



**BALLAS  
PELECANOS**  
& ASSOCIATES L.P.C.



C.I.B. (COUNTERFEIT INTELLIGENCE BUREAU):  
A DIVISION OF THE I.C.C.  
COMMERCIAL CRIME SERVICES BRANCH

# Algorithms, digital platforms and Law

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 [WWW.PALLADIANCONFERENCES.GR](http://WWW.PALLADIANCONFERENCES.GR)

Friday, March 16th 2018

N.J.V. **ATHENS PLAZA**

# NETWORKS v. HIERARCHIES

“Networks are important not just as **transmission mechanisms of new ideas but as sources of new ideas themselves**”

“Not all networks are likely to foster change; on the contrary, **some dense and clustered networks** have a tendency to **resist it!!**”

“But the **point of contact** between diverse networks may be the place to look for **novelty**”

“..... expect continual **network disruption of hierarchies** that cannot reform”

“(Networks) tend to be **more creative than hierarchies** .... Innovations have tended to come from networks more than from hierarchies”

“Networks are as capable of creating and spreading **bad ideas as good ideas**”

Niall Ferguson

“The square and the tower,  
Networks, Hierarchies & the struggle  
for global power” (2017)

# One month ago...

## Availability We Price Match

Check-in date: **Fri 16 Mar 2018** From 14:00 until 00:00  
 Check-out date: **Sat 17 Mar 2018** (1-night stay)  
 Guests: **2 adults** [Change search](#)

Room type	Guests	Today's price	Your choices	Select rooms
<p><b>Classic Double Room</b> <span>Recently booked!</span></p> <p><b>Only 2 rooms left on our site!</b></p> <p>1 double bed </p> <p>Spacious with elegant décor and soothing colors. Fully equipped with luxury designer brand bathroom amenities, satellite TV, free WiFi, electronic laptop size safe and air conditioning.</p> <p><b>Bath</b> <b>Air conditioning</b>  <b>Private bathroom</b> <b>Soundproofing</b>  <b>Free WiFi</b></p> <ul style="list-style-type: none"> <li>• Minibar • Shower • Safety Deposit Box</li> <li>• Pay-per-view Channels • TV • Telephone</li> <li>• Hairdryer • Bathrobe • Free toiletries • Toilet</li> <li>• Video Games • Heating • Slippers</li> <li>• Satellite Channels • Tile/Marble floor</li> <li>• Electric kettle • Wardrobe/Closet</li> </ul> <p>Prices are per room  <b>included:</b> 13 % VAT, 0.5 % City tax  <b>not included:</b> € 4.00 government tax per night</p>		<b>€ 165</b>	<ul style="list-style-type: none"> <li>• Breakfast available, pay at the property (€ 23)</li> <li>✓ <b>FREE cancellation before 23:59 on 14 March 2018</b></li> <li>✓ <b>NO PREPAYMENT NEEDED - pay at the property</b></li> </ul>	<input type="text" value="0"/> <b>I'll reserve</b> No booking or credit card fees! 6 other people looking now
<p><b>Price alert!</b> One of the lowest prices you've seen for 1 night in Athens.</p>		<b>€ 211</b>	<ul style="list-style-type: none"> <li>• Breakfast included</li> <li>✓ <b>FREE cancellation before 23:59 on 14 March 2018</b></li> <li>✓ <b>NO PREPAYMENT NEEDED - pay at the property</b></li> </ul>	<input type="text" value="0"/>
<p><b>Superior Room</b></p> <p><b>Choose your bed:</b></p> <ul style="list-style-type: none"> <li><input type="radio"/> 1 large double bed </li> <li><input type="radio"/> 2 single beds </li> </ul>		<b>€ 171</b>	<ul style="list-style-type: none"> <li>• Breakfast available, pay at the property (€ 23)</li> <li>• Low rate - no money back</li> </ul>	<input type="text" value="0"/>
		<b>€ 198</b>		<input type="text" value="0"/>

Search: NJV Athens Plaza  
 16 Mar 2018 Friday - 17 Mar 2018 Saturday  
 2 adults, 0 children 1 room [SEARCH](#)

