

**BOOTCAMP:**

**AN INTRODUCTION TO  
COMPETITION LAW**

# OVERVIEW

1. Legal basis and goals
2. Personal scope and market definition
3. Market power and data power
4. Anti-competitive agreements
5. Abuse of dominance
6. Merger control

# LEGAL BASIS AND GOALS

# Competition law in its broader context

- Article 3(3) TEU:

The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

- Article 7 TFEU: The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral.

- Policy linking clauses: eg Article 12 TFEU: Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities.



Anti-  
competitive  
agreements

# Abuse of a dominant position





Concentrations (mergers, acquisitions  
and joint ventures)

## Open-textured legal provisions...

Competition law provisions are often worded in a vague and open-ended way..

For example: Article 102 TFEU prohibits 'abuses' of a dominant position while s.2 Sherman Act (US) prohibits 'monopolisation'

The advantage of such an approach is flexibility, the disadvantage is a challenge to legal certainty (cf. for instance, Dunne on *Regulatory Competition*).



# Goals of Competition law...

Economic freedom – Ordoliberalism

Market Integration – ‘The Single Market Imperative’

Economic Efficiency – Consumer Welfare standard

Individual well-being?

→ Not clarified by positive EU law (Lianos),  
normative perspective needed

# CONSUMER WELFARE: BACKGROUND

Definition in Commission Guidance on Article 102 TFEU:

Consumers benefit from competition through lower prices, better quality and a wider choice of new or improved goods and services. [5]



Standard rejected by the Court?

# CONSUMER WELFARE: COURT OF JUSTICE

Two reasons:

1. ‘...there is nothing in that provision to indicate that only those agreements which deprive consumers of certain advantages may have an anti-competitive object.’
2. The Court had held that, like other competition rules laid down in the Treaty, Article [101 TFEU] aims to protect not only the interests of competitors or of consumers, but also the **structure of the market** and, in so doing, competition as such.

# COMMON TIES

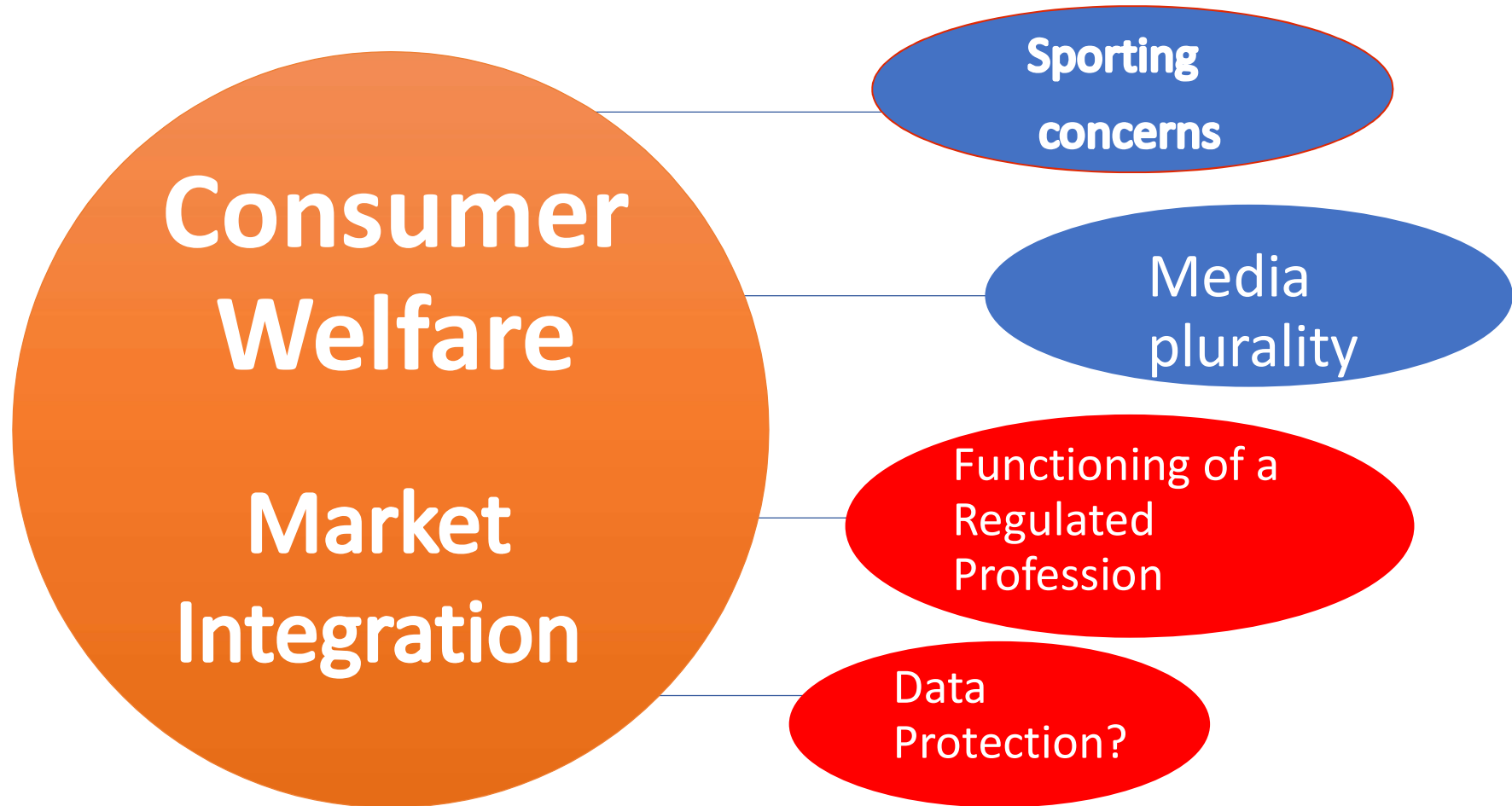
Share 'market integration' as a common objective

