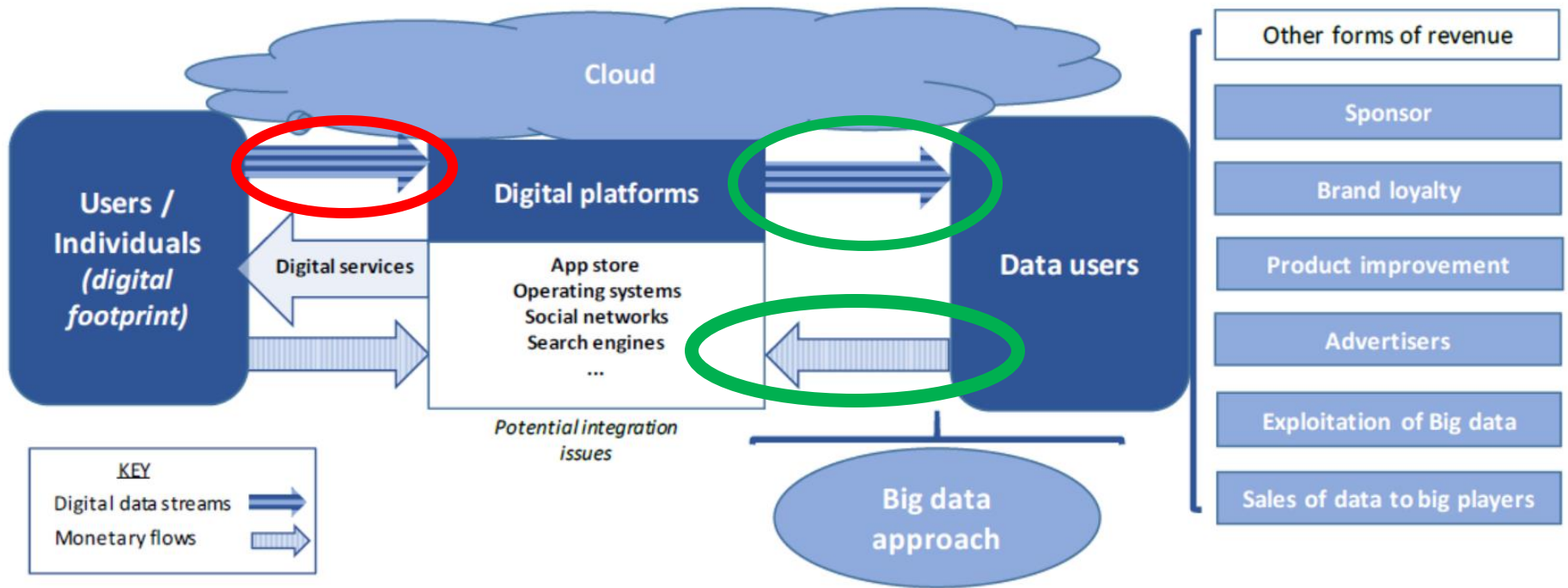


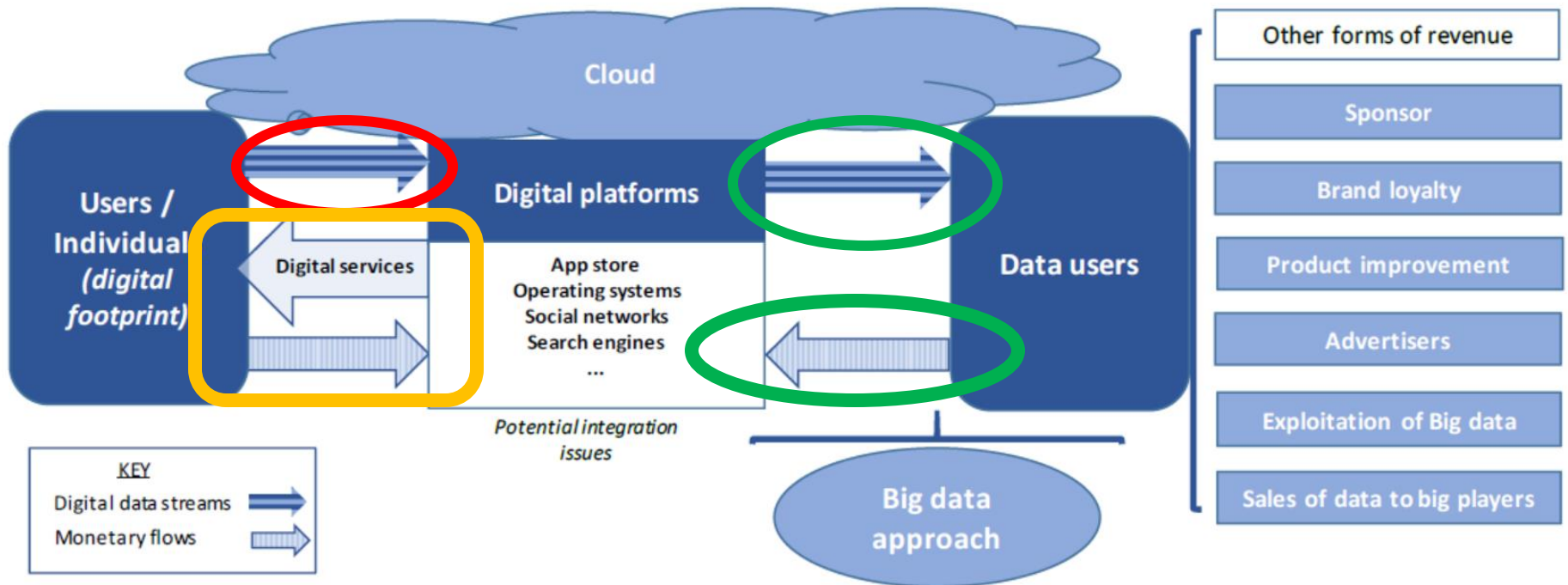
Excessive data extraction as an abuse of dominance: how and why?

