

Editorial foreword

In today's swiftly changing digital environment, addressing the regulatory and competition law challenges linked to data sharing is crucial. For the European Union, facilitating effective data sharing is more than just regulatory adherence; it is a strategic necessity essential for driving innovation and economic progress. Data sharing holds considerable potential for enhancing the value of data, boosting economic activity, and reducing entry barriers for new market participants. Establishing efficient data-sharing frameworks is vital for unlocking the full potential of data and promoting a vibrant innovation ecosystem.

This issue of YARS is dedicated to exploring the complexities and opportunities associated with Business-to-Business (B2B) data sharing from the perspectives of regulation and competition law. This initiative began at the international conference "Business-to-Business Data Sharing within the EU Digital Market," hosted by the Centre for Antitrust and Regulatory Studies (CARS) on 14 and 15 September 2023 (see the conference report in the issue). The conference was part of a project undertaken at CARS under the OPUS grant funded by the National Science Center (2018/31/B/HS5/01192), which aimed to develop discourse on the legal and regulatory challenges and opportunities related to B2B data sharing within the EU digital market.

Thus, this issue serves as both a product of this academic event and the research under the OPUS project. It intends to offer comprehensive analysis and insights into the evolving regulatory landscape and competition law implications of data sharing within the EU, focusing on various dimensions such as digital mergers, intellectual property, data protection, and ethical data commodification.

Monika Woźniak-Cichuta explores the role of data-sharing remedies in digital data-driven mergers. She argues that such remedies could be crucial in ensuring competitive markets by addressing data-induced market power. Woźniak-Cichuta builds her argument on the premise that data, being the core of big tech's economic power, should be shared to prevent anti-competitive mergers, thereby fostering a more innovative digital market.

Eugenio Olmedo-Peralta further discusses the creation of data pools and their antitrust implications. He examines the dual nature of data as a vital resource and a potential antitrust liability. While data pools can enhance data

utility and foster innovation, Olmedo-Peralta also highlights the significant risks of collusion and market foreclosure they pose. This tension underscores the need for carefully crafted regulatory measures to balance the benefits of data sharing with the need to maintain competitive markets.

Chiara Gallese delves into the risks associated with the commodification of health data in the EU digital market. Her article examines the ethical and legal dimensions of transforming health data into a marketable commodity, particularly within the framework of the EU's Digital Strategy Corpus of law. Gallese raises significant concerns about the potential re-identification of anonymized data and the implications for citizens' rights. Her interdisciplinary approach emphasizes the necessity of a balanced legal framework that protects privacy while enabling responsible data sharing in health-related contexts.

Antoni Napieralski adds another layer of complexity by scrutinizing the interplay between the GDPR and the Data Act, focusing on the attribution of responsibility for data sharing. He discusses the overlaps in regulatory scopes that introduce challenges in determining joint controllership and accountability. Napieralski points out that the unintended consequence of joint controllership emerging from the Data Act's mechanisms highlights the intricate balance between data protection and accessibility.

Shifting focus to the intersection of intellectual property and digital data, Katarzyna Klafkowska-Waśniowska addresses the challenge of reconciling the free flow of data with intellectual property (IP) protections. Her analysis considers the implications of the European Research Area's goals on the evolving concept of free movement of data. Klafkowska-Waśniowska discusses potential conflicts between IP rights and the need for data access, especially within the context of the Data Act, raising critical questions about how these competing interests can be harmonized within the single market framework.

Camilla Signoretta further explores the intricate relationship between data portability and intellectual property law, particularly in the context of the EU's digital regulatory framework. Her article highlights the evolving concept of portability, which has transitioned from a personal data prerogative to a broader regulatory tool affecting digital content. Signoretta examines the challenges posed by the intersection of content portability obligations, especially under the Digital Markets Act (DMA) and the Copyright Digital Single Market Directive (CDSMD). She emphasizes that the high liability thresholds in Article 17 of the CDSMD may inadvertently lead to the under-implementation of portability duties, creating a tension that requires careful legal coordination.

Exploring the concept of data altruism, Adrianna Michałowicz assesses the Data Governance Act's framework aimed at fostering trust in voluntary data sharing for the common good. While Michałowicz acknowledges the

framework offers mechanisms to enhance transparency and trust, she also discusses its voluntary nature and potential implementation challenges that may limit its overall impact. Her analysis emphasizes the importance of trust in facilitating altruistic data sharing, particularly for objectives of general interest.

Finally, Emanuele Fazio provides an insightful analysis of experimentalist competition law enforcement, using the *AGCM v. Google* case as a reference point. Fazio explores this approach, characterised by the scope conditions of strategic uncertainty and polyarchic distribution of powers, aimed at designing effective data portability solutions under the new data governance. The internal and external administrative dialogues highlighted in his analysis underscore the collaborative efforts needed to address data-sharing disputes effectively.

Together, these contributions weave a narrative on the multifaceted issues surrounding data sharing within the EU. From regulatory frameworks and competition law to data protection, intellectual property, and ethical considerations, this issue offers diverse perspectives and in-depth analyses that are crucial to navigate the digital market. We hope this issue will serve as a valuable resource for understanding the current landscape and fostering informed discussions on the future of data-sharing regulation and its interplay with competition law.

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