



Research article

UDC 34:004:346.6:004.8

EDN: <https://elibrary.ru/gnqswz>

DOI: <https://doi.org/10.21202/jdtl.2024.48>

Legal Aspects of Personal Data Protection and the Issues of Competition in Digital Marketplaces

Kolawole Afuwape

O. P. Jindal Global University, Sonipat, India

Keywords

antitrust law,
competition law,
confidentiality,
consumer rights,
data abuse,
digital markets,
digital platforms,
digital technologies,
law,
personal data protection

Abstract

Objective: to develop approaches and proposals to improve the legal mechanisms for the personal data protection in the context of the evolving digital markets and the growing digital competition.

Methods: the article is prepared based on formal legal and comparative legal research methods.

Results: the unique features of digital markets are shown, which must be taken into account to achieve the goals of antimonopoly legislation. It is marked that the fundamental elements of the digital market include the big data concept and big data analytics, which, based on digital platforms, are capable of producing many direct and indirect network effects. The latter require understanding for an effective antitrust response and the application of appropriate legislation. The author proves that the growth of digital platforms as a business model and vital infrastructure of the digital economy should be viewed as a factor in improving legal regulation of relations in the sphere of data protection and confidentiality. The paper identifies the potential of digital platforms for assessing the current market power and the impact of competition on limiting this power. The data are considered as an integral component of the overall competitive market landscape. The current European Union regulation in the field of digital platforms and personal data protection is analyzed. The author identifies difficulties associated with the creation and application of effective regulations governing the activities of digital platforms. The article proves that antimonopoly authorities need to change approaches to analytics in order to take into account

© Kolawole A., 2024

This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (CC BY 4.0) (<https://creativecommons.org/licenses/by/4.0>), which permits unrestricted re-use, distribution and reproduction, provided the original article is properly cited.

the distinctive features of digital platforms. It is noted that such changes may require legislative reforms and revision of procedures to match the rapid development of these markets and ensure that any potentially anti-competitive behavior is thoroughly investigated.

Scientific novelty: the research contributes to the development of approaches to determining indicators of ensuring the personal data confidentiality under the digitalization of markets and to evaluating the effectiveness of antimonopoly legislation and its application in a new competitive environment.

Practical significance: the results obtained can be used as a basis for improving antimonopoly and personal data protection legislation, as well as legal regulation of digital platforms in general.

For citation

Kolawole, A. (2024). Legal Aspects of Personal Data Protection and the Issues of Competition in Digital Marketplaces. *Journal of Digital Technologies and Law*, 2(4), 1031–1053. <https://doi.org/10.21202/jdtl.2024.48>

Content

Introduction

1. Data as an integral component of the overall competitive market landscape
2. Digital transformation of the economy and the emergence of a “relevant market” in the digital environment
3. Conceptual foundations of market power and dominance
4. Evolution of the European antimonopoly legislation
5. Digital technology and data management: ethical and regulatory measures
 - 5.1. Digital Markets Act
 - 5.2. Digital Services Act
 - 5.3. Data Governance Act
6. Regulatory challenge in the digital market sphere

Conclusion

References

Introduction

Digitalization has significantly changed the competitive environment in the global economy, creating new markets and changing existing ones (Knudsen et al., 2021). Competition authorities face a difficult task as a result of this development. It is imperative that they address new forms of wrongdoing, investigate markets in which boundaries are ill-defined, and negotiate the uncertainty inherent in quickly changing

markets¹. Concerns about behavior in digital marketplaces and signs of growing market strength have led to a simultaneous push for the creation of new competition regulation tools as well as a more proactive implementation of the ones that now exist (Budzinski & Stöhr, 2019).

Data management business practices have received increased attention from antitrust and data protection regulatory organizations (Lancieri, 2019). Data privacy is greatly impacted by the dynamics of digital marketplaces because many business models rely on the comprehensive acquisition of personal data (Bandara et al., 2021). Individual profiles, containing sensitive details about their personal life, can be generated using this data. The effectiveness and sufficiency of the legal frameworks controlling the processing of such personal data have thus been assessed by data protection authorities (Buckley et al., 2024).

After decades of rapid growth, scholars and regulators of competition policy are beginning to view the emergence of digital platforms as critical infrastructure and a key business model within the digital economy as a threat (Nuccio & Guerzoni, 2019). The once-dominant policy consensus to keep the digital economy unrestricted by traditional laws has given way, very quickly, to a new strategy marked by more intervention (Manne, 2020).

This paper contributes both theoretically and empirically to the search for better ways to quantify market power. It addresses a number of issues related to developing all-encompassing plans to safeguard and improve competition in digital marketplaces. The assessment of market power in modern digital contexts is a major area of interest for the research of effective antimonopoly response and using antimonopoly legislation in this sphere.

1. Data as an integral component of the overall competitive market landscape

Digital platforms possess the capacity to exploit data in ways that may be considered abusive; however, data also has the potential to influence a company's market dominance (Robertson, 2020). In contemporary platform business models, data has emerged as a crucial resource, and the proficiency in leveraging data to create novel and innovative services and products serves as a significant competitive advantage (Mariani & Wamba, 2020). The primary concern regarding data in the context of dominance evaluation lies in its application and the ambiguous nature of its value, which poses challenges for price-based tools used in assessing dominance (Sznajder, 2021). The value of data is not fixed. Conversely, the true potential lies in the insights that

¹ Popiel, P. (2020). Emergent Governance: The Politics of Competition in Digital Markets: Doctoral dissertation. University of Pennsylvania.

can be derived from the data set, and it is imperative for the company to harness this potential effectively. Merely accumulating or retaining data sets will not suffice over time, as they risk becoming obsolete. Continuous data collection and accessibility are essential, accompanied by algorithms capable of harnessing the information embedded within the data (Adadi, 2021). Consequently, platforms are motivated to retain users on their services. Given that substantial data collectors seldom engage in the trading of data sets, there exists a lack of genuine supply and demand for data that could be employed in market definition analysis. The increasing dependence on data within platform business models and the creation of platform services and products has resulted in a departure from conventional pricing strategies (Kretschmer et al., 2022). Consequently, data has emerged as an essential element that must be factored into the analysis of market dominance at multiple stages. Its influence on competition and market power can manifest in multiple ways, contingent upon its application; however, it must be considered as an integral component of the overall competitive landscape within a market.

The application of data significantly influences behavior within markets, as it enhances economic characteristics such as network effects, customer lock-in, and switching costs, particularly in platform markets (Cen & Li, 2020). For instance, once a social media platform achieves a substantial user base, it becomes appealing to prospective individual users seeking to engage with existing members (direct network effects) and to commercial entities (which generate revenue) that can advertise products and services through content or targeted ads on the platform (indirect network effects). Users may encounter challenges when switching between platforms, engaging with multiple social networks (multihoming), or facing a lack of interoperability among the services within the ecosystem, which can lead to lock-in effects (Pervin et al., 2019). Consequently, the inherent features of these markets can be leveraged to retain users on the platform, facilitating ongoing data collection. These economic variables have an impact on both the companies' ability to impose competitive limitations on one another and their respective market shares.

