered questions that will remain until a decision is made and announced.

4.1. Both the market definitions and the number of cases lack clarity

An unresolved issue pertains to the precise definitions of the industry and the rationale behind recognizing that productivity software, like *Office 365*, and video communication software, like *Teams*, are clearly separate categories within the market. The scope of productivity software, as defined by DG COMP, encompasses applications that enable users to generate documents, databases, graphs, workbooks, presentations, and other data structures utilized for information interchange. While prior cases have acknowledged this, DG COMP has not provided a precise definition of the extent of productivity software and why specialized communication software, such as *Teams*, should not be included. However, it is reasonable to assume that DG COMP has provided an explanation of this difference in the Solicitation.

Regarding the open question of whether the case involves one or two instances of abusive tying, the potential for various interpretations quickly leads to the next open question. The integration of *Teams* into *Office 365* may potentially infringe upon Article 102. However, as *Office 365* consists of distinct products like *Word*, *Excel*, and *PowerPoint*, the inclusion of this functionality could be seen as a distinct breach of Article 102. There is no empirical data to support this assertion in the press release; yet circumstances can vary or lead to offspring. According to DG COMP, Microsoft not only has a significant market share in the overall productivity software market, but also in several specific areas within that market. If DG COMP has formulated its argument based on a ring-fencing strategy, it might be prudent to examine *Office 365*, either now or in the future.

4.2. Should we endorse the ring-fencing strategy?

The third and final open question is only relevant if DG COMP investigation does focus on the ring-fencing, as that would involve (critically) evaluating if competing providers of communication software, such as *Slack* and *Alfaview*, are potential challengers to some of Microsoft's core activities, e.g., Operating Systems, cloud solutions, or productivity software. The available information on *Slack* and *Alfaview* is insufficient to offer an informed opinion on the matter, but DG COMP has previously contemplated the matter indirectly. In *Microsoft/LinkedIn*²¹ (2016), DG COMP dismissed the idea that Microsoft's acquisition of LinkedIn may enhance the company's standing in the market for productivity software. This was because *LinkedIn* lacked important features (social networks) that other vendors of productivity software offered. Regarding the investigation undertaken by the DG COMP into *Teams*, and the ring-fencing strategy, it would be imperative for DG COMP to consider communication software as crucial, or at least advantageous, for effectively joining the market for productivity software and competing with other companies.

²¹ See Case M.8124 - *Microsoft/LinkedIn*, recital 382-393.

4.3. The issuance of a SO demonstrates DG COMP's dedication to progress

DG COMP has shown its commitment to progressing the issue by filing a SO, which has also provided Microsoft with opportunities to provide justifications for its actions. This necessitates challenging the market definition and the risk of foreclosure, while also considering how bundling enhances efficiencies through seamless integration and counters rival communication software providers as a potential long-term threat to Microsoft. The ring-fencing strategy, which (potentially) acts as the governing incentive, relies on the latter. However, Microsoft may justifiably dismiss it as disconnected from reality. Regardless of everything, currently our ability is limited to making informed conjectures, which is just somewhat more sophisticated than interpreting coffee grounds.