

Enforcers must embrace algorithms, Régibeau says

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Competition agencies should consider using algorithms to detect potential “killer acquisitions”, the European Commission’s chief competition economist has said. Pierre Régibeau today suggested that agencies hire chief technology officers to work alongside economic and legal teams, with a particular focus on developing new tools to detect anticompetitive behaviour.

Speaking on a panel about computational antitrust during a conference hosted by Greece’s Competition Commission and the BRICS Competition Law and Policy Centre, Régibeau said cartels are an “obvious” focus of such detective tools.

But he said enforcers could also use algorithms to identify potentially problematic “early acquisitions”, where a deal falls below notification thresholds or “arises at a point where it’s a little bit harder to figure out where it’s going to go next”.

Algorithms could examine the large number of below-threshold mergers, detecting them from sources like the press and company reports, to eventually learn which characteristics of these deals “mean they’re worth looking at”, Régibeau suggested.

Agencies could also use algorithms to look at a broad sample of similar technology deals and make a prediction of how such acquisitions or markets are likely to evolve in the future, “which would be very useful”, he added.

However, Régibeau warned there is a “danger” that comes with relying on algorithms. As authorities “never know if we get it right or not”, they risk making the same mistakes over and over again if they use algorithms trained only on their previous jurisprudence, he said. Further, authorities will need to explain their decisions before judges by articulating a theory of harm and putting it in the right legal context, Régibeau said. Showing up with “just an algorithm” would make a judge very uncomfortable and the two opposing sides would simply end up in a “battle of the algorithms”, he said.

So although there is certainly room for chief technology officers in competition agencies, they must work alongside economists who are “especially concerned” about theories of harm and the likelihood of their occurrence, as well as lawyers who are concerned about the legal context and jurisprudence, Régibeau said.

Technology teams can help both economists teams and legal teams separately but can also help bring the two sides together – which is where they will be most useful, he added.

In an article published earlier this month, academics at the Stanford Computational Antitrust Project also [suggested](#) that data science could be used to help antitrust agencies, particularly in the US, screen “rampant under-the-radar acquisitions”.

The authors suggested that the US agencies consider the “fitness” of merging companies when deciding whether to further investigate a deal, as smaller companies with a high level of fitness – a measurement of their ability to translate size into growth – are more likely to be bought up, and a large number of such acquisitions fall below notification thresholds. Yann Guthmann, the head of the digital economy unit at France’s Competition Authority, also spoke on the panel. He said expertise from his unit was “key” to enable the French enforcer to [reject](#) a request for interim measures imposed on Apple relating to its App Transparency Tracking update.

The update requires application developers to obtain users’ explicit consent before tracking their activities across different apps. The French enforcer received a complaint in late October 2020 from a handful of online advertising networks contesting this requirement and asking the enforcer to impose interim measures preventing Apple from rolling out the update. The authority considered that the practices did not appear abusive so rejected the request for interim measures in March, although it is continuing to investigate if the framework is necessary and proportionate.

Guthmann said his unit was able to help the case handlers understand the complex advertising markets so the agency could issue the interim measures decision in less than six months. This is a very short amount of time but is “up to pace” with these fast-evolving digital markets, he said.

The unit officially [launched](#) in September with the goal of developing new tools to help the French authority understand the digital economy. Guthmann said it is “very difficult” to recruit people for this type of work, as agencies need to find “hidden gems” with expertise in data science and an interest in antitrust.

“The traditional competition world and the data science world are kind of strangers to each other, you could almost say they are opposing,” Guthmann said, comparing the two fields to Hades and Persephone.

Like the Greek mythological figures, competition law and data science seem opposing but “could lead to a very successful marriage”, he said.

However, Guthmann said agencies need to broadcast a general understanding and knowledge about data science internally. A lot of case handlers “kind of mistrust these new tools” and are afraid they could lose more time by using them, he explained. Therefore, the only way to bring about the “generic use” of data science tools within competition authorities is to develop them with an emphasis on the case handler experience, Guthmann said.

The conference concluded today.