

*Brussels Privacy Forum 2016 - Identifiability: Policy and Practical Solutions for Anonymization and Pseudonymization*

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# Competition and Data Protection in the Era of Big Data: Privacy Guarantees as Policy Tools

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**The opinion stated herein reflects that of the author and is not a public statement of DIW Berlin or any of its affiliated institutions.**

# I.

## Introduction

### Motivation

**Question:** Can Data Protection Authorities and Competition Authorities use privacy guarantees as effective policy tools?

Common ground for cooperation?

# I.

## Introduction

### Relevant Policy Fields

Tab. 1 Overview of Legislative Frameworks: United States and Germany

	Competition	Data Protection	Unfair Commercial Practices Act
Germany	Bundeskartellamt	Data Protection Authorities	Market participants (Gesetz gg. unlauteren Wettbewerb)
U.S.	Federal Trade Commission	Federal Trade Commission (for the FCR Act)*	Federal Trade Commission (FTC Act, sect. 5)*
Goal	Protection of competition	Protection of personal data and individual privacy rights	Protection of consumers from unfair commercial practices
Activity fields	Horizontal arrangements	Data protection	Unfair and deceptive acts and practices
	Vertical arrangements		Trade secrecy leakage
	Abuse of dominant position		Pyramid schemes
	Price discrimination		Misuse of templates
	Merger Control		

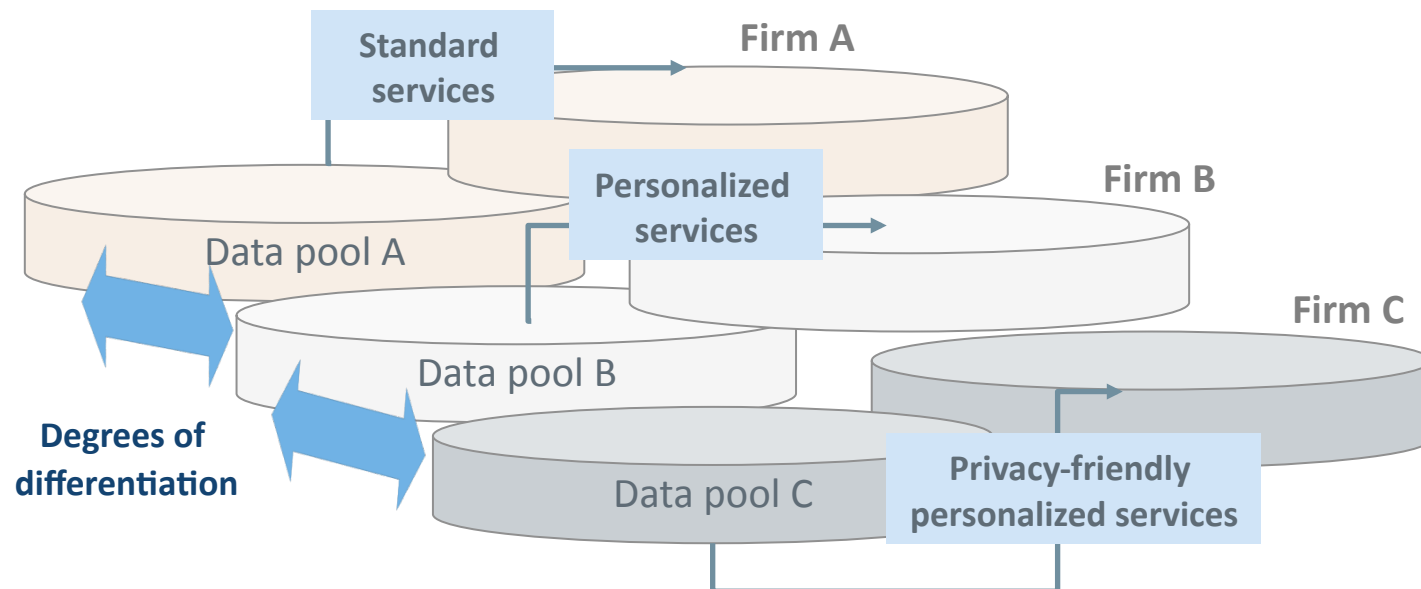
\* Note: FCR Act denotes Federal Credit Reporting Act, FTC Act the Federal Trade Commission Act.

# I.

## Introduction

### Differentiation of Firms in Competition

Fig. 1 Differentiation Degree in De-personalization



## II.

# Privacy Guarantees for DPAs

## Data Protection Authorities

- Determination scope of law and supervision
  - Review of guarantees is part of daily work
- More rigorous application & **quantitatively** evaluate the **outcome**
- Automated reporting and monitoring for off-site supervision?

Align work and cooperate with Competition Authorities

# III.

## Privacy Guarantees for Competition Authorities

### Competition Authorities

- Several areas: Horizontal and vertical arrangements, abuse of dominant position, price discrimination and merger control
- **Focus:** Merger control and reaching/abusing dominant position

### Merger control – Capturing of data-intensive firms

- Turnover, transaction volume
- Number of active users/customer profiles, potentially also differentiation power of data held on individual users

# III.

## Privacy Guarantees for Competition Authorities

### Competition Authorities – Dominant Position

- Competition in digital markets
- Variety & complementary data sets and technologies
- Mergers and changes of privacy policies
  - = Creation of **multi-sided platform challenge for competitors**
- **Pre-merger promises = *post-merger practices***
  - Use privacy guarantees as commitment device
  - Worked out in cooperation with DPAs
  - Conduct monitoring

# IV.

## Conclusion

### Motivation

**Question:** Can Data Protection Authorities and Competition Authorities use privacy guarantees as effective policy tools?

Yes, there is potential, but much work remains to be done.

Thank you for your attention.

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