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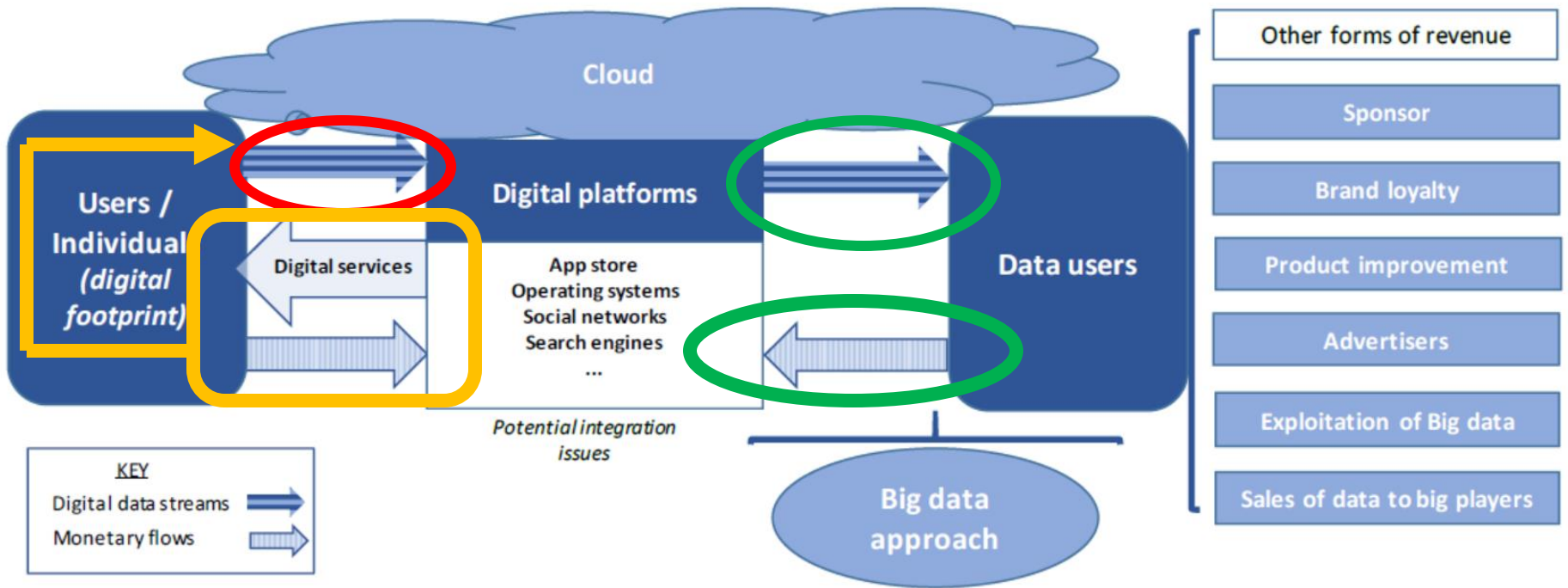
Synthetic representation of the double-side market applied to digital data

Source: AGCOM Big Data Interim Report (2018)



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"So more users more information, more information more users, more advertisers more users, more users more advertisers, it's a beautiful thing, lather, rinse repeat, that's what I do for a living."

