

Dominant Position in Personal Data Protection: Intersections Between Competition Law and Data Protection

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Abstract

The monetization of personal data, informational power, and the ability to condition access to a service on acceptance of personal data processing have brought competition law and personal data protection closer together. This paper examines the concept of dominant position from the perspective of personal data processing, based on the premise that economic and informational power exercised over users/data subjects may influence the exercise of the fundamental rights to privacy and personal data protection. It analyses the mechanisms through which undertakings holding a dominant position may use significant volumes of personal data to strengthen their market power, as well as the impact of such practices on the validity of consent, freedom of choice, autonomy, and the vulnerability of data subjects. The analysis also considers relationships characterized by an imbalance of power, such as the employer–employee relationship and the relationship between entities that hold and exploit informational resources and data subjects, where the collection and combination of data from multiple sources may be assessed both under the GDPR and under the rules governing abuse of a dominant position. The paper highlights that a power imbalance may affect the assessment of whether consent is freely given, access to services, and freedom of choice, and may constitute a relevant factor in evaluating the lawfulness of personal data processing and the effective exercise of rights guaranteed by the GDPR. From this perspective, data subjects may become vulnerable both in traditional relationships characterized by an imbalance of power, such as employer–employee or public authority–citizen relationships, and in their interactions with digital platforms.

Keywords: competition law, personal data protection, dominant position, artificial intelligence

JEL Classification: K24, K38, O33, I18

DOI: <https://doi.org/10.62768/ADJURIS/2026/7/13>

Please cite this article as:

Duță, Daniela. “Dominant Position in Personal Data Protection: Intersections Between Competition Law and Data Protection.” In *Comparative and International Law in an Era of Global Transformation: Sovereignty, Justice, Cooperation, and Emerging Technologies*, edited by Liliana Tymchenko and Paulina Guli Hoti, 223–240. ADJURIS – International Academic Publisher, 2026.
<https://doi.org/10.62768/ADJURIS/2026/7/13>

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1. Introduction

In recent years, personal data have become resources of the digital economy. At the same time, major digital platforms have acquired economic and informational power in relation to their users. Starting from this reality, the research seeks to answer the following question: Can a dominant position influence the exercise of data subjects' rights?

Traditionally, dominant position is a concept specific to competition law. Data protection law, by contrast, operates with the notion of an imbalance of power between the controller and the data subject. The research hypothesis is that these two concepts describe the same legal reality from different perspectives. More specifically, economic and informational power may affect a person's freedom to exercise their rights and to give consent freely. Accordingly, a dominant position may produce effects on competition and the functioning of the market, and also on the exercise of fundamental rights.

To test this hypothesis, the principal European and international legislative instruments were analysed. These include, *inter alia*, the General Data Protection Regulation², the Digital Markets Act³, the Digital Services Act⁴, and the Artificial Intelligence Act⁵. Although they belong to different legal fields, they pursue a common objective: limiting the concentration of digital power and protecting the data subject. In this context, competition, data protection, and artificial intelligence can no longer be analysed separately, but must be considered together because they regulate different manifestations of the same form of power.

The research methodology combines doctrinal analysis, case-law analysis, and the comparative method. Legal instruments concerning competition, data protection, digital platforms, and artificial intelligence were compared. The legal method was also used to identify, examine, and interpret provisions of European Union law and national law concerning competition and data protection. Documents issued by the European Union, the Organisation for Economic Co-operation and Development, the Council of Europe, and the United Nations were also

² Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119 (May 4, 2016): 1–88.

³ Regulation (EU) 2022/1925 of the European Parliament and of the Council of September 14, 2022, on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265 (October 12, 2022): 1–66.

⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of October 19, 2022, on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277 (October 27, 2022): 1–102.

⁵ Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024, laying down harmonised rules on artificial intelligence and amending certain Union legislative acts (Artificial Intelligence Act), OJ L 2024/1689 (July 12, 2024).

analysed. The comparative analysis examines whether these fields are evolving in the same direction. Competition law seeks to limit the concentration of economic power, while data protection seeks to limit the imbalance between the controller and the data subject. The Artificial Intelligence Act⁶ seeks to limit risks generated by algorithmic power. The Digital Markets Act⁷ and the Digital Services Act⁸ seek to limit the power of digital platforms. In essence, all these instruments attempt to regulate the same reality: the concentration of digital power. In the past, dominant position was assessed almost exclusively according to economic criteria. Today, controllers control both markets and very large volumes of data, as well as the algorithms that use those data. For this reason, the paper proposes supplementing the traditional analysis with two additional concepts: informational power and algorithmic power. These forms of power complement economic power and explain the influence exercised over the data subject. The research does not seek automatically to transfer the concept of dominant position from competition law into data protection law. It proposes, however, using it as a legal indicator of the existence of a power imbalance. Such an imbalance may influence the validity of consent, freedom of choice, and the autonomy of the data subject.

