Response from the Data Transfer Initiative to the DSIT consultation on Smart Data opportunities in digital markets

About The Data Transfer Initiative

The Data Transfer Initiative (DTI) is a U.S. 501(c)(4) nonprofit organization dedicated to empowering individuals by enabling simpler, faster, and more secure data transfers through data portability at scale. Born out of the Data Transfer Project (DTP), a collaborative open-source effort initiated in 2018 by a consortium of technology companies, DTI advances its mission through the design and implementation of open-source data transfer tools and other innovations and investments to foster a healthy portability ecosystem.

DTI also serves as an expert resource to policy makers and regulators around the world, and we are delighted to have the opportunity to feed into the UK government's thinking on how the concept of Smart Data could be applied to digital markets.

We are proud to count among our partner organisations some of the largest technology companies in the world, some of which could fall within the scope of such a regulatory scheme depending on how it is targeted. Although our Partners support our work in a number of ways, including through payment of dues, DTI is not a trade association, nor do we speak or advocate for any individual partner or member organisation in any capacity. The views expressed in this submission are those of the Data Transfer Initiative.

Overarching remarks

The UK's Smart Data agenda strikes to the heart of DTI's goals, making it a top priority for us to engage with. Should the Department for Science, Innovation and Technology (DSIT) take forward a Smart Data scheme for digital markets, it will be mission critical for us to ensure it is a success.

As we stated publicly in a DTI newsletter regarding the Data (Use and Access) Act, we intend to be a supportive resource as you identify, design, and implement new Smart Data Schemes. In doing so, our advice will consistently be anchored to the following high-level principles, which are aligned with our founding policy principles for data portability, along with our experiences with implementing data portability in other contexts:

- Focus on outcomes
- Keep users at the centre
- Scope with reciprocal transfers in mind
- Don't reinvent the wheel
- Establish trust from the outset

We refer back to these principles frequently throughout this response, as well as providing more detail on our reasoning behind each of them under the heading of *'designing a scheme for customers'*.

Through application of these principles, we encourage DSIT to minimise the costs of a potential Smart Data Scheme in the UK by leveraging investments and progress made in response to the EU's Digital Markets Act (DMA), while maximising the innovation opportunities available to UK users and developers through an ambitious scope. Critically, both end users and third-party developers will benefit greatly from international interoperability of data portability tools and governance.

We have structured our response to provide detailed feedback on each of the key themes identified by the consultation. We will be open to discussing any of these topics with DSIT in more detail should this be useful.

Designing a targeted scheme

Current landscape for UK data portability

Although this consultation is DSIT's first public exploration of how the Smart Data concept could be applied to digital markets in the UK, the underlying substance of the policy is not new. In the UK, the concept of such data portability schemes dates back at least to 2011, when the government launched its voluntary "midata" initiative. There has since been the introduction of the right to data portability within the GDPR, which prompted many technology companies to develop data download portals for their users, along with a small group that went further by collaborating to build end-to-end transfer tools under the banner of the Data Transfer Project. More recently, the seven 'gatekeeper' technology companies have implemented data portability tools in the EU (and some in the UK) in response to the EU's Digital Markets Act.

As a result of these developments, the UK already has the foundations of a Digital Markets Smart Data Scheme under development. Building from this promising base, there are two high-level questions that DSIT would need to address:

(i) How much wider should DSIT aim to extend the scope of such a scheme, if at all?
(ii) How much further should DSIT go regarding the requirements and expectations for affected businesses, if at all?

It is right that DSIT is seeking to answer these questions by first developing an understanding of the status quo and the current challenges that users face when attempting to access their data and share it with other service providers.

With the emergence of this nascent and narrowly scoped data portability ecosystem in the UK, the nature of challenges faced by users depends heavily on where the user might hypothetically be trying to transfer their data from.

