



# Data, platforms and competition law

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30 March 2018

# Disclaimer

I speak in my personal capacity. Please do not attribute what I say to the European Commission or DG Competition.

# Today's presentation

- 1) Data and platforms
- 2) Examples of how data and platforms have featured in competition law analysis
- 3) Conclusion

# Data & competition law = not a new topic

- 2008: *Google / DoubleClick* and *TomTom / Tele Atlas*
- 2012: Commissioner Almunia's speech (*Competition and personal data protection*)
- 2014: *Facebook / WhatsApp*
- 2016: Commissioner Vestager's speeches; consultation on notification thresholds for mergers; *Microsoft / LinkedIn*

# Perspectives on data

- data as an output
- data as an input / asset
- data as currency / data protection as an element of quality



# Commissioner Vestager on Big Data

*"[...] companies need to make sure they don't use data in a way that stops others competing.*

*But that doesn't mean there's a problem, just because you hold a large amount of data.*

*After all, the whole point of big data is that it has to be big. Because, with the right tools, you can find patterns in a large set of data that you just wouldn't see in a smaller one. And we don't want to discourage companies from putting in the effort to collect that data."*

*- Brussels, 29 September 2016  
("Big Data and Competition")*

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# Perspectives on platforms

- often two-sided, with one side of the platform "paying" with data (e.g. Google search, Facebook)
- can be a tool for new entrants to enter the market
- but can also entrench dominant positions:
  - possibility of network effects / tipping point
  - single homing or multi homing?
  - pre-installed?

# Interaction with other areas of law - data

- C-238/08 – Asnef-Equifax, para. 63 (2006):  
*"since any possible issues relating to the sensitivity of personal data are not, as such, a matter for competition law, they may be resolved on the basis of the relevant provisions governing data protection."*
- EU General Data Protection Regulation
  - Becomes applicable: 25 May 2018
  - Data portability for personal data → more competition





# Interaction with other areas of law - platforms

- Commission Communication on Online Platforms and the Digital Single Market (May 2016)
- Fairness in platform-to-business relations
  - autumn 2017: public consultation
  - Q2 2018: legislative proposal on fairness in platform-to-business relations expected

# EXAMPLES



European Commission

# Example: Google search case

Google

Links to standalone pages of specialised search services

All Shopping Images Videos News More Settings Tools

About 69,500,000 results (0.58 seconds)

**AdWords ("paid search")**

**nike.com - Nike Shoes Range - Buy Today & Get Free Returns**  
[www.nike.com/Shoes](http://www.nike.com/Shoes)  
 Get Fresh, Classic & Iconic Nike Styles. Shop The Latest Nike Shoes Now!  
 Next Day Delivery · Get The Latest Styles · Over 2500 Styles · Returns Are Free & Fast  
 Styles: Air Max, Air Jordan, Air Huaraches, Roshe One, Flyknit

**Nike For Men**  
 Fresh, Vintage & Exclusive Styles For Men. Get The Latest At Nike.com

**Nike Lifestyle**  
 Explore Nike Lifestyle Sneakers and Apparel. Shop Now On Nike.com.

**Nike For Women**  
 Shop Iconic Styles For Women And Find The Full Range Now At Nike.com

**Nike Running**  
 Go The Distance With The Nike Running Collection. Shop Now!

**Nike Collectie bij Zalando - Vind hier de highlights - zalando.be**  
[www.zalando.be/Nike](http://www.zalando.be/Nike)  
 Gratis verzending & retour. 100 dagen gratis retour!  
 Gratis Klantendienst 7/7 · Eenvoudig betalen · 3 tot 4 dagen levertijd · Meer dan 1500 merken  
 Herenschoenen · Nike Collectie · Nike Jongens Collectie · Nike Meisjes Collectie · Damesschoenen

**Nike Shoes - kickz.com**  
[www.kickz.com/Nike-Chaussures](http://www.kickz.com/Nike-Chaussures)  
 4.8 ★★★★★ rating for kickz.com  
 Super Choix de Chaussures Nike chez KICKZ.com - Livraison rapide!

