



Data & Antitrust Guide - First Edition

**Evolving view of data in the application
of competition law**


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In a world where data is 'the new oil', competition authorities are having to tackle fresh issues as data and antitrust converge. The first edition of the GCR *Data & Antitrust Guide* – edited by Miranda Cole and Lara White – offers a wide-ranging view of how key jurisdictions around the world are addressing new regulatory and enforcement questions and provides practical and timely guidance for those trying to navigate this fast-moving environment. The Guide draws on the wisdom and expertise of distinguished practitioners to deliver unparalleled proficiency in the field.

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Evolving view of data in the application of competition law

Miranda Cole and **Francesco Salis**

Norton Rose Fulbright

Summary

[DATA AS A SOURCE OF MARKET POWER OR A BARRIER TO ENTRY](#)

[BEHAVIOURAL CASES](#)

[EX ANTE REGULATION](#)

[EVOLUTION IN MERGER ASSESSMENT](#)

[ENDOTES](#)

DATA AS A SOURCE OF MARKET POWER OR A BARRIER TO ENTRY

In recent years, the impact of data on our rapidly digitising economies has increasingly attracted the attention of competition authorities around the world. The impact of data on competitiveness has been the subject of extensive (and increasing) discussion. As the French and German competition authorities put it in 2016, ‘the collection of data may result in entry barriers when new entrants are unable either to collect the data or to buy access to the same kind of data’.^[2] In other words, data can be a source of market power and can operate as a barrier to entry that can exclude new entrants.

The ability to collect, aggregate and use (or analyse) data can be crucial to successfully entering and successfully operating in various markets. In these markets, the inability to access data may operate as a barrier to entry. Consequently, when a company has the ability to collect, aggregate and use (including through analysis) data, and has the ability to control access to that data by its competitors, it may benefit from market power if third parties are unable to access the same or comparable data in a meaningful way.^[3] As the European Commission (EC) has stated, ‘if a company’s use of data is so bad^[4] for competition that it outweighs the benefits’, it might trigger an enforcement response.^[4]

That said, ‘not all data is equal’ (in the sense of replicability, fungibility and availability) and not all use cases are equal (in the sense of nature, volume and freshness of the data required for the use case). As a result, the extent to which access to specific data sets is exclusionary will vary significantly depending on the context in which it is (or would be) used. Although competition regulators have expressed concerns that the mere accumulation of large data sets could be anticompetitive,^[5] that has not yet been tested in any case.

As an introduction to this guide, this chapter considers the evolution in the competition law assessment of data, predominantly in the European Union (since EU competition authorities have conducted many of the investigations that considered these issues), to provide context for both the current debate around the use of data in artificial intelligence (AI) and the regulation being adopted in an increasing number of jurisdictions.

The majority of the EC cases have been investigations of alleged abuses of dominance (Treaty on the Functioning of the European Union (TFEU), Article 102), although some have also been reviewed as anticompetitive arrangements between undertakings (TFEU, Article 101) and others in the context of reviews under the EU Merger Regulation.^[6] This chapter focuses on the behavioural cases initially and then the merger cases.

BEHAVIOURAL CASES

DATA AS AN INPUT SIMILAR TO INTELLECTUAL PROPERTY

In the initial cases, data (and access thereto) was assessed through a lens very similar to that used in assessing the competition issues raised by access to intellectual property; for example, in *IMS Health*, the Court of Justice of the European Union (CJEU) considered whether a refusal to grant access to a database operated by the holder of the relevant database rights would constitute an abuse of dominance.^[7] *IMS Health*, a provider of pharmaceutical sales data, collected and analysed that data using a ‘brick structure’. Each brick corresponded to a specific geographical area for which data was collected. Following the introduction of a very similar brick structure by a competitor, *IMS* sought to enjoin the

competitor, NDC, from using that database, alleging a breach of copyright law. In parallel, NDC complained to the European Union.

The EC preliminarily found that IMS abused its dominant position by not granting its competitors access to its database, which the EC found had become an industry standard. The EC adopted an interim decision ordering IMS to grant a licence to use the brick structure to all companies present on the market for the provision of German regional sales data.^[8] Although IMS also obtained the copyright injunction that it sought before the German courts, NDC appealed the injunction, and the appellate court referred the case to the CJEU requesting clarification of the legal test applicable to a refusal to provide access to a copyright protected asset.

