

Summary

The Commission's interest in protecting the privacy of its citizens is commendable. This concern, however, should be well tempered by humility, and the Commission's ultimate decision should be guided by the understanding that contemporary technology and market innovations have afforded consumers a degree of choice unparalleled in the history of the European Union. While some firms may build their products with the requirement that consumers allow them to use personal information, others will not. And when consumers defect from products that do not meet their individual mix of privacy, price, and other preferences, firms will take notice and change their behavior accordingly.

This leads to another related point: innovation moves so quickly today that uniform prescriptive regulation intended to govern the behavior of many thousands of firms and millions of consumers is doomed to frustration if not outright failure. Moreover, broad regulations meant to bring industry to heel frequently work to the benefit of incumbents, driving out smaller competitors or making entry nearly impossible, only further narrowing consumer choices and guaranteeing less than optimal results for all of society.

With that said, there are certainly actions for the Commission to take that ensure a competitive environment in which consumer interests are adequately protected. Chief among these areas would be to enact regulations that control the damaging effects of costly data localization rules. Overall, however, the Commission would do best to leave much of the implementation of privacy regulations to the individual EU members who are most in touch with the challenges and desires of their own constituents.