

DATA ASSET FINANCING

New Asset Class
New Opportunity

ROPES & GRAY

WHAT ARE DATA ASSETS?

Data assets are typically intangible assets found in the form of digital information held by companies. They include supplier data, customer data (including anonymised data such as purchase history, average transaction revenue and click-through rate), advertising data and loyalty programmes.

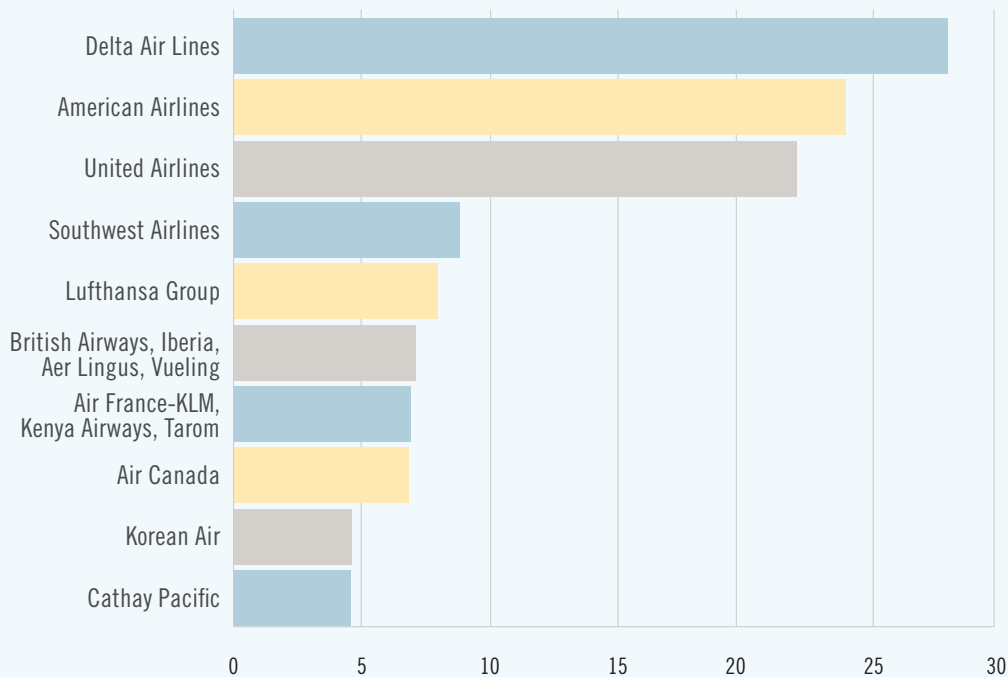
Data assets exist in many different industries and sectors but are often most valuable in businesses operating within the following sectors: airline,

healthcare, retail, telecommunications, technology/ social media, and sports clubs and franchises.

A good example of businesses using their data assets as a form of financing is the US airlines using their customer loyalty programmes and air miles as security for incurring new debt. As you can see below, the dollar value of their data is in the billions (and is, in some cases, larger than the market capitalisation of the airline itself).

A LOT OF AN AIRLINE'S VALUE IS IN ITS FREQUENT FLYER PROGRAMME

Loyalty scheme valuation (€bn) as of 2023



SOURCE: On Point Loyalty Estimates

The global value of data is estimated to be US\$3 trillion, and yet for many companies, the value of their data does not appear on their balance sheet.

HOW CAN DATA BE FINANCED?

For data assets to have value and be financed, several questions need to be asked. Although data asset financing can work in both performing and distressed situations, not all data assets (or the companies that purport to hold them) share the same qualities that enable them to be financed.

DATA RIGHTS

Does the company have the rights from its data sources and under applicable legal regulations to use the data in one or more identified revenue-generating businesses?

REVENUE GENERATION

Can the revenue-generating business associated with the data, now and/or in the future, be identified and segregated from the other revenue generation operations of the company?

ASSET TRANSFERS

Can the company's data be legally and technically moved to a data holding company that (with appropriate support from service providers) can maintain, license or otherwise monetise the data in the identified revenue-generating business associated with the data?

CREDIT STRUCTURING







Can the data holding company act as borrower and enter into and perform enforceable credit agreements with lenders (including structuring the data holding company to be bankruptcy remote, provide appropriate security and even support a securitised investment)?

DATA VALUATION

How valuable are the data assets held by the company? **To answer this question, please see the next page.**

HOW CAN DATA ASSETS BE VALUED?

The quality (and hence value) of data is determined by the following:

Non-Valuable Data	Valuable Data
 Non-exclusive, multiple rights holders	 Exclusive, unique rights to data
 Historic, incomplete, one-dimensional data	 Comprehensive, consistent, accurate and current
 Restrictions on use, liability risk, data regulations (GDPR)	 No restrictions on use, wide permissions to use, opt-in by customers

For valuation of the data, the following needs to be considered:

<p>The value of the data to the company itself, either through the income derived from the data or the impact on the company if that data were not available.</p>	<p>The liquidation value of the data assets outside of an insolvency. Such valuations can be based on multiples of revenue or EBITDA or discounted free cash flow valuations.</p>	<p>The liquidation value of the data assets on an insolvency. Valuations will primarily be driven by the value of the data to an interested third party.</p>	<p>The recovery value improvement through better monetisation of the assets. Such improvements could include leasing the data to multiple parties or enhancing the quality of the data by, for example, acquiring other data sets to complement any existing data.</p>	<p>The extent to which the data can be used, particularly for new purposes or by new entities. For example, national privacy laws may restrict the reuse and transfer of data unless individuals are re-consented or notified of changes in processing.</p>
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WHAT ARE THE DATA REGULATION CONSIDERATIONS?