2. Digital transformation of the economy and the emergence of a "relevant market" in the digital environment

The objective of delineating a market as stipulated in Article 102 TFEU, along with the subsequent examination of market power, is to ascertain and establish the limits of competition among firms (Andriychuk, 2023a). This entails determining if the potentially dominant entity has genuine competitors that can limit market conduct, ensuring that the entity cannot operate without facing significant competitive pressure, which could adversely affect consumers. Within the framework of EU competition law, the concept of the relevant market is utilized to assess market share thresholds and market power, thereby establishing the economic context for specific cases and guiding the theoretical understanding of competitive harm. The definition of a market relies on substitutability assessments that are instrumental in identifying a pertinent antitrust product market (Parker et al., 2020).

These assessments were developed within the context of static markets. While market definition constitutes merely one phase in the analysis of dominance, it plays a crucial role in assessing market power by delineating the breadth of the market. This delineation subsequently influences the ease or difficulty of achieving dominance within that market. The fundamental purpose of defining the market is to facilitate inferences regarding the extent of market power.

However, the evolving nature of digital markets complicates the process of delineating the relevant market significantly. Digital markets exhibit several distinct characteristics that set them apart from conventional static markets. These unique features must be considered when defining relevant product markets for the purposes of competition law. Key characteristics include the rapid evolution of digital markets, the presence of zero-price markets or market segments, the 'winner-takes-all' dynamics observed in certain digital sectors, the tendency of digital platform markets to experience tipping due to network effects, which can lead to user lock-in, and the competition for the market itself, which is a notable aspect of competition within digital environments.

The concepts of big data and big analytics serve as fundamental elements within the data-driven digital marketplace, making it essential to comprehend their intricacies (Perera & Iqbal, 2021). Further, the emergence of platforms, often referred to as multi-sided markets, has established a prevalent business model that warrants thorough understanding, particularly regarding the direct and indirect network effects that underpin such platforms (Dunne, 2021). In conjunction with platforms, digital ecosystems are evolving, which may result in consumer lock-in and diminished competition (Jenny, 2021). This phenomenon is closely associated with the growing trend of conglomerate corporate structures. The digital transformation of the economy has resulted in markets where identical or comparable products can be purchased through both offline and online channels, such as printed books from a physical store or e-books from an online platform (Ratchford et al., 2022). This situation prompts an inquiry into whether online and offline markets are merging or if they should be regarded as distinct relevant markets. In scenarios where one side of the market acquires services in return for data instead of a direct monetary transaction, conventional economic methodologies for defining markets are not readily applicable. It must be emphasized that digital platforms are prevalent within the digital landscape. These platforms function as intermediaries, facilitating interactions among multiple market participants, thus characterizing them as 'multi-sided markets.' An alternative perspective is to consider each side of the market as a distinct relevant antitrust market. However, economists argue that evaluating a platform's market sides in isolation fails to capture the comprehensive dynamics of digital platforms. This limited viewpoint overlooks critical insights essential for effective antitrust analysis. Conversely, defining a relevant market that includes the entire platform may be excessively broad for conventional antitrust evaluations, potentially incorporating markets that are not substitutable (Bietti, 2024). This approach would necessitate substantial modifications in the application of competition law concerning market definition.

3. Conceptual foundations of market power and dominance

Significant fluctuations in market capitalization serve as evidence of the substantial potential inherent in ecosystem companies. The major technology companies known as GAFAM – Apple, Alphabet (Google), Microsoft, Amazon, and Facebook²—have strategically leveraged platforms and ecosystems to assert their dominance in the market, as evidenced by their substantial market capitalizations (Lianos & McLean, 2021). It is noteworthy that these entities have not only supplanted the conventional leaders – such as major oil companies, industrial conglomerates, and financial institutions – but have also solidified their standings and experienced significant growth in both absolute and relative measures. Their market capitalizations, bolstered by the impacts of the coronavirus disease (COVID)-19, now exceed \$1 trillion for all involved (Liang & Whalen, 2022).

The generosity of capital markets has had significant implications, particularly in eroding a crucial advantage of established firms during times of swift transformation: inertia. Historically, the cash reserves and capital possessed by incumbents have restricted the growth potential of disruptive entities. The situation has changed significantly, as stock markets have emerged as the predominant mechanism for capital allocation. This shift has been largely influenced by the low-interest-rate environment of the early 21st century, a consequence of unconventional monetary policies and the repercussions of the global financial crisis. Consequently, an abundance of capital has been in search of investment opportunities, allowing any venture with growth potential to secure funding rapidly. Consequently, investments directed towards emerging platforms and ecosystems such as the digital economy garnered significant financial resources. By being sought after by the very incumbents they aimed to displace, these new enterprises managed to reverse the traditional power dynamics within the established industrial framework.

Given that capital markets prioritize growth, these companies focus on expansion over immediate profitability, thereby disrupting the conventional dynamics of their respective sectors. The evolving landscape of production economics is characterized by distinctive features, particularly as software gains prominence. A notable aspect is the disproportionately high ratio of fixed to variable costs. The process of coding constitutes a significant portion of innovation, and once developed, the cost of replication is minimal. These dynamic fosters competitive environments where a single entity can dominate the market. The interplay between globalization and digitalization has significantly broadened the concept of the «relevant market,» thereby underscoring the importance of these phenomena. This expansion is further augmented by economies of scope and learning, as consumer data can be leveraged across various contexts rather than being confined to a single application.

² The social network belongs to Meta, which is recognized as an extremist organization, its functioning is prohibited in the territory of the Russian Federation.

Concept of a social market economy and the possibility of regulatory intervention

Market power serves as a crucial criterion for regulatory intervention within the framework of the European social market economy. To fully understand the significance of market power in this context, it is essential first to define the concept of a social market economy. A primary objective of the European Union is to create an internal market that operates under the principles of a highly competitive social market economy, as articulated in Article 3(3) of the Treaty on the Functioning of the European Union (TFEU) (Gerstenberg, 2020).

The concept of a social market economy can be understood as the integration of free market economic principles within a framework that prioritizes social welfare. In a free market environment, a profit-maximizing firm would typically seek to set prices at the highest feasible level (Mascarenhas et al., 2024). Nevertheless, the presence of competitive forces would limit firms from imposing prices that exceed those of their rivals, as consumers are likely to prefer purchasing from businesses that provide lower prices. Consequently, firms would either maintain their prices at a competitive threshold or strive to enhance the quality of their products and services in comparison to their competitors. In a free market economy, it is considered unnecessary for regulatory bodies to intervene in trade, as the inherent dynamics of the free market foster effective competition. This competition functions as a natural self-regulating mechanism that maintains market equilibrium (Texocotitla et al., 2017).

The critique of the free-market economy has given rise to the concept of the social market economy. Fundamentally, the social market economy acknowledges the core tenets of the free market system. Nevertheless, it is my view that it also emphasizes the necessity of regulatory intervention to maintain social equilibrium. This can be achieved, for example, by ensuring the availability of essential services or by regulating anti-competitive behaviors of firms that may operate autonomously from both competitors and consumers. In this context, regulatory intervention within a social market economy serves as a protective mechanism, ensuring that the market operates with the anticipated efficiency.

It is also essential to delineate the appropriate level of intervention by public authorities. Excessive regulatory involvement may hinder individual autonomy within society and potentially disrupt market competition. Conversely, insufficient regulatory measures could facilitate anticompetitive behaviors and lead to an inequitable distribution of essential services, as previously discussed. Consequently, identifying the appropriate level of regulatory intervention is crucial for the effective operation of the market. In this regard, public authorities establish specific measures when deliberating on the necessity of economic intervention, including the protection of services deemed to be of general economic interest, the safeguarding of intellectual property rights, and the maintenance of a competitive environment that prevents enterprises from abusing their market power.

