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The Interface Between Competition Law and Data Protection : The Need for A More Integrated Approach

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Abstract
This article examines the growing interface between competition law and data protection in the digital economy, where large platforms accumulate vast datasets that raise both antitrust and privacy concerns. Using a qualitative doctrinal and comparative legal approach, this study analyzes legal developments in the EU, Germany, Malaysia and Indonesia to highlight tensions and complementarities between the two regulatory regimes. The paper finds that data-driven market dominance requires regulators to assess practices such as self-preferencing, refusal to supply, and exploitative data processing through both privacy and competition lenses. Case analyses from Facebook and Google illustrate how dominance in digital ecosystems can harm users and stifle competition. In the Malaysian context, the article critiques the limitations of the current legal framework, including the Competition Act 2010 and PDPA 2010, and calls for integrated regulatory reforms. In the Indonesian context, the analysis focuses on the application of Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, which, despite not explicitly regulating data, provides an effects-based framework to address data-driven market power, self-preferencing, refusal to supply, and exploitative conduct in digital markets. The findings advocate for a balanced, coordinated framework that addresses the complexities of data governance while fostering innovation, fairness, and user autonomy.

Introduction

In today's digital age, data has become an invaluable asset, driving innovation, economic growth, and societal progress. However, the rapid expansion of data collection, processing, and use presents significant challenges that necessitate comprehensive data regulation. The data economy involves complex interdependencies where data practices impact market competition, individual privacy, and consumer rights simultaneously. A fragmented regulatory approach can lead to inconsistencies and gaps, where certain harmful practices might fall through the cracks, undermining overall effectiveness. Enforcing different regulations which consider different aspects of the market for data may create tensions. Enforcing competition law in data-related areas may harm privacy, while strengthening data privacy measures may raise competition concerns. The convergence of data practices and market dynamics necessitates an integrated

approach that takes into account various aspects for comprehensive data regulation. Integrated regulation is better equipped to adapt to emerging technologies and evolving data practices, ensuring that laws remain relevant and effective over time.

Integrated regulation must provide a balanced approach that respects the rights and needs of all stakeholders. Data should be treated as an economic asset, with clearly defined rights and responsibilities for its use. This approach ensures that all economic actors can benefit from said data. By recognizing data as an asset and ensuring equitable access and usage rights, regulation can promote innovation, protect privacy, and maintain fair competition. At the end of the spectrum, effective regulation requires coordination among various regulatory bodies to ensure cohesive and comprehensive enforcement. The integrated approach allows regulators to effectively oversee and respond to new challenges that arise from the convergence of data practices.

Drawing from the experience of other jurisdictions, particularly the EU and Germany, this article aims to explore the interdependence of various areas that impact the data market economy and to explore the issues and challenges involved when designing a holistic framework to regulate data practices. The findings will be beneficial for small economies like Malaysia for future comprehensive data regulation that embraces all aspects that impact market competition and consumer rights.

Research Method

This article used a qualitative doctrinal legal research method combined with comparative legal analysis to explore the interdependence between data governance, market competition, and consumer protection within the data economy. The doctrinal approach[1] is employed to analyze existing legal principles, regulatory frameworks, and policy documents relevant to data practices, particularly focusing on issues such as data privacy, competition law, and consumer rights. By systematically examining laws and regulations in selected jurisdictions, this study aims to identify the gaps, overlaps, and

[1] Nasir Majeed, Amjad Hilal and Arshad Nawaz Khan, 'Doctrinal Research in Law: Meaning, Scope and Methodology' (2023) 12 Bulletin of Business and Economics (BBE) 559 <https://bbejournal.com/BBE/article/view/666>.

tensions that arise from fragmented regulatory approaches. In addition, a comparative legal method is utilized by drawing insights from the European Union and German legal systems, which offer advanced and integrated approaches to data regulation. Through this comparison, the research highlights best practices and potential pitfalls that can inform the development of a holistic and adaptive regulatory framework suitable for emerging economies like Malaysia and Indonesia. This combined methodological approach enables a comprehensive understanding of the complex legal landscape governing data, and provides normative recommendations to support integrated and effective regulation.

Big Data in the Context of the Digital Economy

1. The Importance and Characteristics of Data in the Digital Market Economy

In the era of digitalization, data has become a crucial input in the provision of online products and services. Some even consider data to be the new oil in the age of data-driven economy.[2] In online marketing, businesses rely heavily on data to understand consumer behavior and preferences. This inferred data is essential for delivering personalized advertisements and improving online services.[3] By leveraging user data, platforms can offer services at lower and even zero prices.[4] The value of data also depends on the algorithms and machine learning systems employed, which help platforms enhance the quality and utility of the data collected.[5]

A key debate surrounding data is whether it should be considered an economic asset. Within the digital ecosystem, determining data ownership is complex. Critics argue against assigning ownership rights to data due to the public interest in access, reuse, and

[2] Nathan Newman, 'Search, Antitrust and the Economics of the Control of User Data' [2013] SSRN Electronic Journal <https://papers.ssrn.com/abstract=2309547>.

[3] Damien Geradin and Monika Kuschewsky, 'Competition Law and Personal Data: Preliminary Thoughts on a Complex Issue' [2013] SSRN Electronic Journal <https://papers.ssrn.com/abstract=2216088>.

[4] Andres V Lerner, 'The Role of "Big Data" in Online Platform Competition' [2014] SSRN Electronic Journal <https://papers.ssrn.com/abstract=2482780>.

[5] For example, Facebook uses algorithm to better predict the behavior and interest of users and the newsfeed algorithm is important for the development and improvement of its product, Facebook case, p141, para 495-496; See also Competition Market Authority (CMA) & Information Commissioner's office (ICO): Competition & data protection in digital markets: a joint statement between the CMA & the ICO, para 13, p 8; In the same time, the possession of large volume of data assists Google to improve its relevance search algorithm, see Google Search (Shopping) Case AT.39740 (2017).

sharing.[6] Treating data as an asset fails to account for the diverse personal, social, and economic interests it represents. Personal data, for example, is non-exclusive and serves many purposes across society. The digital economy operates within broad ecosystems of data sharing, which promote innovation and competition, as well as empowering consumers with greater control over their data.[7]

Many jurisdictions have begun to recognize data as a form of asset, particularly due to its intangible value. Data's relevance, marketability, and controllability make it comparable to tangible property.[8] According to Jurcys, user-held data, organized and stored in a personal data cloud, can qualify as an asset because it has clearly defined boundaries, offers economic value, and can be freely disposed of.[9] This model gives consumers ownership and control over accurate, up-to-date, and detailed personal data, including how it is used and shared.

In terms of market competition, the accumulation of large datasets is seen as a potential threat to contestability by creating economies of scale and raising entry barriers.[10] However, some argue that access to large volumes of data does not necessarily restrict entry. First, the marginal value of additional data may decline as the data volume increases.[11] Second, data is non-rival and widely accessible,[12] allowing different firms to

[6] Josef Drexl and others, 'Data Ownership and Access to Data - Position Statement of the Max Planck Institute for Innovation and Competition of 16 August 2016 on the Current European Debate' [2016] SSRN Electronic Journal <https://papers.ssrn.com/abstract=2833165>.

