

Data Portability: The costs of imposed openness

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tl;dr

Background: Many competition agencies are considering data portability mandates to increase competition. These would require companies to make customers' data available to move to other services, or to make their services interoperable with others so that users could share their data between different services on an ongoing basis.

But... Data portability mandates can be costly and cumbersome for service providers, and provide little benefit to users who do not end up using them. This can mean that innovative businesses end up being less able to control and improve their products. Thus data portability mandates may often end up being either too vague to be useful, or too costly relative to the marginal benefits they deliver.

KEY TAKEAWAYS

MULTI-HOMING SUGGESTS THAT DATA PORTABILITY MAY NOT BE VALUABLE TO USERS IN MOST DIGITAL MARKETS.

Because people already tend to use many different, often competing, services at once,

the benefits of data portability in getting them to switch from a primary provider to a less used provider may be fairly minor. In some cases, portability may help – such as allowing people to move phone numbers between different providers – whereas in others, especially where the data is specific to the service itself or incidental and of little interest to the customer, there is not much evidence to suggest that data portability mandates will do much to facilitate switching. Thus, broad-based data portability mandates are unlikely to achieve much.

DATA PORTABILITY MAY DIMINISH BUSINESSES' INCENTIVES TO COLLECT DATA AND THEREFORE DISADVANTAGE CUSTOMERS.

Some data is collected precisely because the business collecting it will have exclusive access to it, thus realizing sufficient benefit that they are often willing to give customers discounted or free services in exchange for that data. Grocery store loyalty points, for example, are in part a way for grocery stores to learn about their customers and to market to them more effectively. If customers could easily port their shopping history to rival stores, it would allow competitors to free ride on their competitors' loyalty programs, sometimes making it unviable for those programs to be run at all. Ultimately, restricting this sort of procompetitive use of data hurts customers.

DATA PORTABILITY REQUIREMENTS MAY CONSTRAIN COMPANIES' ABILITY TO INNOVATE AND MONETIZE THEIR PRODUCTS.

Data portability requirements, and especially 'interoperability' requirements that involve making customer data available to third parties on an ongoing basis, require the standardization of data that is often idiosyncratic and specific to the original service that has generated it. Companies that have to make their users' data readily available to third parties may find it harder to change their services, and companies that make money by serving ads may find that users port their data to third-party services that bypass advertisements. In these cases, a data portability or interoperability mandate undermines firms' ability to improve and to monetize their service, to the detriment of consumers. One reason, for example, that Twitter made its API more restrictive was to prevent users from bypassing ads tools by using third-party apps. If apps like Twitter cannot monetize their platforms, they will worsen in quality and may fail altogether.

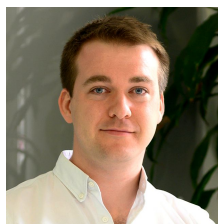
THE MOST SIGNIFICANT EXPERIMENT WITH DATA INTEROPERABILITY, OPEN BANKING, HAS NOT YET DELIVERED THE HOPED-FOR BENEFITS.

Since 2018 banks in the UK have been subject to an "open banking" mandate that requires them to make their customers' transaction and account data interoperable with approved third-party services. While it may be too early to draw strong conclusions about the program, it has not yet driven higher rates of user switching, has cost far more than originally predicted, and has required the ongoing management and oversight of a regulator set up specifically to enact it. The experience so far suggests that even a well-targeted data portability mandate may be difficult to get right, and that broad-based data portability mandates that lack Open Banking's

sector-specific ongoing management may be unworkable altogether, or simply ineffective.

For more on this issue, see ICLE's recently [filed comments](#) with the FTC as part of its "Workshop on Data Portability."

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