While there may be others that we are not aware of, the following services currently have purpose-built tools for data portability which enable their UK users to transfer their data directly to third-party services:

- Apple's Account Data Transfer API supports direct transfers of account data from the App Store to approved third-party services.
- Booking.com has a dedicated data portability API for "traveller data".
- ByteDance's TikTok has a data portability API supporting the direct transfer of users' data to third party services.
- Google's data portability API supports direct transfers of account data from a number of services including search, Chrome, and Play.
- Meta's Export Your Information (EYI) tool enables users to transfer their data from Facebook and Instagram to third parties. This functionality is available to users of those platforms globally.

These tools already exist and are operational for UK users. Since their implementation, industry stakeholders have been providing feedback on them to those companies directly and also to the European Commission. This has led to a number of iterative improvements since their launch in March 2024. We understand that this implementation process is ongoing, and that questions remain in some areas regarding, for example, how developers gain access to the tools, the perceived reliability of the tools, and reported data quality.

To the extent that DSIT would want a Digital Markets Smart Data Scheme to include any of these services within its scope, we would strongly encourage DSIT to incorporate these existing tools to the fullest extent possible rather than starting from scratch. Requiring the creation of brand new tools to operate in parallel to the existing DMA solutions would introduce unnecessary and avoidable costs on those companies, while introducing painful duplication for third-party developers that wish to connect to data portability tools to serve users in multiple countries. This could also ultimately leave users with variable, confusing, and limited portability options. We encourage DSIT to work collaboratively with the European Commission to ensure any remaining concerns with existing portability tools are effectively resolved, including through ongoing close collaboration with all industry stakeholders.

Beyond this limited list of companies and services that already support data portability through direct transfers, the primary challenge for users remains the non-existence of any dedicated solutions for transferring data to third party services. The challenge here is one of scope, to which DSIT will need to examine how widely it will want to design a scheme. In order to maximise impact, we would anticipate a scheme that is scoped more broadly than the DMA, motivated by a desire for value creation and economic growth.

Scope and potential use cases

Data portability is still in its infancy in terms of practical application, and we have yet to see a big bang for data portability uptake or use-case innovation where the functionality has been introduced. Yet we are excited by a growing community of startups, innovators, and established

businesses in the UK that are probing the opportunities that new data portability tools can provide.

While many use-cases are still in the developmental phase, we have engaged closely with organisations seeking or planning to access DMA data portability tools for various purposes, including:

- Personalisation of online retail experiences
- Personal data stores and wallets
- Earning rewards or discounts
- Personalised booking, concierge and travel services
- Data donations and medical research
- Personalised news feeds and media content creation

DSIT should be encouraged to know that a high proportion of companies we engage with are from or based in the UK.

We are also highly optimistic about the potential interaction between data portability and advancements in AI technology. There are undoubtedly strong synergies between developing a thriving data portability ecosystem and ambitions for the UK to be a leading AI superpower. Data portability can in itself help the market for general purpose AI assistants to thrive, as the ability to transfer conversation histories and similar personalization data between services will be critical in preventing AI model lock-in. This is an area that DTI is already investing in heavily. In August, we published a set of principles for personal AI data transfers, explained in an article by our Executive Director in Tech Policy Press on how we need to control personal AI data so personal AI cannot control us.

We are also expecting to see a surge in AI powered verticals that will be made possible by data portability from a wide range of sources, particularly as 'agentic' AI services come to market. This is because semi- or fully-autonomous services that take actions and make decisions on behalf of consumers will need to have a deep understanding of each individual's preferences, habits and behaviours. This can only be managed efficiently and effectively by those services ingesting continuous feeds of the individual's data from a range of other relevant services. As the government recently set out in its Modern Industrial Strategy, the UK can *'capitalise on the value of UK data by treating it as an economic asset, enabling the use of high-quality data across the private and public sectors'*.

We agree that data portability is key to achieving this ambition. The availability of new combinations of high-quality user data on an ongoing basis will create new technology opportunities in the UK that cannot be created or built elsewhere in the world at this point in time. This could establish the UK as a hub for innovation in this space that would put UK companies at an advantage when similar tools or initiatives are eventually replicated elsewhere in the world. The UK has seen this happen before with Open Banking.

Naturally, the more data sources that are included within a Smart Data Scheme, the more opportunities for innovation and value creation that will exist. We also note that a widely scoped scheme would align with the expectations of GDPR Article 20, and with our founding principle of supporting reciprocal transfers.