[7] Tracy Wut and others, 'Data as An Asset : Key Themes Across Business Models and Multidisciplinary Trends' (Baker McKenzie 2019) <https://www.bakermckenzie.com/en/-/media/files/insight/publications/2019/09/data-as-an-asset-report.pdf>.

[8] Andreas Boerding and others, 'Data Ownership—A Property Rights Approach from a European Perspective' (2018) 11 Journal of Civil Law Studies 5, 11 <https://digitalcommons.law.lsu.edu/jcls/vol11/iss2/5>.

[9] Paulius Jurcys and others, 'Ownership of User-Held Data: Why Property Law Is the Right Approach' [2020] SSRN Electronic Journal <https://papers.ssrn.com/abstract=3711017>.

[10] Martin Schallbruch, Heike Schweitzer and Achim Wambach, 'A New Competition Framework for the Digital Economy – Report by the Commission "Competition Law 4.0"' 8.

[11] Inge Graef, Peggy Valcke and Wouter Devroe, 'Data as Essential Facility : Competition and Innovation on Online Platforms' (2016) para 60; Lerner (n 4) 35–38; Daniele Condorelli and Jorge Padilla, 'Harnessing Platform Envelopment in the Digital World' (Social Science Research Network, 14 December 2019) 25 <https://papers.ssrn.com/abstract=3504025> accessed 18 June 2025.

[12] Graef, Valcke and Devroe (n 11) para 61; See also the case 'M.4731 - GOOGLE / DOUBLECLICK' <https://competition-cases.ec.europa.eu/cases/M.4731> accessed 18 June 2025; 'Competition and Data Protection in Digital Markets: A Joint Statement between the CMA and the ICO 2021 (CMA, ICO)' (*GOV.UK*) 12 <https://www.gov.uk/find-digital-market-research/competition-and-data-protection-in-digital-markets-a-joint-statement-between-the-cma-and-the-ico-2021-cma-ico> accessed 18 June 2025; Lerner (n 4) 21.

collect similar data from the same user base at a relatively low cost. The true value lies in the insights derived from the data, not the data itself.[13] Competing platforms may obtain different datasets that yield comparable insights.

Regarding the first argument, if diminishing returns only occur at high data volumes, dominant platforms with vast datasets may still gain a competitive edge and market power.[14] As for the second argument, it is not merely the volume of data that matters, but the ability to combine data from various sources to create rich user profiles[15] and predictive patterns.[16] This again will give the incumbent platform a competitive advantage vis-à-vis other smaller players in the online advertisement market.

2. Intermediary Platform

The issue of data and market competition is closely linked to the emergence of large intermediary platforms. Traditionally, one-sided platforms provided services to a single category of users. In Malaysia, the Malaysia Competition Commission (MyCC) has taken enforcement actions against such platforms, including MyEG[17] and DagangNet,[18] for abusing their dominant positions in violation of Section 10 of the Competition Act 2010. MyEG provides online services for foreign workers' permits, while DagangNet offers trade facilitation services to exporters and importers.

Due to technological developments, online platforms have evolved into multi-sided platforms that enable interaction between two or more distinct user groups, facilitating transactions and value creation.[19] In such platforms, users on each side are

[13] See for example Catherine E Tucker, 'Digital Data as an Essential Facility: Control' (*PYMNTS.com*, 24 February 2020) <https://www.pymnts.com/cpi_posts/digital-data-as-an-essential-facility-control/> accessed 18 June 2025.

[14] See Graef, Valcke and Devroe (n 11) para 61.

[15] Condorelli and Padilla (n 11) 25.

[16] 'Facebook, Exploitative Business Terms Pursuant to Section 19(1) GWB for Inadequate Data Processing (B6-22/16)' <https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Missbrauchsaufsicht/2019/B6-22-16.pdf?__blob=publicationFile&v=> accessed 18 June 2025.

[17] 'Infringement of Section 10 of the Competition Act 2010 by My E.G. Services Berhad.' (*Malaysia Competition Commission (MyCC)*, 24 June 2016) <https://www.mycc.gov.my/case/finding-of-infringement-of-section-10-of-the-competition-act-2010-by-my-eg-services-berhad> accessed 18 June 2025.

[18] 'Infringement of Section 10 of the Competition Act 2010 by Dagang Net Technologies Sdn Bhd.' (*Malaysia Competition Commission (MyCC)*, 26 February 2021) <https://www.mycc.gov.my/case/finding-of-infringement-of-section-10-of-the-competition-act-2010-by-dagang-net-technologies> accessed 18 June 2025.

[19] Condorelli and Padilla (n 11) 6.

both inputs and outputs, as access to one group is sold to the other.[20] For example, MyCC categorizes Food Panda as an intermediary platform connecting customers, merchants, and delivery partners in the online food ordering and delivery ecosystem.[21]

Multi-sided platforms exhibit direct and indirect network effects, whereby the value of the platform increases as more users join either side.[22] For instance, the decision of merchants to join a food delivery platform is heavily influenced by the number of active customers and available delivery partners, and vice versa..[23]

These network effects reinforce market dominance and raise the barriers to entry. Platforms like Meta (formerly Facebook) and Google benefit from vast user bases that make it difficult for newcomers to achieve the critical mass necessary for effective competition.[24] Typically, such platforms offer free services to one group of users and monetize their data by providing targeted services to advertisers, subsidizing the non-paying side of the market.[25]

The ability of large online platforms to collect and process massive volumes of data, characterized by volume, variety, and velocity, not only raises privacy concerns but also poses competition risks, particularly when the data is unique and not easily replicated.[26] Dominant platforms can exploit the data they collect from various stakeholders for their own benefit, thereby placing competitors that rely on the same platform at a competitive disadvantage.[27]

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[20] ibid 7.

[21] 'Non-Infringement under Section 39 of the Competition Act 2010 - Delivery Hero (Malaysia) Sdn. Bhd.' (*Malaysia Competition Commission (MyCC)*, 13 September 2023) <https://www.mycc.gov.my/case/title-finding-of-non-infringement-under-section-39-of-the-competition-act-2010-delivery-hero> accessed 18 June 2025.

[22] Condorelli and Padilla (n 11) 8.

[23] 'Non-Infringement under Section 39 of the Competition Act 2010 - Delivery Hero (Malaysia) Sdn. Bhd.' (n 21) para 37.

[24] Wut and others (n 7).

[25] 'Stigler Committee on Digital Platforms' (Stigler Center for the Study of the Economy and the State 2019) <https://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf>.

[26] Erika Douglas, 'Digital Crossroads: The Intersection of Competition Law and Data Privacy' (Social Science Research Network, 6 July 2021) <https://papers.ssrn.com/abstract=3880737> accessed 18 June 2025.

