

## Response to Consultation

# Data Portability Conduct Requirement

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. In our response to this and the other consultations, our focus for this first set of conduct requirements is where the conduct requirements raise concerns for the wider digital economy, or where its analysis sets a concerning precedent for future SMS investigations.

## Do you agree with the aim of the Data Portability CR and how we propose to implement the Data Portability CR to meet that aim?

Generally speaking, voluntary provision that Google has already made for data portability is preferable to conduct requirements (CR) where possible. If the CMA has not found a problem and has the power to impose a CR in the event of a problem, it is not clear what real additional security imposing a CR now creates.

The most likely reason for a change in a data portability API is that the underlying service (and the data it generates) has changed. Making those changes to improve the service could be complicated if there are legal duties around an existing set of outputs through a data portability API. This means that there is a risk that this CR, if implemented alongside some of the other CRs being proposed in parallel, complicates and therefore slows improvement in Google Search for UK users over time.

By contrast, accommodating such changes should be a core competency of any company built around reusing data drawn from another company's service like this.

## Do you consider the proposed Data Portability CR would result in the potential benefits we have identified (for example, value and innovation)?

Claims that a particular regulatory change locking in existing practice will make a material difference to a company's cost of capital are hard to substantiate. There are many reasons why investors might be enthusiastic or sceptical about investing in such businesses (e.g. changes to data protection regulations; lack of consumer trust in services premised on sharing consumer data with third parties; wider macroeconomic factors). The CMA should generally be sceptical of claims that regulation which locks in established practice is justified on this basis.

There is also no reason a company needs to restrict itself to working with a single API for a Google's Search service that necessarily changes over time. Some measure of diversification to be less dependent on output from a specific API seems like a reasonable thing for financial markets to incentivise through the cost of capital; a price signal that the

CMA should not seek to obscure. There might be more sustainable innovation if companies have such an incentive, building businesses that add more value for consumers.

The costs of any impairment of improvements in Google Search (even if that risk is likely modest with this CR in isolation) could easily outweigh the benefits of any improvements in the businesses built using the Data Portability AI. The service is used by many more people and fulfils a more important economic function than companies which, for example, allow people to resell their search data for a small fee.

## **Do you agree with our proposal to use Interpretative Notes to clarify the conduct we expect from Google to comply with the Data Portability CR?**

There is a risk that the interpretative notes (particularly note 3f) limit the flexibility of Google to develop Google Search. As noted above, this would be likely to result in costs disproportionate to the benefits likely to be attained by this CR.

## **Do you agree with the content of the Interpretative Notes? Are they sufficiently clear and comprehensive? Do they cover the right issues? Are there any gaps?**

No response.

## **Do you agree with our proposals for compliance reporting and for monitoring the effectiveness of the proposed intervention? Have we identified the right metrics?**

The use of an annual compliance report in this instance is a welcome improvement over the 6-monthly reports envisaged in other CRs and should be the general standard to avoid unnecessary compliance costs.

It will be crucial for the CMA to be clear about how it will interpret the results from its compliance monitoring. The number of users who initiate an export via the API might be low simply, for example, because the opportunities for consumers to use that API are unimpressive, or users do not trust them. The goal should be to confirm that Google offers a functioning API, not a tacit assumption that if the API is not used that is prima facie evidence it is not functional.