

Competition Law and Online Platforms – Effective Regulation?

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Online platforms – causes of concern:

Multi-sided markets

In versus for market competition

Fragile monopolies

Network effects

Zero price strategies

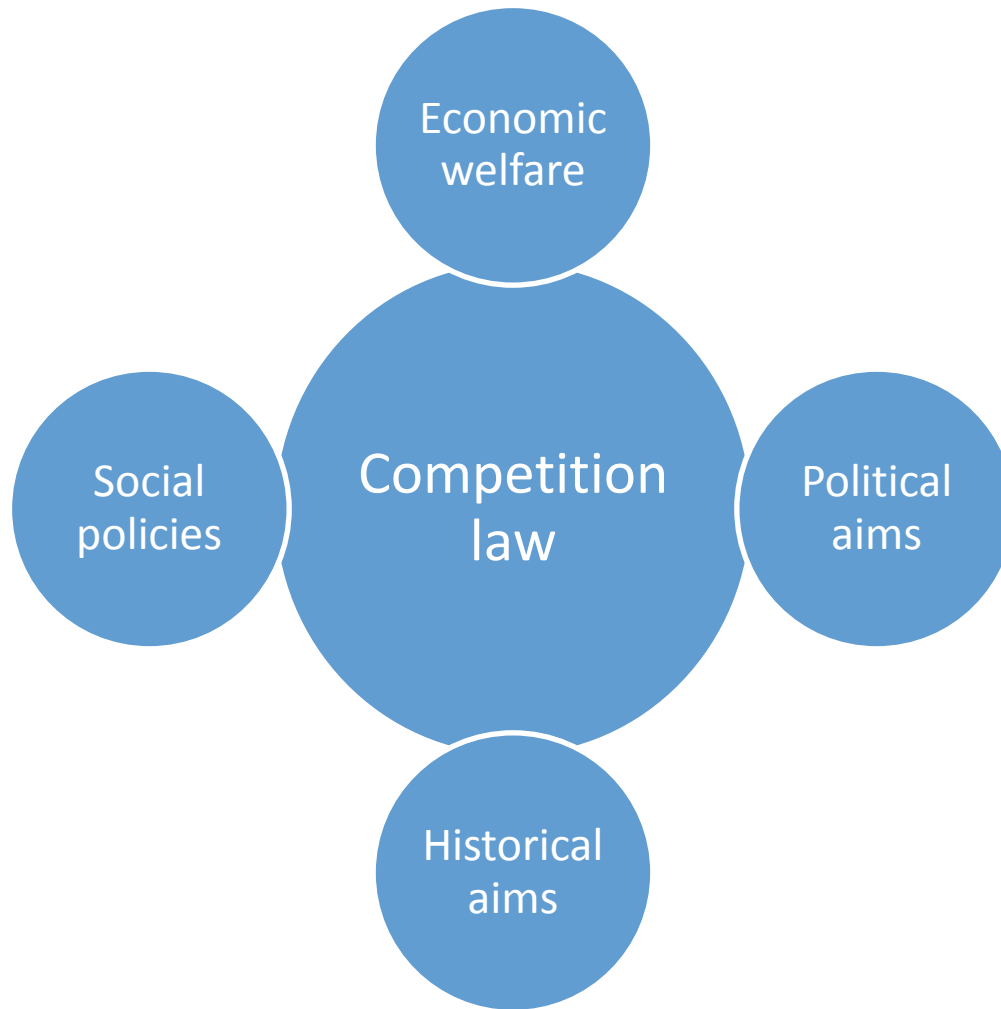
Big data

The purpose of competition rules

Competition law seeks to promote the maintenance of competition within a market and the competitive process to ensure free and dynamic markets as well as promoting economic welfare.

- *TeleSonera*: ‘The function of [the EU competition] rules is precisely to prevent competition from being distorted to the *detriment of the public interest*, individual undertakings and *consumers*, thereby ensuring the well-being of the European Union’ para 22

Competition law does not exist in isolation



Second Tier Regulator

The competition rules have been applied as second tier regulator for other policies

- Internal market (*Grundig*)
- Intellectual property rights (*Magill*)
- **BUT:** Data protection (*Facebook/WhatsApp*)

Facebook/WhatsApp

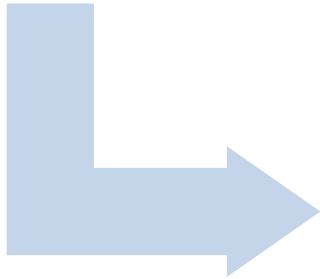


Competition rules used as form of data protection?

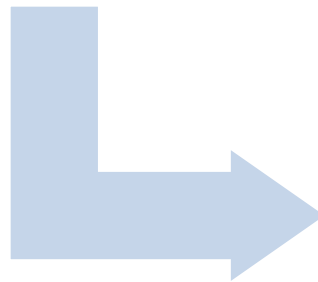
- Commission stated: '[any] privacy-related concerns flowing from the increased concentration of data within the control of Facebook as a result of the transaction do not fall within the scope of the EU competition law rules but within the scope of the EU data protection rules'.

Problem with Big Data

Hidden cost to consumer – difficult to judge value of the data submitted and difficult to assess what will happen to it/ how is it used.



Zero price strategies by companies further entice consumers to 'purchase' services and products without assessing the value of the data that they give away in return.



Can the competition rules help?

Big data – cont.



Big data – unfair trading conditions

Big data – form of essential facility (in some cases protected by IPR) and should therefore be an indicator of dominance

Competition rules have tools to deal with ‘big data’ if applied in abusive manner:

- *Magill, IMS, Commercial Solvent and Stena Sealink*
- There is a clear duty on the dominant company not to restrict the market or related markets further.

Big data (and the privacy of it) must be seen as a non-price dimension of competition and given importance hereafter

Bundeskartellamt's approach



Bundeskartellamt

‘Where access to the personal data of users is essential for the market position of a company, the question of how that company handles the personal data of its users is no longer only relevant for data protection authorities. It becomes a relevant question for the competition authorities, too.’

To conclude: Competition rules can be an effective regulator of online platforms

The purpose of the competition rules is to enhance consumer welfare through the stimulation of economic efficiencies and not individuals' sovereignty.

- However, synergies between the EU competition rules, data protection laws and consumer protection

We need better alignment and cooperation between the three when tackling the challenges of online markets and Big Data.

- Yet caution needed re competition rules as second tier regulator