[27] See also Annie Palmer, 'Amazon Uses Data from Third-Party Sellers to Develop Its Own Products, WSJ Investigation Finds' (*CNBC*, 23 April 2020) accessed 18 June 2025; Erika Douglas, 'Digital Crossroads: The Intersection of Competition Law and Data Privacy' (Social Science Research Network, 6 July 2021) 108 accessed 18 June 2025; 'Antitrust: Commission Accepts Commitments by Amazon barring It from Using Marketplace Seller Data, and Ensuring Equal Access to Buy Box and Prime' (*PubAffairs Bruxelles*) accessed 18 June 2025.

Data Privacy and Competition Law : Complementary or Tension

1. Complementary

The primary objective of competition law is to preserve the competitive process in markets, thereby enhancing consumer welfare. While traditional markets focus on price, choice, and quality as the key parameters of competition, digital markets introduce data privacy as a crucial competitive factor[28] Enhancing data privacy can serve as a competitive differentiator. Firms that offer better privacy protections can attract users who are sensitive about their data security. Thus, competition law promotes enhanced privacy measures and can be used to encourage competition in the market.[29]

Antitrust enforcement plays a vital role in preventing exploitative and exclusionary practices by dominant firms. The ability of a firm to retain users while degrading their privacy may indicate market power.[30] Dominant firms can exploit this power by imposing unfair terms and conditions regarding data processing, thereby undermining consumers' ability to exercise control over their personal data. Control over vast amounts of data incentivizes exclusionary behavior, such as refusing access to essential datasets or self-preferencing their own services—practices that harm competition and entrench incumbency.[31]

In the case of Facebook,[32] the German Federal Cartel Office (Bundeskartellamt) found that Facebook abused its dominant position by requiring users to consent to excessive data collection as a condition for using its platform (so-called *forced consent*).[33] This practice resulted in exploitative harm through privacy degradation and a loss of user autonomy.

[28] Degradation of privacy can be considered as reduction of quality in service or "increase in the quality-adjusted price of the service" – see Katharine Kemp, 'Concealed Data Practices and Competition Law: Why Privacy Matters' (Social Science Research Network, 5 November 2020) <https://papers.ssrn.com/abstract=3432769> accessed 18 June 2025.

[29] Francisco Costa-Cabral and Orla Lynskey, 'Family Ties: The Intersection Between Data Protection and Competition in EU Law' (2017) 54 Common Market Law Review 11, 9 <http://www.kluwerlawonline.com/toc.php?pubcode=COLA> accessed 18 June 2025.

[30] Degradation of privacy can be considered as reduction of quality in service or "increase in the quality-adjusted price of the service" – see Kemp (n 28).

[31] Schallbruch, Schweitzer and Wambach (n 10).

[32] 'Facebook vs. Verbraucherzentrale Bundesverband e.V.'

[33] Autorita' Garante della Concorrenza e del Mercato, 'WhatsApp fined for 3 million euro for having forced its users to share their personal data with Facebook' <https://en.agcm.it/en/media/press-releases/2017/5/alias-2380> accessed 18 June 2025.

In an exclusionary conduct case, Google was accused of acquiring and maintaining its monopoly position in several interrelated product markets relating to online ad display advertising. Google allegedly used these identifiers to its own advantage, manipulating ad auctions[34] and impairing its competitors' ability to match ads efficiently.[35] These practices reduced the quality of the competition, diminished monetization opportunities for rival platforms, and undermined the efficiency of the digital advertising ecosystem to the detriment of publishers, advertisers, and consumers.[36]

The objective of data privacy law is to regulate the process of data collection and processing. Strong data privacy regulations require companies to obtain explicit user consent and provide transparency of information about data collection and its use. Well-informed consumers using data privacy regulations protects said consumers from exploitative practices, such as unauthorized data sharing or the misuse of personal information for manipulative advertising.[37]

2. Tension

Different legal domains aim to protect different aspect of markets, leading to complex regulatory landscape and possible tensions. Antitrust enforcement in data-related issues such as data portability and mandates to allow access to data may raise data privacy concerns.[38] Conversely, the enhancement of privacy measures by dominant firms can have spillover effects on the competition by creating entry barriers or by being used strategically to exclude rivals. The complex intersection between privacy and

[34] Google blocked publishers and advertisers from accessing and sharing the user IDs with non-Google exchanges and networks. Google's ad server hashes or encrypts publishers' ad server user IDs and giving publishers and advertisers different IDs for the same user so that they cannot identify individual users easily and sell users impression at competitive price. However, uses the same user ID information for Google's benefit and advantage 'The State Of Texas v. Google, LLC, 1:21-Cv-06841' (*CourtListener*) para 140 <https://www.courtlistener.com/docket/60181878/the-state-of-texas-v-google-llc/> accessed 18 June 2025.

[35] ibid.

[36] ibid 267.

[37] Both data protection and consumer protection law address the same market failures, i.e. information and behavioral problem, see Wolfgang Kerber and Karsten K Zolna, 'The German Facebook Case: The Law and Economics of the Relationship between Competition and Data Protection Law' (Social Science Research Network, 14 November 2021) <https://papers.ssrn.com/abstract=3719098> accessed 18 June 2025.

[38] See for example, the EU Commission was concerned about access to data may have privacy issue.-see 'Antitrust: Google in the online advertising technology' (*European Commission - European Commission*) <https://ec.europa.eu/commission/presscorner/detail/it/ip_21_3143> accessed 18 June 2025.

competition is illustrated by the contrasting privacy strategies of Google and Apple. Google introduced the Privacy Sandbox, while Apple implemented the App Tracking Transparency (ATT) framework. Both initiatives have drawn scrutiny from competition authorities across jurisdictions.

Google's Privacy Sandbox aims to establish open standards that enhance user privacy[39] while preserving access to free online content. It is part of Google's broader initiative to embed data protection by design and default into its operations, thereby fostering user trust and promoting privacy-centric competition A key element is the phasing out of third-party cookies and fingerprinting technologies via its Chrome browser. While this move supports user privacy, it also limits the access of publishers and advertisers to granular, real-time data, thereby reducing the effectiveness of open display advertising.[40] Google maintains a competitive advantage through its access to first-party data gathered across its owned services, enabling continued precision in digital advertising.[41]

Apple's ATT framework introduces a mandatory consent mechanism for app developers seeking to access the Identifier for Advertisers (IDFA). This is operationalized through the ATT prompt, a pop-up requesting users' permission for cross-app tracking. Apple asserts that this measure is designed to enhance transparency and empower users.[42] While the ATT is pro-privacy, it raises competition concerns. The way ATT is designed is artificially complex. The ATT introduces an additional layer of consent with no marginal value as the publishers have already been implementing their own consent platform to comply with the GDPRR. The ATT prompt lacks clarity regarding the implications of denying tracking, such as potential increased app costs for users, and

[39] 'Competition And Markets Authority Case 50972 □ Privacy Sandbox Google Commitments Offer' <https://assets.publishing.service.gov.uk/media/62052c6a8fa8f510a204374a/100222_Appendix_1A_Google_s_final_commitments.pdf>.