Reflecting the *Bronner* jurisprudence,^[9] one of the key aspects of the judgment concerned the indispensability of the database developed by *IMS Health*, which had become an industry standard. In other words, the CJEU viewed the database at the centre of the dispute as key 'infrastructure', to which competitors would need access to effectively compete with the database rights holder.^[10]

Similarly, in the *Reuters Instrument Codes (RICs)* case, the EC closed an investigation against the Thomson Reuters Group (TR) with a commitments decision.^[11] Reuters Instruments Codes (RICs) are short, alphanumeric codes developed by TR that identify corporations, and were used by financial institutions to retrieve data relating to companies (including data from TR's real-time data feeds). In its investigation, the EC preliminarily found that TR (1) prohibited its customers from using RICs to retrieve data from consolidated real-time data feeds of other providers, and (2) prevented third parties from creating and maintaining mapping tables^[12] incorporating RICs that would allow the systems of TR's customers to interoperate with other providers' consolidated real-time data feeds. The EC preliminarily found that TR's use of RICs amounted to an abuse of dominance in the worldwide market for consolidated real-time data feeds.

In the commitments decision in this case, TR committed to grant licences allowing customers to use RICs for data sources from its competitors. feeds from alternative providers.^[13] While there is some debate about the effectiveness of the commitments, the approach again effectively amounted to addressing an access to data issue by requiring licensing (despite the fact that TR had not asserted copyright over the RICs, relying instead on an assertion of unspecified 'proprietary rights').

Once again in the financial services sector, in 2016, the EC adopted a commitments decision against International Swaps and Derivatives Association Inc (ISDA) and information service provider Markit.^[14] The case concerned the over-the-counter credit default swap (CDS) market, specifically the final price used to value CDS trades in the event of a default, and the use of that non-public price information in specific CDS indices. To be able to offer indices based on non-public information about CDS trades, exchange trading platforms need access to the final prices for trades. Following the EC investigation, ISDA and Markit, which asserted intellectual property rights relating to the final price of trades and CDS indices, committed *inter alia* to license this information to third parties wishing to offer their own indices on fair, reasonable and non-discriminatory terms.

In short, as these cases illustrate, the EC's initial approach to addressing data access requests regarding (non-fungible and indispensable) data was to effectively take the *Bronner* approach to requests for access to content protected by intellectual property rights.

DIFFERENTIATING BETWEEN FUNGIBLE AND NON-FUNGIBLE DATA SETS

Recent cases have considered a broader range of data types, including fungible data sets containing information that could be obtained from multiple sources, including data relating to consumer behaviour. In contrast with the non-fungible data sets addressed above, these data sets are often not indispensable (rendering the *Bronner* test inappropriate), largely because the relevant data can be obtained from multiple sources. As stated by the EC Executive Vice President (EVP) Margrethe Vestager: ‘The problem comes if that data really is unique, and can’t be duplicated by anyone else . . . we do need to keep a close eye on whether companies control unique data, which no one else can get hold of, and can use it to shut their rivals out of the market.’^[15] Cases in which the data was not unique necessitated a change of approach.

In *Google Search (Shopping)*, the EC investigated the market for general search and the market for comparison shopping services and concluded that Google abused its dominant position by self-preferencing its own comparison shopping service Google Shopping in its Google Search.^[16] The EC found that Google ranked its comparison shopping service favourably (compared with competitor comparison shopping services) on its search results page. In its investigation, the EC considered network effects (e.g., the requirement that a general search engine must be able to successfully respond to uncommon queries (known as tail queries)), saying that ‘the greater the volume of data a general search service possesses for rare tail queries, the more users will perceive it as providing more relevant results for all types of queries’.^[17] This in turn affects the online search advertising market, where the higher the number of users, the higher the revenue generated. The EC ultimately fined Google for anticompetitively preferencing its Google Shopping service (in the related comparison shopping market) by (1) reserving prominent placement for Google Shopping results in its general search page and, at the same time, (2) demoting rival comparison shopping services. Although the attempts by third parties to have the EC require Google to provide tail query results failed, Article 6(11) of the EU Digital Markets Act (DMA) does just that, and the EC’s abuse finding in the case, in part, rested on the lack of replicability of Google’s tail query data.

