



*Competition Rebooted: Enforcement and personal data in digital markets*

Keynote speech at Joint ERA-EDPS seminar

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I'm delighted to be opening this seminar, jointly hosted by the European Academy of Law and the EDPS, on competition, personal data and digital markets.

This is an important milestone in the conversation on the interface between privacy and competition, which we helped launch with our Preliminary Opinion in March 2014.

The agenda today is intended to drill down into the questions which have arisen since then, specifically from the perspective of competition law.

The EDPS is an independent institution, like national data protection authorities. Our remit in Regulation 45/2001 is to ensure fundamental rights, in particular privacy and data protection, are respected by EU institutions and bodies, and to advise on *all matters* concerning the processing of personal data.

Our Preliminary Opinion on Privacy and Competitiveness in the Age of Big Data aimed to bridge the gap between the policy disciplines and enforcement traditions of data protection, competition and consumer protection. We identified a number of common concerns, such as consumer welfare, transparency, accountability, and encouraged experts in the fields to exploit synergies in the interests of the individual.

Discussions today indicate the great scrutiny that the digital economy is under at the moment.

As shown by the Commission's questionnaire on contracts for online purchases, the Digital Single Market strategy aims to shine a light on competitiveness and consumer protection in fast moving environment.

Two weeks ago we published an Opinion on developing an ethical approach to tech innovation.

Last week I visited privacy-conscious startups, academics and regulators on a fact finding trip to San Francisco and Silicon Valley.

It is an extraordinary place for its energy and creativity. Many -perhaps most- of the companies have experienced such phenomenal success not only thanks to their innovation and work ethic, but also because of their ability to collect and exploit data, especially personal data.

I spoke to scholars and startups who argued that the revenue model of the Valley is based on monitoring, 'tracking', of people, their relationships and their behaviour.

In other words, surveillance.

Thanks to this revenue model, many benefits for society have emerged and are promised to emerge.

Europe is now seeking, through the digital single market, to realise some of these benefits. But my message is that it can only do so in accordance with the values and principles in the Charter for Fundamental Rights - a document, as I explain to our American counterparts, with an equivalent status in the EU to the US constitution.

So we are doing a lot of thinking about the implications for society and the individual of more and more activity moving on line.

We are more and more convinced that digital tech is changing the parameters for regulators - whether antitrust or data protection authorities, such as ourselves.

- Technology in many ways is empowering people and offering huge potential societal benefits,
- but it may also be shoehorning individuals into categories which they lack the information and awareness to challenge.

Aided by our ongoing dialogue with the Commission and others in the antitrust community, we are looking at how we can ensure greater accountability and transparency in how personal data is handled. The General Data Protection Regulation, expected to be adopted in a few months, is our unique opportunity to entrench these principles for a generation.

Competition enforcement is the site of intense corporate litigation. But our concern is the individual in the middle. We have concerns about information asymmetry, about people's growing sense of lack of control over what happens to information about them.

Competition, data protection and consumer law present an opportunity for cross-fertilisation and joined up thinking which can better safeguard the interests of the individual.

Take for instance big data.

People get very excited about big data – in fact we are probably at 'peak big data' in terms of the buzz around the term. Competition authorities see it as key for enabling targeted advertising which can provide a boost to new entrants to the market.

But targeted ads are not the problem in themselves.

The problem is people not having any choice in whether they are watched and tracked online.

It's reported that there over 50 instances of data collection in a visit to a single website.

Business and governments want to monitor human behaviour now and to predict future behaviour – that's the true value of big data.

Antitrust regulators need to work with others to reach a common understanding of how to embrace the social benefits of powerful data crunching while avoiding harm to the individual and respecting the fundamental rights to privacy and to data protection.

Our objective, as a data protection regulator, is not to interfere with the work of antitrust and consumer authorities. But we need to move out of the silos and learn from one another.

We should be prepared for potential abuse of dominance cases which also may involve a breach of data protection rules –like misleading privacy policies- or preventing more privacy-friendly services from entering the market. Still more seriously, we should be prepared for cases which involve unfair discrimination, by pricing or other means.

Companies in Silicon Valley and the Bay Area which want to avoid tracking people have great difficulties entering the market.

This is a fact.

With the Internet which has emerged, people don't want to pay for services. So companies inevitably have to collect data and try to monetise it, traditionally through offering the data and profiles to advertisers.

This model, if companies are transparent and accountable, is not necessarily a bad thing. But the dominant undertakings which are making billions from this model cannot now backtrack - they will be punished by their shareholders.

These are difficult questions.

I am fully aware of the need for competition law to be enforced in an objective way.

But for me there is a clear need for more coherence.

We should consider appropriate remedies which address both anticompetitive practices and flaws in data protection.

We would like to see a *digital regulation clearing house*, a mechanism where authorities responsible for monitoring potential abuses in the digital sector can meet and explore opportunities to promote competitive services which benefit individual, not only in terms of 'price'.

This could help put real flesh on the bones of the digital single market.

So that's our call to action.

Eighteen months since we published our Preliminary Opinion I mentioned to you, the debate has moved forward.

So I intend, in the coming months, to issue a further Opinion including with some specific recommendations for action at EU level as part of the implementation of the Digital Single Market strategy.

Data protection needs to adjust to the era of big data, and so does competition law.

My special thanks to all at ERA who have worked so hard to make this event happen.

And thank you for your attention and for your participation in today's discussions.