

ACCC must wake up to big data

Reported by **Kathryn Edghill**, for the **Financial Review**

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Growing use of big data technology is starting to raise questions about anti-competitive behaviour.

It is starting to become apparent that an important potential impact of the growing use of big data technology, is the ability to influence competition, and the ACCC needs to take notice.

Big data and its potential to transform the way business is done in the digital era is already well canvassed, but competition regulators across the globe are slowly awakening to the competitive effects which controlling access to big data can have.

In Europe, in 2013, the then head of competition for the European Commission, Joaquin Almunia, canvassed data as a potential competition issue, without sparking much commentary. Fast forward to late 2014 and it was a different story. Last October, the commission's head of competition, Margrethe Vestager, recognised big data as a potential competition issue, referring to it as "the next big currency of the internet".

At the same time both the European Commission and the US Federal Trade Commission cleared Facebook's acquisition of WhatsApp, described by some as the first "big data merger". Yet through all of this, the ACCC has remained relatively quiet about its approach to big data.

The focus has been more on the impact on consumers of the use of big data, than on its effect on competition.

Perhaps the relative silence from the Australian perspective is due to the focus on privacy concerns and a view that data collected by many organisations, especially the Googles and Facebooks of this world, is freely given to them and not necessarily exclusive.

Such issues have clouded the real competition concerns which flow from the fact that this conglomeration of data is an asset with real value. Big data can be and is traded. And just as the Facebook/ acquisition of

WhatsApp demonstrates, control of big data can be a factor in a decision to grant competition clearance for a merger.

Woolworths' acquisition of its stake in Quantum escaped ACCC scrutiny in 2013 but it may be the sort of deal that in the future to attract interest from the regulator. Getting in early, before the true competitive effect of big data has hit the ACCC's radar, meant that the issue has been avoided, for now.

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At the heart of any competition analysis, it is big data's ability to arm a business with targeted knowledge and give it an edge over its competitors which should raise concerns.

If that ability allows a business to act relatively unconstrained by its competitors, big data will be a source of market power, which, if misused for an anti-competitive purpose would be actionable by the regulator.

It is easy to imagine that should a company such as a Woolworths or Coles use its ability to access big data exclusively for the purpose of damaging or eliminating a competitor or preventing a party from competing in a market, the ACCC would be interested.

It may not necessarily be too big a leap to consider the possibility of access to big data falling within the access provisions of the Competition and Consumer Act, if big data is considered as a form of (information) infrastructure.

If that is the case, a requirement that other organisations be provided access on fair and reasonable terms, in the same way as there is the requirement to provide access to other forms of monopoly infrastructure, may not be too far-fetched.

The ACCC may not yet be fully awake to the competition issues arising from big data but those collecting big data reserves would be well served to remain mindful of competition issues, because it can only be a matter of time until the sleeping giant awakes.

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Read more: <http://www.afr.com/technology/accc-must-wake-up-to-big-data-20150820-gj3u7f#ixzz3jnvYD7dD>

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