In 2019, the EC fined Google again for abusing its dominant position in the online search advertising intermediation market.^[18] Through its AdSense for Search product, Google acts as an advertising broker between advertisers and website owners that want to offer their inventory to advertisers. At the time, third-party inventory represented an important entry point for competitors (given Google’s dominance in search advertising). As a result, the EC concluded that Google had abused its dominant position in a number of ways: (1) adopting exclusivity clauses with publishers; (2) adopting clauses reserving to Google the most prominent space on its publisher partners’ pages (for a minimum number of Google advertisements); and (3) a clause reserving to Google the right to approve changes to the display of advertisements served by competitors to Google’s partners. Through this conduct, Google restricted competition for display on publisher websites and competition for the most valuable inventory on those websites. The data relating to consumer behaviour relating to these advertisements further reinforces Google’s dominance in both the general search and online search advertising intermediation markets.^[19]

In the current *AdX* case against Google, the EC has preliminarily concluded that Google has abused its dominant position.^[20] As in *Google Shopping*, the EC is concerned that Google might be self-preferencing, this time to benefit its advertising exchange AdX.^[21] In particular,

the EC investigation is focused on Google's publisher advertising ^[22] server DoubleClick For Publishers (or DFP) and Google's advertisement buying tools ^[23] Google Ads and DV 360, considering the way in which Google's advertisement buying tools and publisher advertising server interact with Google AdX. The EC believes that this gives AdX a competitive advantage over rival advertising exchanges. ^[24] Further, the fact that Google is currently active in every adtech segment enables it to combine targeting data, advertising inventory and advertisers leading to 'a situation of inherent conflicts of interest for Google'. Press reports suggest that this conflict led the EC to consider requiring Google to divest part of its adtech suite, to remove the preferencing and reduce the data set held by Google.

In the *Amazon Buy Box* case, the EC preliminarily found that Amazon relied on non-public data about online retailers competing with Amazon as a seller on its marketplace. ^[25] The EC concluded that Amazon was able to aggregate and combine business data of hundreds of individual sellers in the European Union and draw precise, targeted conclusions from these data. To use Margrethe Vestager's words: the case was about 'big data'. ^[26] The EC alleged that Amazon had favoured its own retail offers, and those of its affiliates, when selecting the single offer for prominent display on the product detail page (i.e., in the Buy Box).

The EC closed the case with a commitments decision requiring Amazon to ensure that it does not use third-party seller data in operating as a seller on its marketplace. Specifically, it required Amazon to (1) set up mechanisms to audit and monitor access by Amazon Retail to third-party seller data and (2) modify the Buy Box by making the second offer more prominent and include a review mechanism in the event that the presentation does not attract sufficient customer attention.

Unlike in *Google Search (Shopping)*, which was a prohibition decision, in the *Amazon Buy Box* investigation, the commitments set out precise obligations intended to bring the alleged anticompetitive behaviour to an end. In doing so, the EC took the approach of reducing the amount of data available to Amazon (rather than requiring that aggregated and anonymised data be made available to Amazon's competitors – to level the playing field).

Again, the result from this case is reflected in the DMA, under which gatekeepers are prohibited from self-preferencing or treating more favourably, in ranking and related indexing and crawling, services offered by the gatekeeper when compared with similar third-party services (Article 6(5)), and are prohibited from using non-public data that is generated or provided by business users in the context of their use of a core platform service to compete with the business user (Article 6(2)).

CREATING DATA SETS THAT CANNOT BE MATCHED

Commenting on Microsoft's acquisition of LinkedIn, EVP Vestager said that:

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. ^[27]

However, EVP Vestager also warned that 'a company might even buy up a rival just to get hold of its data, even though it hasn't yet managed to turn that data into money'. ^[28]

As this suggests, the EC has been considering for some time whether the mere accumulation of data could itself be anticompetitive. Recently, the accumulation of data has been flagged as a potential source of competition issues in the development of Large Language Models (AI), where the availability of data could be a barrier to entry. As stated by EVP Vestager, 'large language models depend on huge amounts of data, they depend on cloud space, and they depend on chips'.^[29] Similarly, the president of the French competition authority, Benoît Coeuré, said in March 2024, 'access to massive amounts of data is key to train and fine-tune generative AI',^[30] and the president of the German competition authority (the Federal Cartel Office (FCO)), Andreas Mundt, noted that the vast amount of data available to certain technology companies may boost their market power, through the deployment of AI.^[31]

ANTICOMPETITIVE CONDUCT THROUGH BREACHES OF DATA PROTECTION AND PRIVACY LAW

The *Facebook/Meta* case best exemplifies the interplay between competition and data protection law. In 2019, the FCO found that the collection of user data by Facebook/Meta was in breach of the EU General Data Protection Regulation (GDPR) and constituted abuse of Meta's dominant position in the German social network market.