[40] 'The Competition and Markets Authority (CMA) Has Accepted Commitments Offered by Google That Address the CMA's Competition Concerns Resulting from Investigating Google's Proposals to Remove Third-Party Cookies and Other Functionalities from Its Chrome Browser. (Case Number 50972)' (*GOV. UK*, 13 June 2025) para 5.36 & 5.37 <https://www.gov.uk/cma-cases/investigation-into-googles-privacy-sandbox-browser-changes> accessed 18 June 2025.

[41] ibid 5.71 & 5.72.

[42] 'Décision 21-D-07 du 17 mars 2021' (*Autorité de la concurrence*, 17 March 2021) paras 28 & 29 <https://www.autoritedelaconcurrence.fr/fr/decision/relative-une-demande-de-mesures-conservatoires-presentee-par-les-associations-interactive> accessed 18 June 2025.

limits the ability of consumers who prefer personalized ads to make informed choices.[43] It prevents smaller competitors from collecting and combining data to improve the quality of their services and reduce costs.

The design of Apple's choice architecture further compounds these issues. The UK's Competition and Markets Authority (CMA) has expressed concern that the ATT prompt may bias user behavior towards opting out of tracking, thereby undermining third-party developers' ability to acquire users and monetize through in-app advertising.[44] The way Apple has designed its choice architecture is different from the ATT prompt. The different choice architecture may influence users to opt into data sharing within the Apple ecosystem and opt out of data sharing within the ATT prompt.[45]

Given that Google and Apple operate globally, their privacy strategies have implications beyond the UK and EU, including smaller markets like Malaysia. According to a study, local ad publishers are concerned about Google's ability to access first-party data within its ecosystem, enabling optimal audience targeting.[46] The limited availability of detailed campaign performance data, restricted to aggregated benchmarks, hampers local advertisers' ability to optimize and compete effectively.[47]

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[43] Thomas Hoppner and Philipp Westerhoff, 'Privacy by Default, Abuse by Design: EU Competition Concerns About Apple's New App Tracking Policy' (*PYMNTS.com*, 6 June 2021) <https://www.pymnts.com/cpi_posts/privacy-by-default-abuse-by-design-eu-competition-concerns-about-apples-new-app-tracking-policy/> accessed 18 June 2025; see also D Daniel Sokol and Feng Zhu, 'Harming Competition and Consumers under the Guise of Protecting Privacy: An Analysis of Apple's iOS 14 Policy Updates' (Social Science Research Network, 14 June 2021) <https://papers.ssrn.com/abstract=3852744> accessed 18 June 2025.

[44] Particularly, the CMA put an emphasis on the format of the ATT Prompt screen including the language, the ordering of the choice option, the incentive can be offered if users opt into data sharing and centralize control to enable or disable ATT Prompt to request data tracking. The personalized ad prompt presented opt-in choice (turn-on personalized ads) above the opt-out choice (turn-off personalized ads). The personalized ad prompt also uses positive language highlighting the immediate benefits of personalized ads and all the text presented (except for the title) are equally visible or salient, The Competition and Markets Authority (CMA), 'Mobile Ecosystems Market Study Interim Report' (*GOV.UK*, 26 January 2022) app 1, para 148 <https://www.gov.uk/government/publications/mobile-ecosystems-market-study-interim-report> accessed 18 June 2025.

[45] ibid.

[46] 'Market Review on the Digital Economy Ecosystem under the Competition Act 2010 (Interim Report)' (Malaysia Competition Commission (MyCC) 2025) 379 <https://www.mycc.gov.my/sites/default/files/2025-03/Public_Interim%20report%20for%20Market%20Review%20on%20the%20Digital%20Economy%20Ecosystem%20under%20the%20Competition%20Act%202010.pdf>.

[47] ibid 372.

The Abuse of the Dominant Position and its Development in the EU, Germany, Malaysia and Indonesia

The concept of abuse of the dominant position is very much relevant due to the fact that some of the multi-sided firms may enjoy a significant market power as a result of the network effect and data monopolization. Article 102 of the TFEU deals with abuse of the dominant position by a firm with strong market power. A dominant firm has a special obligation not to distort the process of competition and is expected to compete on merit, not through an anti-competitive manner. Some forms of conduct which are otherwise lawful for non-dominant firms will be unlawful for a firm found to be in a dominant position.

The EU competition law is very much influenced by the German ordoliberal concept, where competition law aims to promote the competitiveness of the market and freedom to compete. Ordoliberal beliefs that maintain the competitive structure of the market produce better outcomes for consumers.

Abuse under Article 102 is assessed objectively, and the provision contains a non-exhaustive list of prohibited conduct. Abusive practices are generally categorized as either exploitative (excessive pricing or unfair trading terms) or exclusionary (predatory pricing, discriminatory practices, or refusal to supply). The TFEU does not specifically contain provisions on refusal to supply. Rather, the concept developed from various case laws. In contrast, the German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen – GWB) explicitly prohibits refusal to supply under Section 19(2)(4), including denial of access to essential facilities such as data. The GWB also addresses discriminatory conduct and unfair contractual terms.

EU and German competition authorities typically adopt an effects-based approach, assessing the impact of conduct on the competitive structure and consumer welfare. Even conduct falls under exploitative behavior, where harm to the consumer is not sufficient, as the conduct must have some impact on the freedom to compete.

In Malaysia, Section 10 of the Competition Act 2010 closely mirrors Article 102 TFEU, prohibiting abuse of the dominant position through a non-exhaustive list of practices. Provisions relevant to data-related conduct include: (1) the imposition of unfair

terms and conditions, potentially covering data processing obligations (exploitative); (2) refusal to supply essential inputs such as data; and (3) discriminatory practices, including self-preferencing by dominant platforms (exclusionary conduct). Cases under section 10 are still underdeveloped.

In *Dagang Net Technologies Sdn Bhd*, the Malaysia Competition Commission (MyCC) found that the refusal to provide access to the electronic mailbox system for the end users of the Customs Information System did not constitute abuse due to the absence of significant competitive harm. The Commission clarified that refusal to supply encompasses a wide range of practices, including denial of access to networks and essential facilities.

Conversely, in *MyEG Services Bhd*, the Commission found an infringement of Section 10(1) and 10(2)(d) when MyEG leveraged its monopoly in the online renewal of foreign worker permits to favor its affiliates in the mandatory insurance market. The conduct was deemed to have foreclosed the competition in the related market, constituting an abuse of dominance.

While Section 10(2)(d) parallels Article 102(d) TFEU, its theory of harm is broader. Under Article 102(d), the focus is on whether the conduct disadvantages trading partners of the dominant firm (secondary-line injury). EU authorities have, in some cases, also considered harm to the dominant firm's competitors (primary-line injury), even in downstream markets where the firm does not compete. Section 10(2)(d) goes further by evaluating whether the conduct raises entry barriers, harms existing competitors, or damages competition in any market, upstream or downstream, regardless of the dominant firm's participation.

