Published on *The National Law Review* https://natlawreview.com

# The European Parliament publishes a study on financial technology and competition law

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On 9 July 2018, the Economic Affairs Committee of the European Parliament (the “EP”) published a study identifying potential competition law concerns in the financial technology (“FinTech”) sector (the “Study”).

This Study follows the Consumer Financial Services Action Plan launched by the European Commission in March 2017, which aimed to promote greater choice and better access to financial services across the EU, with a particular focus on technology. Also in March 2017, the EP launched a consultation on FinTech, and received over 220 responses.

According to the Study, FinTech could offer significant benefits to consumers, such as cost reduction, improvements in efficiency, greater transparency and increased financial inclusion.

That said, the Study concludes that the complexity, novelty and interconnectedness between FinTech and more traditional financial services makes it challenging, if not almost impossible, to defining either the exact scope of, or turnover generated by, FinTech services.

Despite these difficulties, the Study finds that the increasing number of FinTech services, stakeholders and new business practices could possibly raise competition challenges in the future, even though competition authorities have not yet detected such concerns. Accordingly, the Study could have implications for potential competition investigations as well as for policy.

Because of the specificity of FinTech, the application of the traditional concepts of competition law is likely to raise a number of new challenges, which are addressed in the Study. These include (1) relevant market definitions and assessing market power, (2) possible network effects, (3) concerns raised by access to data, (4) interoperability and standardization and (5) algorithms. The Study also provides (6) some recommendations as to next steps.

## Relevant market definitions in FinTech services

The first challenge the Study identifies is defining relevant markets in the FinTech sector. According to the authors of the Study, a FinTech service is characterised by (i) technology-driven features (ii) which provide a new solution, a new business model or an alternative to what already exists in the financial sector and (iii) which offer a significant added value to at least one stakeholder involved in the value chain. While there is a number of possible categorizations of the various FinTech services, the Study identifies seven types of FinTech services, namely (i) banking (deposits and lending); (ii) payments, transfers and forex; (iii) digital currencies; (iv) wealth and asset management; (v) personal finance; (vi) insurance; and (vii) enabling technologies and infrastructures.

Further, a significant portion of the FinTech services is based on multi-sided online platforms in which users usually generate the value (rather than suppliers). Therefore, it would be inappropriate to apply traditional market definition tools, according to the authors of the Study. For instance, in various merger cases on mobile payments, the European Commission has left the exact product market definitions open. In the UK MCommerce case, the European Commission concluded that while online and offline mobile payments were not likely to be part of the same relevant product market, the situation could evolve in the short to medium term, illustrating the difficulty of defining FinTech markets. Against this background, the authors refer to another Study from the European Commission relating to digital economy that suggests analysing web-based business models and interdependencies between multiple platforms in order to define relevant markets and identify potential anticompetitive behaviour.

## Network effects

Multi-sided platforms are the cornerstone of FinTech, raising potential network effect concerns that the authors believe must be addressed under competition law because FinTech providers are not regulated as financial trading platforms.

The authors of the Study acknowledge that network effects do not always imply anti-competitive behaviour. Rather, this is often driven by whether users choose only one provider (single-home) or several providers (multi-home). User single-homing could exacerbate network effects, if one platform is used by a majority of users, potentially insulating it from competition from smaller providers and creating barriers to entry. Such network effects could be a particular concern in the context of digital currency (or cryptocurrency) markets, which the authors identify as being concentrated.

## Access to data

Data is a key element of FinTech services, given the data-intensive technologies used. The Study notes that data could improve the accuracy of predictions about user preferences, profitability and risk, and could enable FinTech providers to *inter alia* adapt their pricing strategies to different types of users. This could occur in the context of personal finance management services and payment services, the Study notes.

Accordingly, the authors identify competition concerns raised by access to data in FinTech services. Reflecting the Commission’s precedents in the digital sector, the authors take the view that data could be a source of market power for service providers, in particular when a dataset is unique. Such a market power could be a relevant criterion when assessing a merger entailing the combination of datasets. The Study also mentions potential for FinTech service providers that do not have access to the relevant datasets to be foreclosed.

## Interoperability and standardization

The Study notes that interoperability and standardization are of particular importance in a platform-driven environment. The authors advocate for interoperability between FinTech platforms and standardization, since this would provide a competitive playing field with low barriers to entry for potential competitors. However, the Study cautions that standardization might result in oligopolies if providers agree on the features of service and share markets. The Study observes that interoperability concerns could be significant in the digital currencies, since traditional banks may seek to block access on the basis of a lack of interoperability, enabling them to leverage market power in traditional banking services.

## Algorithms

The authors of the Study suggest that the use of algorithms may lead to anticompetitive practice if they facilitate tacit collusion, especially through machine learning.

## Conclusions

The authors recognise that the FinTech sector is generally too fluid, too fragmented and too fast moving to reach firm conclusions on the existence of competition concerns. The authors of the Study suggest that policy efforts be focused on research and monitoring rather than enforcement investigations. They note that the rapidly changing and evolving nature of the sector makes it difficult to identify competition issues that are durable over time. In addition, on the basis of the responses they have received, the Study expresses some doubt that competition law tools, rather than regulatory measures, are appropriate to address the possible concerns raised in the Study. In any event, the authors conclude, the FinTech sectors “offer a fertile ground to re-open the dialogue between regulatory and competition goals, principles and frameworks, which could help rebalance financial regulation policies towards a more pro-competitive stance”.



National Law Review, Volume VIII, Number 211