On appeal to the Higher Regional Court in Düsseldorf, the case was referred to the CJEU to address, *inter alia*, the question whether national competition authorities may review whether a data processing operation complies with the requirements set out in the GDPR. In its judgment, the CJEU acknowledged that in the context of the examination of an abuse of a dominant position by an undertaking, it may be necessary for the competition authority of the Member State concerned also to examine whether that undertaking's conduct complies with rules other than those relating to competition law, such as the rules laid down by the GDPR. However, the national competition authority does not replace the supervisory authorities established by that regulation. The sole purpose of the assessment of compliance with the GDPR is merely to establish an abuse of a dominant position and to impose measures to put an end to that abuse on a legal basis derived from competition law.

EX ANTE REGULATION

Challenges in *ex post* competition enforcement, including in relation to data, have triggered regulation in various jurisdictions. As noted briefly above and discussed at length in the chapter titled 'Breakneck pace of innovation leaves global data regulation on the back foot', it has been difficult for competition regulators to address data issues in *ex post* competition cases (through prohibition decisions, rather than commitments decisions). As a result, legislators around the world have adopted or are considering new legislation of the digital sector that addresses a range of issues, including data issues. For example, in the European Union, new legislation, such as the DMA, was considered to be necessary to complement competition law.

Whereas gatekeepers will now have to comply with the DMA in the European Union, similar measures have been adopted, or are under discussion, around the world; for example, in the United Kingdom, the Digital Markets, Competition and Consumers (DMCC) Bill will impose specific obligations on digital platforms designated as having 'strategic market status' (SMS). If enacted, the DMCC will empower the Digital Market Unit of the Competition and Markets Authority to designate firms with SMS based on factors including, *inter alia*,

whether the company has ‘substantial and entrenched’ market power and the company’s ‘strategic significance’ in relation to the digital activity.

In a similar vein, China is proposing to adopt an online platform classification regime under which platforms would be classified based on different criteria (e.g., main business area, number of active users or market capitalisation). Different obligations could be imposed on digital platforms given different classifications.

EVOLUTION IN MERGER ASSESSMENT

As noted by EVP Vestager, ‘digital markets throw unique challenges at competition authorities’.^[32] With regard to data, the EC has considered a number of concentrations in which data (and access thereto) has played a significant role.

The potential accretion of data was carefully considered by the EC in Facebook/WhatsApp, which was ultimately unconditionally cleared in 2014.^[33] In the decision, the EC analysed the potential impact of additional data that might be obtained through WhatsApp in online advertising. It concluded that the transaction did not raise data-related concerns, largely because WhatsApp did not collect data about its users’ age, verified name or other data that would be valuable for advertising.^[34] The EC also investigated whether the merged entity could hypothetically begin to collect data from WhatsApp users to improve the accuracy of targeted advertisements served on Facebook, and whether that would be exclusionary. The EC concluded that there was no such risk on the basis that, even if the merged entity could collect additional data and could use it to enhance Facebook’s services, there would continue to be a large amount of valuable (similar) data that was not under Facebook’s control that could be used to compete with Facebook. In other words, the fungible and not indispensable nature of the data that WhatsApp could collect would preclude it from excluding competitors.

A similar analysis was carried out (and conclusions reached) in Microsoft/LinkedIn, conditionally approved in 2016, in which the EC analysed the potential accumulation of data for advertising purposes.^[35] The EC ultimately found that a large amount of user data was not under Microsoft’s control (such that it would be accessible to third parties). That said, to address concerns that Microsoft would pre-install LinkedIn on its Windows PC and integrate it into its apps, the concentration was approved conditionally.^[36]

In 2018, the EC unconditionally approved Apple’s acquisition of Shazam^[37] (a music recognition application). The EC examined the competitive effects that could have resulted from the integration of Shazam’s data into Apple systems. Ultimately, the EC concluded that the merger did not raise any competition concerns because the Shazam user data was not unique and, thus, was not able to confer a significant data advantage on Apple. Further, the type of data collected by Shazam was also available in other data sets.^[38]

Another case in which the EC analysed the fungibility and availability of alternative sources of data is Meta/Kustomer.^[39] Kustomer provides customer service and support customer relationship management software. Given that Meta’s instant messaging apps (e.g., WhatsApp or Instagram) are an important means of interaction between businesses and customers, the two companies were found to operate in vertically related markets. The EC considered whether Meta could disadvantage Kustomer’s competitors, specifically whether Meta would have had access to non-duplicable data from Kustomer. In view of the availability of that data from other data sets, and the willingness of businesses to share data with more than one platform, the EC concluded that the data combination resulting from the transaction would not negatively affect competition.

