



*Opening statement for panel on Digital Rights and Enforcement*

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Thank you for being here.

This session is about the rights to which individuals are entitled in the digital environment. And how those rights can be enforced effectively.

'Disruption' is the word associated with data driven markets.

We all love and in many ways depend on the innovative services which these markets have delivered.

But the fact is that the internet, as most people experience it today, is made possible by revenue models that require constant monitoring of human behaviour.

We have for a long time discussed the privacy and data protection implications of covert tracking.

But after a turbulent year of “fake news” and micro-targeting of voters, we are beginning to understand that freedom of expression and discrimination are also at stake in the digital society.

We are also beginning to realise the limits of enforcement bodies in the face of ever more powerful data controllers, complex data processing and opaque algorithms.

Mergers create more powerful entities and, antitrust teaches us, tend to result in higher prices.

Increasing concentration widens the gap between individuals and powerful data controllers.

October last year set a record for the highest value of mergers in a single month ever – and much of this consolidation is in the big data and artificial intelligence area.

This discussion is meant to expand our horizons as DPAs.

We are accountable for the additional powers which are being conferred on us by the EU data protection reform, and, according to the proposal from the European Commission this month, by the reformed ePrivacy rules.

Accountable for the quality of the decisions we take.

Accountable for our response to the concerns of all data subjects

Accountable for the openness and responsiveness which we must show to controllers.

But we also are accountable for how well we understand the nature of data processing and privacy protection in fast moving tech markets.

States have a responsibility to ensure the independence of all DPAs and to invest sufficient resources so that can do our jobs effectively.

But in many ways we need to find a way to do more with less.

The Digital Clearing House is an initiative which we devised to meet this challenge.

We announced it in our Opinion on Coherent Enforcement of Rights in the Age of Big Data. And it was discussed at our conference, hosted jointly with BEUC, in September.

A lot of effort has been devoted to better cooperation between authorities across national borders.

The GDPR creates several new and detailed obligations for cooperation.

In the worlds of competition and consumer enforcement there are also initiatives underway to reinforce cooperation.

The problem is that there is no systematic way for these different worlds to talk to each other.

The GDPR - even with the ePrivacy Directive of our dreams – will not be enough to secure individuals right to privacy, dignity, freedom of expression, non-discrimination and so on.

We face a perfect storm of excessive market power, informational asymmetry and unaccountable algorithms.

This threatens to drive up the cost to individuals of almost essential services – in terms of requirement to disclose personal data

We cannot allow ourselves to drift to a situation where people are expected to pay to preserve their privacy and freedom of expression and association.

I believe that privacy, freedom of expression, vibrant competition and consumer choice each depend on one another.

If a person has in effect only one choice of service provider in a digital market, then they are inevitably in a weak position to negotiate better quality of freedom of expression and privacy.

If the service provider is dominant in the market, then it is potentially a competition issue, as well as a data protection and consumer issue.

The Digital Clearing House is meant to connect authorities on a purely voluntary basis, to pool knowledge on how to tackle such problems, past, current and hypothetical.

It is the result of our analysis, discussions with agencies and pressure from advocacy groups like BEUC.

We issued a questionnaire before Christmas those agencies which had told us that they would like to be part of this pilot phase.

The replies have been very enthusiastic, very thoughtful.

We will start small.

We will probably not be working in a garage in Palo Alto, but our aim is to incubate ideas.

It is voluntary and it will fully respect the independence of each participant, and the confidentiality of ongoing investigations.

I expect we will look at past cases.

I expect we will imagine scenarios for future cases and what a coherent response from all concern enforcement agencies might look like.

For example– what would we do if there was a complaint, a merger, a case of unfair terms and conditions, which appeared to raise questions of compliance in two or more areas of law. We as privacy regulators have not necessarily a legal but, in my view, a moral duty to work with consumer authorities and help competition authorities in these cases.

The Norwegian Consumer Council for example is about to discuss their experience of bringing cases simultaneously before the Norwegian DPA and Consumer Ombudsman, so that they can work together to decide the best way of handling the case in the interests of the individual.

We may invite external experts to discuss issues, but we will work in an informal and confidential setting.

We will aim to be transparent – suggestions in the responses to the questionnaire included creating a webpage, publishing reports and hosting an open conference later this year.

So I would like to call on all the privacy community to get involved. This is a strategic, long term issue for all of us.

I would encourage those DPAs who have not yet contacted us, to be part of the initiative.

This juxtaposition of market, informational and algorithmic power are among the biggest challenges facing society.

The Digital Clearing House is just one idea to bring people together. I hope that there will be many more.

Thank you.