Empirically, the commercialization of personal data has produced two developments that intensify the intersection between the two legal fields. One concerns the attention given to personal data in competition assessment, including the definition of the relevant market and the assessment of market power. The other involves increased attention to data privacy in competition analysis, particularly as a non-price parameter.⁹

The German Federal Cartel Office prohibited Facebook¹⁰ from combining data obtained from its internal and external services with each user's account, on the ground that such processing infringed the GDPR and that the social network held a dominant position. The terms of use and privacy notices were considered insufficient to obtain users' consent because use of the social-network service was made conditional on integrating user data collected through other internal services, such as WhatsApp and Instagram, as well as data collected by external publishers or advertisers. Combining the data remains possible only with the user's consent.¹¹

⁶ Regulation (EU) 2024/1689 (Artificial Intelligence Act).

⁷ Regulation (EU) 2022/1925 (Digital Markets Act).

⁸ Regulation (EU) 2022/2065 (Digital Services Act).

⁹ Samson Y. Esayas, "The Interface between Data Privacy and Competition Law: Insights from Complexity Science," in *Data Privacy and Competition Law in the Age of Big Data: Unpacking the Interface Through Complexity Science* (Oxford: Oxford University Press, 2024), 151–196, <https://doi.org/10.1093/oso/9780198891420.003.0005>.

¹⁰ Bundeskartellamt, *Facebook*, Decision B6-22/16, February 6, 2019, https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/AktuelleMeldungen/2019/11_07_2019_decisionFacebook.html.

¹¹ Pranvera Këllezi, "Data Protection and Competition Law: Non-Compliance as Abuse of Dominant Position," *sui generis* (2019): 343–359, <https://doi.org/10.21257/sg.114>.

2. Dominant Position and Imbalance of Power

Competition law prohibits the abusive use of a dominant position held by one or more companies on the Romanian market. The prohibition concerns anti-competitive conduct capable of affecting economic activity or harming consumers.¹²

A dominant position refers to economic power that enables an undertaking, to an appreciable extent, to behave independently of its competitors and consumers, including its customers.¹³

The classic definition originates in *United Brands* and was subsequently consolidated in *Hoffmann-La Roche*¹⁴, remaining the interpretative benchmark for Article 102 TFEU.¹⁵

These two cases, decided shortly after one another (*United Brands* – 1978 and *Hoffmann-La Roche* – 1979), shaped the definition of dominant position, a concept against which the EU had provided protection even before establishing its precise definition. These definitions and criteria were reflected in Council Regulation (EC) No 1/2003¹⁶, together with Regulation No 773/2004¹⁷, which governed procedural aspects relating to Regulation No 1/2003.¹⁸

Dominance is not unlawful in itself, but it imposes on undertakings a special responsibility not to impair effective competition.¹⁹ Assessing dominance therefore requires defining the relevant market, evaluating market shares, and examining barriers to entry and expansion. In digital markets, the analysis also includes network effects, economies of scale, access to data, and switching costs.²⁰

¹² Romania, Competition Law No. 21/1996, art. 6, republished in *Monitorul Oficial al României*, no. 153, February 29, 2016.

¹³ Court of Justice of the European Union, *United Brands Company and United Brands Continental BV v Commission*, Case 27/76, judgment of February 14, 1978, ECLI:EU:C:1978:22, para. 65.

¹⁴ Court of Justice of the European Union, *Hoffmann-La Roche & Co. AG v Commission*, Case 85/76, judgment of February 13, 1979, ECLI:EU:C:1979:36.

¹⁵ Consolidated Version of the Treaty on the Functioning of the European Union, art. 102, OJ C 202 (June 7, 2016): 89.

¹⁶ Council Regulation (EC) No. 1/2003 of December 16, 2002, on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1 (January 4, 2003): 1–25.

¹⁷ Commission Regulation (EC) No. 773/2004 of April 7, 2004, relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123 (April 27, 2004): 18–24.

