

## Chapter 9

# Evaluation of Big Data within the Context of the Protection of Personal Data and Competition Law

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### **ABSTRACT**

*In order to sustain their presence in the market, personal data acquirers must obtain, store, and process personal data from sources that feed data such as social media shares, shopping records, and sensor networks. On the other hand, the problem of conformity of real and legal persons whose personal data are processed within the framework of personal data law brings about many legal problems and requires a profound research rather than a limited examination. The fact that a small number of enterprises create dominant power by using big data in market strategy has led to data-dependent companies or markets. Due to the effects that big data caused in the market, there is a need to address many problems in the field of competition law as well as the dimension of privacy and personal rights. In this context, the conflict of interest between the economic interest created by big data and the legal principles of personal data will be addressed and compared with regard to Turkish law and foreign law practices by discussing the relationship between big data and competition law.*

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## **INTRODUCTION**

In September 2018, the Competition Authority launched an investigation into Google on the suspicion of Google's abuse of its dominant position in the general search services market by putting forward its local search service to exclude its competitors (Competition Board Decision, 19.09.2018, 18-33/555-273). The dispute occurred in the big data center falling under the scope of the competition law field by exceeding the field of personal data law reflects that the big data is not only related to the confidentiality and security problems of the personal data, but it is an issue that can concern all fields of the law.

The big data has been evaluated and discussed within the scope of personal data law, since its most privacy-related impacts can be felt directly to date. However, the big data, which is reflected in all areas of life, has become the object of competition and new oil of the age. (Biase, 2018, Ketizmen & Kart, 2019). It is extremely important for the innovative market as to how the big data is evaluated within the framework of competition law.

The website with the address of "sahibinden.com", which excluded competitors from the market by taking advantage of the network effect in the market, was imposed with a fine of 10.680.425,98 TL by the Competition Authority in 2018 on the grounds of its excessive price practices (Competition Board Decision, 01.10.2019, 18-36/584-285). In this way, it is necessary to determine as to whether the big data, which also attracts the attention of the competition authorities, causes a dominant position in the market and as to how the abuse of dominant positions emerged in the digital age.

Regardless of the location of the headquarters of an enterprise, the "impact theory" which means that the actions of the enterprise may be investigated if it leads to a competition restriction that has an impact on the country's market (Celen & Eralp, 2018; Karauz & Işık, 2016), is also adopted by the German Federal Competition Authority Bundeskartellamt. Thus, Bundeskartellamt, considers itself competent to investigate if a company's actions result in a competition restriction that has an impact on the German market, regardless of where a company is headquartered. The Bundeskartellamt has recognized itself competent as the basis of the "impact theory" in a Facebook investigation, which was the first competition authority review of a competing authority in Europe with regard to the process personal data and abuse of the dominant position. As a result of the review, it banned the data processing policy of Facebook in Germany and decided that Facebook shall elaborate its data and cookie policies within twelve months (Bundeskartellamt, 06.01.2019, B6-22/16). Under the Turkish Law, the "impact theory" was adopted by Article 2 of the Act on the Protection of Competition numbered 4054, transactions and practices which restrict competition between any kind of enterprises affecting markets for goods

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