





## 1. What was this session about?

The digital services landscape is dominated by a handful of firms whose decisions and operations have an outsized impact on the extent to which we can enjoy our fundamental rights. Market concentration becomes an issue of societal relevance.

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While it remains contested whether competition law can and should promote respect for fundamental rights, its application undoubtedly impacts on data protection.

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Competition law can apply in a way that:

1. fosters synergies with data protection (e.g., by using merger control to block or place conditions on transactions that negatively impact on data protection).
  2. undermines data protection (e.g., if a competition authority imposes a data sharing remedy that violates the purpose limitation principle).
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As part of the session, participants discussed how competition law, in the way it is applied and enforced, impacts data protection and, conversely, how data protection law can be applied to influence competition law enforcement. Focusing on the practical and procedural barriers to civil society engagement in competition proceedings, how can digital rights advocates harness competition law to render digital rights more effective?

## 2. Why should digital rights organisations care?

The terrain on which decisions about digital rights are being made is shifting. Data protection and privacy considerations are now arising in different regulatory contexts with other regulatory authorities starting to interpret data protection law.

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Digital rights organisations need to be engaged with these regulatory agencies to shape this interpretation and application.



### 3. What are the enforcement and litigation opportunities and what are the barriers to civil society engagement?

Increasingly, the enforcement of digital rights is not limited to strategic litigation but includes administrative enforcement of digital rights through designated regulators.

The importance of this process will increase as regulatory authorities cooperate across sectors to act as digital super-regulators and as new legislative frameworks, like the Digital Markets Act and the Data Act are adopted.

For digital rights organisations, this new enforcement landscape presents the following:

1. **Risks:** more limited possibilities for civil society to engage in administrative proceedings because of cost, standing rules and rules governing procedures and actions of regulatory agencies. As more regulatory agencies impact on digital rights protection, there is also an increased risk of conflicting enforcement activities and opportunities for regulatory capture multiply.
2. **Opportunities:** the application of new legal frameworks like the Digital Markets Act can be moulded to incorporate and promote consumer and data protection objectives while the willingness of regulatory agencies to cooperate offers the chance to ensure that these frameworks are applied in a way that is coherent and rights-enhancing.





## 4. Ways for digital rights organisations to get active

### QUESTIONS CONSIDERED:

1. How can civil society participate in competition proceedings? What are the obstacles to such participation?
2. What are the strategic objectives of civil society organisations when they engage with competition law? What are the organisational and practical risks?
3. What opportunities for engagement, or risks of exclusion, do new regulatory instruments like the DMA present?
4. What would be the features of ideal enforcement in the digital rights sphere?

### Ongoing challenges identified:

1. The difficulty of establishing standing in competition proceedings;
2. The need for a more holistic view of what markets should deliver for society beyond cheap products and services;
3. The reluctance of regulatory authorities to venture into new terrain (such as data protection authorities conducting market power assessments to support investigations into “freely” given consent).
4. As currently drafted, the new EU regulatory instruments foresee few explicit opportunities for direct civil society engagement.

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### Potential opportunities:

1. The Digital Markets Act represents a shift in approach from traditional competition law: it applies ex ante rather than ex post and it deals with systemic rather than one-off issues. If enforced properly, it could lead to tangible change.
2. The Consumer Redress Directive is entering into force and provides new opportunities for private enforcement which will supplement public enforcement.



3. Civil society organisations are gaining experience in competition proceedings (eg. BEUC and Privacy International's role as third parties in the Google/Fitbit merger).
4. "Standing" may be easier to achieve than assumed: for instance, third parties can join competition proceedings as complainants where their economic interests are harmed until a decision is sent to the Competition Advisory Committee. This entitles them to a non-confidential version of the Commission's Statement of Objections and to attend an oral hearing where held. For mergers, third parties must have a sufficient interest and show that their interests (note not simply economic interests) may be affected by a decision.



# About the Digital Freedom Fund

The Digital Freedom Fund supports strategic litigation to advance digital rights in Europe. With a view to enabling people to exercise their human rights in digital and networked spaces, DFF provides financial support for strategic cases, seeks to catalyse collaboration between digital rights activists, and supports capacity building of digital rights litigators. DFF also helps connect litigators with pro bono support for their litigation projects. To read more about DFF's work, visit: [www.digitalfreedomfund.org](http://www.digitalfreedomfund.org).

