

Facebook – The Case in Germany

Panel contribution by

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Data harvesting and abuse

- BEUC Report “The Role of Competition Policy in Protecting Consumers’ Well-being in the Digital Era”, released 2019 (Ariel Ezrachi, Augustín Reyna)
- *“rise of exploitative and exclusionary practices which digital market dynamics seem unable to curtail”*
- In particular: Excessive data collection and processing
“Data harvesting, when it does not comply with data protection and privacy legislation, can be viewed as a form of quality degradation by dominant providers. This adversely affect users’ autonomy, and exposes them to manipulation and exploitation.” (p. 10)

The Facebook case and the role of competition policy

- OLG Düsseldorf, VI-Kart 1/19 (V)

“The necessary causal link between Facebook's dominant market position confirmed by the Bundeskartellamt and the breach of data protection law assumed by the Office cannot be established.”
(p. 17)

“It is not the aim of abuse control to prosecute any violations of the law without a competitive connection under antitrust law.” (p. 18)

The Facebook case and the role of competition policy

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“Against this background, a causal relationship between the market power of the dominant undertaking and its abusive conduct, or at least the anti-competitive effects of its conduct, is absolutely necessary.” (p. 18)

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Theory of harm

- Exploitative abuse
 - Need evidence of consumer harm
- Exclusionary abuse
 - How does the data harvesting increase barriers to entry or harm existing competitors?
- Key starting point: Establish a causal relationship between data collection and market power

Data collection and market power

- Information externalities
 - Choi, Jeon, and Kim (J Pub E 2019); Bergemann and Bonatti (unpublished 2019)
- Fraudulent behavior
- Limited cognition / behavioral biases