

ACCESS TO DATA: not the barrier it's thought to be

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tl;dr

Data doesn't create a barrier to entry, but privacy regulations might.

The Debate:

Some fear that incumbents' access to user data gives them the ability to improve and target their products in ways that new entrants cannot replicate, creating a barrier to entry that holds back competition in ways that are harmful to consumers.

But... while access to data may confer some advantages on incumbents, they are not insurmountable by others, and they are akin to other benefits like reputation that are not considered to be barriers to entry.

KEY TAKEAWAYS

MOST SUCCESSFUL DIGITAL BUSINESSES STARTED OFF WITHOUT ACCESS TO DATA.

This includes the core services of now-giants like Google, Uber, and Facebook as well as businesses that thrive in their product niches like Tinder, Whatsapp, and King Entertainment's games. Data is typically generated after companies have entered the market, not before – if lack of access to data

was a barrier to entry none of these firms could exist.

OTHER INTANGIBLE FACTORS LIKE REPUTATION ALSO CONFER ADVANTAGES ON INCUMBENTS WITHOUT PREVENTING COMPETITION FROM TAKING PLACE

It is well established that an incumbent firm having a good reputation does not constitute an anticompetitive barrier to entry for less well-known entrants, although it is clearly a benefit to the incumbent. The fact that incumbents may have certain advantages like this, and access to data to improve their products, is not on its own a problem for competition.

DATA IS NOT SCARCE AND NEW ENTRANTS CAN ACCESS IT FROM THIRD PARTIES TO BETTER COMPETE WITH INCUMBENTS.

Data is not 'the new oil', because unlike oil it is not a scarce, consumable, and rivalrous resource: new entrants can and frequently do pay for data from third parties to improve their products, making it easier for them to compete with incumbent platforms. In digital advertising, for example, much of the data held by Google and Facebook about consumers' preferences can also be acquired from card networks, retailers, data brokers, and similar sources.

THERE IS AN INHERENT TENSION BETWEEN PRIVACY REGULATIONS AND COMPETITION.

Laws like the GDPR, which make it harder for businesses to buy and sell user data, make it harder for new entrants to acquire data as described above. While this may be deemed a price worth paying for the goals that these regulations are intended to achieve, the anticompetitive effects of these measures should be recognized, and if possible tackled with changes to those regulations.

For a fuller explanation of these and related issues, see Geoffrey Manne's recent submission to the U.S. House of Representatives Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law, "[Correcting Common Misperceptions About the State of Antitrust Law and Enforcement](#)."

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