

**On the Interplay between Competition Law and Privacy Protection from the
German Facebook Case of 2019**

Yang, Hung-Hui*

Abstract

Data is viewed as the oil of the 21st century, and plays an increasingly important role in the data-driven digital economy. With the influence of network effects, the collection of data can constitute a barrier to market participation and is a cause for concern. Within such a context, the German Facebook case of 2019 has attracted much attention across the world. The German Federal Cartel Office found that Facebook's user's policy of personal data collection had been an abuse of its dominant market position due to breaching the General Data Protection Regulation in the European Union and ordered it to cease therefrom and make appropriate corrections. Facebook appealed against the order to the High Court and applied for the order to be suspended. Düsseldorf's Court of Appeal rescinded the office's order, but the Federal Supreme Court upheld it. Then both courts performed a detailed analysis of the application of GWB in their respective judgments, especially the different causal relationships between abuse and market dominance in the same article, as well as the different types of monopoly abuses. This decision also affected the 10th Amendment to the GWB in 2021, even though the proceedings in this case were suspended due to a petition for a preliminary ruling of the Court of Justice of the European Union. However, the analysis of the procedural case still has value for discussion, and so this article sets out to analyze Facebook's case in detail, and to discuss the significance of data and the multisided platforms in the competition law. Finally, the application of Taiwan's Fair Trade Law will be discussed. "Privacy-based competition" is considered to be one of the factors in the online banking merger cases. However, the protection of privacy is regulated by the Personal Data Protection Act. Therefore the relationship between the Fair Trade Act and the Personal Data Protection Act will be explored in order to find possible solutions.

Date submitted: May 10, 2022

Date accepted: December 26, 2022

* Professor, Department of Law, National Chung Cheng University; Ph.D., College of Law, National Chengchi University.

Keywords: Facebook, Privacy, Competition, Fair Trade Act, Personal Data Protection Act, Information Privacy, Monopoly, Exclusionary Abuse, Exploitative Abuse, Digital Economy, Cartel Office, Competition Law.