Data regulatory frameworks should not prevent a data asset financing, but legislation does present some issues which need to be considered. The below paragraphs focus only on the monetisation of personally identifiable information, but there is a broad scope of data beyond this which can be valuable, such as financial, commercial or industrial data—all of which are being increasingly regulated. In addition, whilst the below paragraphs are centered around EU GDPR, there are other data protection frameworks, both in Europe and globally, which would have to be considered in practice. Where the data relates to information from a number of different countries, the law applicable to the data will not just be the law of one country—it will be a web of data laws reflecting the jurisdictions involved in the collection and processing of the data.

Personal Data?

- Where asset financing transactions contain personal data, EU GDPR will apply to its use and re-use.
- The GDPR also potentially restricts the collection, processing and sharing of personal data. This can impact value.
- Certain special categories of personal data are subject to enhanced restrictions.

Lawful Basis

- Companies must have a lawful basis (e.g., individual consent, legitimate interests) to process personal data and sensitive personal data, and must consider on a case-by-case basis whether the lawful bases originally used to collect and process data covers the asset financing.

Transparency

- Companies must tell individuals how it will use, share and otherwise process their personal data.
- If the original notice did not contemplate new uses of data relevant to the financing transaction, the company will need to provide an additional notice.
- Whilst often straightforward, contacting individuals may be challenging, for example, if contact details have changed.

Access, Security and Confidentiality

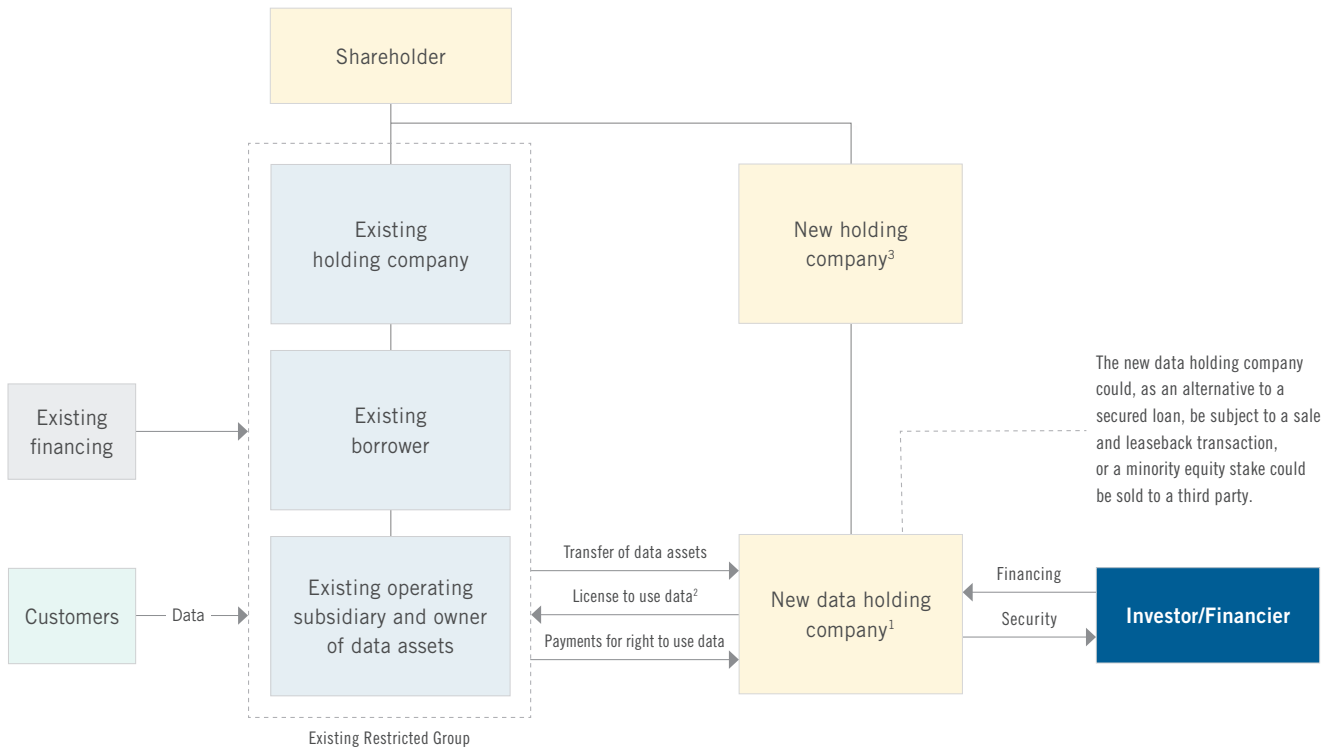
- In addition, the GDPR:
 - grants individuals a range of rights and optionality over the personal data, including to access, correct and delete their data;
 - requires companies to collect, use and share only the minimum amount of personal data needed for their purposes; and
 - requires companies to ensure the security and confidentiality of personal data.

Potential Impact on Valuation

- Each of these requirements may impact a company's ability to value, finance or otherwise monetise personal data.

HOW CAN DATA ASSET FINANCING BE STRUCTURED?

The below chart is a simplified example of a financing structure that could be used to monetise data assets.



With this type of structure, data asset financing could be implemented on existing capital structures where, subject to documentation, there is often sufficient flexibility to move a significant value of assets outside of any existing restricted group and into a bankruptcy remote and separately financed special purpose vehicle.

The financing of such a vehicle can be in the form of a privately placed credit agreement or note, or a securitised product.

¹ The new data holding company could be designated as an Unrestricted Subsidiary if permitted under an existing capital structure.

² The license could include obligations on the existing operating subsidiary (and owner of the data assets) to produce and update the data rights in return for additional ongoing payment.

³ Bankruptcy remoteness of the vehicle to be determined. For some structures (including securitisation structures), an orphan SPV might be required.

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