

# Data Concentration as a New Dimension in Competition Analysis

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# What is the “Data Concentration” Problem?

- Recently, a growing number of commentators have raised concern about “data concentration” in hands of major firms, especially major internet platforms – viz., Google, Amazon, Facebook, et al.
  - FTC 21<sup>st</sup> Century Competition/Consumer Protection Hearings will address big data
- Enforcement authorities in the U.S. and other countries have dealt with data-related *consumer protection problems*, especially privacy
  - US FTC investigations, settlements, enforcement actions – e.g., with Facebook
  - International cooperation on data security policy – e.g., US-EU Privacy Shield
- Are there also *competition issues* due to big data accumulations?
  - Can increased market power arise from creating or acquiring big data sets?
  - Monopoly power stemming from large data sets? – but in what markets? – does possession of large data sets affect particular product/service markets? Other issues?
  - See Sokol and Comerford, [Antitrust and Regulating Big Data](#) (2016) (overview)

# Some Competitive Characteristics of Big Data

- Data can allow a firm to become more efficient in allocating time and other resources, and provide important feedback and insights that allow a firm to solve problems and improve its products and offerings
- This enhanced efficiency may give a firm a competitive advantage over its rivals, which network effects compound
- Unlike tangible assets, sometimes data can be transferred repeatedly to multiple firms, i.e., it is non-rivalrous – e.g., consumers may and often do provide same personal data to multiple internet platforms
  - Consumers differ in their willingness to provide data – and despite consumer-platform information asymmetries, competition can help address this issue

# Big Data Antitrust Issues

- This does not mean big data cannot raise serious antitrust issues
- In the right case, U.S. enforcers could have antitrust concerns about a transaction that requires consumers to yield more data, and specialized data sets might raise rivals' costs and create entry barriers
- Under certain circumstances, data acquisitions can affect price/quality
- Indeed, FTC and DOJ have had occasion to consider the competitive significance of data in the context of merger reviews
  - E.g., proposed 2008 merger of Thomson and Reuters, 2 of 3 largest providers of financial data to institutions like investment banks and trading firms – DOJ concluded the merger would have led to higher prices and reduced innovation in this space, and so it required Thomson to divest copies of three financial datasets in order to proceed with the acquisition

# Big Data Antitrust Issues, cont.

- But big data acquisitions that merely reduce costs and increase efficiency for merged entity are procompetitive, not an antitrust problem
- Also, U.S. antitrust law disfavors requiring the sharing of data that a firm has developed on its own (cf. EU *IMS Health* case on conditions for access)
  - U.S. judicial skepticism of imposing an overarching duty to deal with competitors
  - Forced sharing of critical assets reduces the incentive to invest in innovation, may thereby undermine dynamic competition for leadership in the market
  - Developing programs to collect data, servers to store data, and computation programs and algorithms necessary to analyze data is very costly
  - Forced sharing also a costly, inherently regulatory approach
- Possible misuse of algorithms to facilitate collusion a separate issue, and a key subject of ongoing research (how much inter-firm contact needed?)
- Price discrimination through big data possible, welfare effects complicated

# Summing Up

- The accumulation of big data sets may allow firms to achieve substantial efficiencies, but also may raise potential antitrust issues
- Concern about possible abusive conduct by major internet platforms that accumulate large quantities of data has generated (and merits) attention
- The FTC and DOJ will not hesitate to oppose mergers or other conduct where big data acquisitions threaten to raise price, lower quality
- Also facilitation of collusion, anticompetitive price discrimination, etc.
- But mandated access problematic – undermines dynamic competition
- In short, antitrust has a role to play, but enforcers should be cautious
- An evolving area of economic research and enforcement activity, multiple perspectives, FTC 21<sup>st</sup> Century Hearings will examine this topic