¹⁸ Endri Papajorgji and Artela Roshi, “ECJ Case 27/76 *United Brands v Commission* and Case 85/76 *Hoffmann-La Roche* Analyzed in the Framework of Albanian Competition Law,” *Academic Journal of Business, Administration, Law and Social Sciences* 9, no. 2 (2023): 12–20, <https://doi.org/10.2478/ajbals-2023-0002>.

¹⁹ Court of Justice of the European Union, *Hoffmann-La Roche & Co. AG v Commission*, Case 85/76, ECLI:EU:C:1979:36; Court of Justice of the European Union, *Post Danmark A/S v Konkurrencerådet*, Case C-209/10, judgment of March 27, 2012, ECLI:EU:C:2012:172, para. 23.

²⁰ OECD, *The Evolving Concept of Market Power in the Digital Economy*, OECD Roundtables on Competition Policy Papers, no. 278 (Paris: OECD Publishing, 2022), <https://doi.org/10.1787/2c>

Recent scholarship describes data as a strategic resource capable of strengthening market power and creating informational barriers. Doctrinal developments have shifted the focus from the formalism of market shares towards analysis of effects, contestability, and the durability of economic power.²¹

This paper examines the debate over whether competition law and data protection law can “go hand in hand.” More specifically, it considers whether an infringement of data protection law may also constitute a competition-law infringement and serve as a basis for finding that a dominant undertaking has abused its position in digital markets. A breach of data protection rules may be regarded as a breach of competition rules only where a convincing theory of harm, supported by robust evidence, demonstrates harm to competition.²²

In this context, competition authorities are encouraged to explore the extent to which data-related anticompetitive practices may be addressed through behavioural remedies that enhance data protection. Depending on the circumstances, competition authorities may pursue a case involving either exclusionary or exploitative abuse, with appropriate remedies in each situation.²³ From the perspective of UNCTAD instruments, a dominant position denotes a situation in which one or more undertakings have the ability, with respect to supply or demand, to act in a substantially independent manner from other market participants, including competitors, customers, and consumers.²⁴

Holding such a position is not prohibited in itself; what is sanctioned is its abusive use. Abuse may take the form of imposing unfair prices or trading conditions, limiting production or technical development, applying discriminatory conditions, imposing supplementary obligations, engaging in exclusionary practices, refusing to deal, or restricting access to essential infrastructure.²⁵ Nevertheless, the practices of a dominant undertaking are not considered abusive where the undertaking demonstrates objective justifications,

fc4a8-en; European Commission, “Guidance on the Commission’s Enforcement Priorities in Applying Article 82 of the EC Treaty to Abusive Exclusionary Conduct by Dominant Undertakings,” 2009/C 45/02.

²¹ Inge Graef, “Market Definition and Market Power in Data: The Case of Online Platforms,” *World Competition* 38, no. 4 (2015): 473–506; Inge Graef, *EU Competition Law, Data Protection and Online Platforms: Data as Essential Facility* (Alphen aan den Rijn: Kluwer Law International, 2016).

²² Marija Stojanovic, “Can Competition Law Protect Consumers in Cases of a Dominant Company Breach of Data Protection Rules?” *European Competition Journal* 16, nos. 2–3 (2020): 531–569, <https://doi.org/10.1080/17441056.2020.1824464>.

²³ Alessia D’Amico, “Aligning Remedies in Abuse of Dominance Cases with Data Protection Principles,” Privacy International, January 22, 2021, <https://privacyinternational.org/long-read/4400/aligning-remedies-abuse-dominance-cases-data-protection-principles>.

²⁴ United Nations Conference on Trade and Development (UNCTAD), *Handbook on Competition Legislation, Volume II: Consolidated Report 2013–2014*, art. 3.5, <https://unctad.org/publication/handbook-competition-legislation-volume-ii-consolidated-report-2013-2014>.

²⁵ UNCTAD, *Handbook on Competition Legislation, Volume II: Consolidated Report 2013–2014*, art. 9.

including technical or commercial reasons.²⁶

Although the GDPR and competition law may apply to the same actors and activities, they are distinct legal fields, based on different legal concepts and objectives and possessing their own enforcement frameworks. Whereas data protection law seeks to guarantee data subjects' fundamental right to personal data protection against unlawful, unfair, and non-transparent processing, competition law seeks to "protect the efficient functioning of markets."²⁷ It is therefore necessary to assess the situations in which data protection and competition interact.²⁸

Despite their differences, the two legal regimes pursue at least three common objectives, including the protection of competition. This permits a holistic approach that takes account of both competition policy and data protection considerations.