Market power exists along a continuum that ranges from perfect competition, characterized by the absence of market power, to monopoly power, where the critical point for dominance is defined as «significant market power.» This dominance implies that the entity can operate with a considerable degree of independence from its competitors, customers, and ultimately, the consumers. Although multisided digital platforms may encounter genuine competition, the dynamics of the market can often be significantly limited by the threat of potential competition. The possession and capability to gather extensive data sets can enhance market power by creating entry barriers for competitors who lack access to or the ability to collect comparable data. Additionally, these platforms may gain advantages from associated economic elements such as network effects and switching costs.

4. Evolution of the European antimonopoly legislation

The international regulation governing digital platform markets exhibit common themes, particularly regarding issues related to content, data, and the concentration of market power (Cammaerts & Mansell, 2020). This alignment is largely influenced by the global reach of major platform companies and the ongoing collaborative discussions among regulatory bodies across different nations. Every entity engaged in economic activity is subject to competition legislation. The principal aim of this legislative framework is to maintain and promote competitive processes, which will enable the most efficient distribution of resources and protect the economic freedoms of various market participants. The enforcement methods, which vary by jurisdiction, are intended to guard against economic harm, which could show up as negative impacts on elements like pricing, quality, customer choice, or innovation, and to guarantee that companies compete on the basis of their natural advantages.

The primary objective of competition policy is to guarantee that the actions of companies—whether they are independent, collaborative, or the outcome of a merger — do not obstruct any economic dimension of consumer welfare or the overall economic welfare, as well as the competitive landscape. Consequently, competition policy serves to safeguard a «public interest» within competitive markets, addressing individual rights in an indirect manner, in contrast to data privacy policy.

Numerous nations globally have suggested or enacted legislative modifications designed to tackle challenges associated with digital competition. These modifications involve the introduction of new ex ante regulations intended to enhance ex post enforcement measures within digital markets. In conjunction with proposals aimed at refining existing competition policy frameworks, several recommendations have been put forth to create new ex ante legislative and regulatory bodies.

Reinforced by a thorough regulatory framework, the European Union has become a leader in the regulation of digital platforms. There are a number of significant reforms that will be closely examined in terms of their implementation and effects. These include

the upcoming Digital Services Act (DSA), which seeks to improve online safety and address illegal content, and the Digital Markets Act (DMA), which attempts to encourage competition within concentrated platform markets. The attempts to regulate internet platforms are multifaceted and political. The normative and ideological tenets that underpin the regulatory frameworks that oversee the platform economy are primarily embodied by them. Moreover, conflicting political interests, notably those of the major platform firms, often lead to these activities. As a result, this dynamic leads to tensions and compromises that are inherent in the regulation of digital markets. In the United States, several legislative initiatives are being introduced to enhance data privacy and foster competition. Notable among these are the American Innovation and Choice Online Act (AICOA), the Open App Markets Act, and the American Data Privacy and Protection Act (ADPPA). The United Kingdom is pursuing an independent agenda following Brexit, implementing new legislation and initiating inquiries related to online safety, consumer protection, and competition. The Competition and Markets Authority (CMA), the Information Commissioner's Office (ICO), along with various other significant regulatory bodies, are collaborating to lead this initiative.

Grasping the nuances and practical consequences of these evolving legal frameworks will increasingly be essential. The escalation of regulatory measures creates the possibility of overlapping and conflicting enforcement actions. It is expected that litigation will increase as both corporations and regulatory bodies work to adapt to these new requirements.

5. Digital technology and data management: ethical and regulatory measures

The discussion regarding the management of the digital domain is vast, encompassing many facets that remain to be understood and theorized. A key observation emerges: the governance, ethical considerations, and regulatory measures pertaining to digital environments constitute separate normative frameworks. These frameworks possess a complementary relationship and should not be confused with one another; instead, it is essential to distinctly separate them.

Digital governance encompasses the organized formulation and implementation of policies, procedures, and standards designed to facilitate the efficient development, use, and management of the information environment. This practice encompasses established conventions and effective coordination, functioning within a realm that resists straightforward classification as either moral or immoral, as well as legal or illegal. Digital governance refers to a framework of principles and suggestions that may overlap with digital regulation; however, the two concepts are not identical. This concept can be interpreted as a discussion regarding relevant legal frameworks, which are composed of a set of laws established and implemented by social or governmental bodies to regulate the behavior

of pertinent entities within the infosphere. It is essential to recognize that not every aspect of digital regulation is encompassed by digital governance, and conversely, not all elements of digital governance are related to digital regulation. A relevant example of this differentiation is the General Data Protection Regulation. The relationship of compliance serves as a fundamental mechanism through which digital regulation influences digital governance.

Digital ethics encompasses the field of ethics that examines and assesses moral dilemmas associated with data and information—covering aspects such as generation, recording, curation, processing, dissemination, sharing, and utilization. It also includes the study of algorithms, which involves artificial intelligence, artificial agents, machine learning, and robotics, as well as the relevant practices and infrastructures, such as responsible innovation, programming, hacking, and professional codes and standards. The aim is to develop and advocate for solutions that are morally sound. Digital ethics influences the frameworks of digital regulation and governance by assessing the moral standards that determine what is deemed socially acceptable or desirable. The primary challenge in contemporary society lies in the governance of digital technologies. This encompasses not only the frameworks of digital governance but also the principles of digital ethics and the mechanisms of digital regulation, thereby addressing the entire spectrum of normative considerations.

Digital regulation delineates the boundaries of permissible and impermissible actions within the digital landscape; however, it does not provide guidance on the optimal or most beneficial actions that can be taken within the legal framework to achieve societal advancement. This responsibility falls to digital ethics, which focuses on moral values and preferences, as well as to effective digital governance, which emphasizes management practices. This rationale underpins the establishment of the Ethics Advisory Group by the European Data Protection Supervisor (EDPS), the independent data protection authority of the EU, in 2015. The group's purpose is to examine the emerging ethical challenges arising from digital advancements and existing legal frameworks, particularly concerning the GDPR.

Legislative measures related to data protection offer a constrained approach to addressing the challenges associated with the misuse of user privacy and data. This constraint stems from its neglect to account for the possible long-term effects on users of digital platforms, the considerable power held by specific platforms, and the distinct obligations that come with such authority. In this regard, data protection laws may benefit from the addition of notions of exploitation and exclusion found in competition law.

A platform may intentionally diminish the intensity of positive network effects or compromise the quality of the services it provides to users on at least one side. This behavior can be interpreted as a sign of market power. In the absence of such market power, a platform tends to achieve greater success when network effects are robust, and service quality is elevated. In abusive situations, the purported wrongdoing—more especially,

the search or matching algorithm manipulation—may function as a barometer of market dominance. This idea supports the basic idea of market power that was previously covered, i.e., it suggests that certain market behaviors may indicate the existence of market power or even market dominance. It may initially seem unexpected to commence this discourse with the concept of consent rather than adequacy; however, this methodology has proven to be a seemingly appealing option for international genomics initiatives thus far. Primarily, researchers are typically required to secure participant consent for biomedical research, making it relatively effortless to extend this consent to encompass the international transfer of participants' data. Additionally, broad consent for research purposes is acknowledged within European legislation and is reinforced by the General Data Protection Regulation (GDPR) (Recital 33). Lastly, consent appears to offer a consistent framework that mitigates the inconsistencies associated with measures like adequacy decisions, which are unlikely to encompass all research projects within a consortium as it expands to include initiatives in countries lacking an adequate data protection framework.

