



## Why might conduct involving the collection, storage and use of data fall within the scope of EU competition law?

The nature of the digital economy is such that there are a range of possibilities to collect, store and use data. It has also become a key ingredient, or input, for a number of products or services.

This can produce beneficial outcomes for competition. For example:

Data can be used to improve existing products and services, and the transparency of markets more generally.

Data can be used to produce new products or services, resulting in increased innovation and consumer choice.

However, there are concerns that the collection, storage and use of data may be taking place in ways that harm competition and consumers. As a result, it is possible that actions involving the collection, storage and use of data may fall within the scope of EU competition law.

## Data and EU competition law: general points

There are a few key points to keep in mind when considering the interaction between conduct involving data and EU competition law:

There is currently limited case law, decisional practice or other types of guidance on the extent to which actions involving the collection, storage and use of data may fall within the scope of EU competition law. This is very much a developing area.

There are many different types of data, and the way in which competition law applies is likely to vary depending on the type of data involved, the way in which it is used, and the particular market context in which it is used.

Competition law may overlap with other forms of regulation of the collection, storage and use of data, such as data protection regulation via the GDPR.

## Data and Article 102 TFEU

Examples of conduct involving the collection, storage and use of data that might fall within the scope of Article 102 TFEU might include the following:

Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions.

Limiting production, markets or technical development to the prejudice of consumers.

Self-preferencing.

Refusal to supply / granting access on discriminatory terms.

Exclusive dealing arrangements.



**For more information:** see...

- Joint report by the Autorité de la concurrence and the Bundeskartellamt, *Competition Law and Data*. [Available online.](#)

- *Unlocking digital competition: Report of the Digital Competition Expert Panel*. [Available online.](#)

- *Competition policy for the digital era*, a report by Jacques Crémer, Yves-Alexandre de Montjoye and Heike Schweitzer. Published [online](#) by the European Commission. See in particular chapter 5.