Jurisdictional Issues between Competition Law and Data Protection Law in Protection of Privacy of Online Consumers

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Abstract : The revenue models of digital giants such as Facebook and Google, use targeted advertising for revenues. Such a model requires huge amounts of consumer data. While the data protection law deals with the protection of personal data, however, this data is acquired by the companies on the basis of consent, performance of a contract, or legitimate interests. This paper analyses the role that competition law can play in evading these loopholes for the protection of data and privacy of online consumers. Digital markets have certain distinctive features such as network effects and feedback loop, which gives incumbents of these markets a first-mover advantage. This creates a situation where the winner takes it all, thus creating entry barriers and concentration in the market. It has been also seen that this dominant position is then used by the undertakings for leveraging in other markets. This can be harmful to the consumers in form of less privacy, less choice, and stifling innovation, as seen in the cases of Facebook Cambridge Analytica, Google Shopping, and Google Android. Therefore, the article aims to provide a legal framework wherein the data protection law and competition law can come together to provide a balance in regulating digital markets. The issue has become more relevant in light of the Facebook decision by German competition authority, where it was held that Facebook had abused its dominant position by not complying with data protection rules, which constituted an exploitative practice. The paper looks into the jurisdictional boundaries that the data protection and competition authorities can work from and suggests ex ante regulation through data protection law and ex post regulation through competition law. It further suggests a change in the consumer welfare standard where harm to privacy should be considered as an indicator of low quality.