

Digital Economy, Big Data and Competition Law*

*Roberto Augusto Castellanos Pfeiffer***

ABSTRACT: Big data has a very important role in the digital economy, because firms have accurate tools to collect, store, analyse, treat, monetise and disseminate voluminous amounts of data. Companies have been improving their revenues with information about the behaviour, preferences, needs, expectations, desires and evaluations of their consumers. In this sense, data could be considered as a productive input.

The article focuses on the current discussion regarding the possible use of competition law and policy to address privacy concerns related to big data companies. The most traditional and powerful tool to deal with privacy concerns is personal data protection law. Notwithstanding, the article examines whether competition law should play an important role in data-driven markets where privacy is a key factor.

The article suggests a new approach to the following antitrust concepts in cases related to big data platforms: assessment of market power, merger notification thresholds, measurement of merger effects on consumer privacy, and investigation of abuse of dominant position.

In this context, the article analyses decisions of competition agencies which reviewed mergers in big data-driven markets, such as Google/DoubleClick, Facebook/WhatsApp and Microsoft/LinkedIn.

It also reviews investigations of alleged abuse of dominant position associated with big data, in particular the proceeding opened by the Bundeskartellamt against Facebook, in which the German antitrust authority prohibited the data processing policy imposed by Facebook on its users.

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** Professor of the Faculty of Law of University of São Paulo, Brazil. PhD (University of São Paulo). LLM (University of São Paulo). Former Commissioner of the Brazilian Competition Authority (CADE). Roberto.pfeiffer@usp.br.

The article concludes that it is important to harmonise the enforcement of competition, consumer and data protection polices in order to choose the proper way to protect the users of dominant platforms, maximising the benefits of the data-driven economy.

KEYWORDS: Big Data, competition law, digital economy, privacy, abuse of dominant position.