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# DATA PORTABILITY PIVOTS CONSUMER-CENTRIC APPROACH: AN UNADDRESSED FACET IN INDIAN LEGAL FRAMEWORK

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## ABSTRACT

Data portability refers to the uninterrupted data transmission between data controllers with the consent of the data principal. The concept of self-determination, one of the most prominent international law principles, was ingrained in data portability due to its global nature. The principle of data portability was brought forth in express letters and insulated in their data governance frameworks by the European Union General Data Protection Regulation, which is the touchstone of data portability. Data portability has an impact on the digital economy and market competition. However, it can also empower consumers excessively, posing a potential risk to the digital economy industry's consumers. In conjunction with the user-centric approach, this paper will investigate the advantageous effects of data portability. This paper will also address the topic of data portability and India's exceptional digital economy in the context of the pertinent provisions of Indian competition law, as the Digital Personal Data Protection Act of 2024 does not explicitly include data portability. Lastly, the article will respectfully suggest several critical solutions to mitigate the obstacles associated with data portability to achieve a harmonious equilibrium between its implementation and the development of the digital economy.

**Keywords:** Data Portability, EU GDPR, Indian Digital Economy, Principle of Self- Determination, Consumer-Centric Approach, Digital Personal Data Protection Act, 2023, Competition Law

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## **I. Introduction:**

It is a fundamental concept that holds substantial importance among digital consumers, and data portability is one such concept. The idea of customers having the ability to make their own decisions, particularly about their personal and financial information, is embodied. Within international law, the principle of self-determination is accorded substantial attention. Although the intrinsic nature of data is impossible to limit, restrict, or contain inside geographical bounds, data portability empowers consumers to determine the custody of their respective data. The conclusion that can be drawn from this particular circumstance is that this specific circumstance is also relevant to this principle. The term "data portability" refers to a user-centric methodology that allows users of digital service providers to exercise effective control over the data they have shared with data controllers, even while the data is still within the domain of the data controllers. Data portability is a key principle that serves as a protective mechanism for consumers if there are antitrust difficulties with data controllers. Shoshanna Zuboff, a famous legal scholar, introduced the phrases "First Text" and "Second Text" within the framework of digital fetishism. According to Zuboff, the concept of Data Portability is simultaneously pertinent to both texts. The term "first text" refers to a collection of data that includes questions from users, online transactions, and photos that have been submitted. For the sake of this discussion, the phrase "second text" refers to the data that the platform has gotten from the initial text, which may include statistical analysis. Facebook and other media platforms receive considerable benefits from the utilization of "second text" when it comes to the statistical evaluation of their users.<sup>2</sup> Famous Social Media platforms like Facebook must overcome two significant challenges: first, the development of a strategy to generate revenue that is comparable to Facebook's primarily data-driven approach, which is especially important when taking into consideration the extensive data repository that Facebook has accumulated over twelve years; and second, the provision of a means by which users can efficiently establish connections with their entire network of friends located on Facebook. Data portability is an initiative that tries to address and eliminate anti-competitive activities.

## **II. Data Portability: An Evolving User-Centric Legal Approach**

The Data Portability Project first introduced data portability as a much broader concept. This

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<sup>2</sup> Cristian Mendoza, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*, 7 *Church Comm'n & Culture* 452, 416 (2022), <https://doi.org/10.1080/23753234.2022.2086891>.

business initiative was established in 2007 to advocate unrestricted data portability in the commercial context. In 2010, the European Council recognized the challenges of safeguarding personal data and requested a review of the existing legal framework. This initiative culminated in the GDPR proposal. The concept of data portability is adaptable and can be defined in various ways, making it applicable in a wide range of situations. An emerging concept, data portability, has been introduced by the General Data Protection Regulation (GDPR) under Data Protection laws. It is a legal right that allows users to retrieve the personal information they have provided to the controller in a structured, commonly used, and machine-readable form from the controller and transfer it between controllers without difficulty, as is technically possible.<sup>3</sup> Data portability is fundamentally the right to transmit personal data from a controller to another organization or the data subject in the context of digital personal data and automated processing.<sup>4</sup>

