

Lessons from EU regulator's review of Apple/Shazam merger

November 14, 2018

Following its earlier [announcement](#) clearing Apple's proposed acquisition of Shazam, the European Commission has now published the full text of the clearance decision. The decision came after an extensive investigation by the EU regulator into any unfair advantages that the merger could have given Apple against its competitors – most notably Spotify. The decision marks an important development in the Commission's assessment of acquisitions involving data-driven companies and provides valuable insights into new factors that the regulator takes into account, such as the value and uniqueness of the data involved.

The Commission's investigation started in December 2017, when Apple announced its intention to acquire Shazam. At first glance, Apple and Shazam mainly offer complementary services and do not compete with each other. However, while the customer service that Shazam offers is a music recognition service, its main sources of revenue are online advertising and, key in this case, commissions earned on referrals of users to digital music streaming and download services. Those services included Apple Music, Spotify and Deezer, making Shazam a supplier to Apple and its competitors. The Commission therefore set out to investigate the Apple/Shazam merger and zeroed in on two relevant aspects.

First, the Commission looked into whether the merger would give Apple access to commercially sensitive data about competitors' customers in connection with music streaming services, and whether such data could allow Apple to directly target its competitors' customers and encourage them to switch to Apple Music. This could have led the Commission to conclude that competing music streaming services, such as Spotify, could have been put at a competitive disadvantage. In this case, the Commission found that access to Shazam's data would not materially increase Apple's ability to target music enthusiasts, so any effect of the transaction would only have a negligible impact, leaving plenty of room for competing music service providers to operate. The Commission ruled that Shazam's user data would not confer a unique advantage to the merged entity because Shazam's data was not unique, and Apple's competitors would still have the opportunity to access and use similar databases.

The Commission's focus on data transfer is a new development in the world of antitrust enforcement, which typically deals with the effects of a transaction on the final cost customers will have to pay for products and services. As Commissioner for Competition Margrethe Vestager stated: *"Data is key in the digital economy. We must therefore carefully review transactions which lead to the acquisition of important sets of data, including potentially commercially sensitive ones, to ensure they do not restrict competition."*

The second aspect of the Commission's investigation focused on Shazam's strong position in the market for music recognition apps. The Commission investigated whether, post-transaction, Shazam would have an incentive to discontinue referrals from the Shazam app to Apple Music's competitors. The Commission concluded that as an entry point to the music streaming services of Apple Music's competitors, Shazam is of limited importance. While this helps Apple get the deal cleared, it also raises the question about what Apple's plans with the app are. When looking at the Apple/Shazam transaction, the Commission concluded that competition concerns do not arise in the EEA because the merged entity would not be in a position to restrict competition. The Commission did note that both companies must continue to operate in compliance with all relevant data protection laws. The result could be different for mergers of data-driven companies where the data they hold is deemed to be unique or the services they offer are key to other market participants.