Focus on amelioration of conditions for individuals – through 'consumer welfare' and through 'micro-rights' in data protection

Correction of market failures: at different levels.

Agnostic as to a desirability of a market *for* personal data

# INTERNAL/EXTERNAL CONSTRAINT



# DATA PROTECTION AS A COMPETITION PROBLEM?

Personal data as a barrier to entry?

Restrictive agreements: cartels? Vertical foreclosure?

Practices of a dominant firm:

- Exploitative: 'unfair' data processing
- Exclusionary: 'predatory privacy', refusal to supply

Merger leading to deterioration in quality of data use policies

# Characteristics of data

- Data is non-exclusive and non-rivalrous
- Data has decreasing returns to scale, and may get stale over time
- Data is ubiquitous, inexpensive and easy to get

BUT

- Data collection can be limited by contractual restriction, hard (e.g. build sufficiently attractive platform) or unreliable
- Data storage: requires data centres
- Data analytics: loop effect

# Undertaking

- Every entity engaged in economic activity, regardless of status
- Excluded from "economic activity":
  - Activities based on solidarity (*Poucet Pistre*) or collective bargaining for labor (*Albany*)
  - Exercise of public powers (*Eurocontrol*)
  - Procurement ancillary to non-economic activity (*FENIN*)



# Single economic entity

- Unitary organization of personal, tangible and intangible elements, which pursue a specific economic aim on a long term basis
- “Decisive influence”, paying attention to economic, organizational and legal links between legal entities
- Actual exercise of control, but presumption where a company has 100%
- Joint and several liability for parent and subsidiary
- May lead to collective dominance

## Small but Significant Non-transitory Increase in Price

- Most competition authorities, e.g. those in the US, EU and UK, use a test based on **whether a hypothetical monopolist could profitably raise its price.**
- This depends crucially upon whether a sufficient number of consumers would switch to closest substitute.
- This test is done for both product market (product substitutes) and geographic market (area substitutes).
- Japanese FTC proposed 'SSNIC': Small Significant and Non-transitory Increase in Costs

# Supply-side considerations

- **Supply-side substitution**: short-term, little or no investment
- **Potential competition**: medium- to long-term, substantial investment

# Important concepts for market definition

- Fungibility of data
- Scale
- Two-sidedness
- Network effects: direct and indirect
- Multi-homing
- Switching costs

# MARKET POWER AND DATA POWER

Market Power...

...is the ability of a firm or group of firms 'to profitably increase prices, reduce output, choice or quality of goods and services, diminish innovation, or otherwise influence parameters of competition'.

*Guidelines on the Assessment of Horizontal Mergers, [8].*

# Relevant factors

•After defining the relevant market, identifying market power will depend on:

## 1. Market shares

## 2. Entry barriers, limiting competition such as:

- property rights [e.g. patents]
- strong cost advantages over other potential producers [e.g. learning-by-doing]
- the cost structure is such that average costs fall with production over the relevant range of output [natural monopoly]

## 3. Contravening buying power: when consumers have sufficient bargaining power to counterbalance the suppliers' market power.

Digital markets: the complications when assessing market power

*Underestimates the role of data, and data-driven network effects*

*-Data treated as ubiquitous, non-rival and fungible*

*-Scale, scope and speed of processing*

*Difficulty in assessing competition in zero-priced markets*



# Data Power and other alternatives

Conseil National du Numerique (2014): consider factors other than market share, such as the power to “undermine innovation through control of key resources, critical access points, visibility, information’.

EDPS (2018): Apple/Shazam: encouraged the Commission to focus on “informational power”

