



Policy Opinion

Comments on
Digital Empowerment
and Protection
Architecture

BY

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1. The purpose of DEPA, as stated on page 11, is “that of individual empowerment and financial inclusion through data, of encouraging a vibrant and competitive data democracy, and of building an environment for small and large businesses to thrive based on legitimate and high value use cases for data sharing that ultimately help individuals and MSMEs prosper.” There cannot be any fundamental disagreement with any of these, excepting on the degree and method of implementation of these principles. It is important to keep in mind the roles of the government and business in a market-driven economy where the objective is to improve the welfare of those in society. The two fundamental principles governing such societies are: (a) business know best how to generate value from commercial activities and (b) regulators are best suited to continually monitor businesses to ensure that businesses do not appropriate, at the expense of others, the value generated through commerce. To achieve this, governments create a rule-based market environment with free entry, free exit and a dynamic innovation ecosystem. Governments do not dabble in determining how markets should evolve, as long as innovative market players are free to enter and exit, and market incumbents do not decide on the rules they will play under.
2. Unfortunately, the DEPA paper’s stated objective is to design the data “market architecture” that India should follow. In the process, it comes up with a “technology” solution to achieve social and economic goals. This is an unhealthy approach, as it is impossible to anticipate how markets will evolve. The latter depends crucially on the behavioural responses of the market players and that is something impossible to anticipate either by experts or by government officials. Indeed, this approach goes against the very tenet of enabling innovations in the market place. DEPA fails to appreciate that technological efficiency does not guarantee economic efficiency or, does not automatically generate the economic incentives necessary to sustain the technological solution.
3. Pre-determining the technology in how digital commerce should be done, without a proper understanding of the economic forces at play in the market place, is dangerous, to say the least. For example, the DEPA paper states “DEPA’s market architecture will be based on several competing interoperable consent managers.” There are 4 players in the “consent” activity --- the data user, the data fiduciary with whom the data resides, the consent manager and the individual who is giving consent. If the consent manager is a market player among many competitors, the first question that arises is who pays the consent manager or, in business terms, who are its customers. If the customer is the data user, the consent manager’s incentive is aligned to that of the data user and not the individual who DEPA is trying to empower. I will be empowered only if I am in total control, with full information, of all things that impact me

or, if it is handled by an entity whose interests are aligned with mine. If my data user is paying the consent manager, and not I, the latter's interests are no longer aligned with what is good for me. To believe that competition among consent managers will solve this problem is flawed. Competition is for paying customers and if I am not paying, I am not the consent manager's customer.

4. If, instead, it is the individual who pays the consent manager, then how is a particular consent manager competing with another such manager. One would expect this competition to take place in terms of the ease with which the process works or, how user friendly it is. The more user-friendly process will obviously require greater amounts of investment, in technology and human resources, by the content manager. This means that the friendlier service will come at a higher cost. The poor will be forced out of the better service providers towards those who are less costly. That is not a good idea when we are talking about a service that is supposed to empower an individual. We run the risk of creating a "data" divide among the rich and the poor in much the same way as we have done in education and health (where the poor are restricted to accessing the ill-furnished and under-invested government schools and hospitals, while the rich get the best education and healthcare at costs that are unaffordable by the poor).
5. An equally serious concern is whether such a market will function at all. The consent manager is acting as a broker, or an intermediary, between the individual and the user of the individual's data. An intermediary generates value; e.g., a broker reduces the search costs of the buyer and the seller. What is the value that the consent manager generates? The data is with the data fiduciary and the user knows it. There is no economic search cost to that. Admittedly, the data user's cost of obtaining consent from millions of individuals is huge. The only way the consent manager can generate value in the system is if this cost of getting consent is reduced. Should it be a consent manager who does this? Should it be the data fiduciary who collects this consent during the time it collects the data? Or, should it be a regulated intermediary who creates a "consent bank" in much the same way as we allow the bank, where we deposit our money, to lend out to different projects under banking laws and RBI supervision? Whichever it is, it should be decided by the market through innovations and not by government fiat. The government can lay down the rules of what consent entails and how the individual should be protected from any "harm". Unfortunately, the DEPA does not talk about any of these but pre-determines the entry of competing consent managers!
6. These are economic questions and best left to the market for solutions. We have continually seen the consequences of missing the economics and focusing only on the technologically efficient solution, starting from the Second Five

Year Plan, all the way through pre-1991 and, even post 1991 in the more recent experiences with the UPI. Even though it was touted as something that will encourage Indian financial start-ups and break the monopoly of large foreign digital companies, 80 per cent of all UPI transactions today are carried out through Google and Walmart owned PhonePe and has done precious little to kick-start the innovation one was hoping for.

7. The policymaker's aim should be to create an ecosystem that encourages innovation among potential market entrants to come up with a value creating solution. The primary step in developing such an ecosystem lies in setting up guard-rails within which market outcomes will have to remain. This involves listing the various characteristics of an outcome that will be deemed to fall outside the rails or, a list of what cannot be done by the market players. A list of "don'ts" enables many experiments with what can be done; designing what can be done takes away all possibilities of innovative experimentation.
8. It is entirely possible that some of the innovations have unanticipated characteristics. In many, if not most cases, the market will sift through these solutions and gravitate towards those characteristics which can be sustained by the market. In case the market is unable to provide efficient, or otherwise socially desirable outcomes, then the market regulator can step in to tweak the method of play in the market place such that the market is restricted to produce desirable outcomes. DEPA completely bypasses this 2-step process -- - enabling system first, followed by regulation as the market evolves --- to one where the government decides what the market should look like.
9. Finally, there is no reference to the government and its role in "data democracy" and the empowerment of the individual. It focuses only on profit making market players but leaves out all discussions on the role of NGOs and, importantly, the government itself. DEPA goes through many global experiences but the one point it entirely misses is how these governments have spear-headed "data democracy" and "empowered" their citizens when it comes to the data on individuals that the government possesses. It is necessary to take this first step as the government has, and uses, its explicit power to force citizens and economic entities to give up their data, a power that is not enjoyed by any private player! The government could lead by example rather than dictating how market players should innovate.
10. The architecture one should be thinking about is whether different sectors would require a different process, or nature, of consent. Should the rules and regulation that govern consent regarding my personal health data be the same as that of my transaction data of the clothes I buy? Should these be regulated by sectoral consent "regulators" --- not competing consent managers --- or, is

one integrated regulator enough? What should be the objective of the regulator(s) and what is the process by which regulation is carried out?

11. Data markets are evolving, not just in India, but globally. While we agree with the overall objectives of DEPA, we strongly suggest that policymakers do not try to anticipate what the market place will look like. Such crystal ball gazing will scuttle, rather than enable, innovation. A policymaker could follow three steps: (a) experiment with creating value for citizens and commercial entities from the government's own data (b) list unwanted outcomes and lay down rules to eliminate them and (c) conceive a regulatory mechanism to be put in place as the market starts evolving. Pre-empting the process of market evolution should never be its goal.

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