

Personal Data and Competition Law Enforcement in the Online Environment: EU and U.S. Perspectives

Research project

Investigators:

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Abstract:

This research looks at an emerging question in the context of online activities: whether the processing of personal data by online businesses with market power may give rise to potentially anticompetitive conduct under EU and U.S. competition laws.

As one EU Commissioner once put it, personal data is the new oil of the Internet and the new currency of the digital world. When we browse the internet, conduct web searches, visit sites and make online purchases, all these histories are recorded. The type, quantity and value of personal data being collected and analyzed are vast, and this list continues to grow: social profiles, geo-referenced data, demographic data, financial and medical records, tweets, texts, emails, photos, videos, etc.

The revolution brought about by the internet provides great opportunities. Firms collect and use this data to both empower and monetize certain service-delivery business models. In turn, end users benefit from free, personalized consumer experiences such as Internet search, social networking, geo-referenced listings, or content distribution platforms. Governments employ personal data to provide critical public services more efficiently and effectively. And as communication infrastructures become ubiquitous, in a world where nearly everyone and everything are connected in real time, the opportunity to leverage personal data as an economic resource will emerge even more clearly.

According to some, the “flip side” of this revolution is that companies that manage such a significant amount and variety of data not only have a special responsibility to treat such data appropriately, but they may also have to avoid the temptation of keeping other companies from providing services that necessarily rely on that set of data.

The EU is currently finalizing new regulation on data protection in order to safeguard data subjects' rights and prevent unlawful behavior by undertakings. In contrast, the U.S. is somewhat lagging behind in this respect. This does not mean that in the U.S., these online privacy issues are less of a concern. To the contrary, U.S. Senator Al Franken recently stated that the more certain dominant online businesses know about “us”, the more difficult it is for Internet users to switch away from such companies, since no “comparable” services may otherwise be offered by the market. Sen. Al Franken suggested that the Federal Trade Commission should take action in this regard.

This research will first address the regulatory framework concerning data protection rules in the EU and in the U.S. and will then investigate whether the processing and use of personal data by dominant businesses may be subject to scrutiny under EU and U.S. competition laws.