We are not in a position to predict what the brightest minds will come up with once high-quality user data is made available on a continuous basis at scale, nor should the government be seeking to pre-determine or constrain what innovation it is hoping to unleash. The aim should be to create new opportunities, to enable access to new kinds and combinations of data as an input into businesses that wish to personalise and experiment – while maintaining user centricity and the need for trust at the outset – and then focus on ensuring all of the other necessary conditions are in place for startups to flourish and scale. This is what will enable the UK to realise the growth potential of its dormant and siloed data assets.

Assessing a digital markets Smart Data scheme

Feasibility, challenges and risks

It is highly feasible – at least from a technical point of view – for modern technology companies to implement effective data portability solutions that enable their users to transfer their personal data to third-party destinations. Typically, such solutions involve the use of Application Programming Interfaces (APIs), which enable communication and data exchange between different software systems. APIs are a fundamental building block of modern applications and digital experiences. All major companies operating in digital markets can be expected to have existing internal engineering capabilities and expertise to develop and operate complex and robust APIs that interface with internal or external systems.

The technical feasibility of such technology to support effective user-led data portability is proven. The Open Banking initiative demonstrated that companies from traditional sectors with legacy systems were able to deploy effective and reliable data transfer tools. Then more recently, the companies designated as “gatekeepers” under the European Union’s Digital Markets Act (DMA) also introduced data portability tools that could be considered a form of Smart Data. Separately, in the case of photos and music playlists, the Data Transfer Project has also shown the value of fully end-to-end portability implementations, achievable when companies work together to build data transfer solutions with a common goal.

As we set out in a Tech Policy Press article on building trust for data portability within the DMA framework, the challenges to data portability in technology markets are predominantly non-technical. More specifically, we identified the two main challenges for market-led data portability are investment and trust. A successful Smart Data scheme would need to address these two challenges carefully.

Investment

For each transfer party – including the data holder, the user, and the intended data recipient – facilitating data portability through direct transfers requires some form of investment, whether that is financial, time, or opportunity costs. Each party requires sufficient incentives or motivation to willingly engage in the process simultaneously.

It is certainly possible for these incentives to invest to be driven through market forces, and we believe this would happen over time as demand for portability gradually builds. However, progress has so far been modest, with only a handful of companies engaging seriously in the development of direct transfer tools to date. We recognize that a Smart Data scheme could be an initial catalyst for sector-wide investment in portability tools in the UK, which could have positive ripple effects for voluntary action in other parts of the UK economy, and in other parts of the world.

Trust

In order to implement data portability effectively, at least two organizations need to work together, in communication with a shared user. Trusting each other is key to this coordination, which can be tricky between rivals, let alone strangers.

As visionary as it is, the DMA did not provide guidance regarding how best to establish trust in the process of portability. Consequently, we are seeing trust challenges arise in practice, more significantly than technical limitations. DTI is stepping in to address this challenge through the introduction of a Data Trust Registry, which we discuss further below.

The successful implementation of a potential Smart Data scheme for digital markets in the UK would need to address this issue of trust as well as overcoming the incentives to invest. We stand ready to work with the UK government on these challenges, including in consideration of how our Data Trust Registry could be directly incorporated into the scheme design (which we discuss in more detail below under ‘Maintaining customer trust’).

Potential costs and benefits

A Smart Data Scheme in any sector will introduce material costs to those companies within its scope. These will include costs for engaging with the regulatory initiative, designing and building the required technology, managing trust with third parties, developing and maintaining API policies, maintaining the functionality and performance of the tool, and responding to queries from developers and users. There are likely to be aspects of design – such as the degree to which data is supplied in ‘real time’ – which have the potential to add substantial cost and delivery risk to a scheme. The government should be mindful of these costs as it considers the design of a targeted scheme, and ensure each incremental element of scheme design is proportionate and justified.

We note that some companies have already undergone some of this investment in response to the EU’s DMA. To the extent that DSIT intends to estimate the potential implementation costs

for data holders, we suggest engaging with DMA gatekeepers to understand the range and scale of costs incurred complying with Article 6(9) of the DMA. Given the size of these companies, this may provide a sensible upper bound for the potential compliance costs for a UK Digital Markets Smart Data Scheme.

