

Competition in Data

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Agenda

- ◆ Cloud service a Internet of Things setting
- ◆ Business conduct by Cloud Providers
- ◆ The Application of Competition Law?
- ◆ Sector Specific Regulations?
- ◆ Conclusion

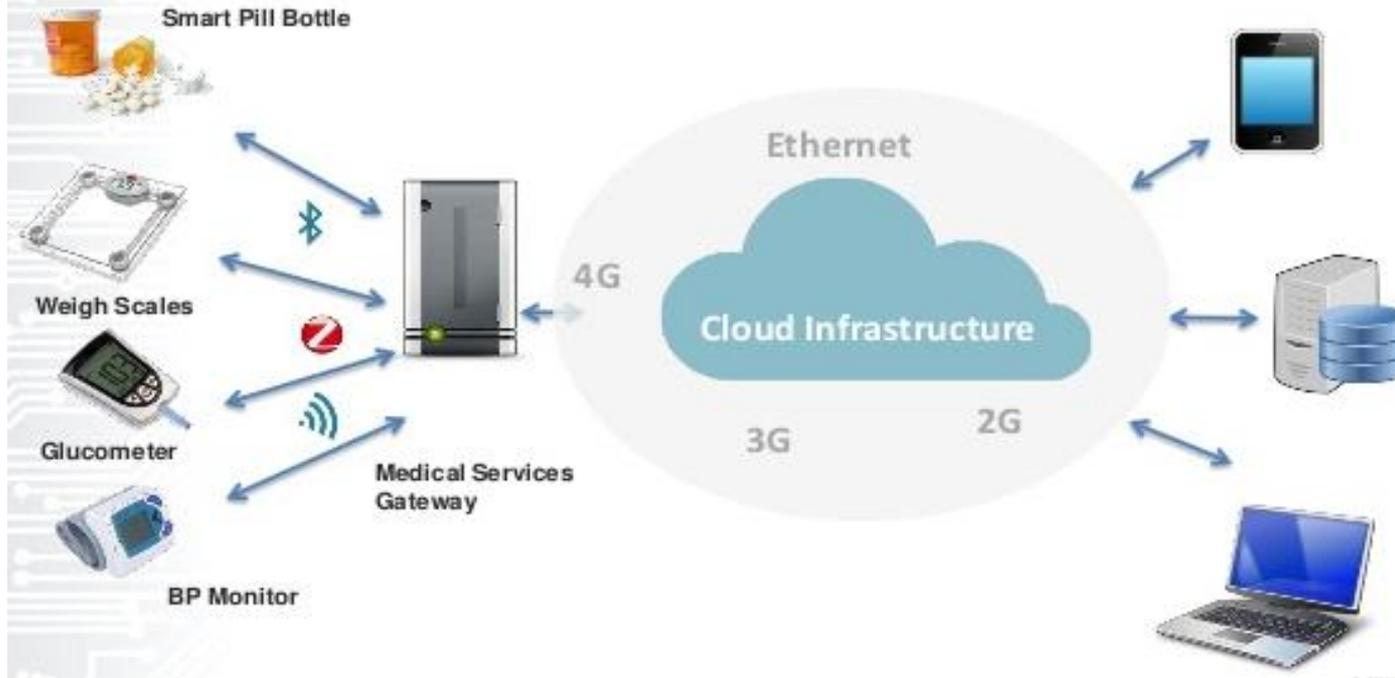
The data, the information (as such), irrespectively how private and how valuable, is not currently covered by property right. However, the infrastructure or ecosystem is covered



Source: French/German Competition Authorities Report on Big data 2016; and OECD 2015
Stanley Greenstein, Our Humanity Exposed, Doctoral Thesis, 2017

IoT and its Infrastructure, i.e. BIG DATA's ecosystem

IOT infrastructure consists of - Terminal devices, Communication and Cloud infrastructure



Silos interoperability



The Economist , June 2017

Business conduct by Cloud Providers, as presented in the road map to the P2B legislative effort:

- ◆ Business users, to some extent, lack access to and/or the ability to transmit or port certain types of data, both of a personal and non-personal character.
 - ◆ For example, many business users do not even have access to the contact details of their customers whom they serve via platforms. As a result, they are unable to interact with their customers outside of the platform, e.g. for targeted marketing initiatives, or to move their customer base to another platform.
- ◆ Some platforms may favour own products or services, or discriminate between different third-party suppliers and sellers, e.g. on their search facilities or by capitalising on superior data access.

Business conduct by Cloud Providers

- ◆ There is also a twist to the discrimination features of the platforms and in reference to data. It is not uncommon that even though the Cloud user has access to its own data in the Cloud, the Cloud provider have access to not only to that data but also to all other data in the Cloud.
- ◆ The use of wide non-assertion clauses in the Cloud access agreements. The cloud users need to agree not to utilize their intellectual property portfolio vis-à-vis the e-platform ecosystem or the firms connected to the e-ecosystem in question.