From an Indonesian competition law perspective, the intersection between data governance and market power has become increasingly salient with the rapid growth of digital platforms. Indonesia's competition regime is governed by Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition ("Law No. 5/1999") which, similar to Article 102 TFEU and Section 10 of Malaysia's Competition Act 2010, prohibits the abuse of the dominant position and anti-competitive agreements. Although the statute predates the digital economy, its broad and effects-based formulation enables it to be applied to data-driven markets.

Under Article 25 of Law No. 5/1999, a business actor is prohibited from abusing a dominant position, including by imposing unfair trading conditions, limiting market access, or hindering consumers or competitors from obtaining goods or services. In digital markets, these forms of abuse may manifest through data accumulation, control over user information, and the leveraging of platform ecosystems, even where services are offered at zero monetary price. The Indonesian Competition Commission (Komisi Pengawas Persaingan Usaha – KPPU) has increasingly acknowledged that data and network effects are key determinants of market power, particularly in multi-sided digital platforms.

Access to data confers incumbents a competitive advantage and creates entry barriers via network effects and economies of scale. Assessing the conduct of digital platforms under competition law is complex, requiring nuanced theories of harm that account for the digital market's unique features. Emerging case law from the EU offers valuable insights into how authorities evaluate the competitive impact of data-related conduct in digital markets.[48]

1. Google Shopping Comparison case – Exclusionary conduct

Although the Google Shopping case does not directly concern access to data, it highlights the complexities of applying traditional competition law in digital markets, particularly regarding exclusionary conduct such as refusal to supply and abusive self-preferencing. In the Google Sandbox and ATT Prompt cases, competition authorities expressed concerns about large platforms or gatekeepers controlling data to self-prefer their own services.

Google's flagship service is its general search engine, alongside ancillary services like shopping comparison tools, which fall under its specialized search services. Google collects vast amounts of user data (e.g., search queries), giving it a competitive advantage, as this data improves search result relevance. The **EU Commission** found that Google had abused its dominant position in the general search market by:

i. Prominently placing its own comparison shopping service in highly visible locations on general search results pages (above or within the first few generic

[48] Ariel Ezrachi and Maurice E Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (Harvard University Press 2016).

results) (Google Case, para 379).[49]

ii. Using algorithms that demote competing services, while Google's own service is never demoted and is displayed in a rich format despite being functionally similar (Google Case, para 344).[50]

This conduct increased traffic to Google's service and reduced traffic to competitors, which could have anti-competitive effects in both the comparison shopping and general search markets.[51] Traffic is vital for specialized search engines as it enhances relevance via machine learning, attracts merchants to provide product data, and boosts revenue to improve services.[52]

A central legal issue was whether Google's actions constituted a **refusal to supply**, and whether the **Bronner** standard applied. In *Bronner*, refusal to access a service is abusive under Article 102 TFEU only if it eliminates all competition, lacks objective justification, and involves an indispensable service with no alternatives. Google argued that these conditions were not met.[53]

The EU Commission and General Court rejected this, finding that Google's conduct amounted to abusive leveraging, specifically positive acts of discrimination favoring its own service. While leveraging market power from one market (search) to another (comparison shopping) is not inherently unlawful, Google's actions exceeded competition on the merits. As an ultra-dominant firm, Google has a special responsibility not to distort the competition. Its self-preferencing behavior was seen as abnormal, especially given the general search engine's function to provide access to all types of content.[54]

2. Google Alphabet case - Theory of harm – self-preferencing

The *Google Shopping* judgment was seen as introducing a new standalone form of abusive conduct under the label of 'self-preferencing', which is unjustified favorable

[49] 'AT.39740 - Google Search (Shopping)' para 379 <https://competition-cases.ec.europa.eu/cases/AT.39740> accessed 18 June 2025.

[50] ibid 344.

[51] ibid 384.

[52] ibid 445–453.

[53] 'Case T- 604/18 Google and Alphabet v Commission (Google Android)' para 225 <https://www.lexisnexis.co.uk/legal/guidance/case-t-604-18-google-alphabet-v-commission-google-android-archived> accessed 18 June 2025.

[54] ibid 176.

treatment or discriminatory behavior that benefits a dominant firm's own services. Self-preferencing may only be prohibited if it results in exclusionary effects, such as reducing competitors' visibility or web traffic. By relying on a new theory of harm, the authority can move away from strict requirements of refusal to supply and its controversies, particularly with regard to the indispensability requirement and the need to transfer assets or enter into an agreement to bring anti-competitive behaviour to an end. However, the term of 'self-preferencing was not clearly mentioned and the legal standard was not clearly articulated in the Commission's decision and court's judgement. The Google decision is still unclear as to whether the general leveraging of abusive conduct is sufficient to establish infringement and whether there is a need to establish a new form of exclusionary conduct. It is also unclear how self-preferencing differs from other abusive conduct such as discriminatory practices (dissimilar conditions to equivalent transaction) and constructive refusal to supply, which may also be relevant in this case.

In the context of data privacy, this is relevant because the non-rivalrous nature of data makes it difficult to apply traditional refusal-to-supply standards. Data may not meet the indispensability requirement set out in the *Bronner* case. Authorities may instead rely on leveraging abuse, such as self-preferencing, to navigate these challenges. In the Privacy Sandbox case, the CMA raised concerns that the proposal would make Google a gatekeeper by controlling access to granular data and ad placements. The system incentivizes Google to favor its own services, as it competes with other publishers, advertisers, and ad tech firms. Similarly, in *Texas v. Google LLC*, restricting access to user ID data enabled Google to leverage market power across ad-related markets. This conduct also harms consumers, who may have consented to share their IDs with rivals. ID sharing promotes competition, potentially lowering costs, increasing ad revenues for publishers, and enabling better or more affordable content for users.[55]

3. Facebook Case – Exploitative Conduct

The Facebook case in Germany demonstrates that competition law can intervene in data privacy matters, where breaches of data protection rules may constitute violations

[55] 'The State Of Texas v. Google, LLC, 1:21-Cv-06841' (n 34) para 129.

of competition law. The Bundeskartellamt found that Facebook imposed unfair terms by collecting user data not only from its own platform but also from Instagram, WhatsApp, and third-party websites without obtaining separate consent, some of which were unnecessary for operating the social network. This extensive data collection enhanced Facebook's market power, given data's role in optimizing paid advertisements, Facebook's primary revenue source.[56]

Under Article 19 GWB, data processing indicates that infringing privacy laws can amount to abusive conduct when the market power enables such practices. This qualifies as non-price exploitative abuse, as it violates users' data privacy. Terms imposed under a power imbalance, especially by dominant platforms, are considered abusive.