What's included	Capacity	Price per night	Rooms	Most booked
<p>Benefits</p> <ul style="list-style-type: none"> <li>• Low rate (non-refundable)</li> </ul> <p>See photos and details</p> <ul style="list-style-type: none"> <li>• 25 m<sup>2</sup>/269 ft<sup>2</sup></li> <li>• Shower and bathtub</li> <li>• 1 double bed</li> </ul>		<b>€ 149</b> <small>Includes taxes and fees</small>	<input type="text" value="0"/>	<p><b>Book now</b></p> <p>Our last 3 rooms!</p>
<p>Benefits</p> <ul style="list-style-type: none"> <li>• Free cancellation before March 13, 2018</li> </ul>		<b>€ 158</b> <small>Includes taxes and fees</small>	<input type="text" value="0"/>	<p><b>Book now</b></p> <p>FREE cancellation</p> <p>Our last 3 rooms!</p>
<b>More deals</b>				
<p>Benefits</p> <ul style="list-style-type: none"> <li>• Tax receipt available</li> <li>• Pay cash on arrival</li> <li>• Free cancellation before March 15, 2018</li> </ul> <p><small>Supplied by Booking.com</small></p>		<b>€ 165</b> <small>Includes taxes and fees</small>	<input type="text" value="0"/>	<p><b>Book now</b></p> <p><b>PAY AT HOTEL</b></p> <p>FREE cancellation</p> <p>Our last 2 rooms!</p>
<p>Benefits</p> <ul style="list-style-type: none"> <li>• Free Breakfast</li> <li>• Free cancellation before March 13, 2018</li> </ul>		<b>€ 171</b> <small>Includes taxes and fees</small>	<input type="text" value="0"/>	<p><b>Book now</b></p> <p>FREE cancellation</p> <p>Our last 3 rooms!</p>
<p>Benefits</p> <ul style="list-style-type: none"> <li>• Free Breakfast</li> </ul>		<b>€ 211</b>	<input type="text" value="0"/>	<p><b>Book now</b></p> <p><b>PAY AT HOTEL</b></p>

# What's the story?

- Wide-spread use of algorithms in modern tourism (tickets, rooms, taxis, restaurants etc.).
- Dominance through collection and use data
- Cartels through use of algorithms in relation to anti-competitive conduct (i.e. potential collusion between competitors).
- NCAs also examine exploitative conduct (i.e. practices that exploit the consumer)
- Breach at data protection laws
- **Margrethe Vestager** (EU Competition Commissioner)

*“I think we need to make it very clear that companies can't escape responsibility for collusion by hiding behind a computer program.”*

# What's the issue?

- The use of algorithms & data may raise legal implications from various perspectives:
  - competition law
  - unfair competition law
  - consumer protection
  - data protection
- Most NCAs have a dual-role (both competition and consumer protection). This means that practices may be jointly investigated from various perspectives (e.g. price exploitation).
- There is also the possibility for combined action by the NCA with another Authority (e.g. German Antitrust & Data Protection Authorities).

# What's the concern? (1) – competition law

- Algorithms can introduce coordination in markets where the variety of competitive parameters otherwise make coordination difficult.
- Algorithms increase transparency, reducing gains from undercutting rivals, making punishment rapid [tips the balance towards coordination].
- Cheating the “Cartel” might not last due to –immediate- detection and subsequent undercutting, hence algorithms might end up coordinating.
- Algorithms (AI) can be programmed to solve coordination problems after repeated interaction with competitors or to achieve coordinated outcomes even when given more neutral objectives (e.g. enhance profits).
- Note: 3<sup>rd</sup> parties (e.g. digital platforms) can breach the law (***AC Treuhand***)



# What's the concern? (2) – other laws/policies

- The use of other types of algorithms (e.g. price-tailoring to meet individual characteristics of customers), may breach other laws and policies (e.g. unfair competition, consumer protection).
- Problematic issues (the list is not exhaustive):
  - Search results (how hotel ranking operates after customers search)
  - Pressure selling (false impressions on e.g. room availability)
  - Discount claims (whether the discount claims made on sites offer a fair comparison for customers)
  - Hidden charges
  - Online reviews (manipulation)

# The way forward

- Intelligent adaptation – not collusion!
  - **Johannes Laitenberger** (Director-General for Competition, European Commission)  
*“... respect for competition rules must be baked into the algorithms as they are implemented ... When you instruct a piece of software not to collude with your rivals, it will follow your instructions without question or hesitation.”*
- Fair practices!
- Commercial strategies must be designed with awareness of Law!





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# Thank you!

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