

## Giovanni Buttarelli, Keynote Speech at

## 'BEUC DIGIFORUM 2016: Consumers shaping the digital economy'

## Monday 20 June 2016, Brussels

Ladies and Gentlemen,

I am delighted to be at this event today.

A warm thank to BEUC for the invitation and for organizing this interesting forum of discussion.

I am also very pleased to open this afternoon's panel on 'Competition and Consumer Protection in the Data Economy'.

The title of the session testifies to how personal data are a huge part of the 'big data value chain'.

So it is high time to find ways to embed better in the digital society and economy the fundamental rights and interests of the individual.

I mean not just the right to privacy and to the protection of personal data, but also related rights such as freedom of expression and non-discrimination

I do not intend to diminish the great potential personal data have for making the lives easier, for boosting productivity of our economies, for connecting people and ideas across the globe.

If I may misquote Shakespeare's Mark Antony, we are here to praise big data, not to bury it.

But just as the industrial revolution of the  $18^{th}$  and  $19^{th}$  centuries created social malaise and pollution as well as innovation and prosperity... so equally the digital revolution of the  $21^{st}$  century brings with it risks for the individual, whether you want to call her a consumer, data subject or citizen.

The EU is well-equipped with a framework to manage this transition.

We have the Charter of Fundamental Rights, which has the equivalent status of a nation state's constitution.

We have strong regulators – especially in the competition and data protection area, and increasingly in the consumer rights enforcement are too.

And we have a vibrant civil society – of which BEUC is a shining example.

In this context, the EDPS's mission is to promote that those rights are enforced properly and are protected against unlawful and imbalanced use.

My role is to ensure that EU institutions and policy makers protect the fundamental rights and in particular those to privacy and data protection.

A Copernican revolution is occurring in the EU legal framework for data protection.

This is more than merely a slogan. The new General Regulation on Data Protection has probably been one of the most negotiated EU laws ever, with three years of difficult negotiation rounds and publication on 4 May this year.

The new Regulation, although in continuity with the amended Directive 95/46, is a game changer.

Let me highlight just few trends in the GDPR which are relevant for today's discussion:

First, individual empowerment.

The GDPR creates 'big data protection' rights:

The right to data portability should give the individual more control over what happens to data about her.

The right to be forgotten goes in this direction together with the right to object and not be subjected to automated decisions, including profiling.

These are crucial provisions able to restore the existing real and perceived lack of control by the data subject on personal data.

Second, a new culture of compliance.

It has been argued that Data Protection may become the new antitrust.

What does this mean?

It means that, like antitrust law, the GDPR aims to foster a culture of accountability, not babysitting.

It means treating companies like 'responsible adults', giving them responsibility for understanding the new rules and requirements, yet combining it with strong sanctions to protect fundamental rights in case of infringement.

Because, believe it or not, the GDPR is not enough.

The new regulation provides a necessary benchmark for data protection.

But protecting privacy and related rights requires the right conditions for the individuals to freely interact and develop their personality.

Consumers of online services are affected by consumer protection, competition law and the applicable regimes for specific sectors: telecommunications is an obvious example.

But standby for many other sectors which are about to be touched by big data and the internet of things: energy regulation for consumers of smart homes; financial regulators for cyber insurance and FinTech, and so on.

Transparency and fairness are at the core of these fields of law in the EU.

And this is why they have to work in tandem, with authorities talking, sharing ideas and insights, cooperating.

That is why today's discussion is so important.

We are here to look deeper at how digital economy raises simultaneous challenges for consumer and data protection, as well as for competition law.

We are here to identify effective ways to tackle those challenges.

And we are here to find ways to protect and empower the consumer in his digital experience, so that she can really have the chance to "shape the digital economy".

You are maybe familiar now with the fact that in 2014 we launched a debate on synergies between competition law, consumer and data protection.

In our preliminary opinion on 'Privacy and Competitiveness in the Age of Big Data' we argued that these laws are applied in silos and that this jeopardizes the effectiveness of the intervention.

In 2014 there was a general lack of awareness among regulators, enforcers, consumers and service providers of the implications of data -driven economy for competitiveness, consumer welfare and choice.

