

CPI's Europe Column Presents:

Competing with Data – A Business Perspective

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“Scientia potentia est,” or in English “Knowledge is power,” is a maxim that applies particularly well nowadays, when it has never been so easy to collect so much information directly from a multitude of people. Such an opportunity and the benefits it can provide has been particularly well understood and used by some companies.

Indeed, with digitization, websites and platforms are collecting a huge amount of data on consumers. These data have become a crucial element of business strategies, and carry high value in themselves: they make it possible to differentiate consumers, to offer targeted advertising, and even to discriminate. Considering the mass and diversity of information collected, and the lack of transparency of the platforms, it is difficult to know exactly what the value of data is. However, it certainly provides a competitive advantage that businesses are determined to gain.

Given the importance of data, one might think it could be worth putting a price on it. However, in reality consumers give their data for free. Is it because they are not aware of their value? Do they feel like they have no other alternative? Or because the opportunity to enjoy a free or better-quality product seems like a fair trade?

Giant online platforms and use of data are definitely a hot topic and a major challenge for the future. Rethinking data exchange to move towards a more efficient system requires to consider both competition, consumers’ privacy right, and the constant evolution characterizing the digital world. Enabling consumers to gain a more informed insight and active position in the process must be the starting point for this reflection.

The Magic of Data - Good Fairy or to be Feared?

If we wish to go deeper on this, I think it is interesting to start by taking a look at the use and benefits that data can provide, as they are not desired by companies and platforms only for the sake of having them or for some shady, greedy reasons. Acquiring data allows a firm to have a better knowledge of its consumers and their behavior, and can thus improve product quality, either through a personalized and more relevant offer for consumers, or through a wider use of data to improve processes and functionalities, or to enable machine learning. Data also makes it possible to offer targeted advertising, that can be of interest to consumers in itself, and provides an important source of revenue for digital companies, which can in turn enable them to improve their products and lower their price.

Efficient data use therefore allows consumers to enjoy a better-quality product or experience, often personalized, and which can go as far as becoming a kind of “life assistant.” Personally, I do not count the times when I was happy to find that I could log in automatically to an account (whose password I had forgotten a long time ago), when I enjoyed a play list composed of (eclectic) songs that I like and songs that I did not know I liked yet, or when a notification on my GPS lets me know that I better keep complying with the speed limits on this part of the road. Besides, what I am even less counting are all the times when I have been able to enjoy a new feature or product made possible by the use of data without realizing it.

However, it is not all rainbows and butterflies. Advertisements that do not stop popping up after an unfortunate click can be annoying. Starting to realize the extent of data

gathered and the presence of the major digital groups across various platforms, applications, websites, etc. may however leave a true feeling of unease.

In short, data are an indispensable resource in the digital world, whether because they are at the heart of the companies' business model, representing a fundamental source of income and (often) enabling them to offer a product for free or at a low price to consumers, or because they are necessary to improve the products or the experience that they provide. As a result, acquiring more, or at the very least enough, (relevant) data is the focus for most digital companies, without which they cannot effectively compete.

Before continuing, and even if the purpose here is not to go into too much detail, it is important to talk about the distinctions between data, and the fact that "data" is indeed plural. First, data collection can either be volunteered (actively given), observed, or inferred. Then, there is individual level data, either non-anonymous or anonymous, aggregated data, and contextual data. Obviously, the use and benefits that can be derived from data will depend on their type. Among these, individual level data which are not anonymized, and can therefore be linked to a given individual, are the only ones that constitute so-called private data. They are the ones that raise most issues and concerns in terms of privacy, and also probably those whose use and benefits are most directly perceived by the consumer. Given their sensitivity, they are subject to specific regulations, such as the General Data Protection Regulation in the EU, strengthening and unifying data protection for the individual.

Data Certainly Gives a Competitive Advantage that Companies are Determined to Gain...But How Large is It?

Now, going back to competition, here is a brief overview of the main mechanisms at play in the digital market. Platforms, the central players of digitization, already benefit from direct network effects: the utility for a consumer to use the platform increases as more other users use it as well. Data generate further network effects: the more data a firm has, the more it will be able to improve the quality of its products (in the broad sense), thereby attracting more consumers, who will provide it with more data, and so on. This snowball effect has the effect of strengthening the position of a company, and in a "winner takes all" kind of market it can clearly reinforce market power and have anticompetitive effects. However, in markets in which consumers typically multi-home then the network effects of data are much less to be feared, and can even have some pro-competitive effect in as much as they encourage companies to compete on quality. The actual impact of data on competition probably lies in between. A case-by-case analysis would obviously be necessary to get a more accurate answer. What is however common to the digital world is that a lot of multi-homing happens as consumers typically use multiple platforms, applications, websites, etc. Indeed, it is quite easy to switch between them as they are accessible from the same tool (computer or smartphone), almost instantly, and often free of charge. However, it would be false to say that consumers are browsing limitlessly between these different offers. This may be due to time constraints, lack of information, the existence of an offer already

meeting their needs, etc., and a very simple illustration is that data could have the potentially discouraging effect of having to create - again - an account.

Overall there are both a large number of new apps and platforms emerging regularly, some with innovative concepts and/or rapid success; and some unavoidable giants (the so called “GAFAs”) reaching the majority of consumers, with a vast and complex data collection system and a wide offer, quickly adjusting to consumer needs.

