

Data Aggregation in the Competition Law Analysis



Big Data in the Platform Economy
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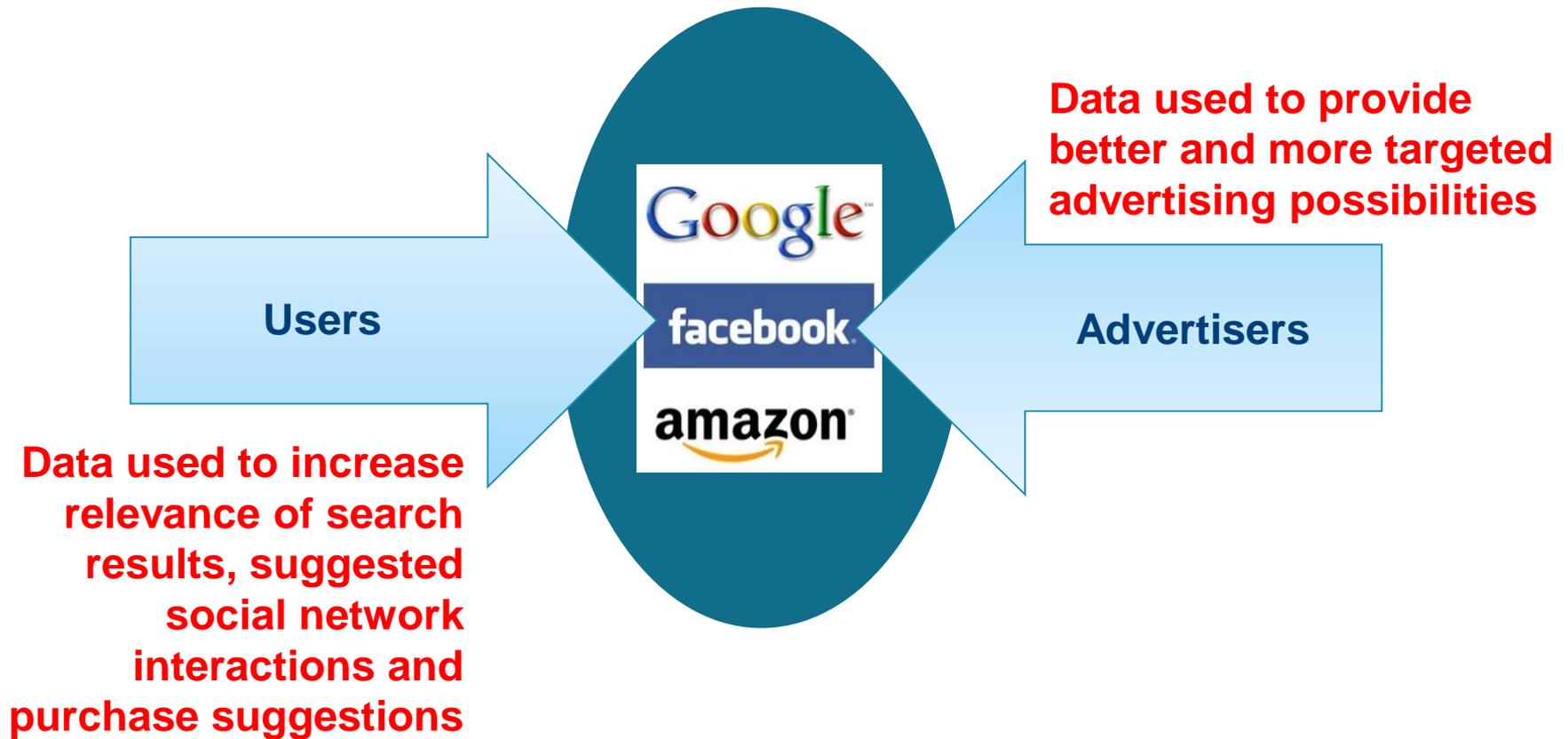


Relevance of data to competition law

Speech Commissioner Vestager ‘**Competition in a big data world**’ (Jan. 2016):

‘If a company’s use of data is so bad for competition that it outweighs the benefits, we may have to step in to restore a level playing field. But we shouldn’t take action just because a company holds a lot of data. After all, data doesn’t automatically equal power’.