The theory of harm centers on privacy invasion, particularly the users' loss of control over their personal data.[57] Facebook did not provide users with the choice between a lesser or higher level of personalized service (the latter cover both on-and off-Facebook data processing).[58]

To assess unfairness, the Bundeskartellamt applied data privacy principles such as necessity, proportionality, and transparency to evaluate whether the data processing was essential for providing the service, whether Facebook's interests outweighed user rights, and whether users received clear information.[59] Competition authorities may consider data protection standards as long as elements of abusive conduct are proven. This application aligns with privacy law, which focuses on compliance with minimum standards rather than addressing market power.[60]

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[56] 'Facebook, Exploitative Business Terms Pursuant to Section 19(1) GWB for Inadequate Data Processing (B6-22/16)' (n 16).

[57] ibid 528–529.

[58] see 'Decision KVR 69/19 Rendered by the Bundesgerichtshof (Federal Court of Justice) on 23/06/2020 Provided by the Bundeskartellamt (Beschluss Des Kartellsenats Vom 23.6.2020 - KVR 69/19)' para 86 <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=2020-6&Seite=4&nr=109506&pos=121&anz=279> accessed 18 June 2025; Klaus Wiedemann, 'A Matter of Choice: The German Federal Supreme Court's Interim Decision in the Abuse-of-Dominance Proceedings Bundeskartellamt v. Facebook (Case KVR 69/19)' (2020) 51 IIC - International Review of Intellectual Property and Competition Law 1168, 1170 <https://doi.org/10.1007/s40319-020-00990-3> accessed 18 June 2025.

[59] In considering the users interests various factors will be taken into consideration including type of data, type of data processing, users' reasonable expectations, the position of data controller and the existence of protective measures to minimize the effect. (775)

[60] Kerber and Zolna (n 37).

Although Malaysia has seen few cases involving the abuse of dominance by digital platforms, global practices may still affect its market. Studies show that Google holds a dominant position in Malaysia's operating system market, raising concerns about self-preferencing using user data. Meta is also dominating the broad social media market. Similarly, local online marketplaces are dominated by a few players who may favor their own shops or products by leveraging detailed user data, disadvantaging third-party sellers.[61] Malaysia is currently in the nascent stage of AI innovation, particularly in data-intensive and generative AI systems (large language models, advanced recommendation engines). Instead, global players like Google, Microsoft,[62] Meta or OpenAI are still dominating the Malaysian market. These providers enjoy a structural advantage due to exclusive access to large volumes of Malaysian user data, for instance, through Android usage, Google services, Meta products, and messaging platforms. This data is often collected through proprietary services and is processed in-house, reinforcing structural market distortions and creating high barriers for local actors attempting to enter the AI sector.

The Development of Competition Policy and Law in the Digital Market Economy: Experience in the EU and Germany From Competition Law to *Ex Ante* Regulations

1. The EU Digital Market Act and Data Act

The EU has introduced new **ex ante** regulations to control the behavior of big tech companies designated as gatekeepers. The Digital Markets Act (DMA) sets specific criteria to determine gatekeeper status, distinct from the assessment of market dominance. It complements existing competition laws, which may be too rigid to effectively regulate digital platforms, while also addressing privacy concerns. Recognizing the unique characteristics of digital markets, the DMA introduces obligations for gatekeepers,

[61] 'Market Review on the Digital Economy Ecosystem under the Competition Act 2010 (Interim Report)' (n 46) 159, 234. 338.

[62] See Malaysia's AI Landscape & What it Means for Businesses (2025) at https://www.veecotech.com.my/blog/malaysia-ai-landscape/ accessed on 24.6.2025. See is also Malay Mail (2024). Google to invest RM9.4b in Malaysia to set up data centre and cloud region. https://www.malaymail.com/news/malaysia/2024/05/30/google-to-invest-rm94b-in-malaysia-to-set-up-data-centre-and-cloud-region/137176.

particularly regarding data usage and access. It aims to protect user privacy and promote competition between gatekeepers and business users reliant on their platforms.

Regarding data use and access, the DMA prohibits gatekeepers from using non-public data generated by business users and their customers when competing with those users (Article 6(2)). It also requires gatekeepers to provide advertisers and publishers with free access to performance measurement tools and relevant data for ad analysis (Article 6(8)). Data portability and continued real time access to the data generated from the use of the platform or services must be ensured for both business and end users (Article 6(9)) & 6 (10)). The interoperability obligation is also imposed on the gatekeepers, allowing other developers and businesses to integrate with the gatekeepers' hardware and software features (Art 6 (7)). Additionally, gatekeepers must allow third-party search engines access to ranking, query, click, and view data on FRAND terms for searches conducted on their platforms (Article 6(11)).

These obligations align with data protection rules. For instance, business users may only access end-user data if the latter gives explicit consent (Article 6(10)). To prevent further market concentration, the DMA prohibits gatekeepers from processing personal data collected from third-party services or combining it with data from their own platforms or other third parties.

Due to the non-rivalrous nature of data, the EU Data Act was introduced to regulate access and the sharing of data, including personal data from connected devices. It also facilitates cloud service data portability, aiming to promote fair competition and prevent dominant firms from imposing unfair terms.[63] Users of connected devices have the right to access data generated through their usage and may request it to be shared with third parties.

The Data Act also permits public sector access to privately held data in exceptional circumstances. Data sharing and portability must comply with data protection laws.[64]

[63] 'Data Act Explained : A Comprehensive Overview of the Data Act, Including Its Objectives and How It Works in Practice.' <https://digital-strategy.ec.europa.eu/en/factpages/data-act-explained> accessed 18 June 2025.

[64] Shruti Hiremath and others, 'The EU Data Act Proposal and Its Interaction with Competition Privacy and Other Recent EU Regulations' 19 <https://www.cliffordchance.com/insights/resources/blogs/talking-tech/en/articles/2023/03/the-eu-data-act-proposal-and-its-interaction-with-competition-pr.html> accessed 18 June 2025.

If the requester is not the data subject, personal data may only be shared if there is a legal basis, such as the subject's consent or a legitimate interest. However, recipients are prohibited from using the data to develop competing products. This restriction, while promoting innovation, especially among startups, aims to preserve incentives for data holders to innovate.

2. The Development of German competition law

Germany has amended its Competition Act (Gesetz gegen Wettbewerbsbeschränkungen – GWB) to address the specific challenges of the digital market economy. Section 19a empowers the competition authority to intervene early to preserve market contestability, encourage innovation, and promote consumer choice. It prohibits undertakings with paramount significance for market competition from engaging in certain conduct, including data-related practices that create entry barriers or restrict data portability. Sections 19a(4)(a) and (b) complement data protection rules by emphasizing the importance of free consent and choice in data processing.

