



Data Portability And EU Competition Law

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Potential Impact Of Data Portability On Competition

- Limitations on data portability may create barriers to entry or switching
- Can potentially impact competition in several ways:
 - Same user switching to competing application
 - Same user using competing applications at the same time (multi-homing)
 - Different users using competing applications
 - Use of competing underlying platforms (e.g., operating systems)



Technical Constraints On Data Portability

- Format compatibility
 - For example *.doc vs. *.odt office formats
- Interfaces and protocols
 - For example ActiveSync email/calendar synchronization protocol

Data / Communication

- Functionality differences
 - For example, functional differences between Bing adCenter and AdWords
- Platform support
 - For example, Oracle data base not running on HP Itanium servers

Executables

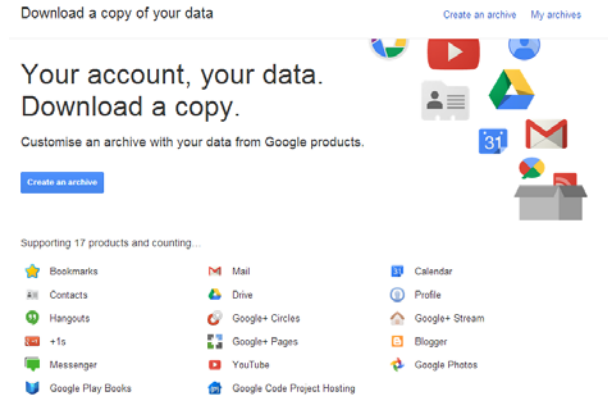
Analysis Under EU Competition Law


- Data portability issues would typically be analyzed under abuse of dominance rules (but rules on restrictive agreements can potentially be relevant too, e.g. in standard setting context)

- Analytical framework under Article 102 TFEU
 - Dominance
 - Can free products be dominant? *Microsoft/Skype*: “*market shares*” of free product “*are not the best proxy to evaluate the market power of providers*”
 - Indispensability / risk of elimination of all viable competition?
 - New product test / balancing
 - No cloning of platform / functionality (*Microsoft*)
 - Duty to port application to other platform? (*HP/Oracle* litigation)
 - Objective justification
 - Reciprocity
 - User protection

Google's Approach To Data Portability

- End user apps: Google Takeout
 - Central tool for data export
- AdWords: Several tools for data export
 - AdWords Frontend, AdWords Editor, AdWords API
- EU Commission investigated certain limitations in AdWords API T&Cs that precluded direct, automatic data transfer by third-party tools
 - Rationale was to protect against functional differences : *“The systems have different campaign options [...]. I wouldn't want to use a programmatic tool to dump campaigns into other system from AdWords”*, Searchenginewatch
 - No restrictive effects: *“Google's API restriction has no discernible effect on Google's rivals [...] the vast majority of search engine marketing firms and advertisers stated that Google's API restriction was irrelevant to their advertising platform decision”*, FTC Commissioner Rosch
 - Google pragmatically agreed to remove limitations





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