In *Sanofi/Google*,^[40] the EC considered whether the cooperation between the two companies through a joint venture delivering diabetes care would lead Google to refuse to offer its data analytics services to other third parties. The EC concluded that this was unlikely, given the alternatives to Google analytics services in the healthcare sector. The EC also concluded that the potential for Google's platform to work with multiple pharmaceutical companies, such that it could accumulate data from all those entities on its platform, did not raise competition concerns.

The EC took a closer look at data in its review of *Google/Fitbit*,^[41] considering two main theories of harm: (1) Google's competitors might lose access to Fitbit data, which could be anticompetitive if Fitbit user data was 'unique'; and (2) Google's control of Android OS might create the incentive to disadvantage Fitbit's competitors by degrading their interoperability with Android smartphones.

The EC concluded that Google's acquisition of Fitbit, by combining Google's already vast data collection with Fitbit's health and location data, could enable Google to hinder expansion by competitors in online advertising markets where Google already had very substantial market power. It reached this conclusion despite finding that the Fitbit data, while valuable (particularly for online advertising) was not unique when compared with the data accessible by other players. Although health data is available from a number of data sources, the data of Fitbit's users is only available through Fitbit, which would give Google the ability to foreclose competitors in downstream markets for digital healthcare by restricting access to the Fitbit application programming interface (API).^[42] The EC noted that this theory of harm was novel: first, because Fitbit's data was not traded, it could not be regarded as an input for a third party active in online advertising; and second, because Fitbit was not active on any online advertising market, the transaction did not raise traditional horizontal concerns. As a result, the EC reviewed the data-related effects as horizontal insofar as the parties' databases would be combined under Google's control. Although the EC ultimately concluded that the Fitbit data was not unique, it required that Google provide access to the Fitbit API for 10 years to companies that are active in digital healthcare and need Fitbit's data to develop their services.^[43]

The potential for data combination was central in the EC's review of the (now abandoned) *Amazon/iRobot* transaction.^[44] Briefly, Amazon proposed to acquire iRobot, a robot vacuum cleaner (RVC) manufacturer. As Amazon is active as both a marketplace provider and retailer of various products (including RVCs), the EC was concerned that this dual role could enable Amazon to restrict competition in the market for manufacturing and supply of RVCs, including their integration with Amazon services (e.g., Alexa). Finally, the EC preliminarily found that, thanks to iRobot's user data, Amazon could have obtained an advantage over third-party suppliers of marketplace services. According to the EC, iRobot's user data could have enabled Amazon to make it more difficult for other marketplaces to compete with Amazon (i.e., Amazon's ranking of products in its marketplace would be 'better' than a ranking by third-party marketplaces). The merger was referred to a Phase II investigation but finally abandoned by the parties owing to the antitrust challenges.^[45]

ENDNOTES

^[1] Miranda Cole is a partner and Francesco Salis is an associate at Norton Rose Fulbright LLP.

[2] _____ Autorité de la concurrence and Bundeskartellamt, 'Competition Law and Data' (2016), p. 11 (https://www.bundeskartellamt.de/SharedDocs/Publikation/DE/Berichte/Big%20Data%20Papier.pdf?__blob=publicationFile&v=4).

[3] _____ Organisation for Economic Co-operation and Development, 'The Evolving Concept of Market Power in the Digital Economy – Note by the European Union' (2022) (- [https://one.oecd.org/document/DAF/COMP/WD\(2022\)30/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2022)30/en/pdf)).

[4] _____ European Commission (EC), Executive Vice President (EVP), Margrethe Vestager, 'Competition in a big data world' (speech at Digital, Life, and Design Conference, Munich, 17 January 2016) (https://ec.europa.eu/commission/presscorner/detail/ov/speech_16_5224).