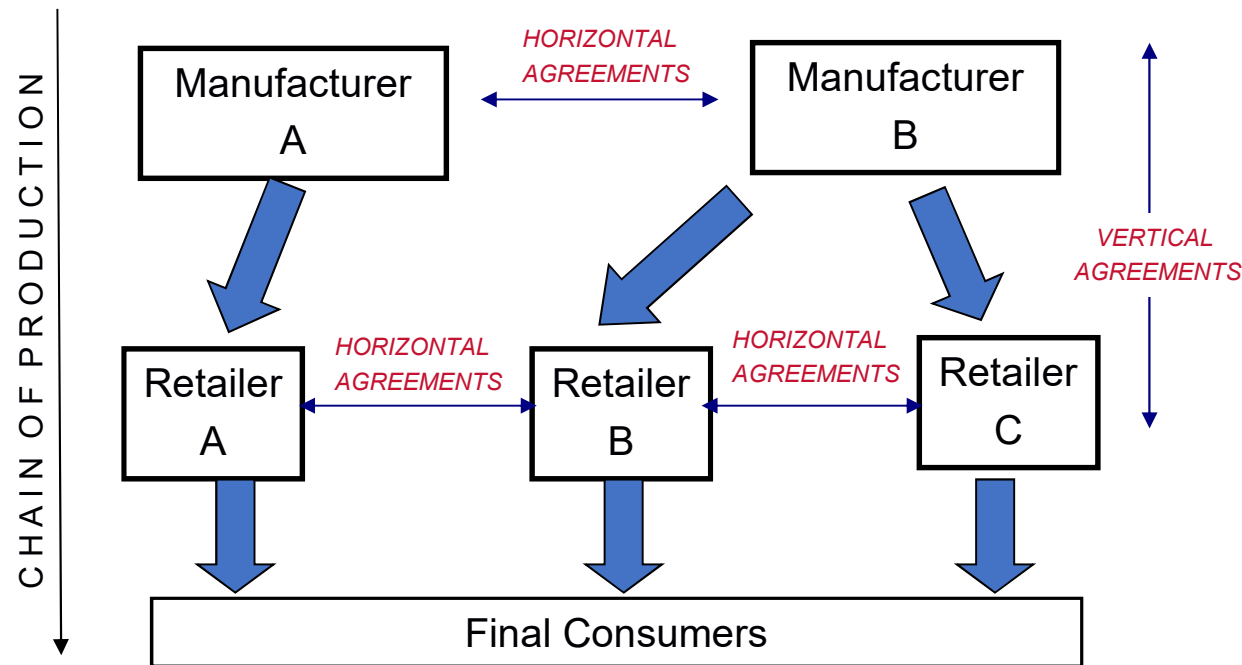
Lynskey (2019): data power as ability to control the flow of information between participants in the digital ecosystem, and to gather data about the actions of each of these parties in the digital sphere

Furman report (2019): focus on the strategic market status of firms.

# Article 101

- 1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:
  - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
  - (b) limit or control production, markets, technical development, or investment;
  - (c) share markets or sources of supply; (...)

Article 101(1) applies to *vertical* as well as *horizontal*



# Agreements

- Restriction of competition on price, quantity or quality
- ...but also exchange of information, as it enables a substitution of the risks of competition with practical cooperation. E.g:
  - *Asnef-Equifax*: pool on creditworthiness register for potential lenders.
  - *John Deere*: UK Agricultural Tractor Registration Exchange, pool of historical data for profiling purposes
- Out of the scope of 101: ancillary agreements
  - Commercial ancillarity: e.g. non-compete clauses
  - Regulatory ancillarity: *Wouters* and *Meca Medina*

## Exempted agreements: art 101 (3)

1. [*Improvement*] contribute to improving the production or distribution of goods or to promoting technical or economic progress
  2. [*Fair share to consumers*] allow consumers a fair share of the resulting benefit
  3. [*Indispensability*] do not impose on the firms concerned restrictions which are not indispensable to the attainment of these objectives
  4. [*No elimination of competition*] do not afford such firms the possibility of eliminating competition in respect of a substantial part of the products in question
- *N.B:* no cross-market efficiencies unless substantial consumer commonality. But for 2sided markets.. (*Mastercard*)

# Vertical agreements

- Tension between
    - **Inter-brand competition** = competition between products of different manufacturers.
      - E.g. Coca Cola vs Pepsi
    - **Intra-brand competition** = competition between the distributors/retailers of the same manufacturer.
      - E.g. Sainsbury's vs Tesco selling Coca Cola
- Assessment heavily dependent on market power of parties
- This is why we have a Vertical Block Exemption Regulation

# Exclusive and selective distribution

- **Exclusive distribution**

- May reduce intra-brand competition; foreclosure of competition at the distribution level.

- • VBER: exempt if neither supplier nor buyer market share exceeds 30% and there are no hard-core restrictions

- **Selective distribution**

- If based on **objective qualitative criteria** may not infringe Article 101(1) (if the nature of the product requires it; applied objectively; does not go beyond what is necessary).

# Price parity clauses

- **Most Favoured Nation** clauses (MFN): sellers through a retail platform agree not to sell at a lower price elsewhere, including through other retailers' platforms.
- **Possible anticompetitive effects:** reduction of intra-brand competition; reduction of inter-brand competition between platforms; facilitate collusion.
- **Possible pro-competitive effects:** allows platforms to recoup investment and avoid free-riding



# Booking.com: diverging approaches in EU

- • France, Italy, Sweden, etc.: wide MFNs are anticompetitive
  - Less competition between competing platforms
  - Foreclosure of new entrants
  - Effect reinforced by pervasiveness of the clause on the market
- • Germany: also takes issue with narrow MFNs
  - Infringe the hotels' freedom to set their own prices
  - Makes market entry more difficult for new platforms

# Article 102 TFEU

- Abuse of a dominant position [...] may, in particular, consist in:
- (a) directly or indirectly imposing **unfair** purchase or selling **prices or** other unfair **trading conditions**;
- (b) **limiting** production, markets or technical development to the prejudice of consumers;
- (c) applying **dissimilar conditions** to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of **supplementary obligations** which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