The EDPS provided an analysis of the significance of personal data in the digital economy, outlining potential infringements of consumer law and abusive behaviours under EU antitrust and merger control rules.

We looked at how these rules should be enforced in tandem, "wherever a specific case arises in which consumer welfare and data protection concerns appear to be at stake".

At that time we already argued that coordination between regulators and cooperation between enforcers were of paramount importance in the age of big data, and called for a joint enforcement.

Our initiative, I am pleased to say, resonated strongly with policy makers, regulators and specialists across the three areas.

It dovetails with one of the big messages coming from BEUC and Europe's consumer organisations.

The message that Europe's regulators need to go digital and get connected to each other.

Since 2014 the debate has rapidly advanced.

An increasing number of studies have started to look at the issue.

The UK's Competition and Market Authority has reported on the commercial use of Big Data, and the Norwegian Data Protection Authority recently analysed how personal data are exploited in data-driven markets.

It is now evident that the prevailing business model, based on data harvesting, individuals' monitoring and surveillance may lead to market distortion and individuals' disempowerment.

There is growing concern at the concentration of power in many of these markets, and what it means for individual self-expression and privacy. This is true on both sides of the Atlantic.

This is far from being a purely theoretical and platonic perspective, and practical advances by enforcers show quite the opposite.

Earlier this year, the *Bundeskartellamt* opened an investigation on Facebook to assess whether though its specific terms of service on the use of user data, "it has abused its possibly dominant position in the market for social networks".

Later, the same antitrust authority together with the French *Autorité de la concurrence* has issued a joint report on 'Competition Law and data'.

This report has shed light on possible cases where personal data are a competitive advantage for firms, concluding that the scope of data "can warrant further scrutiny".

And the French antitrust authority has launched a sector inquiry into the online advertising market to better understand its functioning and the existence of potential competitive issues needed to be investigated.

Several DPAs have started investigating in cooperation with national consumer enforcers.

I expect 2016 will be a decisive year for deepening the discussion.

What is missing in this rather optimistic picture, then?

Most of these advances are being driven at National level.

The EU is still lacking a real joined up approach to tackling information and power asymmetries in digital marketplaces.

So I believe its time to update our initial findings and provide a follow up of our 2014 preliminary paper.

Very soon we will publish a new opinion on the need of an effective enforcement of fundamental rights in the age of big data at the EU level.

We will address the EU institutions with recommendations on how to uphold fundamental rights like privacy and data protection when implementing EU laws.

Firstly, we will deepen our analysis of the value of personal data for business.

Secondly, we aim to further show how consumer protection, data protection and competition rules may interact, and the adjustments that may be needed in existing practices.

Thirdly, we will further look at how to foster a market for Privacy Enhancing Technologies and Services.

We argued in our preliminary opinion that EU should promote the market conditions for PETs to boost in EU.

This is rather far from being achieved, and privacy is not yet a parameter for firms to compete between themselves. This opinion will consider how to make this happen.

Fourthly, we will call for the establishment of a forum of cooperation between competent authorities.

It is a complex issue.

It implies the authorities' willingness to share information on relevant and cross-sectorial cases, it requires them to talk to each other, to take the individual rights into account, to look at the broader picture, to share expertise and best practices.

Notably the case led by *Bundeskartellamt* has been launched in close cooperation with the competent data protection officers, consumer protection associations and the competition authorities of the other EU Member States. And I really think this is a relevant example to look at.

We will try to give more ideas in our opinion on how this forum of cooperation and discussion may work in practice.

The EDPS looks forward to facilitating the discussion.

So here's a date for your diaries.

I am so pleased that BEUC and EDPS will jointly host, on 29 September 2016, a conference, together with BEUC on enforcement of rights in the age of big data.

We are honoured that Commissioner Vestager, the competition Commissioner has agreed to open the conference. We expect also one of the Federal Trade Commissioners to give a keynote.

It will be a great opportunity for informed dialogue between EU regulators and enforcers, national DPAs, antitrust and consumer protection enforcers may look at the issue jointly.

Hopefully we can launch the new forum of strengthened cooperation and effective dialogue exactly on the same day.

Thank you for listening.

I hope to have given sufficient food for discussion and I wish you a fruitful and stimulating panel.