

Comments

CPRC Symposium in Osaka

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Habataki Law Office

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Comments

Big Personal Data's

1. Collection

- Unfair Collection (BKA/Facebook [2016-18?])

2. Use

- Market Position of Digital Platformer
(EU/Facebook&WhatsApp [2014], etc.)

3. Transfer

- Refusal to Access (ECJ/Magill [1995], IMS Health [2004], CFI/Microsoft [2007], etc.)

1. Unfair Collection

— BKA/Facebook(2016-18?)

i. BKA's Preliminary Assessment (2017/12)

- a. “Exploitative” Abuse
- b. Comp &/or Data Protection Auth?

“This is an issue on which we will certainly have to focus even more in future.” (Pres.Mundt Jan.2.2018)

- c. post-GDPR (5/2018~)?
- d. Other MSs?/Outside of EEA?

ii. JFTC ?

- a. No “Consent Principle” in JP (excl. Sensitive Data)
- b. “Abuse of Dominant Bargaining Position”?

2. Market Position of Platformer

— EU/Facebook&WhatsApp (2014)

i. App Market — Overlapped/ca.30~40%

a. “Market Share” in Fast-growing Sector

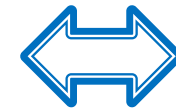
b. Low “Entry Barrier”

c. Low “Switching Cost”

- Value of Data for User

- Data Portability (Control) by User

d. “Multi-Homing”



Network
Effect

2. Market Position of Platformer

— EU/Facebook&WhatsApp (2014)

ii. Online Ad Market — Non-Overlapped

Theory of harm: (ii) FB uses WA's User Data for FB's Ad

a. “Incentive”

- Value of User Data for Ad
- User's Sensitivity against Change in Privacy Policy

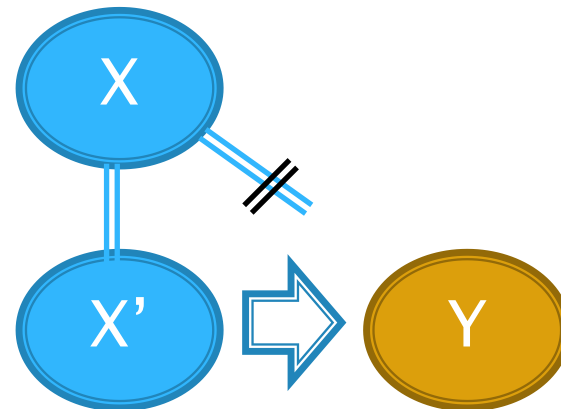
b. “Ability”

- Technology of matching both User Accounts

c. “Effect” to Online Ad Market

- Some Competitors in the market (e.g. Google, Amazon, Apple, etc.)
- Availability of User Data for Competitors (Share of Data Collection)

3. Refusal to Access



- i. “Exceptional Circumstances”
- ii. “Objective Justification”
 - a. Transfer of Personal Data/Consent Principle
 - In case of Comprehensive Consent
 - b. Negative Impact on Innovation or Investment (Microsoft CFI)
 - c. “Nature of Data”
 - “innovative, technological, cultural point of view”? (Magill CFI)
 - Copyright/sui generis right, etc.
- iii. “Indispensability” to access Big Data?
 - “duplication” (EU Commission Guidance)
 - a. Sole source? (Magill’ TV program, MS’s Interoperability Info, etc.)
 - b. de facto Standard? (IMS Health’s 1860 bricks)
 - c. High Entry Barrier by Strong Network Effect + Switching Cost?

Thank you for attention.

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