# Special responsibility

- “[Article 102] is **not only aimed at practices which may cause damage to consumers directly**, but also at those which are detrimental to them through their impact on an effective competition structure” – Case 6/72, *Continental Can v Commission*
- • “A finding that an undertaking has a dominant position ... simply means that, irrespective of the reasons for which it has such a dominant position, the undertaking concerned has a **special responsibility not to allow its conduct to impair genuine undistorted competition** in the common market” – Case 322/81, *Michelin v Commission*

# Typology of abuses with data

- Exclusionary abuses
  - Refusal to give access to an essential facility (e.g. French *GDF Suez* case)
- Exploitative abuses
  - Excessive data/unfair conditions (Facebook case)
- Ambivalent
  - Tying (Facebook case)
  - Discrimination

# Conditions for Essential Facility Doctrine

- 1. Dominance in upstream market
- 2. Product is **indispensable** to compete in downstream market
- 3. Refusal likely to lead to **elimination of competition** in downstream market
- 4. [New product requirement] [with IP rights]
- 5. No objective justification
  - EFD: There are technical, legal and economic obstacles that make it impossible or unreasonably difficult to operate on the downstream market to develop (possibly in cooperation with other companies) products or services
  -

# Factors to identify data-related power

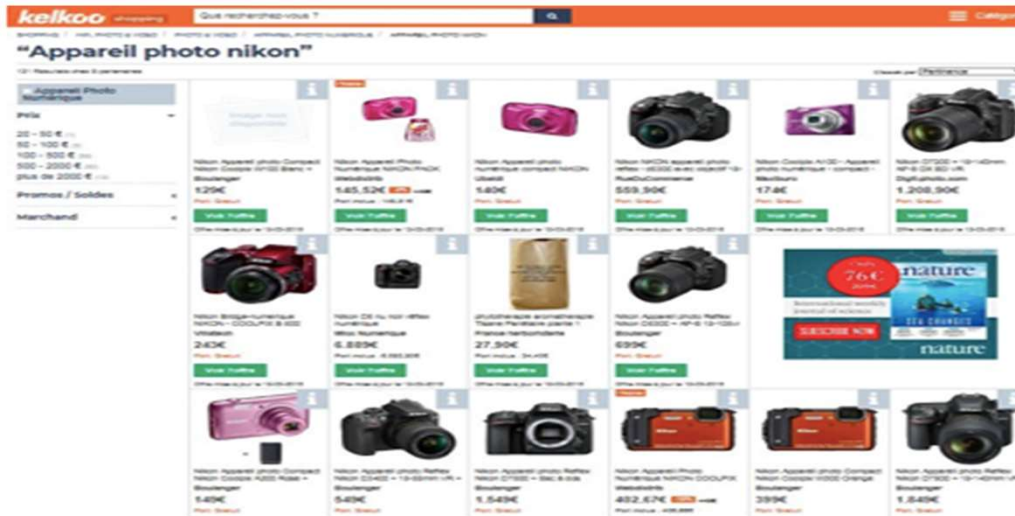
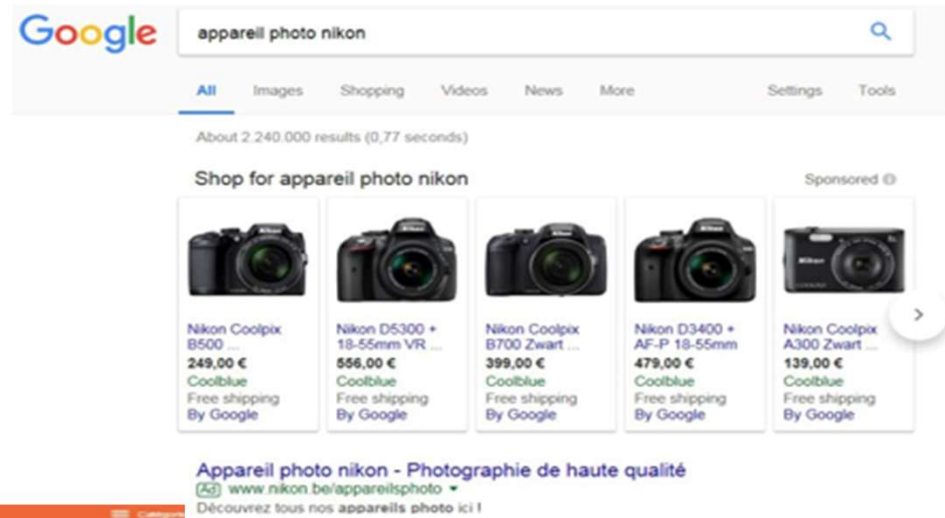
Factor		Effect on market power
1	<b>Exclusivity</b> – Is the data exclusively available to one company or can other companies obtain access as well?	+
2	<b>Learning effects</b> -Does the use of data contribute to learning effects that can be used to improve the product or service?	+
3	<b>Orchestration of interaction on a network</b> - Is data used to bring together various types of users on a platform?	+
4	<b>Complementary assets</b> -Are there any assets that can be considered complementary to the data? Are they exclusive or are substitutes available?	+
5	<b>Competing business models</b> - Are there any companies that use a different business model but compete with the company considered?	-