The justifications for transfer outlined in Article 49(1), specifically those pertaining to public interest and legitimate interest, are significantly more limited compared to the justifications for lawful processing found in Article 6(1). For instance, Article 49(1)(d) explicitly states that the transfer must be necessary for important reasons of public interest. The concept of adequacy has served as a fundamental justification for the transfer of data within the framework of EU data protection since the implementation of the Data Protection Directive in 1995. While an adequacy decision is often regarded as the most favorable and reassuring foundation for such transfers, it is important to recognize three significant limitations associated with this approach. Firstly, not all nations have received approval³. Secondly, even in jurisdictions with an approved mechanism, the adequacy determinations applicable to countries such as Canada and the United States are limited to specific entities governed by those mechanisms. Lastly, following the pivotal Schrems ruling, which annulled a prior adequacy decision, and in light of the GDPR's requirement for regular reassessment of these decisions, stakeholders who depend on adequacy can no longer assume that an approved adequacy decision will remain valid indefinitely. In this context, Austrian student Max Schrems initiated his legal challenge against the European Commission's prior determination that the U.S./EU Safe Harbour Framework offered sufficient data protection. The European Court of Justice explicitly referenced indiscriminate surveillance as a significant rationale for its annulment of the previous adequacy decision in the case of Schrems⁴.

³ European Commission 2018. <https://clck.ru/3FDEBs>

⁴ European Court of Justice 2015. <https://clck.ru/3FDEML>

An additional method for adhering to the GDPR's regulations regarding data transfers involves the integration of standard «model clauses» that have received prior approval from the EU Commission into legally binding agreements between the data sender and the recipient (GDPR Article 45(2)(c)–(d)). Following the annulment of the adequacy decision for the U.S./EU Safe Harbour framework by the European Court of Justice in the 2016 Schrems ruling, these clauses emerged as a prominent alternative mechanism for data transfer, as noted by various stakeholders (Galehr, 2023). Binding Corporate Rules (BCRs), while acknowledged as a preferred justification for data transfer under the General Data Protection Regulation (GDPR), are seldom advantageous in the context of genomics research (Phillips, 2018). These rules are primarily intended for large multinational entities or groups that require the transfer of personal data across borders while remaining within their internal organizational structures (Article 47 GDPR). To utilize BCRs, an organization must develop a set of rules that align with the stipulations of Article 47 of the GDPR, which must then receive external validation from the relevant data protection authority. This approach necessitates considerable initial investments that are often characterized by complexity, time demands, and high costs. Additionally, it may not represent the most suitable mechanism for data transfer, particularly in the framework of international genomic research projects, especially those involving partnerships or consortia with distinct, nationally based member initiatives.

The General Data Protection Regulation (GDPR) stipulates that an organization's compliance with a sector-specific code of conduct, which has received approval from the European Commission in accordance with the procedures outlined in the GDPR (Schütz, 2022), can serve as a valid basis for the transfer of personal data to that organization, provided that there are binding and enforceable commitments to implement the necessary safeguards. However, a significant limitation of this framework is the absence of any currently established code of conduct that meets these criteria.

5.1. Digital Markets Act

The main legal documents pertaining to the Digital Markets Act (DMA) consist of Regulation (EU) 2022/1925, enacted by the European Parliament and the Council on 14 September 2022, which addresses the establishment of contestable and equitable markets within the digital domain, along with the Procedural Implementing Regulation.

The Digital Markets Act (DMA) represents a pivotal advancement in the development of European Union competition law (Petit, 2021). It draws upon the extensive experience gained by the European Commission and the Court of Justice of the European Union (CJEU), while simultaneously establishing a departure from previous methodologies. This legislation signifies a novel regulatory approach to digital markets that is both precise and centered on compliance. A significant aspect of this evolution is the critical relationship and interaction between the European Commission and the Court of Justice of the European Union (CJEU). The Commission is responsible for making decisions, which

are subsequently subjected to scrutiny by the CJEU, thereby shaping the competition framework and illustrating the concept of path dependency. At times, these developments occur in a fragmented manner, disrupting established practices, while at other times, they may encompass both continuity and change. The Act should not be classified as a competition law initiative. It was enacted solely under Article 114 TFEU, with the objective of enhancing the effective operation of the internal market. This enhancement is to be achieved through regulations that promote contestability and fairness within digital markets, particularly concerning core platforms operated by gatekeepers as defined by the Act. Consequently, the Act possesses a regulatory character, aiming to influence the conduct of core platforms to foster fairness and contestability, thus serving as a complement to various other regulatory frameworks, including the Digital Services Act.

A fundamental principle of the Digital Markets Act (DMA) is the establishment of particular responsibilities for gatekeeper platforms. These responsibilities aim to promote equitable competition and establish a balanced environment within the digital marketplace. For example, gatekeepers must permit business users on their platforms to advertise their products and conduct transactions with customers beyond the limitations of the gatekeeper's platform. Additionally, the DMA forbids gatekeepers from favoring their own services and products over those offered by third parties on their platforms, thereby ensuring a more unbiased ranking system.

In order to guarantee compliance with the DMA, comprehensive enforcement strategies have been implemented. Digital companies that fail to meet the specified obligations may face significant repercussions. Financial penalties can reach as high as 10 % of a company's total global annual revenue, with the potential for this figure to double to 20 % in instances of repeated violations, thereby acting as a strong deterrent. Furthermore, authorities may impose periodic fines amounting to 5% of the average daily revenue. In situations where persistent violations are detected following market investigations, the DMA grants regulatory bodies the authority to enforce additional corrective actions. The DMA serves as a crucial regulatory instrument designed to oversee the influence wielded by major digital companies. This legislation seeks to foster a more fair, transparent, and competitive landscape within digital markets by establishing and implementing specific standards and limitations for identified gatekeepers. The DMA should be understood as a supplementary framework that does not alter existing competition laws within the European Union. Instead, it is intended to tackle the unique challenges posed by digital marketplaces.

5.2. Digital Services Act

The Digital Services Act (DSA), which came into effect on 19 October 2022, outlines a phased approach to its implementation. Extensive online platforms that fall under the direct supervision of the Commission must report their user statistics within a timeframe of three months. Following their designation, these platforms are granted a period of four

months to comply with the regulations set forth by the DSA. Starting on 17 February 2024, the DSA regulations will extend to include smaller platforms, with Member States empowered to ensure adherence to these regulations.

The DSA signifies a substantial shift in regulatory frameworks, heralding the onset of a new era in digital governance throughout the European Union. The intricacies of the DSA are underscored by its core legislative framework, specifically Regulation (EU) 2022/2065, which was adopted by the European Parliament and the Council on 19 October 2022. The DSA seeks to modernize and improve the existing E-Commerce Directive, which has been operational for two decades. It creates a comprehensive set of uniform regulations, primarily emphasizing the obligations of due diligence and the conditional exemptions from liability for online intermediary services.

The DSA strengthens user autonomy by facilitating the reporting of illegal content and allowing users to challenge the content moderation decisions implemented by platforms. It presents transparency measures that mandate online platforms to disclose information about their algorithms, service agreements, and advertising practices. Further, it establishes particular obligations for extremely large platforms, which are required to implement risk-based strategies and undergo independent assessments of their risk management systems.