The Application of Competition Law



Competition Law to be used for accessing data?

◆ **Magill**

- ◆ The Magill “logic” works well in a data scenario: entities (in the Magill case the publicly owned BBC and RTE et al), engaging in their primary market (producing and distributing TV programmes), create or collect information, (in the form of TV listings) that might be copyright protected. They are, under the rules of abuse of dominance, *de facto* required to give access to this information (the TV listings), due to its indispensability and that a refusal would be unjust, to an undertaking that will create a new product (TV guides). Thus, in the Magill case the appellants were not allowed to reserve for themselves a secondary market.

◆ **IMS Health**

- ◆ IMS Health dealt with a unique brick structure (a *de facto* standard for the industry) developed by IMS and the users in conjunction. Similar logic as *Magill*. Yet, we are missing the idea of failed market...

◆ **Huawei**

- ◆ De jure standardization may trigger the exceptional circumstance doctrine

◆ **Microsoft**

- ◆ Leveraging from Operating system market to the Server market. Plus the wide non-assertion clauses

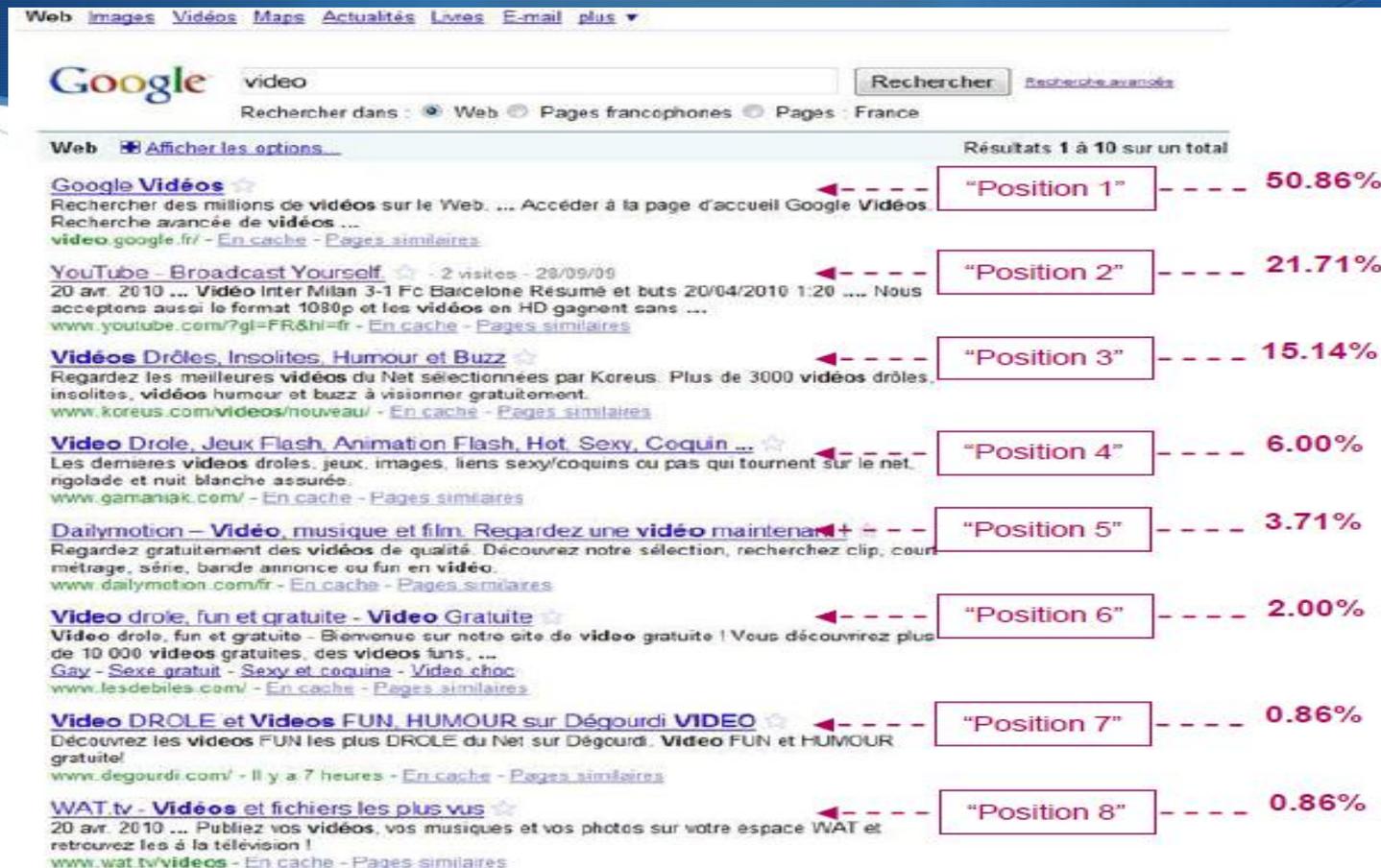
Leveraging, as stand-alone abuse

- ◆ The *Google* investigation, Google €2.42 billion for breaching EU antitrust rules, be leveraging from general search to comparison shopping services
 - ◆ Remedy: neutral general search engine in reference comparison shopping.
- ◆ Antitrust harm/test: use conduct, on the market plagued by dominance, available only to the dominant firm, to leverage market power on a secondary market