[5] _____ In a written answer given to the European Parliament (March 2019), EVP Vestager stated: 'Like other important inputs, data accumulation in the hands of a single firm may raise competition concerns' (see https://www.europarl.europa.eu/doceo/document/E-8-2019-000001-ASW_EN.pdf). See also 'Digital mergers: moving with the curve' (speech by EVP Vestager at the 22nd International Conference on Competition (Berlin) ('The second challenge for competition authorities are the strong network effects and the benefits gained from data access that we often see in digital mergers.)) (- https://ec.europa.eu/commission/presscorner/detail/en/speech_24_1243).

[6] _____ Treaty on the Functioning of the European Union (TFEU), Articles 101 and 102; Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 2004, pp. 1–22.

[7] _____ Court of Justice of the European Union (CJEU), Judgment of 29 April 2004, case C-418/01 (<https://curia.europa.eu/juris/showPdf.jsf?text=&docid=49104&pageInd ex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=190626>).

[8] _____ EC, Decision 2002/165/EC, case COMP D3/38.044, **NDC Health/IMS Health** (interim decision) ([https://eur-lex.europa.eu/eli/dec/2002/165\(1\)/oj](https://eur-lex.europa.eu/eli/dec/2002/165(1)/oj)). The interim decision was appealed before the EU courts but ultimately withdrawn by the EC in Decision 2003/741/EC of 13 August 2003 (<https://eur-lex.europa.eu/eli/dec/2003/741/oj>).

[9] _____ CJEU, Judgment of 26 November 1998, case C-7/97, **Bronner** (- <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=43749&pageInd ex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=192164>).

[10] _____ In **IMS Health**, at para. 52, the CJEU stated that refusal to provide access to an essential facility constitutes an abuse of dominant position if three cumulative criteria are met: (1) the undertaking that requested the licence intends to offer, on the market for the supply of the data in question, new products or services not offered by the intellectual property rights (IPR) owner and for which there is a potential consumer demand; (2) the refusal is not objectively justified; and (3) the refusal is such as to reserve to the IPR owner the market for the supply of data within the relevant market by eliminating all competition on that market.

[11] _____ EC, case AT.39654, **Reuters Instrument Codes (RICs)** (- https://ec.europa.eu/competition/antitrust/cases/dec_docs/39654/39654_2861_16.pdf).

[12] Mapping is the process through which one set of identifiers is translated and mapped to a different set of identifiers.

[13] Thomson Reuters Group (TR) committed to license its customers – and not its competitors – additional RIC symbology usage rights for the purpose of switching providers of consolidated real-time data feeds. The licence allowed TR’s customers to use RICs to retrieve real-time financial data from consolidated real-time data feeds sourced from TR’s competitors for the purpose of switching some or all of their server-based applications and desktop-based applications to use consolidated real-time data. See *Reuters Instrument Codes (RICS)*, op. cit. note 11, at para. 50.

[14] EC Commission, case AT.39745: commitments decision against Markit (-https://ec.europa.eu/competition/antitrust/cases/dec_docs/39745/39745_14237_7.pdf) and commitments decision against ISDA (-https://ec.europa.eu/competition/antitrust/cases/dec_docs/39745/39745_14238_7.pdf).

[15] EVP Vestager speech, ‘Making data work for us’, Data Ethics event on Data as Power (Copenhagen, 9 September 2016).

[16] EC, case AT.39740, *Google Search (Shopping)* (-https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf).

[17] *id.*, at para. 288. The relevance of tail queries has been also acknowledged by Google, which states that it derives ‘little marginal benefit from collecting additional click and query data about head queries’ and that there ‘may be value to having a greater amount of click and query data for “tail queries” (queries entered infrequently by users)’, see Competition and Markets Authority, ‘Online Platforms and Digital Advertising market study’, Appendix I: search quality and economies of scale (2020), at para. 35 (-https://assets.publishing.service.gov.uk/media/5fe4957c8fa8f56aeff87c12/Appendix_I_-_search_quality_v.3_WEB_.pdf).

[18] EC, case AT.40411, *Google Search (AdSense)* (-https://ec.europa.eu/competition/antitrust/cases/dec_docs/40411/40411_1619_11.pdf).

[19] As stated by the EC: ‘Google has a number of self-reinforcing (i.e., “feedback”) strategic advantages; The growth of our ad network and search products reinforce one another; We enjoy a variety of network effects, whereby the value of all players increases as we add an individual player to the mix’ (see *Google Search (AdSense)*, op. cit. note 18, at para. 254).

[20] EC, case AT.40670, *Google AdX*. For more information, see European Commission, press release, ‘Antitrust: Commission sends Statement of Objections to Google over abusive practices in online advertising technology’ (14 June 2023) (-https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3207).