The DSA is fundamentally supported by robust enforcement mechanisms. It establishes a framework that includes financial penalties, recurring fines, and corrective actions for entities that fail to comply (Eifert et al., 2021). The governance framework requires EU member states to designate a Digital Services Coordinator, who operates in conjunction with the European Board for Digital Services. Additionally, the Commission directly oversees very large platforms, possessing enforcement authority similar to that found in anti-trust regulations.

5.3. Data Governance Act

The DGA establishes a unique legal structure for Data Intermediation Services (DISs). While the Regulation specifies the definition of a “data intermediation service”, it does not provide a definition for the data intermediary that offers these services (Carovano & Finck, 2023). DISs are designed to facilitate the creation of commercial partnerships that enable data sharing among an unspecified number of data subjects and data holders, as well as data users. This is achieved through various technical, legal, or alternative methods, including the promotion of data subjects’ rights concerning their personal data.

Article 2(11) of the Data Governance Act delineates four criteria that must be met for a service to be classified as a data intermediation service: (i) the primary objective of the service must be data sharing; (ii) the sharing process should either establish

or seek to establish a commercial relationship; (iii) the data sharing must involve an unspecified number of data holders or subjects in conjunction with data users. Additionally, this provision encompasses a wide-ranging material scope by stating that (iv) intermediation may be facilitated through technical, legal, or alternative methods. The DGA pertains to actors who create or seek to create commercial partnerships for the purpose of data sharing. Data sharing is characterized as the act of a data subject or data holder supplying data to a data user for either collective or individual utilization of that data. This process is governed by voluntary agreements or applicable Union or national legislation, and may occur directly or via an intermediary, such as through open or commercial licenses that may involve a fee or be provided at no cost.

The DGA delineates its material scope by excluding services that facilitate the intermediation of copyright-protected content, as well as consolidated tape providers and account information service providers. These entities do not solely engage in data sharing; rather, they pursue supplementary objectives. Additionally, data brokers, consultancies, and providers of products that derive added value from the data are also excluded from the DGA's purview.

Article 2(11), on the other hand, covers data intermediation activities that occur "for the purpose of exercising the rights of data subjects concerning personal data". Here, personal information management services (PIMS) are specifically mentioned, as they are classified as a "distinct category" of data intermediation services.

6. Regulatory challenge in the digital market sphere

Optimists contend that the dominance displayed by some ecosystem firms could reflect their exceptional dynamic capacities. Pragmatists, on the other hand, take a more grounded viewpoint (Andriychuk, 2023b). The troubling actions of these recently powerful corporations have been brought to light by several writers, as has the regulatory authorities' inability to enact laws and other measures that might effectively curb unethical activity (Richter et al., 2021). The consumer welfare standard posits that the absence of demonstrable harm to consumers from elevated prices negates the existence of an antitrust issue, suggesting that a monopoly may simply stem from superior innovation (Newman, 2021). This perspective, however, overlooks the challenges faced by suppliers, employees, and, particularly in the context of platforms and ecosystems, complementary businesses. Regulatory bodies often lack sufficient personnel and resources to effectively address these challenges, leading to potential oversights in enforcement. However, societal expectations continue to rise. In some cases, the severity of the situation suggests that technology companies could gain from proactively and credibly limiting their own practices through self-regulation. Failing to do

so may provoke scrutiny regarding their legitimacy to operate within society, potentially resulting in more stringent external regulations.

The concentration of power among a limited number of companies is often regarded as a significant issue that may jeopardize not only economic operations but also the very foundations of democracy and governance, particularly through the erosion of conventional press and the increasing influence of social media platforms (Davola & Malgieri, 2023). The complete overhaul of the regulatory framework was essential. This was accompanied by substantial regulatory measures, such as the lawsuits initiated by the United States against Google and other major technology firms, as well as the European Union's implementation of the Digital Services Act and the Digital Markets Act (Jacobides, 2020). Despite the fact that many regulatory bodies continue to struggle with insufficient expertise, resources, and concentration to adequately respond to the worldwide call for reform, countries such as the United Kingdom and India are proactively advancing the establishment of a new Digital Competition Unit (Moreno Bellosso & Petit, 2023). There is a pressing necessity for the development of novel regulatory instruments aimed at enhancing competition, both among platforms and within them. Additionally, it is essential to revise existing frameworks, theoretical constructs, and overall methodologies as we address the contemporary regulatory challenges, especially those posed by platforms and ecosystems.

Conclusion

This article examines the formulation and execution of solutions within digital markets. The emergence of digital platforms, coupled with growing apprehensions regarding their effects on both markets and society, is rapidly transforming the regulatory environment. This shift is expanding the potential for interaction between competition and regulatory frameworks. To effectively address these challenges, our theoretical perspectives on these dynamics must also adapt and progress.

Selecting an appropriate remedy is a task that is susceptible to mistakes, which may result in expensive over-enforcement or under-enforcement. Generally, authorities ought to be prepared to implement more rigorous remedies as their confidence in the detrimental effects of specific conduct grows. This also necessitates a careful approach when exploring new theories of harm. Most importantly, any intricate remedy should be regarded as a dynamic process that is periodically evaluated and modified as additional information regarding its effects on actual behavior becomes available.

The constant exploration and adaptation process requires different authorities to leverage their institutional advantages. The effective coordination of the various enforcement actions carried out by National Competition Authorities (NCAs) and National

Regulatory Authorities (NRAs) can be made more flexible by outlining the three crucial but distinct activities of (i) identifying behaviors or particular market structures that negatively impact welfare, (ii) formulating appropriate remedies, and (iii) supervising and adjusting implementation over time.

It is imperative to develop a more comprehensive academic examination of remedies, particularly in relation to their implementation within the digital domain. Remedies ought to extend beyond mere conclusions in infringement rulings and necessitate a well-defined and substantial framework. Given the intricate nature of the issues associated with remedies, there is a need for more advanced designs and adaptable institutional structures than those presently available globally.

