

Data, platforms and competition law

Simon VANDE WALLE

Case handler DG Competition, European Commission

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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")



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 platformto-business relations expected

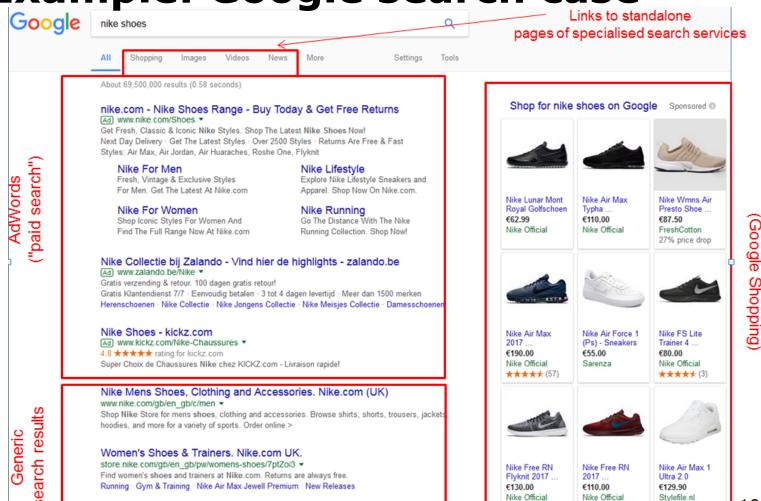


EXAMPLES



Example: Google search case

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



*****(3)

**** (20)

19

search results

Specialised



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 anticompetitive 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