

Competition Law and Privacy: rediscovering the goals of the EU competition law in the age of digital economy

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Research questions

- *In what ways, if any, privacy could act as a proxy for competition law application?*
- *Should competition authorities' mandate be extended to protect privacy amongst the goals of EU competition law?*
- *Is the current competition legal framework fit to encompass the rapid changes introduced by the digital economy?*

Methodology

- Doctrinal methodology:
It focuses on the discussion of legal provisions by critically analysing the texts of the European Treaties, policy measures, case law and decision-practice concerning the area under this study.
- Law & Economics:
This methodology is vital in analysing human choice from an economic view, as people act rationally opting options matchings their preferences, expectations, based on information available to them, and, secondly, the goals attributed to the legal system.

Introduction

- Proliferation of the data-fuelled platforms introduced a number of perils, including the privacy protection concerns and an coherent application of competition law rules.
- The key aims of the EU is to establish a single, integrated market with all the Member States. Such an aim can be found in the preamble and Article 3(3) and 3(4) of the TEU.
- The requirement to factor in privacy as a competition proxy is questioned in the light of ubiquity of zero-priced services in exchange for personal data.
- Part of the problem in with Commission analysis is lack of any framework attributed for identification fo concerns in data privacy competition.

Data protection and EU Competition law

A confusing relationship?

- The digital economy has itself resulted in a rise of disruptive technologies which, produce social benefits.
- Empirically, the EU legal practice contributed to identification of three different phases of the development of the intersection between competition law and data protection:
 - ignorance of data (*Asnef-Equifax*, (2006)),
 - identification of parallel pathways between competition law and data protection
 - recognition of data in the competition sphere by the EU Member States (Facebook case, and other reports).

Is there a way forward?

in attempt to bring certainty...

- Is Facebook case an example of a persisting trend of not applying criteria relating to the functioning of the market in competition law, without adding a real value in terms of data protection?
- The Higher Regional Court of Düsseldorf raised serious doubts regarding with Facebook case assessment.
- The French Competition Authority in 2018 published a report on the Online Advertising Sectors.
- The report mapped out the digital sector as “fragile competitive equilibrium”.
- The French/German study reflected a determination amongst the EU Member States competition authorities to address the effects data collection and its usage by companies and to reflect on the boundaries between data protection and competition law.

Privacy concerns as:

- ... proxy for the competitive process and a competitive market structure,
- ... proxy for the social welfare, consumer welfare, and economic efficiency
- ... proxy for competition authorities intervention.

Thank you.