Data portability signifies the data subject has the right to access, and without undue interference from the original controller, a structured, commonly used, and machine-readable format of any personally identifiable information (PII) that the controller has collected from the data subject when processing is done with the data subject's consent.<sup>5</sup> Data portability is an idea that has been brought up before. With data portability, consumers can keep their phone numbers even when switching telecommunications providers, just like with local number portability. European countries began permitting number portability in 2002 after the United States government passed a law requiring it in 1996 (the Telecommunications Act).<sup>6</sup> Additionally, under the US legal framework, the right to access one's financial records "in an electronic form usable by consumers" is a requirement of Section 1033 of the Dodd-Frank Act of 2010.<sup>7</sup> Regarding patient records, the US Department of Health and Human Services says it wants to "increase innovation and competition; reduce burden and advance interoperability; and promote patient access."<sup>8</sup> Without naming names, the Federal Trade Commission (FTC)

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<sup>3</sup> Johann Kranz et al., Data Portability, 2023 Business & Information Systems Engineering, <https://doi.org/10.1007/s12599-023-00815-w> (last visited Sept. 15, 2023).

<sup>4</sup> Engin Bozdag, Data Portability Under GDPR: Technical Challenges, 2018 SSRN Electronic Journal, <https://doi.org/10.2139/ssrn.3111866> (last visited Sept. 15, 2023).

<sup>5</sup> D. Gill & J. Metzger, Data Access Through Data Portability, 8 European Data Protection Law Review 221, (2022), <https://doi.org/10.21552/edpl/2022/2/9> (last visited Sept. 15, 2023).

<sup>6</sup> Engin Bozdag, Data Portability Under GDPR: Technical Challenges, 2018 SSRN Electronic Journal, <https://doi.org/10.2139/ssrn.3111866> (last visited Sept. 15, 2023).

<sup>7</sup> D. Gill & J. Metzger, Data Access Through Data Portability, 8 European Data Protection Law Review 221, (2022), <https://doi.org/10.21552/edpl/2022/2/9> (last visited Sept. 15, 2023).

<sup>8</sup> Portability, in SAS® Data Analytic Development 313, (John Wiley & Sons, Inc. 2016), <https://doi.org/10.1002/9781119255680.ch10> (last visited Sept. 15, 2023).

acknowledged data portability in a 2000 case involving ReverseAuction.com. This eBay competitor used unethical and dishonest means to acquire email addresses and feedback scores from eBay consumers. Although the FTC had other grievances regarding ReverseAuction.com, one was "recognition of how eBay's control over user reputations accumulated the results of many transactions-blocked competition in online auctions.<sup>9</sup> If users can migrate their ratings and reputations between platforms, data portability might make this a non-issue. While FTC commissioners support data portability to "increase privacy protections without crowning corporate royalty," the agency has not yet determined that a ban on online reputation transfer is unfair or anticompetitive. Despite a September 2020 full-day meeting, the FTC has not provided any data portability rules.<sup>10</sup>

U.S. data portability guidelines are less developed than those in Europe. From 1995 to 2018, Article 29 of the Working Party, henceforth referred to as WP29 served as an advisory body for E.U. data protection agencies. The GDPR supplanted Working Party Article 29 in May 2018, with the European Data Protection Board (EDPB) adopting all guidelines and resources from Working Party Article 29.<sup>11</sup> The EDPB has yet to release guidance on data portability, despite the Working Party Article 29 having done so in 2017. WP29 asserted that data portability enables data subjects to obtain the personal data they have supplied to a data controller in a structured, widely-used, and machine-readable format, and to transfer that data to another without obstruction. The WP Article 29 data portability guidance is a valuable and commendable foundation for California and Europe.<sup>12</sup>

A vital element of data portability is the concept of interoperability. Interoperability refers to a characteristic of a product or system that allows its interfaces to be fully understood, facilitating smooth interaction with other products or systems, whether current or future, in terms of implementation or access, without any restrictions.<sup>13</sup> The effective execution of data portability is fundamentally dependent on achieving interoperability, which enables the smooth transfer

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<sup>9</sup> Federal Trade Commission, ID Theft, in Best Practices, (Auerbach Publications 2001), <https://doi.org/10.1201/9781420000177.ch24> (last visited Sept. 15, 2023).

