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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
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Executive Summary of the Roundtable on Data Portability, Interoperability and Competition

Annex to the Summary Record of the 135th meeting of the Competition Committee

9 June 2021

This Executive Summary by the OECD Secretariat contains the key findings from the Roundtable on Data Portability, Interoperability and Competition, held by the Competition Committee on 9 June 2021.

More documents related to this discussion can be found at
<https://www.oecd.org/daf/competition/data-portability-interoperability-and-competition.htm>

Please contact Mr Antonio CAPOBIANCO if you have questions about this document.
Email: Antonio.CAPOBIANCO@oecd.org

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Executive Summary of the Roundtable on Data Portability Interoperability and Competition

By the Secretariat¹

On 9 June 2021, the OECD Competition Committee held a meeting to discuss data portability, interoperability and competition. The roundtable featured participation from the Chair and delegates of the Working Party on Data Governance and Privacy in the Digital Economy. Considering the background note prepared by the OECD Secretariat, the written contributions, as well as the discussion by delegates and the expert panellists, the following key points emerged:

1. Data portability and interoperability measures can pursue several policy objectives, including the empowerment of consumers and the promotion of competition.

Data portability refers to the ability of users to request that a data holder transfer to them or a third party data about them in a structured, commonly used and machine-readable format. Interoperability refers to the ability of different digital services to work together and communicate with one another. Interoperability is a core feature of many modern digital ecosystems.

From a competition perspective, these measures seek to address a range of broad concerns about competitive dynamics in digital markets, including: consumer lock-in associated with network effects, leveraging concerns associated vertically-integrated and conglomerate business models, demand-side concerns such as consumer inertia, and the role of data feedback loops in reducing market contestability. They may also seek to leverage digital technologies to promote competition in other sectors, such as banking.

Specifically, data portability measures aimed at promoting competition seek to reduce user switching costs and reduce the frictions associated with trying new services. This could, in turn, stimulate competition by making it easier for new entrants to attract users and potentially alleviate barriers to entry associated with data access (in those markets for which individual-level data is valuable). Further, data portability could have the effect of promoting competition beyond the markets in which the data were originally collected, given that a given data flow may have various applications. In the medium- to long-term, this effect may even allow the development of firms outside a market to eventually challenge incumbents within the market.

Interoperability measures are distinct but related to data portability, in that they focus on allowing systems to communicate with one another, generally through the use of standards such as application program interfaces (APIs). This could allow users to multi-home and make markets more contestable. Depending on their design, interoperability measures can promote competition *among* digital platforms (or ecosystems), by allowing users to preserve network effects on new services, and *within* digital platforms (or ecosystems), by allowing users to mix and match different complementary services from different providers. Certain types of data portability, including real-time data transfers between services, will require some level of interoperability.

* This executive summary does not necessarily represent the consensus view of the Competition Committee. It does however identify key points from the discussion at the Roundtable, including the views of the expert panellists and the participants' oral and written contributions.

2. The effectiveness of both data portability and interoperability measures will depend on the specific market context in which they are implemented, as well as on their design. Further, they may have unintended consequences, including worsening competition in a market, if not carefully designed.

The effectiveness of data portability measures may be limited if the scope of the data is too narrow, if user-initiated data portability is too low to generate economies of scale, if there are no current or potential firms that would benefit from the data, or if network effects limit the value of new digital services regardless of data access. Further, data portability could create risks in terms of market transparency (potentially facilitating collusion), or enhancing incumbents' positions by improving their access to consumer data (both from rivals and consumers, since consumers may be more willing to provide data when it can be ported). When a dominant digital platform faces no rivals (including potential entrants with sufficient capacity to compete), these measures may be more appropriate for promoting competition in related and complement markets than in enabling the emergence of rivals to the core platform. Thus, data portability measures, if implemented on their own with competition objectives in mind, may need to be focused on markets where:

- Individual-level data provide significant competitive value to recipient firms
- Data are held by incumbents without significant costs or investments
- Markets in which some competition is already present (thus network effects and data-driven economies of scale do not completely preclude effective competition)
- The data in question can be used in clearly defined applications and can take a standardised format
- The data in question do not involve significant IP rights or other ownership complexities
- Consumers are comfortable with the idea of sharing the data in question across platforms

Interoperability measures address some of the concerns associated with data portability, including potentially enabling continuous data transfers (improving the utility of data for recipients), and allowing consumers to retain network effects when transferring to a new service (such as cross-posting on social media sites). However these measures also have risks, since they may entrench incumbent technologies, disincentivise innovation, and create risks for exclusionary conduct or tacit collusion if standard-setting processes are not subject to oversight. Thus, interoperability measures may be more appropriate for products that are not rapidly evolving.