Data in a two-sided business model



Economic characteristics of data

- Economies of scale and scope relating to data
 - Volume and variety of data provides benefit to providers
- Data as a network effect
 - Data also provides benefit to customers
- Feedback loop

Is data an entry barrier?

No	Yes
Data is a non-rivalrous good	Access to data can be made exclusive
Data is widely available	Specific data is needed to operate an online platform
Users multi-home	Network effects reduce the possibility for users to multi-home

Nuanced approach: volume and variety of data may form a barrier to entry

BUT there are diminishing returns to scale

Market definition of online platforms

- Search engines:
 - *Microsoft/Yahoo* merger: analysis of online advertising market; existence of market for online search was left open
 - Ongoing *Google* case: practices on the market for online search advertising and the market for online search
- *Facebook/WhatsApp* merger:
 - Relevant market for online advertising and potential sub-markets
 - Potential relevant market for communications apps and social networks
- Market definition based on services provided

Market for data?

- [2012 speech](#) former Competition Commissioner Almunia: *'we have not had to define a market for personal data or for any of its particular usages'*
- 2014 *Facebook/WhatsApp* merger: parties were not active in potential markets for the provision of data or data analytics services
- Market for data has been defined in cases where it was truly traded as a product:
 - *TomTom/TeleAtlas*: databases of digital maps
 - *Thomson/Reuters*: databases of financial information
- In online platforms, data is usually 'merely' used as input

Market for data?

- Definition of a hypothetical or potential market for data in addition to the relevant markets for the services provided
- More forward-looking and dynamic analysis:
 - Data is not just an input, but also enables market players to detect trends for potential new products
- Reflects market reality:
 - Mergers and particular types of conduct seem to be incentivised by the prospect of having extra data

Combination of datasets in mergers

- US FTC Commissioner Pamela Jones Harbour suggested in her dissenting statement in *Google/DoubleClick*:
to define ‘*a putative relevant product market comprising data that may be useful to advertisers and publishers who wish to engage in behavioral targeting*’
- *Google/Nest* merger in the US:
 - Nest did not compete with Google in any relevant product market
 - Merger possibly reinforced Google’s position with regard to access to data about the behaviour of consumers

Market for data?

- Substitutability of data:
 - Online versus offline data
 - Different types of online data
- US *PeopleBrowsr/Twitter* case:
 - Twitter discontinued PeopleBrowsr's full access to its tweets
 - PeopleBrowsr argued that:
 - Twitter data is a '*unique and essential input*'
 - social networking sites like Facebook '*do not provide the same rich set of public data regarding users' sentiments and influence*'

Market power in data

- Combination of factors which leads to strong market position of incumbents:
 - Next to data, need for a well-functioning algorithm
 - Because of transient nature of data, a stable user base provides a competitive advantage for incumbents
- Ability to adapt to the changing intentions of users as soon as possible

Market power in data

- How can value be attributed to data?
 - Volume or quality of data do not seem to constitute adequate indicators
 - Instead, look at the ability of an undertaking to monetise the collected information
- Share of total turnover earned by undertakings active in a potential market for data

Market power in data

- Potential competition as an alternative proxy for dominance – some relevant indicators:
 - data is a significant input into end products;
 - incumbent protects the exclusivity of its dataset so that competitors cannot freely access the necessary data;
 - there are few or no actual substitutes readily available on the market;
 - it is not viable for a potential competitor to collect data itself in order to develop a new dataset with a comparable scope to that of the incumbent

Conclusion

- Situations can be identified in which data forms an entry barrier
- There is a need to define a potential market for data even if data is not traded as a stand-alone product
- Data can be a source of market power and should be analysed as such

See also:

**‘Market Definition and Market Power in Data:
The Case of Online Platforms’,
World Competition, 38(4), 2015, p. 473-506**



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