



## FRANCE

---

# Competition law and big data: French and German competition watchdogs issue joint report

🔗 [Joint paper of the French Competition Authority and the Bundeskartellamt, May 10, 2016](#)

On May 10, 2016, the French Competition Authority (the “FCA”) and the German Bundeskartellamt (the “BKA”) published a joint paper on data and its implications for competition law (the “Report”).<sup>1</sup>

In the Report, the FCA and the BKA analyzed the implications and challenges for competition authorities resulting from data collection in the digital economy.

The purpose of the Report is not to provide universally valid conclusions as to how data and competition law interrelate, but rather to “feed this debate by identifying some of the key parameters that may need to be considered when assessing the interplay between data, market power and competition law.”

The Report focuses primarily on merger control, as well as “data-based” conduct by dominant firms. The crux of the Report resides in the insight it provides on assessing the market power of online industries. The Report does not, however, provide definitive answers on how to assess the complex question of market power stemming from data ownership. Instead, it highlights the relevant considerations in this context. In particular, according to the two competition watchdogs, consideration should be given at the outset to the essential features of the online industry, namely network effects, multi-homing and market dynamics. Then, to assess whether data indeed contribute to creating, preserving or strengthening market power, competition authorities will have to evaluate the extent of the economic advantage that data provide. The Report identifies two factors particularly relevant

---

<sup>1</sup> The full report can be found here: <http://www.autoritedelaconurrence.fr/doc/reportcompetitionlawanddatafinal.pdf>.

when considering whether data contribute to market power: (i) the scarcity of data or ease of replicability, and (ii) whether the scale/scope of data collection matters to competitive performance. The conclusion of the Report is particularly nuanced. The FCA and the BKA recognize that in this particular sector, “competition assessment needs to be supported by extremely refined and case-related considerations.”

The Report may therefore prove to be a useful tool for entities facing data-related antitrust probes. In this respect, the FCA recently launched a sector inquiry in the digital sector, and sector inquiries usually lead to formal antitrust probes. The first few cases stemming from this endeavor will be of paramount importance for established entities assessing the lawfulness of their online behavior.