[21] Advertising exchanges are tools that allow publishers and advertisers to meet in real time, typically via auctions, to buy and sell display advertisements.

[22] Publisher advertising servers are used by publishers to manage the advertising space on their websites and apps.

[23] Advertising buying tools allow advertisers to manage their automated advertising campaigns.

[24] For instance, according to the EC, Google would inform AdX in advance of the value of the best bid from competitors, which it had to beat to win the auction.

[25] EC, case AT. AT.40703, *Amazon – Buy Box* (- https://ec.europa.eu/competition/antitrust/cases1/202310/AT_40703_8990760_1_533_5.pdf).

[26] EVP Vestager, 'Statement by Executive Vice President Vestager on Statement of Objections to Amazon for the use of non-public independent seller data and second investigation into its e-commerce business practices' (10 November 2020) (- https://ec.europa.eu/commission/presscorner/detail/en/statement_20_2082).

[27] Quoted in EC, 'Application of EU merger control law to Big Data', p. 8 (- https://competitioncooperation.eu/wp-content/uploads/2018/04/Stephan_Big-Da-ta-Sharing-Economy-and-Innovation_EN.pdf).

[28] 'European Commission may consider customer data concerns in mergers', *Financial Times* (2016) (<https://www.ft.com/content/415351b8-3ec6-3d1e-9677-ff0e54cc9101>).

[29] MLex, 'AI's high barriers complicate disruption from outside Big Tech, Vestager warns' (19 February 2024).

[30] Benoît Coeuré, 'Artificial intelligence: making sure it's not a walled garden' (19 March 2024) (<https://www.autoritedelaconcurrence.fr/sites/default/files/2024-03/20240319-BIS-Speech.pdf>).

[31] 'German antitrust head warns AI may boost Big Tech's dominance', Reuters (10 October 2023) (<https://www.reuters.com/technology/german-antitrust-head-warns-ai-may-boost-big-techs-dominance-2023-10-09/>).

[32] EC, 'Digital mergers: moving with the curve' (speech by EVP Vestager at the 22nd International Conference on Competition (Berlin) (- https://ec.europa.eu/commission/presscorner/detail/en/speech_24_1243).

[33] EC, case No. COMP/M.7217, *Facebook/WhatsApp* (- https://ec.europa.eu/competition/mergers/cases/decisions/m7217_20141003_203_10_3962132_EN.pdf).

[34] *id.*, at para. 166.

[35] EC, case M.8124, *Microsoft/LinkedIn* (- https://ec.europa.eu/competition/mergers/cases/decisions/m8124_1349_5.pdf).

[36] The commitments included obligations to (1) ensure that Microsoft does not pre-install LinkedIn in Windows and that users are able to remove LinkedIn, when pre-installed by PC manufacturers and distributors, (2) not reduce the interoperability between other professional social network and Microsoft's Office suite and (3) grant competing professional social networks access to Microsoft Graph, which is used to build applications and services that can, subject to user content, access data stored in the Microsoft Cloud.

[37] EC, case M.8788, *Apple/Shazam* (- https://ec.europa.eu/competition/mergers/cases/decisions/m8788_1279_3.pdf).

[38] id., at para. 317.

[39] EC, case M.10262, *Meta (formerly Facebook)/Kustomer* (-
https://ec.europa.eu/competition/mergers/cases1/202242/M_10262_8559915_3054_3.pdf).

[40] EC, case M.7813, *Sanofi/Google/DMI JV* (-
https://ec.europa.eu/competition/mergers/cases/decisions/m7813_479_2.pdf).

[41] EC, case M.9660, *Google/Fitbit* (-
https://ec.europa.eu/competition/mergers/cases1/202120/m9660_3314_3.pdf).

[42] id., at para. 520.

[43] id., at paras. 527 and 528.

[44] EC, case M.10920, *Amazon/iRobot*. For more information, see EC press release, 6 July 2023 (https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3702).

[45] EC, 'Statement by Executive Vice-President Vestager on announcement by Amazon and iRobot to abandon their transaction' (29 January 2024) (-
https://ec.europa.eu/commission/presscorner/detail/en/statement_24_521).

Miranda Cole
Francesco Salis

miranda.cole@nortonrosefulbright.com
francesco.salis@nortonrosefulbright.com

<https://www.nortonrosefulbright.com/en>

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