Jonathan Rosenberg, former Google Senior Vice President of Product Management and Marketing (2008) quoted in *Google/Android* fn.943

Excessive data extraction as an abuse of dominance: the German way

FB is dominant in the 'private social network market'

- Excludes YouTube, Snapchat, Twitter, WhatsApp, and Instagram
- 95% of daily active users

Abuse: collection of off-FB data & integration with FB data

- **Exploitation of users**: breach of GDPR (ineffective consent) + dominance = abuse
 - Data collection does not harm consumer economically as data can be duplicated
 - Consumer failure to notice use of data is due to their preference not to FB dominance → no causal link btw dominance and abuse/breach of GDPR
 - **CF consumer lock-in/network effects at the time of policy change?**
- **Exclusionary potential**: more data raises entry barriers

EU Competition Law Option 1: Excessive price analogy

UBC: expensive Chiquita bananas

1. **Difference between costs & price is excessive**
2. Price unfair
 - a) **in itself or**
 - b) **compared to other products**

'other ways may be devised, and economic theorists have not failed to think up of several, of selecting the rules for determining whether the price of a product is unfair'

FB: taking too much data

1. **Difference btw benefits to users and amount of data**
2. FB data extraction policy
 - a) **Abuse in itself (GDPR reference)**
 - b) **Compared to other platforms**

Value v price
Abuse > GDPR

EU Competition Law Option 2: Unfair terms

BRT v SABAM:

collecting society & authors

Balance: **freedom of authors** &
**effective management of
copyright for all members**

imposes on its members
obligations which are not
absolutely **necessary for the
attainment of [the collecting
society's] object** ... encroach
unfairly upon a member's
freedom to exercise his copyright

Applied in B2C context?

Balance: **right to data** v **FB business
model**

- Imposing on customer data extraction policies not necessary for:
 - FB business model as a 2-sided platform
- Customer's freedom to exercise right over their data v FB business model: balance
 - GDPR as a benchmark? (e.g. data minimization; awareness of extent of data collection)

EU Competition Law Option 3: exclusionary effects

Google/Android

- **Smartphone OEMS wanting to install Google Play Store must also install Google Search**
 - Tying as an abuse of dominance
 - **Excludes rival smartphone search apps**

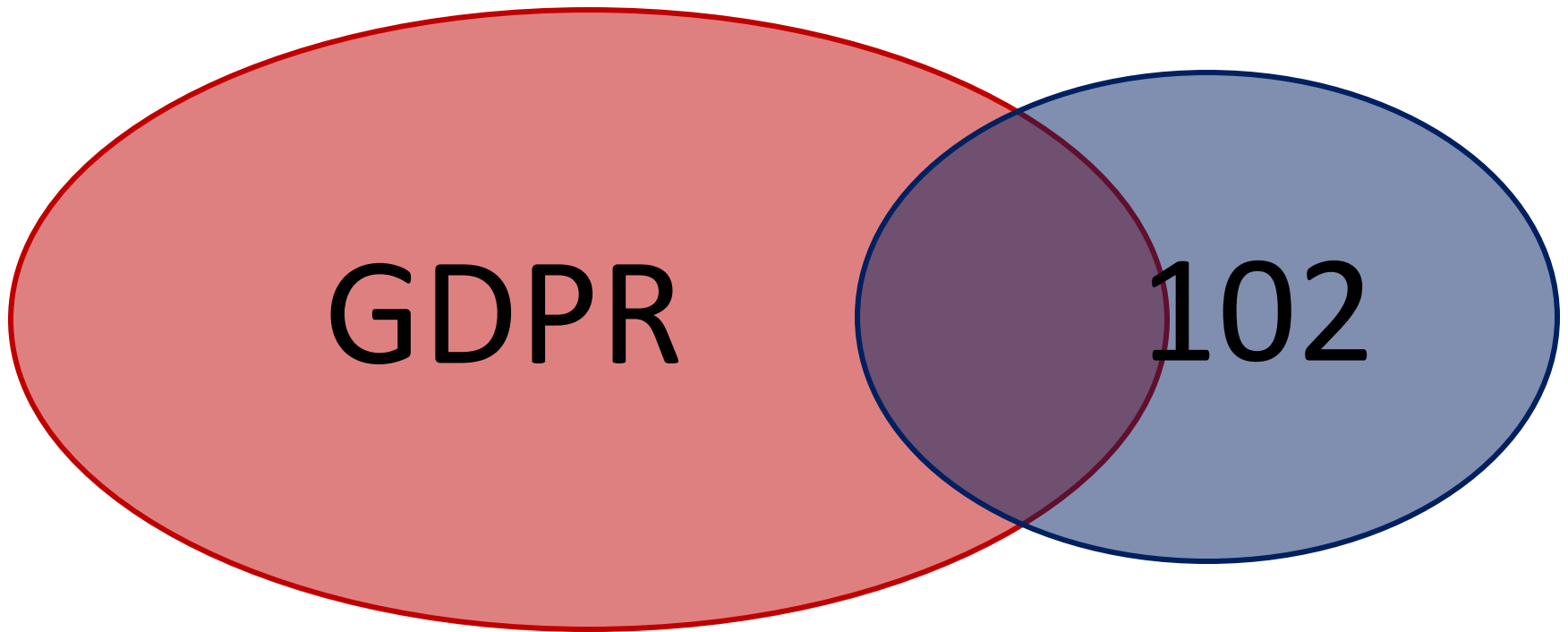
Among the anticompetitive effects

- (976) Google's conduct prevents competing general search services *to gain search queries and the respective revenues and data needed to improve their services*

