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New iOS Changes, New Antitrust Clashes Ahead?

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Over the past decade, the intersection of privacy and antitrust has become a significant focus in the literature on data's role in digital markets.[1] In a landscape where platforms acquire data to strategically offer sellers preferential access to consumers' attention, personal data is indeed the most valuable asset in a platform's information arsenal. As a result, privacy has moved to the forefront, with policy makers keen to evaluate whether data accumulation strategies could compromise individuals' privacy and reinforce platforms' market power. Consequently, there is a growing argument that the unique characteristics of digital markets and the potential uses of data in the digital economy require an approach that integrates privacy considerations into antitrust enforcement, fostering close collaboration between antitrust authorities and data protection regulators.

However, there are indications of a new trend where data protection requirements might be interpreted by companies in ways that could distort competition. Specifically, as privacy concerns become part of the interests protected in antitrust proceedings, platforms might be incentivized to adjust their strategies, using data protection as a justification for potentially anticompetitive behavior. For example, some platforms may claim that denying competitors access to their services is necessary to protect user privacy, while app store providers might present restrictions — such as requiring the use of their own payment processors for in-app purchases, limiting sideloading, and preventing developers from informing users about alternative payment options — as essential for safeguarding user security and privacy, even though these measures could lead to anticompetitive self-preferencing.

Therefore, in such a scenario, privacy may be weaponized as a business justification for potential anticompetitive conduct and data protection requirements may be leveraged to distort competition.

One of the most discussed examples of the growing tension between data protection and antitrust concerns is Apple's adoption of the App Tracking Transparency ("ATT") policy as part of the iOS 14.5 privacy update. This policy introduced new consent and notification requirements, altering how app developers can collect and use consumer data for mobile advertising on iOS. While the ATT framework may offer privacy benefits by enhancing users' control over their personal data, it also establishes a different process for obtaining user consent for Apple's advertising services compared to third-party services. This disparity could result in discrimination, potentially favoring Apple's own advertising services and strengthening its dominance in app distribution at the expense of competitors.[2] As a result, several

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[1] For a recent analysis, see Giuseppe Colangelo, *The privacy/antitrust curse: insights from GDPR application in competition law proceedings*, (2023) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4599974.

[2] About the impact of ATT on online advertising market, namely on rivals' ability to target advertisements, see Guy Aridor & Yeon-Koo Che, *Privacy Regulation and Targeted Advertising: Evidence from Apple's App Tracking Transparency*, (2024) https://ssrn.com/abstract=4698374; Lennart Kraft, Bernd Skiera & Tim Koschella, *Economic Impact of Opt-in versus Opt-out Requirements for Personal Data Usage: The Case of Apple's App Tracking Transparency (ATT)*, (2023) https://ssrn.com/abstract=4598472; Reinhold Kesler, *Digital platforms implement privacy-centric policies: What does it mean for competition?* CPI Antitrust Chronicle 1 (2022); Daniel Sokol & Feng Zhu, *Harming Competition and Consumers under the Guise of Protecting Privacy: Review of Empirical Evidence*, CPI Antitrust Chronicle 12 (2022); Lennart Kraft, Bernd Skiera & Tim Koschella, *Economic Impact of Opt-in versus Opt-out Requirements for Personal Data Usage: The Case of Apple's App Tracking Transparency (ATT)*, (2023) https://ssrn.com/abstract=4598472.

antitrust authorities are currently investigating the ATT policy.[3]

In the meantime, the announced changes to iOS 18 may soon raise further competitive concerns. According to Apple's press release, the new iOS 18 — expected to launch in mid-September — will include "new privacy features designed to empower users."[4] Notably, among the other things, iOS 18 is changing the Contact Import ("CI") flow, purportedly to give users "more control" by allowing them to "share only specific contacts with an app."[5] As a result, while users previously gave consent for developers to access their entire address books, in iOS18 the default setting will require users to select individual contacts to share with third-party apps. However, most of Apple's key apps (such as all of the ones that come pre-loaded on iPhone) will seemingly not be subject to the same policy.

The solution would, therefore, dangerously resemble the features (and the anticompetitive risks) of the ATT policy, specifically, an additional prompt requiring users' consent that applies only to third-party apps. Once again, under the declared aim of enhancing user privacy, Apple seems poised to introduce a differential process that grants its own apps preferential treatment over third-party apps. As with the ATT policy, this raises suspicion that Apple's noble intentions around privacy may actually conceal a strategy to gain anticompetitive advantages at the expense of rivals and business users.

Indeed, for many apps, access to contacts is essential for ensuring a good user experience. In other words, if a user refuses permission or grants only partial access to her contacts, her experience with the app could be significantly degraded. Apple's first-party apps would not be exposed to such a risk, being exempt from the application of the above policy. Therefore, by generating frictions between third-party apps and users, hence reducing users' willingness to share their address books with third-party apps, the discrimination introduced under iOS 18 changes to the CI flow may lead to significant exclusionary effects.

Efforts by companies to enhance data protection and deliver privacy-enhancing solutions are certainly welcome. Yet, one question remains: why are only third-party developers subject to these policies? If the forthcoming iOS 18 changes are truly necessary to ensure greater user privacy, there is a straightforward way to reconcile both competitive and privacy concerns: subject all apps, including Apple's own, to the same treatment. Otherwise, the privacy justification may simply serve as a pretext for regulatory gaming.

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[3] See Consilium Concurentei, *Consiliul Concurenței investighează piața publicității prin aplicații instalate pe dispozitive mobile Apple (iOS)*, (2023) Press release, http://www.competition.ro/wp-content/uploads/2023/10/Inv-App-oct-2023.pdf; Autorità Garante della Concorrenza e del Mercato, May 11, 2023, Case A561; Bundeskartellamt, *Bundeskartellamt reviews Apple's tracking rules for third-party apps*, (2022) Press release, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/14_06_2022_Apple.html; Autorité de la concurrence, March 17, 2021, Decision 21-D-07, *Apple,* https://www.autoritedelaconcurrence.fr/en/decision/regarding-request-interim-measures-submitted-associations-interactive-advertising-bureau; Urząd Ochrony Konkurencji i Konsumentów, *Apple – the President of UOKiK initiates an investigation*, (2021) https://uokik.gov.pl/news.php?news_id=18092. See also UK Competition and Markets Authority, *Mobile ecosystems*, (2022) Market study final report, Chapter 6 and Appendix J, https://www.gov.uk/cma-cases/mobile-ecosystems-market-study.

[4] Apple, *iOS 18 makes iPhone more personal, capable, and intelligent than ever*, (2024) https://www.apple.com/newsroom/2024/06/ios-18-makes-iphone-more-personal-capable-and-intelligent-than-ever/.

[5] *Ibid*.