References

- Adadi, A. (2021). A survey on data-efficient algorithms in big data era. *Journal of Big Data*, 8(1), 24. <https://doi.org/10.1186/s40537-021-00419-9>
- Andriychuk, O. (Ed.) (2023a). *Antitrust and the Bounds of Power: 25 Years On*. Bloomsbury Publishing.
- Andriychuk, O. (2023b). EU Digital Competition Law: The Socio-legal Foundations. *Cambridge Yearbook of European Legal Studies*, 25, 81–104. <https://doi.org/10.1017/cel.2023.12>
- Bandara, R., Fernando, M., & Akter, S. (2021). Managing consumer privacy concerns and defensive behaviours in the digital marketplace. *European Journal of Marketing*, 55(1), 219–246. <https://doi.org/10.1108/ejm-06-2019-0515>
- Bietti, E. (2024). Structuring Digital Platform Markets: Antitrust and Utilities' Convergence. *University of Illinois Law Review*, 2024(4).
- Buckley, G., Caulfield, T., & Becker, I. (2024). GDPR and the indefinable effectiveness of privacy regulators: Can performance assessment be improved? *Journal of Cybersecurity*, 10(1), tyae017. <https://doi.org/10.1093/cybsec/tyae017>
- Budzinski, O., & Stöhr, A. (2019). Competition policy reform in Europe and Germany – institutional change in the light of digitization. *European Competition Journal*, 15(1), 15–54. <https://doi.org/10.1080/17441056.2018.1555942>
- Cammaerts, B., & Mansell, R. (2020). Digital platform policy and regulation: Toward a radical democratic turn. *International Journal of Communication*, 14, 135–154.
- Carovano, G., & Finck, M. (2023). Regulating data intermediaries: The impact of the Data Governance Act on the EU's data economy. *Computer Law & Security Review*, 50, 105830. <https://doi.org/10.1016/j.clsr.2023.105830>
- Cen, Y., & Li, L. (2020). Effects of network externalities on user loyalty to online B2B platforms: an empirical study. *Journal of Enterprise Information Management*, 33(2), 309–334. <https://doi.org/10.1108/jeim-02-2019-0050>
- Davola, A., & Malgieri, G. (2023). Data, Power, and Competition Law: The (Im) possible Mission of the DMA? In *The Economics and Regulation of Digital Markets* (pp. 53–74). Emerald Publishing Limited. <https://doi.org/10.1108/s0193-589520240000031003>
- Dunne, N. (2021). Platforms as regulators. *Journal of Antitrust Enforcement*, 9(2), 244–269. <https://doi.org/10.1093/jaenfo/jnaa052>
- Eifert, M., Metzger, A., Schweitzer, H., & Wagner, G. (2021). Taming the giants: The DMA/DSA package. *Common Market Law Review*, 58(4). <https://doi.org/10.54648/cola2021065>
- Galehr, S. (2023). *Transatlantic Data Transfers under the GDPR*. EIZ Publishing. <https://doi.org/10.36862/eiz-ng001>
- Gerstenberg, O. (2020). Fundamental rights and democratic sovereignty in the EU: the role of the Charter of Fundamental Rights of the EU (CFREU) in regulating the European Social Market Economy. *Yearbook of European Law*, 39, 199–227. <https://doi.org/10.1093/yel/yeaa008>
- Jacobides, M. G. (2020). *Regulating Big Tech in Europe: why, so what, and how understanding their business models and ecosystems can make a difference*. <https://doi.org/10.2139/ssrn.3765324>
- Jenny, F. (2021). *Competition law enforcement and regulation for digital platforms and ecosystems: understanding the issues, facing the challenges and moving forward*. <https://doi.org/10.2139/ssrn.3857507>
- Knudsen, E. S., Lien, L. B., Timmermans, B., Belik, I., & Pandey, S. (2021). Stability in turbulent times? The effect of digitalization on the sustainability of competitive advantage. *Journal of Business Research*, 128, 360–369. <https://doi.org/10.1016/j.jbusres.2021.02.008>

- Kretschmer, T., Leiponen, A., Schilling, M., & Vasudeva, G. (2022). Platform ecosystems as meta-organizations: Implications for platform strategies. *Strategic Management Journal*, 43(3), 405–424. <https://doi.org/10.1002/smj.3250>
- Lancieri, F. M. (2019). Digital protectionism? Antitrust, data protection, and the EU/US transatlantic rift. *Journal of Antitrust Enforcement*, 7(1), 27–53. <https://doi.org/10.1093/jaenfo/jny012>
- Liang, Y., & Whalen, C. J. (2022). Money manager capitalism and the coronavirus pandemic. In *A Modern Guide to Post-Keynesian Institutional Economics* (pp. 89–120). Edward Elgar Publishing. <https://doi.org/10.4337/9781800885752.00012>
- Lianos, I., & McLean, A. (2021). *Competition law, big tech and financialisation: The dark side of the moon*. <https://doi.org/10.2139/ssrn.3930565>
- Manne, G. A. (2020). Error Costs in Digital Markets. *The Global Antitrust Institute Report on the Digital Economy*, 3. <https://doi.org/10.2139/ssrn.3733662>
- Mariani, M. M., & Wamba, S. F. (2020). Exploring how consumer goods companies innovate in the digital age: The role of big data analytics companies. *Journal of Business Research*, 121, 338–352. <https://doi.org/10.1016/j.jbusres.2020.09.012>
- Mascarenhas, O. A., Thakur, M., & Kumar, P. (2024). Critical Thinking Applied to Profit Maximization and Its Presumptive Capitalist Models. In *A Primer on Critical Thinking and Business Ethics* (pp. 31–64). Emerald Publishing Limited. <https://doi.org/10.1108/978-1-83753-312-120231002>
- Moreno Belloso, N., & Petit, N. (2023). *The EU digital markets act (DMA): a competition hand in a regulatory glove*. <https://doi.org/10.2139/ssrn.4358589>
- Newman, J. M. (2021). The Output-Welfare Fallacy: A Modern Antitrust Paradox. *Iowa L. Rev.*, 107, 563. <https://doi.org/10.2139/ssrn.3866725>
- Nuccio, M., & Guerzoni, M. (2019). Big data: Hell or heaven? Digital platforms and market power in the data-driven economy. *Competition & Change*, 23(3), 312–328. <https://doi.org/10.1177/1024529418816525>
- Parker, G., Petropoulos, G., & Van Alstyne, M. W. (2020). *Digital platforms and antitrust*. <https://doi.org/10.2139/ssrn.3608397>
- Perera, A., & Iqbal, K. (2021). Big data and emerging markets: Transforming economies through data-driven innovation and market dynamics. *Journal of Computational Social Dynamics*, 6(3), 1–18.
- Pervin, N., Ramasubbu, N., & Dutta, K. (2019). Habitat traps in mobile platform ecosystems. *Production and Operations Management*, 28(10), 2594–2608. <https://doi.org/10.1111/poms.13072>
- Petit, N. (2021). The proposed digital markets act (DMA): a legal and policy review. *Journal of European Competition Law & Practice*, 12(7), 529–541. <https://doi.org/10.1093/jeclap/lpab062>
- Phillips, M. (2018). International data-sharing norms: from the OECD to the General Data Protection Regulation (GDPR). *Human genetics*, 137, 575–582. <https://doi.org/10.1007/s00439-018-1919-7>
- Ratchford, B., Soysal, G., Zentner, A., & Gauri, D. K. (2022). Online and offline retailing: What we know and directions for future research. *Journal of Retailing*, 98(1), 152–177. <https://doi.org/10.1016/j.jretai.2022.02.007>
- Richter, H., Straub, M., Tuchtfield, E., Buri, I., van Hoboken, J., De Gregorio, G., Pollicino, O., Peukert, A., Appelman, N., Quintais, J. P., Fahy, R., Zech, H., Goanta, C., Ruschemeier, H., Leerssen, P., Janal, R., Rodríguez, H. B. T., Graef, I., Franck, J.-U. ... & Vergnolle, D. S. (2021). To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package. *Max Planck Institute for Innovation & Competition Research Paper*, 21–25. <https://doi.org/10.2139/ssrn.3932809>
- Robertson, V. H. (2020). Excessive data collection: Privacy considerations and abuse of dominance in the era of big data. *Common Market Law Review*, 57(1). <https://doi.org/10.54648/cola2020006>
- Schütz, P. (2022). Data protection authorities under the EU General Data Protection Regulation—a new global benchmark. In *Handbook of Regulatory Authorities* (pp. 128–145). Edward Elgar Publishing. <https://doi.org/10.4337/9781839108990.00018>
- Sznajder, M. (2021). No Strings Attached? Zero-Price Practices on Social Media Markets under EU Abuse of Dominance Assessment. *Yearbook of Antitrust and Regulatory Studies (YARS)*, 14(24), 33–62.
- Texocotitla, M. A., Hernandez, M. D. A., & Hernandez, S. A. (2017). *The Doctrine of Free Markets: Origin, Nature and Implications*.