<sup>10</sup> Federal Trade Commission, Data Brokers: A Call for Transparency and Accountability (CreateSpace Independent Publishing Platform 2015).

<sup>11</sup> Helena U. Vrabec, Data Portability as a Data Subject Right, in Data Subject Rights under the GDPR 159, (Oxford University Press 2021), <https://doi.org/10.1093/oso/9780198868422.003.0007> (last visited Sept. 15, 2023).

<sup>12</sup> G. Chassang et al., Data Portability in Health Research and Biobanking, 4 European Data Protection Law Review 296, (2018), <https://doi.org/10.21552/edpl/2018/3/8> (last visited Sept. 15, 2023).

<sup>13</sup> Liane Margarida Rockenbach Tarouco et al., Internet of Things in healthcare: Interoperability and security issues, in ICC 2012 - 2012 IEEE International Conference on Communications, (IEEE 2012), <https://doi.org/10.1109/icc.2012.6364830> (last visited Sept. 15, 2023).

of data across different systems. Organisations must accomplish a standardised level of interoperability to guarantee the feasibility of data portability. There are numerous common misconceptions surrounding data portability. Data portability is frequently linked to social media; however, its relevance spans a broader range of contexts. The concept of data portability, as outlined in the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA), focuses on the transferability of data across different platforms, including cloud computing, web services, smartphone applications, and other automated systems engaged in data processing.<sup>14</sup>

Furthermore, during data migration between platforms, users are not required to cease using the original service. The California Consumer Privacy Act (CCPA) and the General Data Protection Regulation (GDPR) permit individuals to transfer their data between platforms while maintaining the choice to continue utilising the original platform. Individuals can transfer their data between services, thereby benefiting from the advantages offered by both simultaneously.<sup>15</sup> The California Consumer Privacy Act (CCPA) and the General Data Protection Regulation (GDPR) allow individuals to request the erasure or deletion of their personal data. Individuals exercising their right to data portability can transfer personal data to an alternative platform, allowing for independent use or integration with the original medium.<sup>16</sup> Social media companies succeed partly due to the "first-mover advantage" concept, which allows early adopters to secure a significant market edge. The "tipping effect" refers to a situation in which a specific seller achieves a competitive advantage, resulting in a market shift in their favour.

Additionally, "network effects" occur when an individual experiences increased benefits from a service as more friends and acquaintances engage with the same platform.<sup>17</sup> Data portability has the potential to mitigate specific adverse effects of prior regulations; however, its validity within the framework of current antitrust and competition laws may be uncertain. Data

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<sup>14</sup> I.I. ZABOKRYTSKY, CALIFORNIA CONSUMER PRIVACY ACT: REVIEW OF GENERAL PROVISIONS, 6 *Law and Society* 294,(2022), <https://doi.org/10.32842/2078-3736/2022.6.44> (last visited Sept. 15, 2023).

<sup>15</sup> Helena U. Vrabec, Data Portability as a Data Subject Right, in *Data Subject Rights under the GDPR* 159,(Oxford University Press 2021), <https://doi.org/10.1093/oso/9780198868422.003.0007> (last visited Sept. 15, 2023).

<sup>16</sup> Martin H. Weik, data portability, in *Computer Science and Communications Dictionary* 354, (Springer US 2000), [https://doi.org/10.1007/1-4020-0613-6\\_4338](https://doi.org/10.1007/1-4020-0613-6_4338) (last visited Sept. 15, 2023).

<sup>17</sup> Sasha Hondagneu-Messner, Data Portability: A Guide and a Roadmap, 47 *Rutgers COMPUTER & TECH. L.J.* 240 (2021).

portability should be regarded as an adjunct to enforcing antitrust and competition regulations.