2.1. Can a Dominant Position Exist in Personal Data Protection?

The concept of dominant position traditionally belongs to competition law. It was developed to assess economic power exercised on the market. The transformations of the digital economy, however, require reconsideration of the limits of this concept.

The analysis considers whether conduct favourable to data protection may infringe Article 102 TFEU. Despite their differences, the two legal regimes pursue at least three common objectives, including the protection of competition. Three scenarios must therefore be distinguished. The first concerns situations in which data-protection-friendly conduct has pro-competitive or neutral effects; in such cases, abuse of a dominant position is excluded. The second concerns conduct strictly required by data protection law; because an undertaking has no option other than to comply with the applicable rules, it cannot be held liable for the anticompetitive effects of that conduct. The third concerns situations in which a dominant undertaking invokes data protection as justification for anticompetitive conduct; in that case, a rigorous proportionality assessment is required.²⁹

A dominant position in data protection may be understood as a situation

²⁶ UNCTAD, *Handbook on Competition Legislation, Volume II: Consolidated Report 2013–2014*, art. 9.

²⁷ European Commission, Directorate-General for Competition, *EU Competition Policy in Action: COMP in Action* (Luxembourg: Publications Office of the European Union, 2017), <https://doi.org/10.2763/897035>.

²⁸ European Data Protection Board, *Position Paper on Interplay between Data Protection and Competition Law*, adopted January 16, 2025, https://www.edpb.europa.eu/documents/other-policy-document/position-paper-on-interplay-between-data-protection-and-competition_en.

²⁹ Klaus Wiedemann, "Can Data Protection Friendly Conduct Constitute an Abuse of Dominance under Art 102 TFEU?" in *Research Handbook on Data, Privacy and Competition Law*, ed. Maria Ioannidou and Despoina Mantzari (Cheltenham: Edward Elgar Publishing, 2025), 208–234, <https://doi.org/10.4337/9781802202335.00018>.

in which a controller exercises significant influence over the exercise of a data subject's rights. Such influence may result from economic, informational, or technological power. In practice, these forms of power may operate simultaneously.

Control over data, algorithms, and digital infrastructures therefore brings new forms of influence. From this perspective, dominant position may also be analysed in relation to the data subject, with market power no longer constituting the sole central element. The analysis should consequently focus on the effects exerted on the data subject. In data protection, an imbalance of power affects the validity of consent and the effectiveness of the individual's control over personal data processing.

The General Data Protection Regulation defines consent as a freely given, specific, informed, and unambiguous indication of the data subject's wishes.³⁰

Recital 43 of the same Regulation presumes an absence of genuine freedom where there is a clear imbalance between the controller and the data subject or where provision of a service depends on consent.³¹ The conditions governing consent may be structurally or only tangentially affected by the fact that consent is given in specific fields, such as research or marketing, or by particular categories of data subjects, such as children.³²

The European Data Protection Board indicates that relationships with public authorities and employers generally entail a serious risk that consent may be merely apparent.³³

A contractual imbalance arises where terms are non-negotiable and refusal of processing results in economic loss, functional exclusion, or significant disadvantages, including personal disadvantages. Vulnerability is not exclusively subjective; it also results from the architecture of the legal relationship and the asymmetry of power.

The Meta judgment³⁴ confirms that a dominant position does not automatically invalidate consent, but constitutes a decisive factor in assessing whether

³⁰ Christopher Kuner, Lee A. Bygrave, and Christopher Docksey, eds., *The EU General Data Protection Regulation (GDPR): A Commentary* (Oxford: Oxford University Press, 2020).

³¹ Regulation (EU) 2016/679, recital 43; European Data Protection Board, *Guidelines 05/2020 on Consent under Regulation 2016/679*, version 1.1, adopted May 4, 2020, secs. 3.1.1–3.1.2.

³² Daniel-Mihail Șandru, "Elemente privind reglementarea consimțământului în prelucrarea datelor cu caracter personal, potrivit art. 6 din Regulamentul nr. 2016/679," *Revista Română de Drept al Afacerilor*, no. 5 (2017): 129–135.

³³ European Data Protection Board, *Guidelines 05/2020 on Consent under Regulation 2016/679*, version 1.1, adopted May 4, 2020; European Data Protection Board, *Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms*, April 17, 2024.