We would, in time, expect those companies to also benefit from the tools they develop, as we will expect an ecosystem of innovation to form around their service that adds value and new opportunities for each customer that uses their services. Just as third-party app developers add value and functionality to smartphones, we anticipate Smart Data Authorised Third-Party Providers (ATPs) adding incremental value and competitive advantage to all digital platforms offering data portability functionality. However, we recognise that this is a longer-term view with some uncertainty.

We would expect the impacts for all other businesses interacting with a smart data scheme on a voluntary basis (e.g. the potential data recipients not otherwise facing mandatory obligations) to be net positive. We can assume that such businesses will only voluntarily incur costs of becoming an ATP if they expect it to be justified by increased revenues and/or profits over time.

We anticipate there would be some costs to a body (or bodies) from running the trust verification exercise for the scheme, however that may be designed. Based on our experience with the DMA, we consider this trust exercise to be important in order to protect users' security and privacy from bad actors, while also avoiding duplication and minimising the burdens placed on those legitimate companies (data holders and data recipients) seeking to engage with the scheme in good faith.

As noted above, DTI is currently piloting a Data Trust Registry, which will serve as a centralised authoritative record of levels of established trust according to published and documented criteria. In order to establish trust with data transfer parties, DTI is operating an independent verification process that assesses a company's data privacy and security policies and practices, how they communicate with their users, and other key elements identified by our prior threat analysis work specific to portability transactions. It is our ambition for this Registry to be the single global solution for establishing trust in the digital markets data portability ecosystem, which could include within it a UK Smart Data Scheme.

DTI's global solution could deliver substantial efficiency savings to companies and the public purse by removing international duplication. As we intend to operate the Registry on a global basis across multiple legal jurisdictions, in principle only a proportion of the operating cost would be linked to UK activity. We are currently considering a number of potential funding models for the Registry, and would welcome joint discussions with the UK government and the European Commission on the viability of different approaches.

Overwhelmingly, we would expect the winners from a Digital Markets Smart Data Scheme to be UK consumers. Much like data recipient businesses, engaging with data portability use cases

will be optional – users will be presented with new choices, but will always retain the option to do nothing and leave their data firmly where it is.

This is not to say data portability is an entirely risk-free endeavour. Striking the right balance between user protection, friction, and costs to legitimate businesses is not straightforward and will involve some trade-offs. As we set out in this Tech Policy Press article, we consider these risks to be manageable and worth taking, subject to the placement of proportionate guardrails around which organisations are able to access data portability tools and become data recipients.

Potential wider impacts

The UK has every reason to be optimistic about the impact that widespread access to data portability can have on its prospects for economic growth. It is no coincidence that the UK led the way in Open Banking and has subsequently been a global leader in fintech.

More than ever before, data is a critical input into the production of modern products and services. Releasing it – in a way that empowers UK citizens and aligns with existing data protection law – will create new opportunities for efficiency savings and productivity gains, enhanced individual and commercial decision making, hyper-personalisation of AI powered digital interactions, and ultimately the creation of brand new services that make peoples' lives easier or reinvent how we go about certain daily tasks. By creating these new opportunities for innovation and business development, data portability can be a growth engine for the UK economy.

Designing a scheme for customers

DTI's Smart Data principles

As noted above in our overarching comments, DTI has developed a set of policy principles to steer our early engagement with the UK government's Smart Data agenda.

- **Focus on outcomes:** any obligations on organisations regarding data portability should aim to be precise about the outcomes that must be achieved, and avoid being overly prescriptive about specific technologies or design decisions. Alignment and interoperability between UK Smart Data schemes are important goals to keep in mind, but the optimal functionality or architecture of an API may vary by company, sector, and data type. Relative to the banking sector, for example, there is substantial variation between different digital services in terms of the types of data provided by a user or generated by their activity. In the context of designing a Smart Data Scheme for 'digital markets', a 'one size fits all' approach may be counterproductive.
- **Keep users at the centre:** regardless of the sector, data portability tools need to be designed and implemented around the needs, expectations, and preferences of real technology users. We encourage the UK government to undertake consumer research to understand the motivations and experiences of individuals that have interacted with

existing data portability tools, such as those within the Open Banking framework or those from DMA gatekeepers.