Competition Law and Personal Data Protection Law in Malaysia

The Malaysian Competition Act 2010 does not specifically address data-related competition issues. Nevertheless, data-driven concerns can be accommodated within existing competition law principles. In particular, the MyCC Guidelines in Section 10 recognise factors such as network effects, economies of scale, and barriers to entry, all of which are closely associated with the accumulation and control of data in digital and networked markets. Although the doctrine of refusal to supply traditionally applies to tangible facilities or intellectual property, it remains unsettled under Malaysian law whether data, especially non-personal or machine-generated data, may qualify as an essential facility. In assessing any alleged refusal to supply, the MyCC is required to balance short-term competition gains against long-term incentives for investment and innovation.[65] The Guidelines further acknowledge the concept of leveraging, whereby a

[65] 'MyCC Guidelines on Chapter 2 Prohibition : Abuse of Dominant Position' <https://www.mycc.gov.my/sites/default/files/pdf/newsroom/MYCC%204%20Guidelines%20Booklet%20BOOK2-6%20FA%20copy.pdf>.

firm dominant in an upstream market may abuse its position by restricting access to an essential input in order to distort competition in a downstream market. In a data-driven context, this could arise where a dominant firm limits its competitors' access to critical datasets while preferentially granting access to its own downstream affiliates.

Beyond general competition law, Malaysia's sector-specific regulatory framework, particularly the Communications and Multimedia Act 1998 (CMA), offers a more concrete pathway for linking data to an access regime. The CMA represents a hybrid regulatory model that combines ex-ante regulatory obligations with ex-post competition enforcement, which is broadly analogous (though not equivalent) to the EU's approach under the Digital Markets Act. Under the CMA, ex-ante obligations such as price control and access requirements are imposed in markets characterised by high entry barriers or natural monopoly features, with general competition law applying once effective competition emerges, such as in segments of the mobile telecommunications market.

The CMA also contains access regulation. The Malaysian Communications and Multimedia Commission (MCMC) determines which facilities are subject to access obligations. Under this regime, the MCMC determines which facilities and services are included in the access list and therefore subject to mandatory sharing on equitable, reasonable, and non-discriminatory terms. While bottleneck facilities (akin to essential facilities) are a key criterion,[66] the MCMC may include other facilities or services in the access list if the markets in which these facilities or services serve as inputs do not exhibit workable levels of competition. Importantly, the scope of the access regime is not confined to physical infrastructure. It extends to the inter-network linkages and connectivity services that are necessary to ensure end-to-end communications and effective market participation.

This emphasis on connectivity provides a conceptual bridge for linking data to the access regime. In modern communications and digital markets, data functions as a critical input that enables connectivity, interoperability, and service provisions, particularly in

[66] The bottleneck concept involves two distinct markets, usually referred to as the "upstream" and "downstream" markets, with one firm participating in both. Other companies operating, or intending to operate, in the downstream market depend on access to a key input from the upstream market, which is only provided by the competing firm active in both markets.

relation to network management, traffic information, usage data, and platform-based services. Where access to such data is indispensable for competitors to interconnect, operate efficiently, or offer substitutable services, data may perform a role functionally equivalent to a network facility. In the EU for example, interoperability information was treated as an essential input, reflecting the Court's recognition that access obligations may extend beyond physical infrastructure to information and connectivity-enabling inputs.[67] Accordingly, although data is not expressly listed under the CMA's access provisions, there is a plausible regulatory basis for considering certain categories of data, especially those integral to connectivity and inter-network operation, as falling within the logic of the access regime. This interpretation would allow the access framework to evolve in line with technological realities, while remaining consistent with the CMA's objective of promoting competition, efficient infrastructure investment, and service interoperability.

Malaysia's Personal Data Protection Act (PDPA) 2010, influenced by the EU and UK frameworks, governs data processing. Section 6 sets out the principles of lawfulness, necessity, and proportionality. Consent is the main basis for processing, though exceptions apply, such as contractual necessity. The PDPA emphasizes transparency and choice—data subjects must be informed about data collection, usage, and third-party disclosures, and be given the option to limit data processing.

To accelerate digital transformation, the government promotes data sharing through open APIs and centralized access systems. The Data Sharing Act 2025 facilitates public-to-public data exchange for better policy analysis and service delivery, emphasizing transparency and data minimization. Requests must specify their purpose, the data type, and handling. The law imposes obligations on both providers and recipients to comply with PDPA standards. To encourage B2B innovation, the amended PDPA 2024 introduced data portability, allowing individuals to transfer personal data between service providers. This complements broader efforts to expand cloud services and consumer choice. The national digital platform initiative enables open-source data

[67] Case T-201/04 Microsoft Corp. v Commission [2007] 5 CMLR 11.

sharing, forming a data bank accessible to businesses and policymakers to enhance efficiency, innovation, and digital adoption.[68]

Malaysia currently relies on separate regimes, the Competition Act 2010 and the PDPA, to address competition and data issues. These were not designed to manage their growing intersection. The overreliance on competition law in data protection may harm privacy and discourage innovation. Competition law should only apply in limited scenarios, such as disproportionate or discriminatory privacy measures by dominant platforms. In such cases, Section 10(2)(a) may address unfair practices by taking into consideration data protection rules to establish fairness such as proportionality and necessity requirements.

The authorities must avoid vague harm theories like self-preferencing or the rigid indispensability test from refusal-to-supply cases. Section 10(2)(d) offers a broader basis to tackle discriminatory conduct and data leveraging, where data advantages are transferred across markets. Unlike the EU competition law regime, where the prohibition of discriminatory practices focuses on the harmful effect of the conduct on competition between trading partners, section 10 (2) (d) of the CA 2010 can be widely used to prevent discriminatory practices including self-preferencing since it aims to address practices that harm not only the dominant's direct and indirect competitors, but also harm to any market. This provision can also be used to regulate access to AI- or training-related data (e.g. behavior or demographic) for the development of new competing automated or AI systems. However, the key challenge remains defining markets in complex digital ecosystems.

Data should be treated as an economic asset, governed by clear rights and responsibilities to ensure broad access and benefit. While the PDPA includes data portability provisions, it is unclear whether denying portability constitutes abuse under the Competition Act. Current data-sharing laws are limited to government-to-government exchanges, leaving gaps in B2B and B2C contexts. Without proper safeguards, dominant entities on national data platforms could impose unfair terms on

[68] Ministry of Investment, Trade and Industry, 'New Industrial Master Plan 2030' (2023) <https://www.nimp2030.gov.my/> accessed 18 June 2025.

smaller players. Regulatory measures are needed to prevent excessive or anti-competitive data sharing while protecting privacy.

Ex-ante regulation, such as the EU DMA, can address conduct that competition law alone may miss, especially in fast-evolving digital markets. In Malaysia's developing digital environment, new rules risk increasing compliance burdens and stifling innovation. The MyCC may also lack the capacity for robust ex-ante enforcement. A more feasible approach is leveraging the CMA, which already integrates competition and ex-ante tools. Unlike Bronner case's strict test, the CMA allows access obligations even when indispensability is not met. The dynamic and flexible nature of CMA also enables the MCMC to define gatekeepers tailored to Malaysia's market structure. For example, the MCMC now requires messaging and social media services with over 8 million users[69]—such as Facebook, TikTok, and WhatsApp—to obtain licenses. These providers must protect users from harmful content and give them control over personal data use, particularly in targeted advertising. This complements data protection by enhancing user choice.