³⁴ Court of Justice of the European Union, *Meta Platforms Inc., Meta Platforms Ireland Ltd and Facebook Deutschland GmbH v Bundeskartellamt*, Case C-252/21, judgment of July 4, 2023, ECLI:EU:C:2023:537, paras. 147–154.

it is freely given.³⁵

2.2. Imbalance of Power and the Validity of Consent

Consent constitutes a freely given, specific, informed, and unambiguous indication of the data subject's wishes. The data subject accepts the processing of personal data by means of a statement or a clear affirmative action.³⁶ This notion reflects the principles of individual autonomy and control over one's own data.³⁷ Under the Civil Code, valid consent of the parties must be genuine, free, given with full knowledge, specific, informed, and unambiguous.³⁸ The essential role of consent is emphasized by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union³⁹.

The General Data Protection Regulation recognizes that certain relationships are characterized by an imbalance of power. In such situations, consent must be assessed with caution, the employer–employee relationship being the example most frequently cited. The data subject's economic dependence on the employer may affect freedom of individual decision-making.

The same reasoning may be extended to the digital environment. Users may depend on services provided by social-media platforms. In practice, access to certain services may be made conditional on acceptance of extensive data processing. The user's practical ability to refuse may therefore become limited. None of the situations in which data are processed without consent may be used to the detriment of private life for the company's purposes, such as improving efficiency or increasing profit.⁴⁰

The data subject may accept imposed conditions without a genuine choice, thereby affecting the freely given nature of consent. The issue concerns not only the lawfulness of processing, but also the effective protection of individual autonomy. The imbalance of power must therefore be analysed as a relevant factor when assessing the validity of consent.

³⁵ Alessia Sophia D'Amico, "Market Power and the GDPR: Can Consent Given to Dominant Companies Ever Be Freely Given?" *European Papers: A Journal on Law and Integration* 8, no. 2 (2023): 611–629, <https://doi.org/10.15166/2499-8249/678>.

³⁶ Regulation (EU) 2016/679, art. 4(11).

³⁷ Daniela Duță, "Inacțiunea persoanei vizate în arhitectura protecției datelor: între consimțământ și riscurile deciziei automatizate în sistemele cu inteligență artificială," in *Tăcerea, pasivitatea și inacțiunea în arhitectura dreptului* (Bucharest: Universul Juridic, 2026), ISBN 978-606-39-1957-2.

³⁸ Romanian Civil Code, art. 1204.

³⁹ Charter of Fundamental Rights of the European Union, arts. 7–8, OJ C 202 (June 7, 2016): 389–405; Daniela Duță, "De la consimțământul electronic la tranzacțiile asistate de inteligență artificială: contractele digitale în Uniunea Europeană," *Revista Română de Drept Comercial*, no. 1 (2026): 124.

⁴⁰ Daniel-Mihail Șandru, "Situatii în care este permisă prelucrarea datelor cu caracter personal fără consimțământul persoanei vizate," in *Regulamentul general privind protecția datelor cu caracter personal. Comentarii și explicații*, ed. Andrei Săvescu (Bucharest: Hamangiu, 2018), 39–48.

2.3. Dominant Position and the Vulnerability of the Data Subject

The data subject is the holder of the rights established by the GDPR and the reference point for the lawfulness of any data processing.⁴¹ Legal autonomy requires adequate information, a genuine capacity to choose, and the possibility of withdrawing without suffering detriment.⁴²

This autonomy becomes fragile when access to essential or quasi-essential services is made conditional on acceptance of extensive processing.⁴³ Conditioning services in this manner transforms consent into an instrument of compliance rather than an authentic and autonomous choice.

Legal vulnerability describes heightened exposure to structural constraints, informational asymmetries, and the practical impossibility of refusal. In platform environments, vulnerability may result from social or communicational dependence on a single intermediary.

Legal vulnerability thus becomes a cross-cutting criterion for competition, data protection, platform regulation, and artificial-intelligence governance.⁴⁴ Personal data play a constitutive role in artificial-intelligence systems; whether structured or unstructured, data form part of the nature of artificial intelligence.⁴⁵

3. From Economic Power to Informational Power

Digital transformation has generated new forms of power, among which informational power occupies an important place. Informational power results from the capacity to collect, process, and exploit data relating to persons and behaviour. This capacity makes it possible to anticipate preferences and influence individual decisions.

In the digital economy, data are often described as a strategic resource whose value derives from their potential use for economic and technological pur-

⁴¹ Regulation (EU) 2016/679; Council of Europe, *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*, ETS No. 108, January 28, 1981.