# Discrimination

- **(i) dissimilar conditions in (ii) equivalent transactions between (iii) trading parties, thereby (iv) placing them at competitive advantage**
  - (i) + (ii) -> any differential treatment not obj. justified (*BPB*)
  - (iii) --> "business contacts" (*BdKEP*)
- (iv) "competitive disadvantage" not always enforced (see *United Brands*, *Corsica Ferries*, *Deutsche Post*) and recently relaxed in *MEO* (sufficient that behaviour is *capable* of distorting competition)

# Google Shopping (2017)

More favourable positioning and display than competing comparison shopping sites



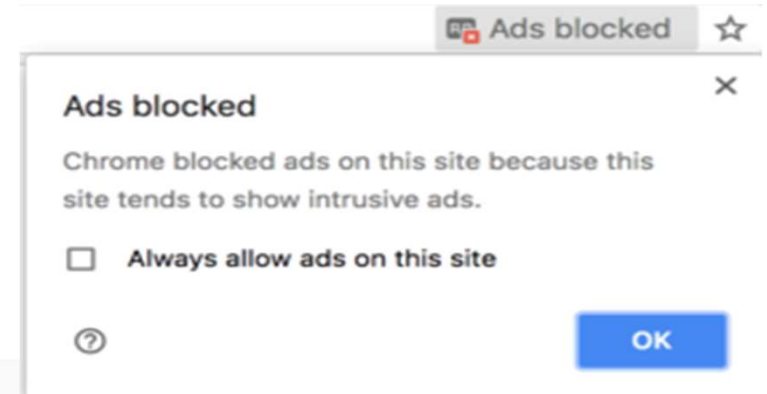
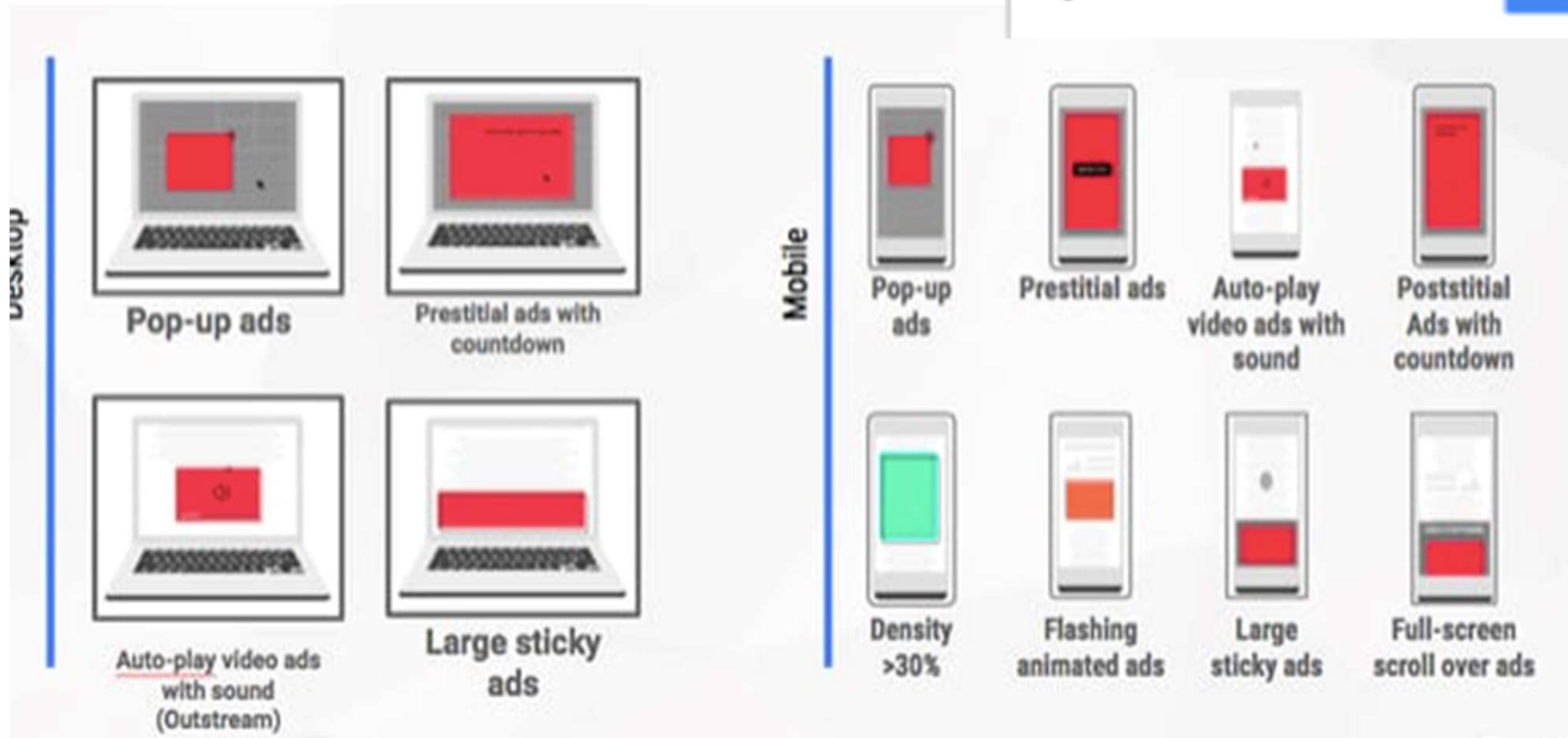
The EC “does not object to Google applying *certain* relevance standards, but to the fact that Google’s own comparison shopping service is not subject to those same standards as competing comparison shopping services”.