Author information



Kolawole Afuwape – LLM, Assistant Lecturer, Jindal Global Law School, O.P. Jindal Global University

Address: Sonipat Narela Road, Near Jagdishpur Village, Sonipat, Haryana 131001, NCR of Delhi, India

E-mail: kolawole.afuwape@jgu.edu.in

ORCID ID: <https://orcid.org/0009-0001-5686-230X>

WoS Researcher ID: <https://www.webofscience.com/wos/author/record/LPP-5259-2024>

Google Scholar ID: <https://scholar.google.com/citations?user=2tZOhdCAAJ>

Conflict of interests

The author declare no conflict of interests.

Financial disclosure

The research had no sponsorship.

Thematic rubrics

OECD: 5.05 / Law

PASJC: 3308 / Law

WoS: OM / Law

Article history

Date of receipt – October 4, 2024

Date of approval – October 20, 2024

Date of acceptance – December 13, 2024

Date of online placement – December 20, 2024



Научная статья
УДК 34:004:346.6:004.8
EDN: <https://elibrary.ru/gnqswz>
DOI: <https://doi.org/10.21202/jdtl.2024.48>

Правовые аспекты защиты персональных данных и проблемы конкуренции на цифровых рынках

Колаволе Афувапе

Глобальный университет имени О. П. Джиндала, Сонипат, Индия

Ключевые слова

антимонопольное законодательство, защита персональных данных, злоупотребление данными, конкурентное право, конфиденциальность, права потребителей, право, цифровые платформы, цифровые рынки, цифровые технологии

Аннотация

Цель: разработка подходов и предложений по совершенствованию правовых механизмов защиты персональных данных в условиях развивающегося характера цифровых рынков и роста цифровой конкуренции.

Методы: статья подготовлена на основе формально-юридического и сравнительно-правового методов исследования.

Результаты: показаны уникальные особенности цифровых рынков, которые необходимо учитывать для достижения целей антимонопольного законодательства. Отмечается, что основополагающими элементами цифрового рынка являются концепция больших данных и аналитики больших данных, которые на основе цифровых платформ способны производить многие прямые и косвенные сетевые эффекты, требующие понимания для эффективного антимонопольного реагирования и применения соответствующего законодательства. Рост цифровых платформ как бизнес-модели и жизненно важной инфраструктуры цифровой экономики рассмотрен как фактор совершенствования мер правового регулирования отношений, связанных с защитой данных и конфиденциальностью. Определен потенциал в сфере цифровых платформ показателей оценки сложившейся рыночной силы и влияния потенциальной конкуренции на ограничение этой силы. Данные рассмотрены как неотъемлемый компонент общего конкурентного ландшафта на рынке. Анализу подвергнуто действующее в Европейском союзе правовое регулирование в сфере функционирования цифровых платформ и защиты персональных данных. Выявлены трудности, связанные с созданием и применением эффективных нормативных актов, регулирующих деятельность цифровых платформ. Обоснована необходимость изменения антимонопольными органами подходов к аналитике с тем, чтобы учесть отличительные особенности цифровых

© Колаволе, А., 2024

Статья находится в открытом доступе и распространяется в соответствии с лицензией Creative Commons «Attribution» («Атрибуция») 4.0 Всемирная (CC BY 4.0) (<https://creativecommons.org/licenses/by/4.0/deed.ru>), позволяющей неограниченно использовать, распространять и воспроизводить материал при условии, что оригинальная работа упомянута с соблюдением правил цитирования.

платформ. Отмечено, что такие изменения могут потребовать законодательных реформ и пересмотра процедур, чтобы соответствовать быстрому развитию этих рынков и обеспечить тщательное изучение любого потенциально антиконкурентного поведения.

Научная новизна: проведенное исследование вносит вклад в разработку подходов к определению показателей обеспечения конфиденциальности персональных данных в условиях цифровизации рынков и оценке эффективности антимонопольного законодательства и практики его применения в новой конкурентной среде.

Практическая значимость: полученные результаты могут быть положены в основу совершенствования антимонопольного законодательства и законодательства в сфере защиты персональных данных, а также правового регулирования деятельности цифровых платформ в целом.

Для цитирования

Колаволе, А. (2024). Правовые аспекты защиты персональных данных и проблемы конкуренции на цифровых рынках. *Journal of Digital Technologies and Law*, 2(4), 1031–1053. <https://doi.org/10.21202/jdtl.2024.48>

Список литературы

- Adadi, A. (2021). A survey on data-efficient algorithms in big data era. *Journal of Big Data*, 8(1), 24. <https://doi.org/10.1186/s40537-021-00419-9>
- Andriychuk, O. (Ed.) (2023a). *Antitrust and the Bounds of Power: 25 Years On*. Bloomsbury Publishing.
- Andriychuk, O. (2023b). EU Digital Competition Law: The Socio-legal Foundations. *Cambridge Yearbook of European Legal Studies*, 25, 81–104. <https://doi.org/10.1017/cel.2023.12>
- Bandara, R., Fernando, M., & Akter, S. (2021). Managing consumer privacy concerns and defensive behaviours in the digital marketplace. *European Journal of Marketing*, 55(1), 219–246. <https://doi.org/10.1108/ejm-06-2019-0515>
- Bietti, E. (2024). Structuring Digital Platform Markets: Antitrust and Utilities' Convergence. *University of Illinois Law Review*, 2024(4).
- Buckley, G., Caulfield, T., & Becker, I. (2024). GDPR and the indefinable effectiveness of privacy regulators: Can performance assessment be improved? *Journal of Cybersecurity*, 10(1), tyae017. <https://doi.org/10.1093/cybsec/tyae017>
- Budzinski, O., & Stöhr, A. (2019). Competition policy reform in Europe and Germany – institutional change in the light of digitization. *European Competition Journal*, 15(1), 15–54. <https://doi.org/10.1080/17441056.2018.1555942>
- Cammaerts, B., & Mansell, R. (2020). Digital platform policy and regulation: Toward a radical democratic turn. *International Journal of Communication*, 14, 135–154.
- Carovano, G., & Finck, M. (2023). Regulating data intermediaries: The impact of the Data Governance Act on the EU's data economy. *Computer Law & Security Review*, 50, 105830. <https://doi.org/10.1016/j.clsr.2023.105830>
- Cen, Y., & Li, L. (2020). Effects of network externalities on user loyalty to online B2B platforms: an empirical study. *Journal of Enterprise Information Management*, 33(2), 309–334. <https://doi.org/10.1108/jeim-02-2019-0050>
- Davola, A., & Malgieri, G. (2023). Data, Power, and Competition Law: The (Im) possible Mission of the DMA? In *The Economics and Regulation of Digital Markets* (pp. 53–74). Emerald Publishing Limited. <https://doi.org/10.1108/s0193-589520240000031003>
- Dunne, N. (2021). Platforms as regulators. *Journal of Antitrust Enforcement*, 9(2), 244–269. <https://doi.org/10.1093/jaenfo/jnaa052>
- Eifert, M., Metzger, A., Schweitzer, H., & Wagner, G. (2021). Taming the giants: The DMA/DSA package. *Common Market Law Review*, 58(4). <https://doi.org/10.54648/cola2021065>
- Galehr, S. (2023). *Transatlantic Data Transfers under the GDPR*. EIZ Publishing. <https://doi.org/10.36862/eiz-ng001>
- Gerstenberg, O. (2020). Fundamental rights and democratic sovereignty in the EU: the role of the Charter of Fundamental Rights of the EU (CFREU) in regulating the European Social Market Economy. *Yearbook of European Law*, 39, 199–227. <https://doi.org/10.1093/yel/yeaa008>