⁴² European Data Protection Board, *Consent under GDPR: When to Act and What to Do* (May 2026), https://www.edpb.europa.eu/system/files/2026-04/edpb-summary-consent_en.pdf; Kuner, Bygrave, and Docksey, eds., *The EU General Data Protection Regulation (GDPR): A Commentary*.

⁴³ Court of Justice of the European Union, *Meta Platforms v Bundeskartellamt*, Case C-252/21, paras. 149–152; European Data Protection Board, *Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms*.

⁴⁴ Regulation (EU) 2016/679, recital 75; Regulation (EU) 2022/1925 (Digital Markets Act); Regulation (EU) 2024/1689 (Artificial Intelligence Act); Orla Lynskey, “Grappling with ‘Data Power’: Normative Nudges from Data Protection and Privacy,” *Theoretical Inquiries in Law* 20, no. 1 (2019): 189–220, <https://doi.org/10.1515/til-2019-0007>.

⁴⁵ Daniel-Mihail Șandru, “Relația dintre protecția datelor și inteligența artificială. Impactul reglementării inteligenței artificiale în Uniunea Europeană,” *Revista Română de Drept European*, no. 1 (2023): 84–91.

poses. Continuous data collection enables the development of services and personalized marketing to optimize commercial processes. At the same time, it contributes to improving algorithms and artificial-intelligence systems.

Informational power may therefore generate competitive advantages, as controllers holding substantial volumes of data benefit from enhanced opportunities for innovation and development.

Data accumulation also produces effects that extend beyond the economic sphere and may influence the exercise of data subjects' fundamental rights and freedoms.

Under these conditions, informational power becomes relevant both to competition law and to personal data protection law.

3.1. Economic, Informational, and Algorithmic Power

Digital power frequently derives from the continuous accumulation, combination, and exploitation of personal and behavioural data.⁴⁶

Data increase the accuracy of profiling, the effectiveness of advertising, and the capacity for algorithmic improvement of services, generating cumulative advantages. These advantages produce positive externalities for the platform and negative externalities for users through loss of control and intensified surveillance. Network effects increase the value of a service as the number of users grows, reinforcing tendencies towards concentration and dependence.⁴⁷ Lock-in⁴⁸ arises where switching provider entails losing contacts, history, preferences, or functionalities accumulated within the ecosystem.⁴⁹

Algorithmic power arises where the controller determines rankings, recommendations, prioritization of access, and conditions of economic visibility.⁵⁰

Digital dominance therefore results from the convergence of capital, data, computing infrastructure, and automated decision-making architectures.

⁴⁶ OECD, *The Intersection between Competition and Data Privacy*, OECD Roundtables on Competition Policy Papers, no. 310 (Paris: OECD Publishing, 2024), <https://doi.org/10.1787/0dd065a3-en>; Graef, *EU Competition Law, Data Protection and Online Platforms*.

⁴⁷ OECD, *The Evolving Concept of Market Power in the Digital Economy*; European Commission, "EU Citizens Q&A – Digital Markets Act," accessed June 22, 2026.

⁴⁸ On switching costs and vendor lock-in in digital platforms, see OECD, *Data Portability, Interoperability and Competition*, OECD Roundtables on Competition Policy Papers, no. 260 (Paris: OECD Publishing, 2021), <https://doi.org/10.1787/73a083a9-en>.

⁴⁹ OECD, *Data Portability, Interoperability and Competition*; Inge Graef, "Mandating Portability and Interoperability in Online Social Networks: Regulatory and Competition Law Issues in the European Union," *Telecommunications Policy* 39, no. 6 (2015): 502–514, <https://doi.org/10.1016/j.telpol.2015.04.001>.

⁵⁰ Ariel Ezrachi and Maurice E. Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy* (Cambridge, MA: Harvard University Press, 2016).

4. International Convergence between Competition and Data Protection

4.1. Competition Law at the International Level

Unlike other fields of law, no international treaty of universal scope concerning competition was identified. Nevertheless, important cooperation mechanisms have been developed.

