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# What Can Competition Law Do for Data Privacy?

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Prof. Dr. Adrian Kuenzler, University of Zürich

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## Overview

1. The Intellectual Dispute
2. Enforcement of Competition Law
3. The Relationship of Competition Law and Regulation

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# 1. The Intellectual Dispute

- Disputes turn around the major internet platforms' illegal acquisition of small competitors, their character as monopolies and harms resulting from the employment of network algorithms.

There are concerns about:

- the platforms' size and reach;
  - suffocation of progress;
  - intensification of inequality;
  - social and political polarization.
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- Extensive literature on break-ups.

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# 1. The Intellectual Dispute

- Tensions with findings on network benefits.
- Long debate in legal scholarship around the goals of competition law.
- What about the law's enforcement?

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## 2. Enforcement of Competition Law

- Digital markets distort the classical distinction between production, distribution and consumption.
- Consumers' decisions are increasingly made passively rather than through active choice.
- Growing presence of AI-based algorithms.

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## 2. Enforcement of Competition Law

- AI-based algorithms facilitate more complex and swift transactions.
- AI-based algorithms diminish consumers' search and transaction costs.
- *But*: risk of market manipulation.

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## 2. Enforcement of Competition Law

- Competition law usually ensures that consumers have an opportunity to choose between different alternative options.
- The main cognates of this account are regulatory arrangements that seek to preserve consumer switching through data portability or interoperability measures.

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## 2. Enforcement of Competition Law

- Central challenges for *competition law enforcement* consist in:
  - an increased concern with leading actors' product design choices;
  - a heightened need to focus on 'collective' forms of market governance;
  - the practical exigency of fashioning, and implementing, appropriate remedies.

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## 2. Enforcement of Competition Law

- **Bundeskartellamt, Decision of 6 February 2019, B6-22/16; Bundesgerichtshof (23 June 2020) KVR 69/19 (Facebook);** but see OLG Düsseldorf, Order of 26 August 2019, VI-Kart 1/19 (V) (preliminary reference to the CJEU).
- **European Commission, Case AT.39740 Google Search (Shopping), 2017;** see also General Court, Case T-612/17, Google and Alphabet v Commission (Google Shopping), 10 November 2021.
- **Rechtbank Rotterdam, 24 December 2021, ROT 21/4781 en ROT 21/4782;** European Commission, ‘Statement of Objections to Apple on App Store Rules for Music Streaming Providers’ (2021) Press Release, 30 April 2021 and ‘Statement of Objections to Apple on Clarifying its Concerns Over App Store Rules For Music Streaming Providers’ (2023) Press Release, 28 February 2023.

‘Integrative remedies’ play a central part in this type of enforcement, see A Kuenzler, *What Competition Law Can Do for Data Privacy (and Vice Versa)*, 47 Computer Law & Security Review 2022.

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## 3. Competition Law and Regulation

Especially in light of the DMA, competition law also performs a significant regulatory role:

- Competition law is *structurally* embedded in the DMA.
- Competition law assumes a unique *democratic* role given the DMA.
- Competition law serves more *technocratic* ends as a result of the DMA.

Competition law and regulation are profoundly interlaced, see A Kuenzler, *Third-Generation Competition Law*, Journal of Antitrust Enforcement 2023.

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**Thank you for your attention!**