# Tying & bundling

- Elements required for the tying/bundling to be abusive:
  - Two (or more) **distinct products**
  - **Coercion** of customer to purchase both products
  - Potential detriment to competition by **foreclosure**
- *Microsoft IE*: Coercion element satisfied by reference to consumer inertia:
  - Downloading is viewed as complicated by a not insignificant number of users, although not the sophisticated ones
  - No need for use, *likelihood of use* is sufficient: consumers had an *incentive* to use it to the exclusion of better products

# Chrome's ad blocking



What if the "big 5" psychometric profiles are used...

### Exposure of consumers to ads based on psychological profiles

Personality Dimension	People who are rated as high in this dimension could be
Extraversion	Active, assertive, energetic, enthusiastic, outgoing, talkative
Agreeableness	Appreciative, forgiving, generous, kind, sympathetic, trusting
Conscientiousness	Efficient, organized, planful, reliable, responsible, thorough
Neuroticism	Anxious, self-pitying, tense, touchy, unstable, worrying
Openness	Artistic, curious, imaginative, insightful, original, wide interests

# Exploitation: unfair pricing

- **Guidance paper:** only “where the protection of consumers...cannot otherwise be adequately ensured”
- *United Brand* test:
- (1) whether the difference between the costs actually incurred and the price actually charged is excessive, and (2) whether a price has been imposed which is either unfair in itself or when compared to competing products
- **Benchmarking:** using comparables to show both the excessiveness and the unfairness of a price, specifically that the price difference is both significant and persistent

## Exploitation: unfair trading conditions

- *SABAM* (1974): 'obligations which are not absolutely necessary for the attainment of [the agreement's] object and which thus encroach unfairly upon a member's freedom to exercise his copyright.
- *Alsatel* (86): unilateral fixation of prices of supplements through contractual modification and automatic 15-year renewal. → Oppressive and one-sided
- *Michelin II*: dealers forced to enter into quantitative commitments before even receiving quantity rebates for the previous year → lack of transparency and oppressiveness

# Facebook case

- *BKA decision* (2016)
- Problem: invalid take-it or leave-it consent
- Appeal to self-determination, not to substitability patterns
- Normative causality
- OLG Düsseldorf sets aside the decision (2019):
- no counterfactual, no causality, data is replicable
- Facebook's terms are not read because of consumer ignorance/convenience, not because of Facebook's dominance

# The need for a coordination framework for data considerations

	P+	PØ	P-
C+	C+, P+  N/A	C+, PØ  N/A	C+, P-  <i>Cooperation need:</i> tip from CA to DPA. Seek DP-friendly remedies
CØ	CØ, P+  N/A	CØ, PØ  N/A	CØ, P-  <i>Cooperation need:</i> tip from CA to DPA. Request preliminary ruling from CA to DPA on whether DP is infringed.
C-	C-, P+  <i>Cooperation need:</i> CA to request DPA's assessment of DP-related defences	C-, PØ  <i>Cooperation need:</i> tip from DPA to CA. Consultation of CA for market definition and market power. Consultation for remedy.	C-, P-  <i>Cooperation need:</i> Coordination at remedy stage

# GENERAL INTRODUCTION TO MERGERS



An outlier policy

*Mergers not treated as an inherently anti-competitive activity (pro-competitive benefits)*

*‘One-stop-shop’ regime established by way of EU Merger Regulation*

*A form of ex ante control: relevant mergers must have pre-clearance for transaction*

## Assessing mergers pursuant to EUMR

*Does the transaction fall within the EUMR's jurisdiction?*

- Is it a concentration?*
- Does it have a 'Union' dimension?*

*On balance, does the transaction lead to a 'significant impediment to effective competition'?*

*What remedies might be proposed to address any anti-competitive concerns raised?*

General scheme pursuant to Guidelines...

*Market definition, and assessment of market concentration*

*Counterfactual*

*Non-coordinated effects: where a merger eliminates important competitive constraints on one or more firms, leading to increased market power*

*Coordinated effects: where the merger changes the nature of competition in such a way so that firms that previously were not coordinating their behaviour are now significantly more likely to coordinate*

Efficiencies...

Should take into account 'substantiated' and 'likely' efficiencies put forward by undertakings.

It is possible that the efficiencies brought about by the concentration counteract the [harmful] effects on competition [...] and that, as a consequence, the concentration would not significantly impede effective competition, in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

*EUMR, Recital (29)*

# Forms of Mergers

*Horizontal mergers: Transactions involving actual or potential competitors on the same relevant market (eg. COMP/M.6281—Microsoft/Skype, 2011)*

Vertical mergers involve companies operating at different levels of the supply chain

Conglomerate mergers involve firms that are in a relationship that is neither horizontal nor vertical, but where the companies concerned are active in closely related markets (e.g. involving producers of complementary products).

