



Digital markets: interplay between data protection, consumer protection & competition law

Dr. m Liber, LLM, FIP, CIPP/E, CIPM, Attorney at Law

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Data-driven Economy

Data-driven Economy and its Trends

The emergence of information technology and data driven-business models:

- High privacy exposure of individuals through technology; significant imbalance between providers and users
- New business models: operators whose main income is from analysis, processing and selling of data;
- Data as asset with monetary value and currency: free online services 'paid for' using personal data;
- Data as an important factor in competition;
- Data pooling; Algorithms and machine learning.



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Convergences and Tensions

Data Protection

- Privacy - protection of an individual's private sphere against intrusion from others; data protection is a fundamental human right (Art. 7 of the Charter)
- Fairness of data processing and transparency, including accurate and fair information about data processing – unintelligible privacy notices and terms
- Electronic direct marketing and advertising
- Choice and consent bundling
- Data portability
- Enforcement through national Data Protection Agencies

Interplay with Consumer Protection

- Consumer protection aims to prohibit misleading claims about online services, particularly those marketed as ‘free’
- Consumers as data subjects
- Breach of data protection information requirements as „material” information
- Provision of personal data as a „transactional decision”
- Considering data protection violations when assessing the overall unfairness of commercial practices
- US approach: prosecuting deceptive trade practices in relation to privacy and data security promises
- No common EU approach to investigate breaches

Interplay with Competition Law

Anti-competitive agreements and abuse of market power and mergers

- Personal data as an intangible asset; market power through control over massive volumes of user data, not turnover
- New concept of consumer welfare – privacy aspects
- Processing vast amount of personal data and proprietary software as entry barrier; restricting customer choice for „free services”; data as essential facility
- Algorithmic collusion: new definition of agreement for antitrust purposes?
- Collaboration for developing privacy enhancing services;
- Fostering competition through data portability



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Conclusions

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- Lack of interaction among various policies
- Reflect to the trends in digital economy and the role of personal data
- Data protection as a factor of consumer welfare
- Consumer choice, consent and transparency
- Greater convergence and cooperation among enforcement authorities is necessary



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