### **III. Data Portability vis-a-vis Self-Determination of Consumers**

Data portability is essential to the data principal's right to self-determination because it allows him control over his personal information. An individual's right to privacy is bolstered by data portability, which is supposed to protect that person's privacy by default. Data portability is a key component of EU data governance regulation. Digital consumers have the right to obtain a structured and machine-readable copy of their submitted personal data and to transfer it to another controller without any restrictions or prohibitions imposed by the first controller, as outlined in Article 20 of EU's General Data Protection Regulation (GDPR). With data protection and privacy as its primary goals, the General Data Protection Regulation has been an essential piece of legislation in establishing rights to the portability of personal data. The right to data portability is an integral facet of EU legal framework extending their intent to introduce the user centric approach to the consumers of the digital periphery.<sup>18</sup>

In this regard, three elements should be taken into consideration:

(i) Was the processing of this data deemed essential for the execution of a job conducted in the public interest or the exercise of official authority? If so, the exception outlined in Article 20(3) of the General Data Protection Regulation (GDPR) would be applicable because Article 20 (3) prescribes a limitation on the enforceability of the right of data portability. According to Article 20(3), That right does not apply to processing required for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, which means that the controller can limit the right to data portability based on his official capacity, the nature of the task, and the public interest. In the context of general learning institutions, the restriction is not intended to encompass universities and differentiating between private and public learning institutions would need to be more logical about portability.

(ii) Secondly, it is essential to ascertain which specific data has been contributed by the student. Grades are bestowed by university personnel, whereas the transmission of emails to students is facilitated by their respective senders. Consequently, the data in question does not give rise

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<sup>18</sup> Orla Lynskey, Article 20 Right to data portability, in *The EU General Data Protection Regulation (GDPR)*, (Oxford University Press 2020), <https://doi.org/10.1093/oso/9780198826491.003.0052> (last visited Sept. 15, 2023).

to a right to portability.

(iii) Thirdly, is moving the data from one institution to another technically viable? Frequently, higher education institutions depend on databases that have been created by external entities. Should the determination of the feasibility standard be based on the viewpoint of the universities involved or the respective software developers? The online quizzes students have completed have been designed by instructors, and the discussions on the learning platform may affect a diverse group of students. Concerning the provided information, the rights and freedoms of third parties encroach upon the student's entitlement to portability.

Nevertheless, according to the norm, the transfer of this information to another controller is precluded, as the relevant parties reasonably anticipate that the information was confined to the learning platform and specific to it. The conclusion, which may be considered rather unexpected, suggests that a majority of the data held by the institution needs to be encompassed under the student's entitlement to data portability. Expressly, although the student's primary concern may be the transfer of transcript data and received emails to the new university, it should be noted that the portability of this information is not guaranteed. The outcome is satisfactory from the Art. 20 GDPR perspective if it is exclusively regarded as a regulation of competition, but If the objective of the law is to enhance data empowerment, it is likely that the rule does not effectively fulfil its intended goal in the given scenario.

#### **IV. Empowering Users: Data Portability under the EU Directive**

The European Union has adopted the Directive on October 6, 2015 to foster the Digital Single Market Strategy which will be beneficial for the consumers and business enterprise. The Data portability though not in explicit manner but implied in this document in the form of digital content mobility from one controller i.e business enterprise to another controller. In this directive, the notion of data portability has been evaluated in the larger extent especially to impose reasonable restriction on the data portability of consumers across borders.<sup>19</sup> This directive is a positive initiative in order to strike a balance between economic growth and the privacy of the consumers that caters the sense of trust for the consumers which stands as a backbone for any commercial entity. Henceforth the European Union after evaluating the figures that hinders with the economic growth of the union come up with this directive. The

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<sup>19</sup> What is Digital Single Market is About?. European Commission. (2018). <https://ec.europa.eu/eurostat/cache/infographs/ict/bloc-4.html> . (Last listed on August 2 , 2023)



initiatives aim to accelerate Digital Single Market growth for consumers and enterprises. The EU Directive has the following basic objectives enshrined in this document:

1. The proposals will reduce uncertainty for businesses and consumers due to the complexity of the legal framework and business costs due to differences in contract law between Member States by eliminating key contract law-related barriers to cross-border trade.
2. Uniform standards with explicit consumer rights will boost consumer trust. 39% of internet enterprises that don't trade internationally cite national contract rules as a barrier.
3. Businesses should have legal clarity when selling goods and digital materials abroad and avoid extra costs due to different national legislation. Only 18% of individual Internet users in 2014 bought from another EU country, whereas 55% did it domestically.
4. The lack of contractual rights for poor digital content hurts consumers. Digital content includes music, apps, games, films, cloud storage, and sports broadcasts. The financial loss from the most current digital content issue and the time spent fixing it over the past year is estimated at €9–11 billion.<sup>20</sup>

Article 13 of the Directive pertains to the exchange of digital content instead of monetary compensation or reciprocal actions. Within the context of the digital economy, market participants are progressively recognising the worth of personal information, perceiving it to be on par with monetary assets. Digital material is frequently provided without a financial transaction but in return for non-monetary compensation, such as granting access to personal or other data. These particular business models are applicable in various manifestations throughout a significant portion of the market. Implementing a distinction based on the underperformance type will result in different business models' differentiation. This differential could create an unwarranted motivation for firms to shift their focus towards providing digital content rather than data. It is imperative to ensure equitable conditions for all participants. Furthermore, the presence of flaws in the performance characteristics of the digital content provided, apart from monetary compensation, can potentially affect the economic welfare of consumers. Hence, the dependence of the regulations outlined in this Directive on the presence of a financial transaction for the particular digital material in question should be avoided. According to Article 14 of the Directive, the scope of application of this legislation is limited

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<sup>20</sup> id.19



to contracts involving the provision of digital content that is not obtained in exchange for monetary payment but rather in exchange for non-monetary forms of compensation. This Directive applies only to contracts in which the supplier explicitly requests and the consumer actively provides data, such as personal information (e.g., name and email address) or photos, directly or indirectly to the supplier. This data exchange can occur through various means, such as individual registration or a contractual agreement granting access to consumers' photos. Applying this Directive should be exempted in cases where the supplier gathers data essential for the digital content to operate following the contractual agreement. This may include collecting geographical location data necessary for the proper functioning of a mobile application. Also, exemptions should be granted when data collection is solely for fulfilling legal obligations, such as when consumer registration is required by applicable laws for security and identification purposes. The scope of this Directive should exclude cases in which the supplier obtains information, including personal data like the IP address or other automatically generated information such as data collected and transmitted by a cookie, without the consumer's active provision, even if the consumer consents to the use of the cookie. This provision should also not be applicable in cases where the consumer is just exposed to adverts to obtain access to digital content.

The Conjoint reading of Article 13 and 14 of the Directive delineates the reasonable restrictions on the part of data intermediaries to share the personal data to other data intermediaries either in place of price or any other consideration.

## **V. Data Portability and Competition Law: An evolving synergy in Indian Digital Economy**

In 2024–2025, the size of the Indian economy will surpass \$4 trillion, and nominal GDP per capita will exceed \$2,800, according to an analysis conducted by the PHD Chamber of Commerce and Industry. As a result of the structural reforms implemented by the government of India over the past three years, the economic activity rate is anticipated to remain robust. The recent FY 2023-24 budget was announced when India's economy was experiencing the highest growth rate among the world's leading economies.<sup>21</sup> The success of Co-WIN is not an isolated occurrence. The utilisation and provision of government services on digital platforms

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<sup>21</sup> Doh-Shin Jeon & Domenico Menicucci, Data portability and competition: Can data portability increase both consumer surplus and profits?, 2023 European Journal of Law and Economics, XXXX, <https://doi.org/10.1007/s10657-023-09774-9> (last visited Sept. 15, 2023).