Conglomerate mergers are generally viewed more kindly than horizontal mergers:

- Don't restrict direct competition.
- More likely to lead to efficiencies.

# Theory of Harms: Horizontal Mergers

*Non-coordinated effects arise where a merger eliminates important competitive constraints on one or more firms, leading to increased market power*

*The Horizontal Guidelines provides a (non-exhaustive) list factors that may indicate that such effects are likely to arise:*

- *Merging firms have large market shares*
- *Merging firms are close competitors*
- *Customers have limited possibilities of switching supplier*
- *Competitors are unlikely to increase supply if prices increase*
- *Merged entity would be able to hinder expansion by competitors*
- *Merger eliminates an important competitive force (e.g. a 'maverick')*

# Theory of harm: Non-horizontal mergers

Foreclosure: where actual or potential rivals' access to supplies (input foreclosure) or markets (customer foreclosure) is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.

Conglomerate mergers: the merged entity may be in a position to leverage its strong market position in one market into another by means of a tying/bundling or other exclusionary strategy.

# Remedies

Burden of proof with Commission to prove concentration will lead to a SIEC.

Commission cannot unilaterally impose remedies; merging parties must propose commitments that may address competition concerns if identified.

The pecking order for remedies is:

- Divestiture;
- Other structural commitments; and
- Behavioural commitments, which are acceptable only exceptionally.

(Remedies Notice, [17])



# ROLE OF DATA PRIVACY IN MERGERS

## 1. Data privacy as an element of quality:

- Concentration restricts 'quality' of data use policies – use data protection legislation as a normative benchmark.
- Competition on 'data privacy' quality must be a 'key parameter of competition'
- Overlooks role of maverick 'data-privacy protectors' and/or acquisition as a defensive move to stifle future competition

# ROLE OF DATA PRIVACY IN MERGERS

## 2. Data privacy as part of the relevant competitive backdrop

- Data protection as economic regulation; seeks to correct information/power asymmetries
- Merged entity would: 'lack the ability to lock-in patients by limiting or preventing the portability of their data given that, [according to GDPR], users will have the right to ask for the data portability of their personal data'.

*Sanofi/Google/DMI JV*

# EXTERNAL CONSTRAINT

Fundamental rights influence procedural aspects of Comp law (Art 51 – EU Charter)

DG Comp could not impose a remedy or accept a commitment that breaches data protection (GDF example)

The application of Articles 101/102 TFEU excluded due to an external policy goal (Wouters): eg. Data portability standardisation

# DATA PRIVACY AS AN EXTERNAL CONSTRAINT

Data privacy as a fundamental right and/or public good:

- Irrespective of individual preferences, seek to promote core data protection principles
- Positive obligation to ensure the *effectiveness* of rights

Allow for a **non-competition** assessment for privacy and data protection concerns

→ Media plurality precedent

## *Facebook/Whatsapp (2014)*

- Concern in 3 relevant markets:

- (1) consumer communication services: no problem because different, multi-homing and dynamic market.

- (2) social networks: no problem because distant competitors, high number of competitors, overlapping customers; forced transfer of users (tying) would “alienate customers”

- (3) Online advertising services: WA can be used to (a) introduce advertising; or (b) as a potential source of user data.

- (a) Would require change of WA’s “no ads”&privacy policy, likely alienating users who are accustomed to EtoE encryption.(+ many other competitors remain)

- (b) It would require a change of privacy policy (!) and a matching of profiles. In any case, it would only be of marginal utility for FB

## Why are you updating your Terms of Service and Privacy Policy?

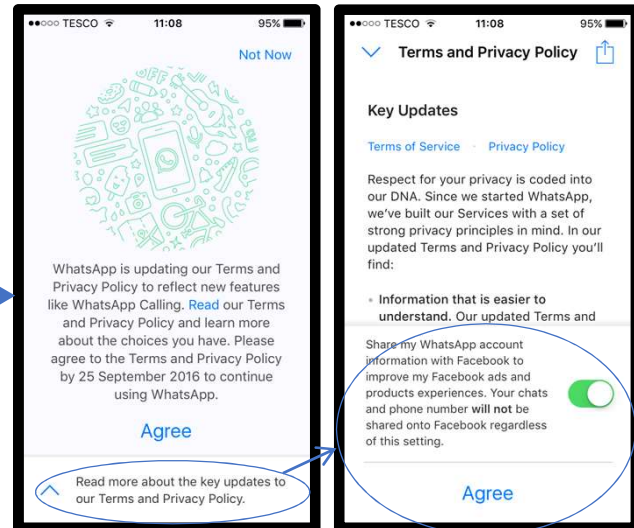
We are updating our Terms of Service and Privacy Policy to make them easier to understand and to reflect new WhatsApp features and services. For example, our updated Terms and Privacy Policy refer to new features such as WhatsApp Calling, WhatsApp for web and desktop, and end-to-end encryption, as well as our plans to help you communicate with businesses using our service. They also explain that we are part of the **Facebook family of companies**. While WhatsApp will continue to operate as a separate service from Facebook, **we plan to share some information with Facebook and the Facebook family of companies** that will allow us to coordinate more and improve experiences across our services and those of Facebook and the Facebook family.