**Generic search results**

**Nike Mens Shoes, Clothing and Accessories. Nike.com (UK)**  
[www.nike.com/gb/en\\_gb/c/men](http://www.nike.com/gb/en_gb/c/men)  
 Shop Nike Store for mens shoes, clothing and accessories. Browse shirts, shorts, trousers, jackets, hoodies, and more for a variety of sports. Order online >

**Women's Shoes & Trainers. Nike.com UK.**  
[store.nike.com/gb/en\\_gb/pw/womens-shoes/7ptZoi3](http://store.nike.com/gb/en_gb/pw/womens-shoes/7ptZoi3)  
 Find women's shoes and trainers at Nike.com. Returns are always free.  
 Running · Gym & Training · Nike Air Max Jewell Premium · New Releases

**Men's Shoes & Trainers. Nike.com CA.**

**Shop for nike shoes on Google** Sponsored

Nike Lunar Mont Royal Golschoen €62.99 Nike Official	Nike Air Max Typha ... €110.00 Nike Official	Nike Wmns Air Presto Shoe ... €87.50 FreshCotton 27% price drop
Nike Air Max 2017 ... €190.00 Nike Official ★★★★★ (57)	Nike Air Force 1 (Ps) - Sneakers €55.00 Sarenza	Nike FS Lite Trainer 4 ... €80.00 Nike Official ★★★★★ (3)
Nike Free RN Flyknit 2017 ... €130.00 Nike Official ★★★★★ (3)	Nike Free RN 2017 ... €110.00 Nike Official ★★★★★ (20)	Nike Air Max 1 Ultra 2.0 €129.90 Stylefile.nl

**Specialised search results (Google Shopping)**

Competition

# Example: Google's dominant position in general search

- Market share
- Barriers to entry and expansion
  - Significant investments
  - More queries → quicker to detect change in user behaviour → quicker to update and improve algorithm → easier to provide relevant results
  - More queries → easier to provide relevant results for infrequent "tail queries"
  - Positive feedback effects between both sides of the platform (general search services and online advertising): more users → higher chance that online advertisement results in sale → search engine can charge higher price to advertisers → more money to re-invest
- Multi-homing is infrequent
  - Minority of users multi-home
  - Brand effects
- Lack of countervailing buyer power

# Example: Microsoft / LinkedIn

- Microsoft's acquisition of LinkedIn, cleared with remedies in December 2016
- **Horizontal** effects:
  - combination of data used for online advertising: Microsoft's data + LinkedIn's data → no concerns
    - small players in online advertising
    - large amount of internet user data for advertising continues to be available;
- **Vertical** effects:
  - input foreclosure because LinkedIn data important for advanced functionalities in CRM software through machine learning/AI?
  - no concerns
- **Conglomerate** effects:
  - tying Windows/Office and LinkedIn = leverage of Microsoft's strong position in operating systems (Windows) and productivity software (Office) to foreclose LinkedIn's competitors?
  - → increase in LinkedIn users + network effects → competitors marginalized
  - → less choice, less privacy (important parameter of competition)
  - concerns resolved through remedies



# Example: blocking rivals' access to data

Pending investigation: did banks engage in anti-competitive practices by shielding their customers' bank account data from rivals, in spite of customers' consent?

European Commission - Fact Sheet

**Antitrust: Commission confirms unannounced inspections concerning access to bank account information by competing services**

Brussels, 6 October 2017

The European Commission can confirm that on 3 October 2017 its officials carried out unannounced inspections in a few Member States concerning online access to bank account information by competing service providers.

# Conclusion

- Tools are flexible enough to deal with digital economy
  
- Big data and platforms present new challenges for competition law enforcement
  - ◆ Fast(er)-moving markets
  - ◆ Technical complexity