DATA PORTABILITY – AN EFFECTIVE COMPETITION TOOL?

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EXEC SUMMARY

Industries such as banking, telecoms and energy have all introduced ways to make end-user switching easier for consumers, often with mixed results. As the EU's proposed Digital Markets Act plans to apply a "data portability" obligation on digital platform gatekeepers, what might the impact on competition be?

As currently drafted, the EU's Digital Markets Act proposes to apply obligations on "gatekeepers" in digital platforms. One obligation, "data portability", may require gatekeepers to give users access to free tools that can import and export the data they create on the gatekeeper's platform. Imagine, for example, transferring your search history from one search engine to another.

Data portability is partly about ownership – people being able to control data about themselves. But data portability is also about helping end users switch between competing platforms, which should increase contestability. This article explores the potential competition effects.

There is not yet any proposal for how this obligation may work in practice. However, in recent years, UK regulated sectors have witnessed several interventions sharing the objective of increasing switching rates. The experience of these interventions can inform the impact we can expect from the obligation.

THE POTENTIAL CONSUMER BENEFIT FROM MAKING SWITCHING EASIER IS GREAT

Making end user switching easier can increase competitive tension in markets. If switching becomes easier, then there will be more switching, or at least a greater threat of switching. This increases the incentive to innovate and to offer attractive pricing to acquire new customers but also to retain existing ones.

Greater switching also increases the pool of potential new customers which may reduce barriers to entry and expansion. Even if new entry is not encouraged, more switching reduces any incumbency advantage, and allows others to build market share (and to benefit from any efficiencies arising with scale).

UK REGULATORS HAVE BEEN KEEN TO PROMOTE END USER SWITCHING

If switching is beneficial, then a lack of it must be a problem. Indeed, some UK regulators concluded that certain consumers were not benefiting from sufficient competition.

The first diagnosis for this was that high barriers to switching made it rational for consumers to not switch when better offers were available. This prompted initiatives to reduce such barriers.

The Current Account Switching Service (CASS) is an example. The CASS cut the time taken to switch current accounts by more than half, and removed the need for the consumer to do anything. However, the impact of CASS on switching rates is muted: switching volumes were only 2% higher at the start of 2015 compared to late 2012.

Similarly, Ofcom recently simplified the process of switching mobile providers. Consumers can now switch providers by sending a text rather than having to call their provider. It is too early to tell how effective this intervention will be.

With interventions such as the CASS appearing to have a limited impact, the diagnosis was updated and a new theory emerged: consumers lacked the information they needed to know that they should switch.

In this vein, Ofcom now requires telecoms providers to warn their customers when their contract is coming to an end, and to notify them of their best deals – including new customer offers.

Similarly, a 2018 Ofgem experiment tested whether consumers would switch more with better information. Ofgem notified 600,000 energy customers of the cheapest tariffs available (across all providers). While switching rates increased among those receiving Ofgem's letters, more than 90% of recipients ignored them. This is even more surprising given the homogeneous nature of gas and electricity.

Another intervention, different to the above, but most similar to data portability, is Open Banking. Open Banking requires financial institutions to provide APIs so that consumers can share their data with third-parties. Open Banking's goal is to encourage innovation and contestability. However, Open Banking has been hindered by a lack of awareness and trust: a 2019 survey found that two-thirds of consumers were not aware of Open Banking, while a 2020 survey found that only 30% of consumer felt comfortable sharing their data with a third-party.

Nonetheless, Open Banking may have had a positive impact on competition, even if it has resulted in limited user engagement. The threat of Open Banking may have caused high street incumbents to raise their game – their own apps are increasingly feature rich.

A MISDIAGNOSIS OF THE COMPETITION PROBLEM?

Textbook theory suggests giving consumers as-good-as-perfect information on prices and minimising barriers to switching produces ideal conditions for effective competition. So why do pro-switching initiatives appear to have muted success?

One potential answer is that regulators have misdiagnosed the problem's root cause. The interventions above focus on removing obstacles which can be addressed relatively easily (simplifying processes and improving the immediacy of relevant information). Perhaps there are bigger barriers to switching.

Arguably the biggest barriers are those which economic theory has traditionally ignored: the imperfect nature of the human thought process. Economics textbooks tend to assume that humans are rational and continually optimise everything. In reality, this is not the case and we put off switching even when the conditions are ideal for doing so.

- People can suffer from time inconsistency: the upfront (time and mental) costs of engaging in, say, the broadband market, might be considered too great relative to the benefits which occur over the lifetime of the broadband contract.

- Regret aversion means that people can make decisions based on a desire to minimise the potential for regret. Sticking with the broadband example, if people fear the risk of getting a poor broadband service more than the risk of not getting the best deal, then consumers may be reluctant to switch.

- The endowment effect, the phenomenon whereby people systematically overvalue things that they own as a result of ownership, can result in "status-quo bias". This manifests in an inherent preference against switching.

IT IS IMPORTANT TO HAVE REALISTIC EXPECTATIONS FOR DATA PORTABILITY

Data portability may be a worthy principle in and of itself. But past experience and behavioural barriers suggest the impact on competition could be limited and this needs to be weighed up against the costs. Several other reasons indicate data portability's impact may not be significant.

- The DMA's data portability obligation will potentially be a particularly expensive switching initiative and could be difficult to implement. For consumers to benefit from exporting data from a gatekeeper, they must be able to make use of it elsewhere. This would imply the need to agree on, and then implement, common standards. This will likely be costly and take time. For instance, the industry body that oversees the standards supporting Open Banking in the UK incurred annual costs of £30m to £50m between 2017 and 2020, and five of the nine UK banks instructed to implement Open Banking by the CMA missed the implementation deadline.

- If data portability is applied as a symmetric remedy, introducing standards could even have a negative impact on competition. The compliance costs associated with implementing interoperability standards could increase barriers to entry, and ultimately deter new entrants. The need to ensure compliance with standards could also stifle innovation.

- As the benefits of data portability may not be clear to consumers, engagement with data portability tools may be limited. The benefit of switching between banks, energy suppliers and broadband providers is obvious (a clear cost saving on a homogenous product). The benefits of, for example, sharing one's Apple App Store purchase history with Google Play is less clear. If data portability is to be useful, consumers must be aware of the data portability tools and find a compelling reason to use them. This is not guaranteed.

- Digital services also tend to be provided to end users for free. The incentive to switch is even lower for products which are free, and the effect of behavioural biases such as regret and loss aversion are amplified.

WILL THE OBLIGATION BE "WORTH IT"?

Experience in the UK's regulated sectors has shown that initiatives designed to reduce barriers to switching have limited impact in practice. In addition, if applied symmetrically, data portability could increase barriers to entry.

It is also not obvious that switching initiatives are as necessary in digital platforms as they would be in other sectors. Unlike for paid services, end users can – and do – "multi home" across digital platforms, which means the need to "fully" switch from one platform to another is lessened.

Data portability may be a useful intervention to further solidify individuals' rights to control their own personal data. Whether it has a positive impact on competition remains to be seen.

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