The Role of UNCTAD in Developing Competition Standards. The United Nations Conference on Trade and Development is the principal international body involved in promoting competition policies. Its activities address both developed economies and emerging states.⁵¹

The OECD's Contribution to Competition Governance. The Competition Committee of the Organisation for Economic Co-operation and Development promotes regular exchanges of views and analyses on competition-policy issues. It influences contemporary competition policies, and its recommendations are frequently used in legislative processes.⁵²

The International Competition Network provides competition agencies worldwide with a dedicated network for addressing issues concerning enforcement of competition laws and policies of common interest. It facilitates procedural and substantive convergence in antitrust enforcement and merger control.⁵³

Council of Europe Convention 108+. Convention 108+ guarantees respect for fundamental rights and freedoms, particularly the right to privacy, with regard to the automated processing of personal data. Extending the Convention's applicability to non-EU states underscores its recognition as a global foundation for data protection, to be respected without discrimination. At the institutional level, the Council of Europe Framework Convention on Artificial Intelligence (2024) is analysed as an expression of a new constitutive phase in international law, demonstrating that technological regulation lies at the intersection of sovereignty, fundamental rights, and concern for the future.⁵⁴

⁵¹ UN Trade and Development (UNCTAD), "About UN Trade and Development (UNCTAD)," accessed September 13, 2026, <https://unctad.org/about>.

⁵² OECD, "Competition," accessed September 13, 2026, <https://www.oecd.org/en/topics/competition.html>.

⁵³ European Commission, "International Competition Network (ICN)," accessed September 13, 2026, https://competition-policy.ec.europa.eu/international-relations/multilateral-cooperation/icn_en.

⁵⁴ Cristina Elena Popa Tache, "Artificial Intelligence, Existential Risks and International Obligations," in *Law, Ethics and Human Vulnerability: Global Perspectives on Responsibility and Governance*, ed. Cătălin-Silviu Săraru, Cristina Elena Popa Tache, and Federica Cristani (Cham: Springer Nature Switzerland, 2026), 41–69, https://doi.org/10.1007/978-3-032-19547-0_2.

5. Dominant Position, Consent, and Control of Data

From Dominant Position to the Concept of Gatekeeper. Major digital platforms control infrastructures that provide access to services and information and occupy important positions in contemporary digital ecosystems. The European Union responded to this challenge by adopting the Digital Markets Act⁵⁵, which introduces the concept of the gatekeeper. The notion of gatekeeper does not replace dominant position in competition law. The two concepts nevertheless pursue related objectives. A gatekeeper is an operator that controls access to markets and users.⁵⁶ Its power derives from the strategic position it occupies in the digital environment. The Digital Markets Act adopts a preventive approach, seeking to limit risks before anticompetitive effects arise.

Artificial Intelligence and the Accumulation of Informational Power. The development of artificial intelligence has increased the importance of personal data, which constitute a principal element required for training systems and models. The AIA builds upon the GDPR modulating its legal impact, but without directly contradicting it or affecting its scope of application, avoiding major damage. In doing so, it illustrates that it is possible to legislate to support the deployment of AI while respecting EU fundamental rights protection, certainly on paper and at least to some extent.⁵⁷

From a historical perspective, the emergence of automated and opaque data processing was the starting point for the legal reflection that gave rise to data protection legislation. Protecting individuals against the power of the machine was, and remains, one of its fundamental rationales. For decades, data protection appeared to be the key instrument for protecting individuals in the context of artificial intelligence and, implicitly, a necessary condition for its adoption in democratic societies — the first line of defence for democracy in the face of technological development.⁵⁸

The Artificial Intelligence Act adopts a risk-based approach and seeks to prevent uses that affect human dignity and individual autonomy. Controllers that hold significant volumes of data enjoy technological advantages that may contribute to strengthening their dominant position on the market. In this context, data protection and artificial-intelligence regulation pursue complementary objectives, both seeking to limit the negative effects of the concentration of digital power.

⁵⁵ Regulation (EU) 2022/1925 (Digital Markets Act).

⁵⁶ Regulation (EU) 2022/1925 (Digital Markets Act), art. 3.

⁵⁷ Gloria González Fuster, “The AI Act and the GDPR,” in *The EU Artificial Intelligence Act: A Thematic Commentary*, ed. Gianclaudio Malgieri, Gloria González Fuster, Alessandro Mantelero, and Gabriela Zanfir-Fortuna (Oxford: Hart Publishing, 2026).

⁵⁸ Gloria González Fuster, “Caught Between AI and the AI Hype: How the Right to Personal Data Protection Was Ambushed,” *Rivista di Diritti Comparati*, Special Issue VIII (2026): 106–124.

Personal Data as a Source of Competitive Advantage. In the digital economy, data constitute a strategic resource comparable to infrastructure or capital, and their economic value is indisputable. This dual nature explains the growing proximity between competition and data protection. Control over data simultaneously produces economic and legal effects. Consequently, analysis of digital power cannot be limited to traditional economic indicators. The assessment must also include the informational dimension and proportionality tests.