In the case of both data portability and interoperability measures, asymmetric approaches may be needed (either through competition enforcement or regulation), ensuring that the burdens are focused on large incumbents and do not create barriers to entry for new firms.

3. Data portability and interoperability measures require a clear objective, and a conscious balancing of different potential impacts.

Implementing data portability measures will require identifying what data should be included, potentially based on an assessment of what would be needed to enable entry in a market. This will need to be balanced with innovation incentives, and so the measures may need to focus on data collected by firms, rather than inferred data that involves proprietary and innovative processes to generate. The format in which data are provided, the timeline, and the static or dynamic nature of the transfer process will also be important considerations. At the same time, risks associated with collusion due to market

transparency, and risks associated with intellectual property protections, will need to be identified, evaluated and navigated.

Implementing interoperability will require identifying whether the measure seeks to promote competition within or between platform ecosystems, and where in the supply chain or platform ecosystem would competition be feasible. Overly broad interoperability standards may harm innovation and entrench incumbents.

Active monitoring and enforcement may be needed in order to ensure the implementation of portability or interoperability measures, and to resolve any disputes that may arise. These measures will generally include conditions of access, for example non-discrimination and reasonableness of licensing fees, in order to distinguish legitimate limitations (e.g. relating to security and data protection) from anticompetitive strategies.

To implement these measures, third parties or specially created implementation entities can be used. Competition authorities may, however, wish to retain a supervisory and ultimate decision-making role.

4. Data portability measures can be implemented either in the context of competition enforcement mechanisms, or through regulation. Regardless of the mechanism, there is broad consensus about the need to tailor procompetitive portability or interoperability measures to the specific situation in a market.

Data portability and interoperability may emerge as the subject of, or remedy to, a competition enforcement theory of harm in several cases. For this to occur, several conditions must be met, including the importance of the data or platform access, the lack of technically and legally-feasible workarounds (such as data scraping), and the ability of firms with market power to benefit from the alleged misconduct.

Degrading data portability or interoperability could be a method of implementing anticompetitive margin squeeze, bundling, or switching cost strategies, and could thus be considered in abuse of dominance or merger proceedings. The conditions of digital platform markets may better fit these theories than essential facilities-type theories regarding data access in some instances. However, it may be challenging to assess these theories in cases where there were no pre-existing portability or interoperability arrangements. Collusive arrangements among market participants to deter entry through selective interoperability may also arise. More broadly, data portability and interoperability may be considered as remedies to address fundamental market conditions giving rise to competition concerns in abuse and merger cases. Competition authorities in some jurisdictions have also imposed or recommended portability and interoperability measures through market studies, market investigations and advocacy activities.

The benefit of addressing interoperability and portability through competition enforcement and market studies or investigations is a focus on competition harms, and the source of those harms, such as a dominant firm. In addition, competition law remedies can be flexibly designed according to the situation of a given market, and adapted as the market evolves. However, these remedies will require substantial oversight, which may be a significant challenge for authorities to design and monitor.

Given these challenges, ex ante regulation may be a possible alternative approach, particularly when the regulation is tailored to a specific sector, and there is a sector regulator in place to provide surveillance and dispute adjudication. This approach may also be faster or more preventative than competition enforcement. Examples of a regulatory approach include data protection regulation, open banking (which has been used to enable multi-homing, shopping around, and mixing and matching), and proposed new measures focused on gatekeeper digital platforms.

5. Data portability and interoperability measures may involve various objectives, such as data protection, innovation and consumer empowerment and so their impact on competition will vary. As a result, close interdisciplinary and international co-operation among different regulators and policymakers will be necessary.

Co-operation across policy perspectives will be particularly valuable in terms of avoiding unintended consequences of data portability and interoperability measures, and developing the most suitable oversight approach. Further, given experience with these measures is limited, the sharing of lessons learned across regulators and jurisdictions will prove particularly valuable.