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Big data brings companies under the spotlight of the competition authority

The collection of data in today's businesses is of such importance that data protection laws may be not enough anymore with regard to them and in addition competition law needs to be applied. For the companies managing big data it practically means more control from the State institutions and therefore also more obligations and potential sanctions for non-compliance.

The rapid development of digital markets has brought along the emergence of companies, whose business models are mostly dependent upon the collection, processing and commercial use of personal data. Besides the social networks and search engines like Facebook and Google, similar business models are being applied also in many other economic sectors, such as, for example, telecommunications, transport, banking, insurance etc. In addition to the names, locations and other contact information of the clients, the collected data also includes the information concerning the clients' behaviour, their preferences and choices they have made (e.g. the products or services they have bought). The volumes of such data are often so large and the data itself so complex that it constitutes a so-called big data.

In the competition law context big data qualifies as the „source of market power“ of the company, as the data-based business decisions increase the company's productivity comparing to its competitors and therefore give such company an economic asset. This kind of source of market power may become so important for being able to compete in the market that even relatively small companies may become dominant thanks to owning large databases. The Competition Law Act

contains certain special obligations for the companies with dominant position in the market.

It's possible that in the future certain data that the companies own will even qualify as an essential facility, i.e. such facility, which other companies cannot duplicate or for whom it is economically inexpedient to duplicate but without access to which or the existence of which it is impossible to operate in the market. For example, a new web store cannot make personalized offers to its potential clients without the knowledge of their choices and preferences, which makes it impossible for it to neither successfully enter the market, nor survive the competition. In such case, the company in control of big data will have to permit other companies to gain access to data under reasonable and non-discriminatory conditions (considering the restrictions following from data protection laws).

The new General Data Protection Regulation, which comes into force in 2018 does give the consumers an opportunity to require a transfer of their personal data from one service provider to another, thus making it possible to avoid the emergence of the so-called „data monopolies“. However, in practice this provision alone most likely will not solve all the potential competition law issues related to big data, as these issues may turn out to be more extensive and complex than that. The Data Protection Inspectorate and the Competition Authority are thus likely to start cooperating with each other more, whilst ensuring the compliance with relevant regulations.

This is why the companies, whose businesses depend on big data have to be ready that their activities may bring them under the spotlight of the Competition Authority. Such companies should bring their business activities in line with competition rules, as well as follow these rules whilst communicating with consumers, business partners, as well as competitors already today.