

DATA SHARING WITHIN THE EU DIGITAL MARKET

Faculty of Management, University of Warsaw

15 September 2023

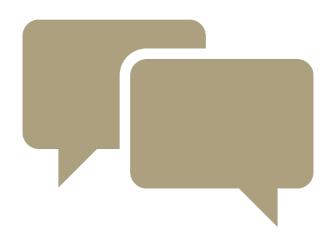
EXPERIMENTAL COMPETITION ENFORCEMENT: A COMPLEMENTARY DATA SHARING TOOLKIT

Emanuele Fazio

PhD Student in Law

OUTLINE

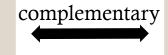
- I. THE EU'S DIGITAL DECADE BACKGROUND
- II. EXPERIMENTALIST GOVERNANCE
- III. EXPERIMENTAL COMPETITION
 ENFORCEMENT: AGCM v. GOOGLE (2023)
- IV. INTERNAL AND EXTERNAL DIALOGUES
- V. PRELIMINARY CONSIDERATIONS



THE EU'S DIGITAL DECADE BACKGROUND

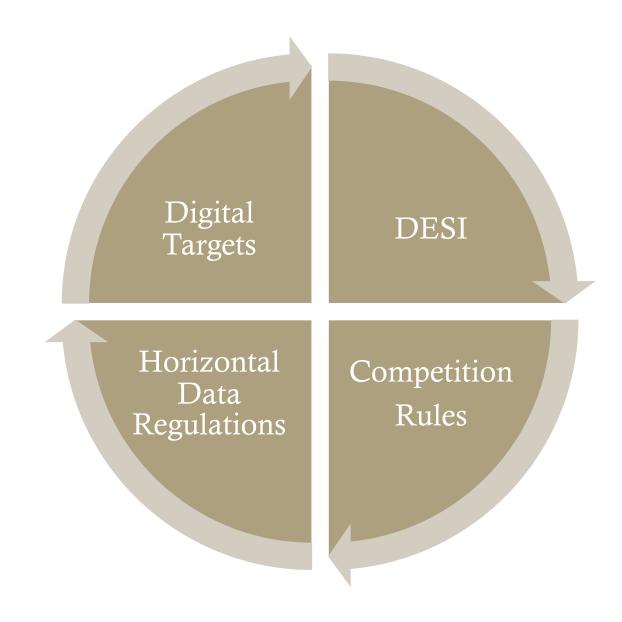
'Digital Decade Policy Programme 2030' [2022]	Digital targets (Art. 4): <i>e.g.</i> by 2030 at least 75% of Union enterprises should be using cloud computing services, big data and AI systems based on fair sharing of data
'Digital Economy and Society Index (DESI) 2022'	"Data sharing paradox" → Union enterprises still struggle to reach the digital targets.
European Data Strategy	DGA, Data Act & DMA
'A competition policy fit for new challenges' COM (2021) 713 final	Procedural & Substantial Revisions

Horizontal data regulations

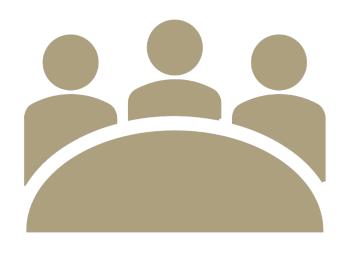


Competition rules

THE EU'S DIGITAL DECADE BACKGROUND



EXPERIMENTALIST GOVERNANCE



- Strategic uncertainty requires local actors in cooperation to learn the definition of problems and specific solutions;
- 2) Polyarchic distribution of powers refers to the necessity of considering others' views, since no single actor can impose their preferred solution;
- 3) High degree of discretion of local agents in identifying obstacles and solutions;
- 4) Dynamic accountability requires the "agent" to explain its actions to those who have to evaluate those actions rather than implying compliance with rules set down by the "principal";
- **5) Participation of all stakeholders** in the design, review and updating of rules.

EXPERIMENTAL COMPETITION ENFORCEMENT: AGCM V. GOOGLE (2023)



FACT

- **Parties:** Weople Google AGCM;
- **Object: "possible"** violation by Google of the prohibition of abuse of dominant position *ex* Art. 102 TFEU and Art. 3 of L. no. 287/1990;
- **Practice:** Google allegedly hindered **data portability** (Art. 20 GDPR) to Weople by requiring data export through "Google Takeout".

DECISION

- **Basis:** Art. 14-ter L. no. 287/1990 → **commitments**;
 - 1) First commitment: modifications to Google Takeout
 - 2) Second commitment: modifications to Google Takeout
 - 3) Third commitment: Early Adopter Program (EAP) sharing without direct intervention of data subjects

EXPERIMENTAL COMPETITION ENFORCEMENT: AGCM V. GOOGLE (2023)



EXPERIMENTAL COMPETITION ENFORCEMENT

- 1. Strategic uncertainty: required Google and local actors to continuously understand the definition of data sharing problems and the specific solutions;
- **2. Polyarchic distribution of powers:** no single actor not even Google could impose their own preferred solution;
- **3. High degree of discretion of local agents:** the AGCM in proceeding (particularly, in accepting commitments) and Google in removing data portability obstacles;
- **4. Dynamic accountability:** requires Google (the agent) to explain its actions to the interested parties rather than being compliant with rules set down by the AGCM (the principal);
- **5. Participation of all stakeholders:** including various associations that have an active role both in accepting the commitments and in approving any changes over time

INTERNAL AND EXTERNAL DIALOGUES



INTERNAL DIALOGUE

In the **enforcement**, the parties affected by data sharing played not only a passive role, consisting of providing information, but rather an **active role**, participating in the accepting, monitoring and revision of commitments

EXTERNAL DIALOGUE

- Horizontal Data Regulations → market investigations to monitor substantial changes in facts & keep the rules up to date;
- The Commission must also consider any relevant findings of competition proceedings

ENFORCEMENT

IMPLEMENTATION

REGULATION

PRELIMINARY CONSIDERATIONS



The *legis-executio* of data sharing provisions (*i.e.*, implementation and enforcement oriented to the achievement of the digital targets) is ancillary to *legis-latio* (*i.e.*, rule-making);



Experimental competition enforcement can express "regulatory content" in the form of **local guidelines** stemming from the collaboration of all interested parties and national authorities;



The limits of **legal uncertainty** (including "legislative inflation" of data sharing provisions) and **fragmentation** might be overcome by extended internal and external dialogues;



Experimental competition enforcement is not primarily shaping EU competition policy **but rather** the European Data Strategy



DATA SHARING WITHIN THE EU DIGITAL MARKET

Faculty of Management, University of Warsaw

15 September 2023

THANK YOU FOR YOUR ATTENTION!



Email: emanuele.fazio@santannapisa.it

LinkedIn: www.linkedin.com/in/emanuelefazio