Google investigation by EU Commission

Vertical	Most popular vertical sites ²³²	Example Query	Ranking of Google's own vertical site in search results ²³³
Finance	Yahoo Finance, MSN Money	"finance", stock symbols	Google Finance: #1
Music	iTunes, MySpace Music, MTV	Artists: "lady gaga"	Google Music: #1
Health	EverydayHealth, WebMD, Wikipedia ²³⁴	Major medial terms: "cancer"	Google Health: #1
Patents	FreePatentsOnline: iBiblio.org	"patent" + patent number	Google Patents: #1
Maps	MapQuest (Prior to Jan 2009)	Addresses: "420 west 25th street, new york, ny"	Google Maps: #1
News	CNN, New York Times	Current news: "health care bill"	Google News: #1
Scholar	FindArticles, SpringerLink	"legal journal articles"	Google Scholar: #1
Movies	IMDB, Yahoo! Movies	Movies: "Alice in Wonderland"	Google Movies: #1
Books	Amazon, Barnes & Noble	"the call of the wild"	Google Books: 2 of top 5; 4 of top 10 (Amazon #7)
Blogs	Blogger, Federated Media, Technorati	General search: "blogs"	Google Blog 3 of top 4
Code	SourceForge, CodePlex	"Cloud computing code"	Google Code: #1
Dictionary	Dictionary.com, Merriam Webster	Generic search term: "definition of homogeneous"	Google Dictionary: #1
Travel	Expedia, TravelAdNetwork, Orbitz	Flight origin & destination: "Boston to Denver"	Google Flight Search Lead Generation: #1
Video	YouTube, Break Media Network, Google Video Search	"Labrador puppy video"	Google YouTube and Google Video Search: #1 and #2
Weather	The Weather Channel, Weatherbug	"Denver weather"	Google Weather Lead Generation: #1
Images	Google Image Search, Photobucket, Flickr	"Iceland volcano image"	Google Images: #1
Mortgage Quotes	Bankrate.com, Lendingtree.com	"California mortgage rates"	Google Mortgage Rate Quotes Lead Generation: #1 Ad
Products	Yahoo! Shopping, Google Product Search, Shopzilla.com	"Gucci heels"	Google Shopping/Products: #1

By manipulating search results, Google captures 2/3 of the user's attention. This in turn provides advantages in online advertising



Sector Specific Regulations

- 💧 P2B!
- 💧 eCall Regulation with apps
- 💧 Directive on Payment Service II
- 💧 PSI Directive



P2B

- ◆ Aim (a) to optimise the innovation and growth potential of online platform ecosystems, by securing a predictable business environment for firms depending on platforms and thus enhancing the general level of trust of all (potential) users; (b) to limit direct negative effects of problems arising in platform-to-business relationships; (c) **to prevent, ex ante, abuse of dependencies in the platform economy**; (d) to reduce burdensome compliance costs derived from legal fragmentation, which could jeopardise the functioning of the Digital Single Market, and; (e) **to facilitate the emergence of new online platform firms**, including by reducing barriers to entry and by ensuring a level playing field.

Proposal to Data Free Flow Regulations

- ◆ The Commission is also interested in self-regulation: Article 6 states that the Commission shall encourage service providers and professional users to develop and implement codes of conduct detailing the information on data porting conditions (including technical and operational requirements) that providers should make available to their professional users in a sufficiently detailed, clear and transparent manner before a contract is concluded. (Proposal to Data Free Flow Regulations)

eCall Regulation (more than rescue....) however, is the *eCall* already outdated...

[Recital 16] In order to ensure open choice for customers and fair competition, as well as encourage innovation and boost the competitiveness of the Union's information technology industry on the global market, the eCall in-vehicle systems should be based on an interoperable, **standardised, secure and open-access platform** for possible future in-vehicle applications or services. As this requires technical and legal back-up, the Commission should assess without delay, on the basis of consultations with all stakeholders involved, including vehicle manufacturers and independent operators, all options for promoting and ensuring such an open-access platform and, if appropriate, put forward a legislative initiative to that effect. Furthermore, the 112-based eCall in-vehicle system should be accessible **for a reasonable fee** not exceeding a nominal amount and without discrimination to all **independent operators for repair and maintenance** purposes in accordance with [...].

Access to insurance companies and leasing firms? A pricing issue?

Thank you!

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