- **Scope with reciprocal transfers in mind:** a widely scoped Smart Data scheme will naturally lend itself to a healthier ecosystem with reciprocal transfers more widely available. Greater reciprocity will promote competition, better empower consumers, and facilitate more innovation. This recent DTI newsletter sets out some of our latest thinking on when reciprocity matters most for data transfers.
- **Don't re-invent the wheel:** this is key to moving quickly, and avoiding burdensome duplication and complexity. For example, if something is working for Open Banking, it will likely do for Open Finance too. In digital markets, substantial progress has been made already in response to the Digital Markets Act, including in the UK; it would be a step back to design a scheme that cuts across those existing investments.
- **Establish trust from the outset:** trust is paramount for portability. For schemes such as Open Finance, the Open Banking Directory could be expanded to accommodate a wider variety of companies and use cases. In the case of a Digital Markets Scheme, our Data Trust Registry, which is now in a pilot phase, will provide an off-the-shelf solution for establishing trust for data transfers in the technology sector.

Maintaining customer trust

By reducing the friction for users to access and move their data around, you must inevitably also reduce the friction for bad actors to steal or exploit sensitive information, while increasing the attack surface for more sophisticated cybercriminals. When implementing Smart Data schemes in any sector, the UK government should aim to minimise the level of friction for users while simultaneously maximising it for potential malicious actors. This involves consideration of some complex tradeoffs, which DTI has considered in depth in a series of projects on trust.

For context, it is worth acknowledging that the UK has comprehensive data protection regulations in place that would cover all participants in the scheme, and determine by law how UK users' data should be handled, stored and processed by data holders and recipients at all stages of the user journey. We can and should expect this existing regulatory framework to do much of the heavy lifting for protecting customers (aka data subjects) in this context, and should avoid the temptation to reinvent the data protection wheel.

That said, and as we recognised in our Tech Policy Press article on trust, the GDPR is not in itself automatically self-enforcing, while formal enforcement by the ICO has been relatively limited. Yet we know there are plenty of bad actors in operation, with the global cost of cybercrime projected to reach $13.8 trillion by 2028. This includes sophisticated and malicious criminals, as well as more subtle bad or careless actors who collect users' data without being upfront about how they will use it, or who fail to take sufficient measures to keep it safe. Assuming GDPR compliance by all would lead to flawed policy outcomes.

We can be certain that some bad actors will attempt to utilise data portability as a method for stealing people's personal data, and so it makes sense to consider what form this might take.

Therefore, guardrails for data portability are necessary and justified in order to avoid high profile breaches of privacy or security that could undermine trust in the scheme as a whole. This is something DTI has been investing in since 2023, leading to the release of our User Data Portability Threat Model in January 2024, and our Trust Model Report and Trust Model later that year.

Our Trust Model is framed around the following five themes:

1. Transfer party authentication
2. Jurisdiction
3. Data security
4. Transparency
5. End user authentication and authorisation

We are now in the process of implementing this model in our Trust Registry, turning principle into practice through the design of a targeted and proportionate verification process. Where companies are unable to demonstrate their trustworthiness, we will seek further information or provide advice on how they can do better before they gain access and our stamp of approval. For those companies that have made it onto our Registry, we will expect them to renew annually, and keep us updated if their use of data changes materially from when they applied. Where we receive reports of bad practice, we will investigate and remove organisations from the Registry where necessary (together with appropriate consultations with the organisation).

We believe these measures will be a positive complement to the natural dynamics of competitive markets. We would expect legitimate companies to care about retaining customer trust and building a positive reputation. Our Trust Registry will provide a targeted and proportionate screening process to ensure it is those legitimate businesses that gain access to data portability tools in digital markets. In instances where bad actors do slip through the net, we would expect a robust data protection regime to identify breaches and enforce the law accordingly.