Meta Platforms v Bundeskartellamt. The convergence between competition law and data protection has also become visible in the recent case law of the Court of Justice of the European Union.

A key reference is Case C-252/21, *Meta Platforms Inc. and Others v Bundeskartellamt*.⁵⁹

The dispute concerned practices involving the collection and combination of data relating to users of the Facebook service. The data originated both from services within the Meta group and from third-party sources.

The German competition authority considered that these practices could constitute an abuse of a dominant position. Its assessment was based on the effects produced on users.

Meta challenged the competition authority's competence to examine data-protection issues. The dispute therefore reached the Court of Justice, which held that competition authorities may take data protection rules into account where this is relevant to the application of competition law. The judgment clarifies how regulatory rules may influence competition assessments and highlights the potential for competition authorities to consider the broader market and regulatory landscape without exceeding their mandate.⁶⁰ The judgment does not transform competition authorities into data protection authorities. It does, however, recognize the interdependence between the two fields.

Another aspect of the judgment concerns consents as a legal basis for processing, the opportunities for using data protection as a benchmark in competition law, and, ultimately, the challenges of addressing data protection through the lens of competition law in the online environment.⁶¹

Under the GDPR, consent must be freely given, specific, informed, and unambiguous. These requirements safeguard individual autonomy.

The Court emphasized that the existence of a dominant position does not automatically invalidate consent. It nevertheless constitutes a relevant factor in

⁵⁹ Court of Justice of the European Union, *Meta Platforms v Bundeskartellamt*, Case C-252/21, ECLI:EU:C:2023:537, paras. 147–154.

⁶⁰ Arletta Gorecka, "On the Interplay between Competition Law and Privacy: The Impact of Meta Platforms Case," *European Competition Journal* 20, no. 3 (2024): 555–576, <https://doi.org/10.1080/17441056.2024.2324586>.

⁶¹ Ana-Maria Hriscu, "C-252/21 Meta v Bundeskartellamt: The Lawfulness of Big Tech's Processing of Personal Data and the Relationship Between Data Protection and Competition Law," *European Data Protection Law Review* 9, no. 3 (2023): 371, <https://doi.org/10.21552/edpl/2023/3/15>.

the assessment.

The controller's economic power may influence user behaviour; in certain circumstances, the data subject may perceive a lack of genuine alternatives. This may affect freedom of individual decision-making. The validity of consent must therefore be assessed with particular care.

The Court's approach brings the competition-law concept of dominant position closer to the data-protection notion of imbalance of power. In both situations, the concern is the exercise of disproportionate influence over a person in a weaker position.

The Meta judgment highlights the limits of an exclusively economic approach to dominant position.

In the digital economy, power is manifested not only through control of the market, but also through control of data and informational infrastructures. Digital operators may influence both competition and the exercise of fundamental rights; this phenomenon therefore justifies an interdisciplinary analysis.

6. Prospects for Developing a Global Framework on Digital Power

At present, digital power is regulated through different legal instruments. Competition law analyses dominant position and its effects on the market. Data protection seeks to safeguard autonomy and privacy.

The transformations analysed in this paper indicate an expansion in the significance of dominant position, with the concept no longer confined to its economic dimension. Control over data and algorithms may generate comparable forms of influence, affecting both competition and the exercise of fundamental rights. In this context, dominant position may be regarded as one manifestation of digital power. Such an approach facilitates dialogue between different branches of law. Developing this concept may constitute a future direction for legal research. Its importance will increase as the use of artificial intelligence expands.

7. Research Results and Conclusions

The research highlights a convergence between competition law and personal data protection, driven by the economic and informational role of data. In the digital economy, economic power is complemented by informational and algorithmic power, while control over data may reinforce competitive advantages and asymmetries in relation to data subjects.

The analysis of case law, particularly Meta Platforms/Bundeskartellamt, demonstrates the relevance of dominant position to assessing the context of data processing and whether consent is freely given. The imbalance of power thus becomes a connecting element between competition law and data protection.

The principal contribution of the research is the proposal to use dominant position as a legal indicator of an imbalance of power, without automatically

transferring this concept into data protection law. Such an approach makes it possible to assess the effects of economic and informational power on freedom of choice, autonomy, and the effective exercise of data subjects' rights.

Future research should extend to the effects of algorithmic power and generative artificial intelligence on competition and data protection.

In conclusion, dominant position remains an institution of competition law, but it may serve as an indicator for identifying power imbalances that affect the exercise of data subjects' rights in the digital environment.

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