



# FTC Experience with Data Markets



Krisztian Katona  
Counsel for International Antitrust  
U.S. Federal Trade Commission

Brasília  
August 1, 2019

# Competition Analysis of Data

- Competitive analysis of data must account for:
  - Data's dynamic nature
  - Way firms use data to compete
- Data as a product
- Data as an input
- Entry conditions may be affected by data
- Important: none of this is new and can be assessed using traditional tools in the U.S. antitrust toolbox
- Consumer protection and privacy concerns – privacy can be a non-price aspect of competition

# The Many Dimensions of Data

- So how do staff at the FTC think about data?
- Investigations and cases are always very fact-specific and we will look at all aspects of data
  - Is data a product or an input?
  - Is the competition with the data or for the data?
  - Is the data unique, broadly available, or replicable?
    - Data may be important for assessing likely entry

# Mergers Involving Data

- In a merger, how are the companies each using data?
  - Data can be a product, such as in the case of two database companies that compete to sell data products
  - Access to data can be a service
  - Data can be an input for firms that provide analysis, verification, or other analytics
  - Data can be a complement to whatever product or service is being supplied
  - Data can affect entry conditions, making it more or less difficult for a firm to enter and compete
- Focus of merger analysis: is the data of the two merging firms a key differentiator in how they compete? If so, are there other firms (in the market or likely to enter) that also have access to data that could replace the competition that would be lost due to the merger?



# FTC History of Database Merger Cases

- FTC has long history of enforcement on database cases, *see Automatic Data Processing, Inc.* (complaint issued in 1996), settlement with divestiture buyer receiving an unrestricted license to proprietary database for auto parts
- The FTC has investigated, and often challenged, mergers involving database assets across a wide range of industries

# CoreLogic/DataQuick (2014) – Data as a Product

- **Product: National Assessor and Recorder Bulk Data**
  - CoreLogic: vast database of reformatted public record data and information on properties in the U.S.
  - DataQuick: significant historical data; unique rights to relicense CoreLogic’s ongoing data in bulk
- Sold to companies for different uses (risk and fraud management tools, valuation models, customer-facing websites such as Zillow)
- **Order created new competitor**
  - Required CoreLogic to license bulk data to RealtyTrac for relicensing
- **Order modified in 2018**
  - CoreLogic supplied insufficient data

# CoreLogic/DataQuick (2014)

- Key Takeaways

- Data as product and as divestiture asset
- Scope of historical database created barrier to entry
  - Ongoing data an easier hurdle than historical data
- Remedy challenges
  - Identifying the precise data for divestiture
  - Buyer due diligence may not be enough
  - Reliance on parties' representations

# Verisk/EagleView (2014) – Data as a Key Input

- **Rooftop Aerial Measurement Products (RAMP) for Insurance Purposes**
  - Verisk was the leading provider of claims estimation software that integrated with RAMPs, and a recent entrant into RAMP
  - EagleView was the dominant provider of RAMP
- **Aerial image libraries are a key input to software products**
  - Must integrate with claims estimation software
  - Verisk image library was much smaller than EagleView's
- **Transaction abandoned after FTC challenge**



# Verisk/EagleView (2014)

- Key Takeaways

- Data as necessary input into relevant product
  - But: scope of database not dispositive of competitive significance
  - Recent success in relevant market (RAMP) more probative
- Position in adjacent market provided unique ability to overcome data-related entry barriers
- Complaint alleged innovation effects related to data coverage and quality

## CCC/Mitchell (2009) – Access to Data as an Entry Barrier

- Two products:
  - Estimatics, databases used to generate repair estimates for cars
  - Total loss valuation (TLV) systems, used to determine when a vehicle was totaled
- At the time of the merger, Big Three – CCC, Audatex, and Mitchell – held ~ 99% of estimatics market; Web-Est and Applied Computer Resources were fringe players
- Total loss valuation systems (TLV); Big Three accounted for more than 90% of market; Mitchell entered in 2005 and had a significantly smaller market share
- Customers were insurers (estimatics and TLV) and repair facilities, such as service stations (estimatics)

# CCC/Mitchell (2009) – The Proposed Fix

- CCC offered to relinquish its exclusive rights to database, giving any new entrant access to a comprehensive fully updated database; Mitchell would remove restrictions on Web-Est and continue database license
- Judge found that availability of database would reduce most critical barrier to entry, but unclear whether cost v. opportunity would be prohibitive
  - In addition to database, competitor would need to develop software
  - Other barriers included existing customer relationships, (large insurers were relatively sticky); need to establish a track record; and sufficient scale (including technical and customer service employees)
- Judge noted Web-Est leader had great entrepreneurship and experience, but company had only 10-12 employees and modest project revenues; growth curve too long and steep

# Takeaways – Competition Analysis

- Question: whether and how data actually plays a role in competition in some particular market
- No need for special rules in data markets
  - Current antitrust analysis accounts for how firms compete using data as a product or input, or as a tool for making decisions
  - May have additional complexity if data is proprietary or subject to copyright/IP protection
- Data sets can be highly differentiated; non-price factors of competition important (*e.g.*, quality, innovation)
- Data is often combined with analytics to make information useful in a business setting (*i.e.*, an input)

# Takeaways – Competition Analysis (cont'd)

- Dynamic nature of data markets requires attention to other sources of reliable information – the data feed is critical
  - Who owns the data?
  - What other sources are available at similar cost?
  - Do incumbents have data advantage?
- Often ask: is the data unique? Difficult or costly to replicate?



## Competition Agency Responses to Digital Issues - FTC

- FTC Chief Technologist position since 2011
- Technology Task Force (2019)
- FTC Hearings on Competition and Consumer Protection in the 21st Century (2018-19)