The wider context of a digital markets Smart Data scheme

Importance of international alignment

We consider it imperative that each major platform or service implements a single data portability solution that serves all users and third parties globally, instead of being forced to build separate tools to meet conflicting requirements in separate jurisdictions.

Yet this kind of international alignment can be challenging when data portability initiatives are prompted by regulatory interventions. Regulators can only act within their own borders, and coordinating with others can be practically challenging. This is made harder where each country may not have the same policy objectives or regulatory toolkits to deploy. For example, the

European Commission's Digital Markets Act (DMA) was not introduced with precisely the same goals as the UK's Smart Data Agenda.

To address this challenge, we suggest that DSIT build upon existing DMA implementation progress from the EU, rather than starting from scratch or operating in a silo.

With many of the DMA gatekeepers' data portability tools already available to UK users, leveraging this progress offers significant efficiencies for data holders, third-party innovators, the UK Smart Data Agenda, and ultimately users, while avoiding the costs and confusion of fragmented, duplicative obligations. DTI would be pleased to support DSIT as a resource in coordinating this alignment.

At the same time, the UK has an opportunity to lead by extending portability requirements into areas not yet addressed by the DMA. One example is AI assistants and agents, which are becoming important entry points for users but currently fall outside of the DMA. We would welcome the opportunity to work with DSIT on the application of DTI's personal AI data portability principles to such a scheme.

By aligning with DMA solutions where it already applies, and selectively expanding the scope where it does not, the UK could both achieve international consistency and enjoy first-mover advantage.

Additional comments

While DTI recognises the role that government intervention can play in accelerating investment and progress in nascent markets or emerging technology, we are generally wary of the risk that policy makers overreach by setting overly prescriptive rules for how technology should be built or how private companies must operate. Where the state does intervene in technology markets, we advocate for the setting of clear and targeted outcomes.

In such an outcome focused approach, there are two questions that the UK government will keep returning to as it considers the design of a potential Digital Markets Smart Data Scheme.

What kinds of use cases does the government want to unlock?

It is not realistic for the government to predict precisely the new innovations that wider data access could unlock, but having a clear idea of why data portability is being pursued will inform how it is implemented. For example, if the primary objective is to facilitate user switching, then the optimal design may look quite different to if the primary objective is the creation of new complementary third-party services. This may inform decisions on a wide range of issues such as whether to build a 'push' or 'pull' style tool, where the user journey should start and end, which and how much data should be included, whether transfers are one-off or ongoing, how fresh and frequent do transfers need to be, and so on.

What is the optimal balance between ensuring users are effectively informed and providing them with a positive user experience?

DTI believes that user protection is most effectively handled invisibly behind the scenes on a user's behalf. However, even with adequate trust frameworks in place to ensure bad actors don't get access to tools, we still need to be confident that users are making informed choices. Yet there can be a tension between this need to give users information, and the desire to give them a seamless and low friction experience.

There is no precise or correct approach to striking the right balance between these objectives. Rather, this is a spectrum on which very many scheme design decisions will sit. We recommend understanding roughly where on this spectrum the UK wishes a potential Digital Markets Smart Data Scheme to be, and then adopt a consistent approach through the very many design decisions that it will affect.

As DSIT designs and implements a Digital Markets Smart Data Scheme, this theme will continue to arise and potentially introduce disagreement between different stakeholders with conflicting interests.

A clear understanding of the risk profile of the scheme will inform decisions around UX design, the user authentication process, the optionality for user authorisation of third parties, frequency and language for communication to users, and more.

DTI does not hold an institutional view on the answers to these questions. We merely recommend that DSIT starts out by developing a position on these high-level topics, which will then act as a guide – to DSIT and to scheme participants – as further more granular issues and challenges arise.

Next steps

DTI welcomes the opportunity to feed into DSIT's consideration of whether and how to implement a Digital Markets Smart Data Scheme. We would be happy to discuss any of the issues raised in this submission should they require further clarification.

DTI will also continue to provide regular updates to DSIT and DBT on our work that overlaps with the Smart Data agenda, including on our Data Trust Registry and our AI Principles.