- Jacobides, M. G. (2020). *Regulating Big Tech in Europe: why, so what, and how understanding their business models and ecosystems can make a difference*. <https://doi.org/10.2139/ssrn.3765324>
- Jenny, F. (2021). *Competition law enforcement and regulation for digital platforms and ecosystems: understanding the issues, facing the challenges and moving forward*. <https://doi.org/10.2139/ssrn.3857507>
- Knudsen, E. S., Lien, L. B., Timmermans, B., Belik, I., & Pandey, S. (2021). Stability in turbulent times? The effect of digitalization on the sustainability of competitive advantage. *Journal of Business Research*, 128, 360–369. <https://doi.org/10.1016/j.jbusres.2021.02.008>
- Kretschmer, T., Leiponen, A., Schilling, M., & Vasudeva, G. (2022). Platform ecosystems as meta-organizations: Implications for platform strategies. *Strategic Management Journal*, 43(3), 405–424. <https://doi.org/10.1002/smj.3250>
- Lancieri, F. M. (2019). Digital protectionism? Antitrust, data protection, and the EU/US transatlantic rift. *Journal of Antitrust Enforcement*, 7(1), 27–53. <https://doi.org/10.1093/jaenfo/jny012>
- Liang, Y., & Whalen, C. J. (2022). Money manager capitalism and the coronavirus pandemic. In *A Modern Guide to Post-Keynesian Institutional Economics* (pp. 89–120). Edward Elgar Publishing. <https://doi.org/10.4337/9781800885752.00012>
- Lianos, I., & McLean, A. (2021). *Competition law, big tech and financialisation: The dark side of the moon*. <https://doi.org/10.2139/ssrn.3930565>
- Manne, G. A. (2020). Error Costs in Digital Markets. *The Global Antitrust Institute Report on the Digital Economy*, 3. <https://doi.org/10.2139/ssrn.3733662>
- Mariani, M. M., & Wamba, S. F. (2020). Exploring how consumer goods companies innovate in the digital age: The role of big data analytics companies. *Journal of Business Research*, 121, 338–352. <https://doi.org/10.1016/j.jbusres.2020.09.012>
- Mascarenhas, O. A., Thakur, M., & Kumar, P. (2024). Critical Thinking Applied to Profit Maximization and Its Presumptive Capitalist Models. In *A Primer on Critical Thinking and Business Ethics* (pp. 31–64). Emerald Publishing Limited. <https://doi.org/10.1108/978-1-83753-312-120231002>
- Moreno Belloso, N., & Petit, N. (2023). *The EU digital markets act (DMA): a competition hand in a regulatory glove*. <https://doi.org/10.2139/ssrn.4358589>
- Newman, J. M. (2021). The Output-Welfare Fallacy: A Modern Antitrust Paradox. *Iowa L. Rev.*, 107, 563. <https://doi.org/10.2139/ssrn.3866725>
- Nuccio, M., & Guerzoni, M. (2019). Big data: Hell or heaven? Digital platforms and market power in the data-driven economy. *Competition & Change*, 23(3), 312–328. <https://doi.org/10.1177/1024529418816525>
- Parker, G., Petropoulos, G., & Van Alstyne, M. W. (2020). *Digital platforms and antitrust*. <https://doi.org/10.2139/ssrn.3608397>
- Perera, A., & Iqbal, K. (2021). Big data and emerging markets: Transforming economies through data-driven innovation and market dynamics. *Journal of Computational Social Dynamics*, 6(3), 1–18.
- Pervin, N., Ramasubbu, N., & Dutta, K. (2019). Habitat traps in mobile platform ecosystems. *Production and Operations Management*, 28(10), 2594–2608. <https://doi.org/10.1111/poms.13072>
- Petit, N. (2021). The proposed digital markets act (DMA): a legal and policy review. *Journal of European Competition Law & Practice*, 12(7), 529–541. <https://doi.org/10.1093/jeclap/lpab062>
- Phillips, M. (2018). International data-sharing norms: from the OECD to the General Data Protection Regulation (GDPR). *Human genetics*, 137, 575–582. <https://doi.org/10.1007/s00439-018-1919-7>
- Ratchford, B., Soysal, G., Zentner, A., & Gauri, D. K. (2022). Online and offline retailing: What we know and directions for future research. *Journal of Retailing*, 98(1), 152–177. <https://doi.org/10.1016/j.jretai.2022.02.007>
- Richter, H., Straub, M., Tuchtfield, E., Buri, I., van Hoboken, J., De Gregorio, G., Pollicino, O., Peukert, A., Appelman, N., Quintais, J. P., Fahy, R., Zech, H., Goanta, C., Ruschemeier, H., Leerssen, P., Janal, R., Rodríguez, H. B. T., Graef, I., Franck, J.-U. ... & Vergnolle, D. S. (2021). To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package. *Max Planck Institute for Innovation & Competition Research Paper*, 21–25. <https://doi.org/10.2139/ssrn.3932809>
- Robertson, V. H. (2020). Excessive data collection: Privacy considerations and abuse of dominance in the era of big data. *Common Market Law Review*, 57(1). <https://doi.org/10.54648/cola2020006>
- Schütz, P. (2022). Data protection authorities under the EU General Data Protection Regulation—a new global benchmark. In *Handbook of Regulatory Authorities* (pp. 128–145). Edward Elgar Publishing. <https://doi.org/10.4337/9781839108990.00018>
- Sznajder, M. (2021). No Strings Attached? Zero-Price Practices on Social Media Markets under EU Abuse of Dominance Assessment. *Yearbook of Antitrust and Regulatory Studies (YARS)*, 14(24), 33–62.
- Texocotitla, M. A., Hernandez, M. D. A., & Hernandez, S. A. (2017). *The Doctrine of Free Markets: Origin, Nature and Implications*.

Сведения об авторе



Колаволе Афувапе – магистр права, ассистент преподавателя, Школа права, Глобальный университет имени О. П. Джиндала

Адрес: 131001 Нарьяна, Индия, г. Сонипат, Нир Ягдишпур Виледж, Сонипат Нарела Роуд

E-mail: kolawole.afuwape@jgu.edu.in

ORCID ID: <https://orcid.org/0009-0001-5686-230X>

WoS Researcher ID: <https://www.webofscience.com/wos/author/record/LPP-5259-2024>

Google Scholar ID: <https://scholar.google.com/citations?user=2tZOhdAAAAJ>

Конфликт интересов

Автор сообщает об отсутствии конфликта интересов.

Финансирование

Исследование не имело спонсорской поддержки.

Тематические рубрики

Рубрика OECD: 5.05 / Law

Рубрика ASJC: 3308 / Law

Рубрика WoS: OM / Law

Рубрика ГРНТИ: 10.19.31 / Право на информацию

Специальность ВАК: 5.1.3 / Частно-правовые (цивилистические) науки

История статьи

Дата поступления – 4 октября 2024 г.

Дата одобрения после рецензирования – 20 октября 2024 г.

Дата принятия к опубликованию – 13 декабря 2024 г.

Дата онлайн-размещения – 20 декабря 2024 г.