are increasingly prevalent. India's population is at a substantial 1.4 billion, accompanied by a significant number of telecom customers at 1.3 billion, internet subscribers at 900 million, and smartphone users near 500 million. These figures highlight that only a few countries globally are currently exploring digital innovations on a comparable scale to India. The nation's digital trajectory commenced in 2009 by implementing Aadhaar, the most extensive biometric digital identification system globally. The entity mentioned above serves as the fundamental basis upon which the digital ecosystem of India is being constructed. This ecosystem has diverse digital goods, infrastructure, platforms, and services. Many of these platforms have already amassed a user base of over 100 million individuals. A substantial portion of India's digital ecosystem is owned and managed by public-private partnerships or operates solely within the private sector. The distinguishing characteristic of the Indian model lies in its emphasis on advancing and implementing digital public infrastructure and various digital public platforms (DPIPs). One notable illustration is the India Stack, which comprises of Aadhaar, the Unified Payments Interface (UPI), and the Data Empowerment and Protection Architecture (DEPA). This framework has been established to enable the widespread utilisation of identity, data, and payment systems while ensuring fairness among participants in a digital ecosystem. The Bharat Interface for Money (BHIM) is a mobile payment platform developed by the public sector to serve as a reference app for the Unified Payments Interface (UPI). It competes directly with private entities such as PhonePe and Google Pay.<sup>22</sup> Many additional Development Policy Implementation Platforms (DPIPs) are currently in operation, encompassing many sectors such as healthcare, commerce, urban government, and more.

Despite the fact, India is going to be a 8 Trillion US dollar economy by 2028 but the digital economy is also rising rapidly. According to the State Indian Digital Economy Report 2023, the digital economy will cross 1 trillion by 2030<sup>23</sup>. Mobile broadband subscriptions grew 40% annually from 2014-21. Internet connectivity divides pandemic-closed small and large companies. Larger firms use digital technologies more than smaller ones: 26% for online sales, 33% for websites, 12% for online marketing, and 21% for social media presence post-pandemic. 3G mobile broadband is available to 99% of Indians; however, not all use it. Rural India has twice the population of metropolitan India but just half the number of active internet

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<sup>22</sup> Dr. Rumki Majumder, Deloitte Insights, Indian Economic Outlook, 2, Deloitte Global Economics Research Center, 2023

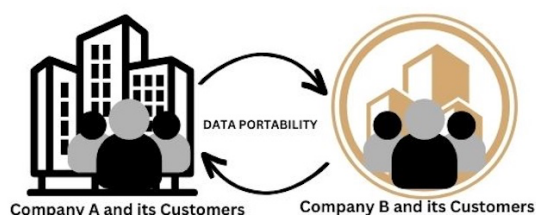
<sup>23</sup> India's digital economy to grow over 1 Trillion US dollar By 2030, times of india, June 6 2023 14:11 IST, <https://timesofindia.indiatimes.com/business/india-business/indias-digital-economy-to-grow-over-fivefold-at-1-trillion-by-2030-report/articleshow/100789668.cms?from=mdr#> (last visited on August 16 2023)

users. Rural Indian women utilise the internet less than one-third. Many Digital Public Infrastructure Platforms (DPIPs) are fast scaling up, like Co-Win, which registered over a billion users in 13 months. DPIPs can increase the digital divide by creating monopolies and excluding the vulnerable if not adequately controlled. The Growing Digital Economy emancipates the practice of data portability at a larger extent and also have a greater impact on the competitive market among the digital service providers<sup>24</sup>.

Data portability has been recognised as a pro-competitive strategy to provide customers the power to select from various providers. Notably, data portability may lower the costs associated with switching providers for consumers, as opposed to the case where they must recreate all of the data and content they have entered into a digital content platform each time they change service providers. Customers can enter new firms, increasing competition, if they bring their data within their ambit. Comparison services in areas with complex price structures can also be made possible through data portability. Conversely, interoperability can encourage competitiveness by allowing various systems to speak with one another. This can include standards enabling real-time data sharing between services (such as cross-posting social media content across several platforms) and those helping to combine features (such as using a single account log-in across various online services). Interoperability can simplify multi-homing by allowing users to access several competitive or complementing services over a single access point. By doing this, network effects would be preserved while possibly resolving entrance barriers and fostering competitiveness in a market. The competitiveness issue regarding data portability among digital platforms can be examined by a comparative analysis of digital media operating within the same market. Consider a hypothetical scenario where two virtual platforms, platform A and platform B, compete in the same market. Platform A is the dominant operator in the market, while Platform B endeavours to penetrate the market or secure user engagement by providing a superior or more appealing service than platform A. The introduction of Platform B into the market, along with its superior product offering compared to Platform A, presents the potential for an increase in its user base. This is because platform B provides users with the option to transfer their data, enabling a seamless transition to the new platform. Consequently, platform A may experience a decline in its user count as users take advantage of data portability to effortlessly switch to the alternative forum. In the absence of data portability guarantees, platform A's presence may impede platform B's entry into the