## The Facebook Companies

In addition to the services offered by Facebook Inc. and Facebook Ireland Ltd, Facebook owns and operates each of the companies listed below, in accordance with their respective terms of service and privacy policies. We may share information about you within our family of companies to facilitate, support and integrate their activities and improve our services. For more information on the Facebook Companies' privacy practices and how they treat individuals' information, please visit the following links:

- Facebook Payments Inc. ([https://www.facebook.com/payments\\_terms/privacy](https://www.facebook.com/payments_terms/privacy))
- Atlas (<http://atlassolutions.com/privacy-policy>)
- Instagram LLC (<http://instagram.com/about/legal/privacy/>)
- Onavo ([http://www.onavo.com/privacy\\_policy](http://www.onavo.com/privacy_policy))
- Parse (<https://parse.com/about/privacy>)
- Moves (<http://moves-app.com/privacy>)
- Oculus (<http://www.oculus.com/privacy/>)
- LiveRail (<http://www.liverail.com/privacy-policy/>)
- WhatsApp Inc. (<http://www.whatsapp.com/legal/Privacy>)
- Masquerade (<https://www.facebook.com/msqrd/privacy>)

## Mobile App ToS update



## What information is being shared with Facebook and the Facebook family of companies?

We plan to share some information with Facebook and the Facebook family of companies that will allow us to coordinate more, such as to fight spam and abuse, and improve experiences across our services and those of Facebook and the Facebook family. For example, **once you have accepted our updated Terms and Privacy Policy, we will share some of your account information** with Facebook and the Facebook family of companies, like the **phone number** you verified when you registered with WhatsApp, as well as the last time you used our service.

- **Your Account Information.** You provide your **mobile phone number** to create a WhatsApp account. You provide us the phone numbers in your mobile address book on a regular basis, including those of both the users of our Services and your other contacts. You confirm you are authorized to provide us such numbers. You may also add other information to your account, such as a profile name, profile picture, and status message.

1. Text and 'opt-out' not visible until user clicks 'Read More'
2. If user opts-OUT, they must still click 'Agree'.
3. 'Agree' = Facebook and The Facebook family of companies will still receive and use this information for other purposes such as improving infrastructure and delivery systems, understanding how our services or theirs are used, securing systems, and fighting spam, abuse, or infringement activities.
4. A users phone number will still be shared with Facebook even if they opt-out.
5. An opt-out **only applies** to the **sharing of account information with Facebook** to improve Facebook **Ads** and **product experiences** (note language used in opt-out - it does not state 'Facebook Family of companies')

# Apple/Shazam

- **Parties:** IT company providing inter alia music streaming, and a developer and distributor of music recognition apps/s
- **Concern:** Apple would take advantage post-transaction of the information acquired by Shazam, to target rivals' customers with personalized advertising. Despite the existence of legal and contractual constraints on the use of Customer App Information, the Commission assessed it.
- **Outcome:** cleared. Ability to access the Customer App Information on Android is not limited to Shazam and would not be limited to Apple post-Transaction (unlike for iOS). Second, Apple promised to change Shazam's privacy policy. Third, low market power of Shazam.

# Sales & profits= only one piece of the puzzle...

Figure 2: Measures of digital platform success

Metric	Companies that use the metric
Revenue	Booking.com, SAP, Uber
Funnel of transaction/transaction volume   number of people travelling	Booking.com, BlaBlaCar
Profit and market share	Uber
Number of participants (consumers, suppliers)   “gravity of the platform”, e.g. how many complementors   number of active users	Booking.com, SAP, Deutsche Bank
Quality (customer satisfaction ratings, surveys)	Booking.com, Door2Door, SAP
Supply – number of rooms and number of properties	Booking.com
Customer adoption rate   customer engagement   customer experiences and outcomes   customer health score   customer acquisition costs	SAP, Deutsche Bank, GE Digital, BlaBlaCar
Prevalence of multi-homing	Lyft
Killer application	Alibaba
Culture and talent – talent adoption – “integrated talent management score”	GE Digital
Share of revenues from digital sales	Klöckner
Membership	BlaBlaCar
Utilization rate	Door2Door
Share of ecosystem revenue captured by partners, share captured by platform	Alibaba, SAP
Share of organic new users to paid new users	Uber, Lyft
Match rate	Alibaba, Uber, Lyft

Source: Deloitte analysis and author



# OBJECTIONS TO A HOLISTIC APPROACH

Detrimental to the internal coherence of the discipline

- 'When everything is relevant, nothing is dispositive' (Easterbrook)
- Incommensurability
- Competition lawyers ill-equipped to apply non-competition norms
- 'Instrumentalisation' of competition law

## • **BENEFITS OF A HOLISTIC APPROACH**

Administrative efficiency

Debunks idea that efficiency and well-being are synonymous

Legal necessity – policy-linking clauses and principle of collective responsibility