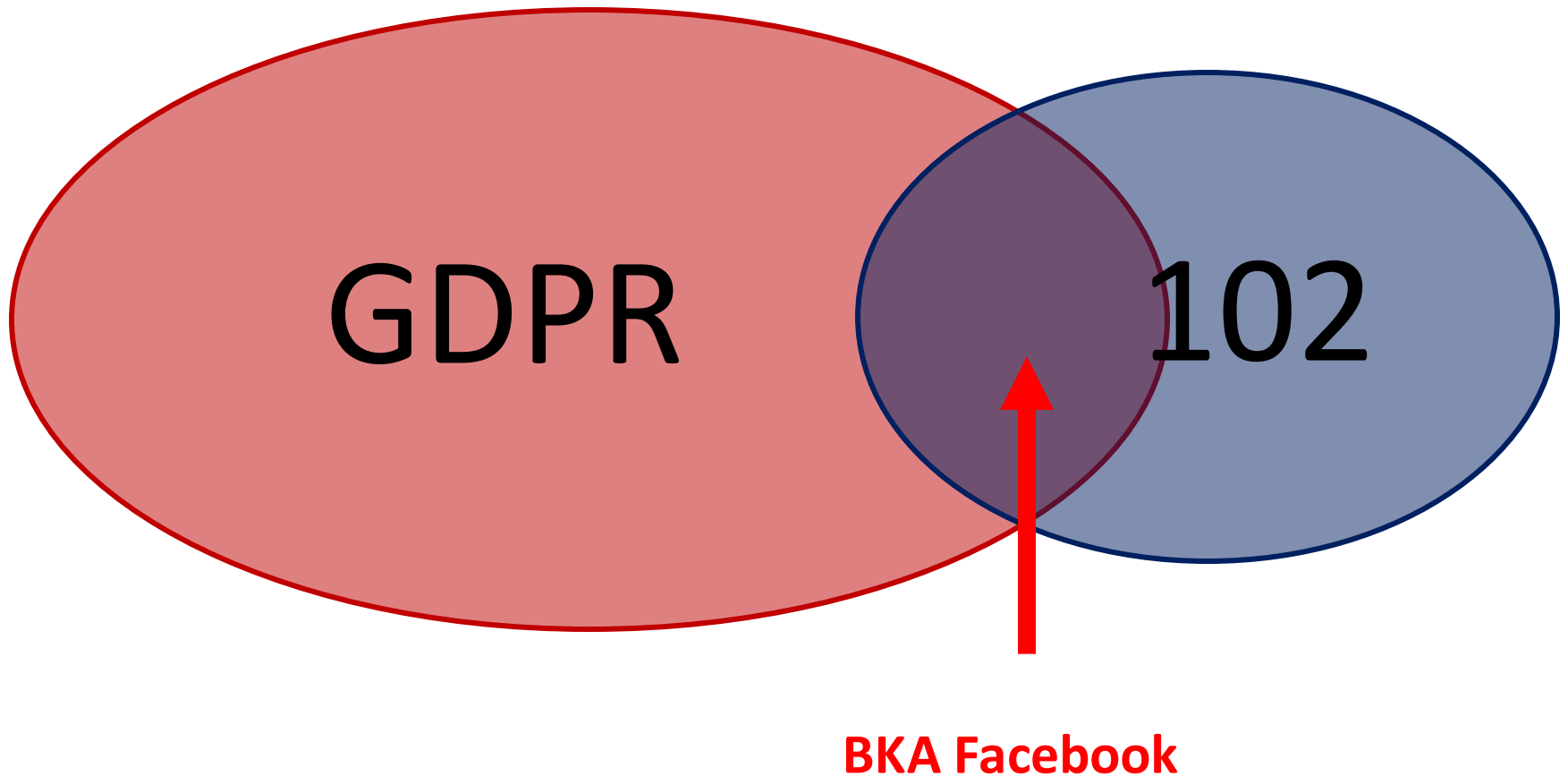
Lesson

- **A data-rich platform acquiring ever more data may foreclose other rivals keen to secure that data**

Excessive data extraction as a competition infringement: why?



Excessive data extraction as a competition infringement: why?



Excessive data extraction as a competition infringement: why?