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<sup>24</sup> id.22



market or its capacity to expand its market share. This hindrance can harm innovation and competition, as users may need help moving between platforms due to the inability to move their data. To analyse this factor, have an insight on the mechanism of data portability with the help of the figure depicted herein below:

**Figure 1 : Mechanism of Data Portability ( Self Created By Author)**

When a new digital platform is introduced to the market, the consolidated platform user or a new user who recognises the prospect of maximising their benefits can either migrate entirely to the new platform, known as single-homing or utilise both platforms, known as multi-homing. In both instances, there must be no consumer lock-in, and both platforms must support data portability for these options to be accessible to the user. Users can move data between the two platforms without difficulty because switching costs are minimal due to data portability unless other circumstances result in higher switching costs. Additionally, a substantial influx of new users might enter the market. As a result, platforms could share new users and profit, which would benefit both parties.

The twin mirror reflection provisions in Sections 21 and 21A of the Indian Competition Act, 2002, support inter-regulatory collaboration. Section 21 of the Competition Act allows any statutory authority to refer a matter to the Competition Committee of India (CCI) if a party raises a concern during a proceeding that a decision it has made, is considering making, or would cause would violate one or more Competition Act provisions. CCI must give the relevant legislative authority its opinion within 60 days after receiving a recommendation. The statutory body will next analyse CCI's opinion and deliver its judgements, with reasons, on the concerns raised. Additionally, any government agency may refer to CCI on its own. Similar to Section 21A of the Competition Act, CCI may refer a party's challenge to a CCI decision during a proceeding or to a statutory authority if the decision would violate a provision of an Act whose implementation is the responsibility of the statutory charge. The statutory authority must give

CCI an opinion within 60 days after receiving a recommendation. CCI will analyse the statutory authority's opinion before drawing conclusions and justifying its points. Additionally, CCI may refer to the legislative powers on its own initiative.<sup>25</sup>

Data portability and, by extension, the right to data portability, are positioned as crucial elements for the formation of new businesses and the expansion of existing ones. When platform users engage in multihoming, which enhances the platform's service, this realisation assumes even more significance. In order to strengthen ongoing innovation and the competitive environment for the advantage of the user, user attraction, maintenance, and sharing enable digital platforms to mutually develop an ecosystem with the ability to port their data.

## **VII. Concluding Remarks and Suggestion:**

At the outset Data portability promotes multifarious advantages to the consumers in relation to their personal as well as non personal data. But It should be borne in mind that the practice of data portability must not be effectuated without reasonable restrictions. Because it is an admitted fact that data portability infuses with potential risk of unreasonable data mining by the rival data controllers of the digital market. Data portability should follow the principle of data minimisation that curb the feasibility of the transfer of sorts of data. Some Sensitive data should be exempted from the realm of data portability but not to the extent of curtailing their right of self determination. In this conjecture, a mechanism should be curated to strike a balance between the right of data portability and the potential risks arising out of it. It is pertinent to suggest some important suggestive measures that can be incorporated too achieve the ends of data portability and these are:

1. Assessing the impact of portability of a system controller.
2. Solutions can be sought from the financial sector and incorporate the same in the respective legislation.
3. Adaptations of Self-Regulatory Systems as Solutions of the potential risk coupled with data portability.

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<sup>25</sup> The Organization for Economic Cooperation and Development , Data Portability, Interoperability and Competition – Note by India, 3 , 135th OECR Competition Committee Meeting , 2021

4. The Competition law of India Should be evaluated and a public discourse should be considered during the process of upgradation.