Thus, even if the competitive advantage given by the data is real, it is still possible for an entrant to successfully access a market, and be able to collect enough data to grow. As examples, let us mention the success of Instagram, WhatsApp, or Snapchat, which have successfully flourished in social networking and consumer communication apps markets. The reaction of the incumbent, Facebook, is quite interesting: seeking to acquire them (successfully for Instagram and WhatsApp), at a price well beyond the one their turnover could suggest at the time, shows both the fear of the competitive pressure that these apps could generate, and the value of the data to which they give access.

What Room for Consumer Choice and Conditions for Sharing this so Desired Good?

On the one hand there are data, very valuable for companies for the functionalities they enable, the revenues they can generate, and more generally the competitive advantage they create. On the other hand, there are the users, the initial “creators” of this much desired good, whose behavior is in general quite ambiguous. Indeed, there is a growing mistrust of private data collection by large groups and the abuses it can generate (either legitimate or rather conspiracist), and privacy is often considered as a right of the utmost importance. At the same time, consumers are giving more and more data, through increased use of different networks, connected devices, etc., and for free. Why? Is it because users do not feel they have a choice to do otherwise? Because they do not realize the value of the data they hold? Or are privacy preferences ultimately offset by preferences for a free and/or high-quality product? Lastly, maybe in the end privacy is not so much of an issue for most users, either because they actually do not care that much, or because they trust companies enough not to use their data for questionable purposes, or they trust regulation to protect them.

To all these questions, there are no definite answers. However, consumers on a subject such as this certainly have heterogeneous preferences, some valuing privacy more than others. Second, it is also clear that, at least to some extent, consumers often feel constrained to share their data. In the case of a dominant platform, such as Facebook, this can be especially problematic. Having to give up using Facebook is not really an option for many users, since it is the only network of that size and with the widest functionalities. As a result, Facebook takes advantage of this position to extract “consent” from its users, which goes as far as collecting user data through other apps or websites (Instagram, WhatsApp, websites with a Facebook interface or relying on Facebook, etc.) without them realizing it.

In February, the German *Bundeskartellamt* issued a much awaited and possibly pioneering decision, concluding that Facebook was infringing competition law and

violating the GDPR, by abusing its dominant position. Contrary to previous cases, the exploitative abuse here does not consist of an excessive price, but rather of an excessive collection of data, for which the user cannot give free and informed consent. By stating that the excessive collection of data, in violation of the GDPR, may constitute an abuse of a dominant position, this decision also shows the blurred line and interconnection between users' data protection and competition law.

Balancing Competition and Privacy...In Different Settings

Bearing in mind the challenges posed by these competition and privacy issues, what are the paths for improvement? First of all, it is necessary to distinguish between two cases, depending on the type of data.

Indeed, with regards to non-private data, in other words anonymized individual level, aggregated and contextual data, privacy issues are not really relevant (provided that they truly cannot be linked to a specific individual). Consequently, and given the advantage they provide, the best means to support competition would be an easy, global, and fair access to relevant data for companies. For more precision, in the report "*Competition policy for the digital era*" by Jacques Crémer, Yves-Alexandre de Montjoye, and Heike Schweitzer, they discuss in detail the benefits of greater data dissemination and different possible mechanism of data sharing as well as the question of access to data under 102 TFEU and the set of potential anticompetitive effects that can be generated by these practices.

With regard to private data, the situation is even more complex. Indeed, even if from a competition point of view wider dissemination of data is also desirable, it is also a matter of respecting the privacy rights of users. As said previously, private data cannot (or should not) be collected or transferred without consent. The GDPR provides for that, and in order to enhance data exchange within the limits of privacy regulation, it establishes the right to data portability: the right of users to receive the personal data they have provided to a "collector" (volunteered and observed data, but not the ones inferred), and the right to transfer their data from one controller to another.

Such possibility is certainly a step forward, in that it allows users to be more aware of the data that companies possess about them, and can allow them to switch between competitors in a more convenient way. However, the fact that users will exercise this right, at least on their own initiative, does not seem obvious.

Additionally, another alternative could be the idea of an intermediary to manage user data, which was heard for example during the conference "*Shaping competition in the era of digitisation.*" The idea is for a third party to collect the private data that an individual agrees to share, and then use it efficiently. In particular, since such third parties would no longer be isolated and poorly informed individuals, these parties would have the opportunity to monetize the data and offer return on them to users. Although the concept is interesting, in that it would allow users to have a real knowledge of the data they share and their value, from which they would benefit directly, many questions arise. Indeed, it would be a very different system from the one currently in place, leading to major changes in the model used by digital companies. This raises questions

of feasibility and efficiency, as well as competition issues. These third parties would therefore have very substantial power, raising problems of effective competition at this level, such as foreclosure and various anticompetitive behavior or abuses.

Thinking about a framework that can effectively balance competition and privacy is complex, especially since it requires considering the plurality of data and company needs. This should often be reflected in an analysis on a case-by-case basis. In any event, it is clear that ensuring greater awareness and effective consent of users is the necessary starting point for moving towards a better, more competitive, and sustainable business ecosystem in the digital world.

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