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Open-data: a solution when data constitutes an essential facility?

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The opinion expressed in this paper are ours and do not necessarily reflect the position of La Poste

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Context and objectives

- What is a "data"?
  - Is some sort of **raw material** derived from observations, experiments, measures or computations, collected by a huge range of organizations and institutions.
  - Becomes **information** once it has been analyzed or interpreted, suitable for making decisions.

- Nowadays, many digital firms base their **strategy and business model on data**.
  - Notably platforms that collect data from their users to offer innovative, customized and sometimes "free" services.
- The features of digital markets lead to a **concentration of this core input between hands of few big "superstars"**.
  - Arise legitimate not only economic but also societal concerns.

➢ ***This raises the question of the essential facility character of data.***
➢ ***Is data openness a solution to deal with market power derived by data?***

Agenda

1. Is data an essential facility?

2. Would an extension of data openness be a good thing?

Is data an (impure) public good?

- According to economists, data is a **non-rival good**.

- Is it a **non-excluable good** ?

- This possibility to exclude some users from its exploitation **raises competitive concerns in data-driven markets**:
  - New actors could be prevented to enter and even established providers could be forced to exit if they have no access to some « essential data ».

Is data an essential facility?

- In this context, the question is: **is all data an essential facility**?
  - i.e. an "*input that (is) unconditionally necessary to provide certain goods or services and that (is) unfeasible or too costly to be duplicated or to be bypassed. At the same time there must not exist sufficient demand side substitution possibilities for the service itself.*
  - *Shortly, essential facilities not only have to be nonreplicable but also non-substitutable with regard to the service they are needed for*" (Heitzler, 2009).

The opponents' arguments

- Primary data has **no value by itself**.

- Data held by incumbents is **replicable** and **cannot be qualified as rare**:
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- The **value** of some data **decreases through time**.
  - The main concern of entrants should be to collect updated and differentiated data.

The proponents' arguments

- The market power of dominant firms comes more from their ability to provide a reliable and high quality good, from the network effects and the switching costs incurred by customers than from primary data.

- But it seems **difficult to deny** that in some extent the **ability to satisfy consumers' needs and to exploit network effects come from information and knowledge provided by data**.

- Sometimes, data is a necessary or essential resource in the digital economy.
  - For instance, in search engine or digital map markets, the collection of a huge amount of data is an essential pre-requisite to develop this type of service.

To conclude on this issue…

- **Academic literature** remains **divided** on the character of essential facility of data.
- In our opinion, **the answer to this issue is not unequivocal**: it depends on the type of data and market under review.
- In this context, it seems more appropriate to have a **case-by-case approach** rather than establish *per se* rules.

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What is Open Data ?

- "**Open Data**" is a piece of data or content that anyone is free to access, use, reuse and redistribute (European Commission, 2014).

- **Open "*government*" data** (OGD) are defined as open data or information generated, created, collected, processed, preserved, maintained, disseminated or funded by or for the Government or public institutions.

Motivations and expected benefits of OGD

- It is a means to promote **democracy**, to give citizens access to information, to increase transparency of government actions and to increase the participation, interaction, self-empowerment and social inclusion of open data users (e.g. citizens) and providers.

- It promotes **economic value and efficiency**: reduction of transaction cost and information asymmetry thanks to transparency; development of better services and new production methods, generating economic value.

➢ If the expected benefits of OGD have been largely outlined by a number of ex ante studies, **ex post evaluations are lacking** (novelty of the concept and lack of performance indicator).

The risks and costs of a larger open-data policy

- A free of charge scheme could lead to **underinvestment** in data production and harm the sustainability of data-driven business model and/or provision of some public services.
- It may **distort the competition**
- Disclosing indiscriminately all data could also **threat individuals' privacy and national security**
- At another level, **only data of good quality should be publicized**

Towards a more general open data environment?

- Originally focused on governmental data, recent initiatives go further and extend obligations of openness to data held by private actors.

- The French Law for a digital republic (October 2016):
  - Not only central and local government, but also **public and private legal entities having a public service** are demanded to exchange the public information which they produce or receive.
  - Creation of a new public service mandate and a new class of public data named "***benchmark data***".
  - Creation of the concept of "***data of general interest***" and an obligation for public service concession holders (potentially private firms) to allow the concession-granting authority to publish, as open data, the main data concerning the activity covered by the public service concession.

Towards a more general open data environment?

- At the European level, the PSI directive **initially** lays down a right to re-use all **public documents** (data) **held by public sector bodies** of the Member States.

- During the preparation phase of Directive's review the **concept of "reverse PSI"** which would entail access for public sector bodies to **re-use privately-held data**, was considered but seems to be finally abandoned.

- Nevertheless, the Commission proposes to **add into the scope of the Directive data held by public undertakings operating in the** water, energy, transport and **postal services sectors**, acting as public service operators.

The special case of postal data

- Today, most of postal operators **try to diversify their revenue sources** by monetizing their datasets (especially the national address database)

- Open government data policy **threatens this revenue source**:

- Moreover, the new provisions of the revised PSI directive could hurt postal operators by creating a **distortion of competition** between public undertakings and private companies which are not under the scope of these provisions.

The special case of postal data

- Facing this movement, some postal operators decided by **themselves to open some of their databases for free**

- In this context, one can **question the relevance of a larger open data policy** that would force postal operators to disclose for free:
  - Most of postal databases are **sensitive** and constitute a **strategic asset**
  - Revenues derived from data monetization could be a way to **finance the universal service**

- All these considerations should be taken into account by public authorities in the open data debate.

Conclusion

- Many reasons suggest that **not all government or privately-held data should be opened**:
  - Protection of citizen's personal data and strategic asset for private companies.
  - Forcing access to private data would discourage market entry, investment and innovation.

- Mandatory open data policy might **only be justified by the existence of market failure**: when private data of public interest are subject to under-provision due to antitrust issues or coordination failures.

- A **case-by-case approach** should be followed to determine if an obligatory access is the best solution among all other feasible remedies.

Thank you for your attention !