



European Consumer Summit 2014: "European Consumers in the Digital Era"
Brussels, 1 April 2014

"Opportunities and challenges in the digital era: big data and moral hazard"

Peter Hustinx

European Data Protection Supervisor

Speaking points

- There is no doubt that online services are booming. This can be attributed in part to the creativity of designers and developers. But the key impetus is consumer demand and more particularly the information which individuals disclose about themselves - sometimes knowingly, usually not – in using those services.
- The pace of change is breath-taking. This is why the EU urgently needs a framework for responsibilities of organisations in the internet age: a Data Protection framework that is consistent and uniform for online and traditional markets alike.
- It is deeply worrying that - 800 days since the Commission put its proposals for a new Data Protection framework on the table - Member States governments have yet to agree a general position. The European Parliament voted resoundingly in favour of a compromise text in March. This significant endorsement should act as a spur in June when justice ministers next meet to discuss the reform.
- Moving on from these general remarks, I would like to use the few minutes available to turn to another theme, which is also strategic in its range, and on which we published a substantive paper last week. This is our preliminary Opinion on privacy and competitiveness in the age of big data.

- Today, I would like to start with the concept of 'moral hazard'. We tend to associate this concept with the insurance industry. More recently it has been cited in the context of the EU debt crisis and banking regulation.
- It generally refers to the risks which arise when a contract or financial arrangement creates incentives for the parties involved to behave against the interest of others. 'A situation,' writes economist Paul Krugman, 'in which one person makes the decision about how much risk to take, while someone else bears the cost if things go badly.'
- In fact, underlying moral hazard is an asymmetry of information. This means that one party to a contract has the advantage of knowing more about the risks and benefits of the exchange.
- EU consumer law also recognises this. There is the requirement for contracts to be in plain and intelligible language under the Directive on Unfair Contract Terms, where the consumer has the benefit of the doubt wherever the meaning of a term is uncertain. Prices must be easily identifiable and clearly legible under the Price Indication Directive. And the Consumer Rights Directive tackles services, including those on the internet which are supposedly 'free', where people are vulnerable to exploitation.
- EU rules on data protection also recognise this danger of asymmetry of information. According to the Charter of Fundamental Rights, individuals have a proactive right which entitles them to expect that any processing of their personal information must be fair and legitimate, and for specified, transparent purposes. Individuals have the right, under the Data Protection Directive, to be told about who processes their personal information and for what purposes.
- This is just one of several overlaps between not only data protection and consumer protection rules, but also the EU's competition policy.
- These EU policy areas, it seems to us, have hitherto developed in parallel. Big data is now highlighting the opportunity, and moreover, the necessity for policymakers and regulators to work in tandem.
- In our paper we peer into the market for free products which are a feature of an increasing number of sectors of the digital economy. Search engines, social media, file storage and sharing – these are just some of the services which many of us *imagine* to

be free, and which we are *encouraged* to believe to be free. (“Sign up - It’s free and always will be” – see Facebook’s homepage).

- In reality they are designed to maximise the information which can be leveraged to attract those looking to maximise return on advertising.
- The paper suggests that in considering 'market power' and 'dominance' and 'potential for abuse' in the digital economy, there may be a need for a new concept of 'consumer harm'. We know that markets in the digital economy tend more easily towards concentration due to network effects – people wanting to use the same services as their friends. That heightens the need for transparent, intelligible statements on how personal data will be used.
- Let me here also refer to the proposed acquisition of Whatsapp by Facebook and the different questions which arise in this context.
- We note that often individuals are unaware of how their behaviour is tracked and their data collected and sold on. Usually they are under-informed, and only rarely are they able to take full control of what is, in effect, their own property.
- We call this a *preliminary* Opinion because at this stage we are exploring the gaps. We hope that an honest dialogue between the experts in the fields will identify the sorts of policy and legal responses which can bridge those gaps. We are planning a workshop on 2 June in Brussels; the details are still being worked on. If you are keen to join this discussion then please get in touch with us.
- I genuinely don’t know what precisely will emerge from this dialogue. At the very least, it is a chance to demonstrate that policymaking at EU and national level is not a series of echo chambers.
- Rather this is a means of taking a holistic perspective of major questions of legitimacy and power in the digital economy, two European and global concerns which straddle fundamental rights and the interests of consumers and businesses.