As data becomes central to business and digital services, the CMA should consider regulating B2B and C2B data access and sharing to foster innovation and competition, while ensuring privacy. The CMA and PDPA should also consider extending the regulatory scheme on interoperability (akin to DMA Article 6(7)) to support the government's initiatives encouraging open access data (API). The interoperability regime allow start-tups and small businesses to work with the dominant platform's system, further stimulating competition, reducing entry barriers, and supporting data portability in Malaysia.

Indonesian Competition Law Perspective on Data and Digital Markets

Indonesia's digital economy is dominated by large intermediary platforms in ride-hailing, e-commerce, digital payments, and online advertising. Platforms such as Gojek,

[69] 'Frequently Asked Questions (FAQ) on the Regulatory Framework for Internet Messaging Service and Social Media Service Providers in Malaysia' <https://www.malaysiainternet.my/wp-content/uploads/2024/08/MCMC-FAQ-for-Regulatory-Framework-Social-Media-Malaysia.pdf>.

Tokopedia, Shopee, Grab, and Google operate multi-sided markets characterized by strong indirect network effects and extensive data collection. KPPU has recognized that such platforms act as intermediaries that control access between different user groups, and that the accumulation of transactional, behavioral, and location data can reinforce entry barriers and market concentration.

This approach is evident in KPPU's assessment of digital mergers, particularly the Gojek–Tokopedia merger (GoTo). In its merger review, KPPU explicitly considered data integration, ecosystem leveraging, and cross-market effects as part of the competitive assessment. The authority acknowledged that combining datasets across ride-hailing, e-commerce, logistics, and financial services could strengthen its market power and potentially foreclose competitors, even absent immediate price effects. This signals an implicit recognition that data constitutes a strategic economic asset capable of conferring a durable competitive advantage.

Although Indonesian case law on data-related abuse of dominance remains limited, Law No. 5/1999 provides the doctrinal space to address practices such as data leveraging, self-preferencing, and discriminatory access to platform-generated data. Article 25(c) prohibits dominant firms from restricting market development or technology, which may extend to practices where a platform limits a competitors' access to essential datasets, APIs, or interoperability information.

Article 19(d) prohibits discriminatory treatment that places certain business actors at a disadvantage. In the context of digital platforms, this provision can be interpreted to cover self-preferencing conduct, where a dominant platform favours its own services or affiliated entities using superior access to user data or algorithmic ranking. Unlike the EU's strict refusal-to-supply doctrine, Indonesian competition law does not require proof of indispensability in the Bronner sense, making it potentially more flexible in addressing exclusionary data practices.

Indonesia's Personal Data Protection Law (Law No. 27 of 2022) establishes consent, purpose limitation, and proportionality as the core principles governing personal data processing. While the PDP Law focuses on individual rights and lawful processing, competition law addresses the structural power imbalances arising from data control.

Similar to the German Facebook case, exploitative data practices, such as excessive data collection imposed by a dominant platform, may simultaneously raise privacy violations and competition concerns.

Indonesian law maintains a functional separation between these regimes. Competition law should not be used to enforce personal data protection compliance per se, but privacy norms may serve as benchmarks for assessing unfairness under Article 25, particularly where dominant platforms impose take-it-or-leave-it data terms on users or business partners. In this sense, competition law complements data protection by addressing situations where market power undermines meaningful consent and consumer choice.

Toward an Integrated Regulatory Approach in Indonesia

Indonesia currently relies on ex post competition enforcement under Law No. 5/1999 and sectoral regulation under laws governing electronic systems and communications. Unlike the EU Digital Markets Act, Indonesia has not adopted a comprehensive ex ante regime for digital gatekeepers. Recent developments such as KPPU's Guidelines on Merger Assessment and Digital Economy Markets indicate a gradual shift toward recognizing data-driven theories of harm, including ecosystem dominance and cross-market leveraging.

For emerging digital economies like Indonesia, an integrated approach similar to that proposed for Malaysia is increasingly relevant. Competition law should intervene where data practices distort the market structure or exclude rivals, while data protection law safeguards individual rights. Sector-specific regulation may further address interoperability, access to platform infrastructure, and the systemic risks posed by large digital intermediaries. Such coordination would allow Indonesian regulators to address data-related competition harms without undermining privacy protection or innovation incentives.

Conclusion

The convergence between data protection and competition law in the digital economy requires an integrated regulatory approach that balances innovation, market fairness, and user privacy. As large digital platforms gain market power through data

accumulation and network effects, their practices raise both antitrust and data privacy concerns. Relying solely on competition law or data protection regulation is insufficient, particularly in addressing complex behaviors such as self-preferencing, data leveraging, and exclusionary conduct. Experiences from the EU and Germany demonstrate the value of combining ex-ante regulation with competition enforcement.

In the Malaysian context, this interface is best addressed through a function-based and coordinated regulatory framework**.** The Personal Data Protection Act 2010 establishes the baseline rules governing the lawfulness of data processing and data portability. The Data Sharing Act facilitates controlled data access and sharing, subject to privacy safeguards. Competition law intervenes where market power transforms data practices into exploitative or exclusionary conduct, rather than enforcing data protection compliance as such. Sector-specific regulation under the Communications and Multimedia Act 1998 may further complement this framework by addressing access, interoperability, and connectivity-related data issues in digital and communications markets. Jurisdiction over data-driven harms is therefore shared: data protection authorities govern legality and consent, competition authorities address market power-related effects, and sector-specific regulators play a role where data functions as a critical input for access and interoperability.

Data-driven digital markets pose significant challenges to Indonesia's competition law regime, which was not originally designed to address data concentration, network effects, and ecosystem-based dominance. Although Law No. 5 of 1999 does not explicitly regulate data, its effects-based provisions on the abuse of dominant position and discriminatory conduct provide a workable basis to address data-related competition harms, particularly in multi-sided digital platforms where control over data functions as a key source of market power.

Recent enforcement practice, especially in digital merger control, reflects a growing recognition by the KPPU that data constitutes a strategic economic asset capable of reinforcing entry barriers and enabling cross-market leveraging, even when price effects are absent. While the Personal Data Protection Law 2022 safeguards individual rights, competition law should intervene only where market power transforms data practices

into exploitative or exclusionary conduct. In the absence of ex ante gatekeeper regulation, a coordinated and function-based approach combining competition law, merger control, and sector-specific regulation offers a proportionate path to balancing competition, innovation, and consumer protection in Indonesia's digital economy.

Finally, Malaysia and Indonesia need a holistic framework that recognizes data as an economic asset, promotes data sharing and portability, and ensures fair access to data. This is essential to support a competitive, privacy-respecting digital economy.

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