

Review of Competition in Digital Markets: Call for Evidence Barclays Response

Barclays is a transatlantic consumer and wholesale bank with global reach, offering products and services across personal, corporate and investment banking, credit cards and wealth management, with a strong presence in our two home markets of the UK and the US. With over 325 years of history and expertise in banking, Barclays operates in over 40 countries and employs approximately 85,000 people. Barclays moves, lends, invests and protects money for customers and clients worldwide.

Barclays welcomes the opportunity to engage with the Expert Panel's Review of Competition in Digital Markets. As a major financial institution competing in an increasingly digital market, we are well placed to provide unique insights and perspectives on this subject.

We provide thoughts on a number of themes we believe relevant to this review and hope these are valuable. We would of course be happy to discuss them further if helpful.

1. Driving Competition Through Data Sharing Frameworks

The digitalisation of markets and technological innovation has improved the ability of businesses to collect, store, manage and use consumer data, providing firms with huge potential to create competitive advantage. However, developments in technology and regulation also have the potential to drive greater competition across the economy by enabling consumers to control and share their data in ways never previously possible.

In financial services, the recently introduced Open Banking framework demonstrates how secure data sharing mechanisms can drive competition by allowing consumers to share their bank transaction data with competing third party providers (TPPs). Similarly, the new General Data Protection Regulation (GDPR) has enhanced consumers' control over their data, and introduced new data portability capabilities enabling consumers to transfer their data to competing providers. Access to consumers' data enables competing businesses to design tailored products and services most suited to the consumer's needs. However, for these benefits to be realized, a cultural shift towards data sharing is required, with consumers having confidence in these new frameworks, and trusting that their data will be used appropriately and for their benefit.

Open Banking and GDPR Data Portability create the foundations on which the UK can develop into a customer-centric, 'open data' economy, with greater competition as consumers leverage their data between providers for their own benefit. We explore each of these initiatives, and their impact on competition further below.

Open Banking

The Open Banking framework in the UK, introduced following the Retail Banking Market Investigation by the Competition and Markets Authority, is intended to boost competition in financial services by providing consumers with the ability to securely share their financial data with third party firms, whilst continuing to retain their underlying relationship with their bank.

The framework is driving competition in the market by enabling third party firms to provide the consumer with a variety of 'front line' services, from data aggregation to spending analysis, while the responsibility of securely holding the funds remains with the bank. Such services would not be possible without access to consumers' data.

If consumers choose to utilise this ability, they provide consent for each TPP to access their data, with the data then shared between their bank and the TPP safely and securely through industry developed and purpose built application programming interfaces (API) technology. This API technology underpinning the framework is crucial to ensuring consumer data is shared safely and securely with third parties, and helps build confidence and trust in the system. At no point are consumers required to share their login credentials with third parties.

While still in its infancy, Open Banking is a positive first step in harnessing the power of consumer data sharing to boost competition, and is proof that open data principles can be leveraged within the private sector to improve consumer markets.

Policymakers should consider how a similar framework to that used in Open Banking could be used to boost competition in other sectors.

Data Portability

Under the new GDPR rules, consumers can request that firms provide back to them all data they have provided to the firm in return for a service, for the purpose of 'porting' it to a competing provider. This allows a consumer to switch service providers without losing their data profile developed with their existing provider and the associated benefits that brings. A consumer may be discouraged from switching to a new service provider if, in so doing, they are unable to take their data history with them, and therefore have to begin creating a new data profile from scratch, which may disadvantage them – either in terms of product/service received or customer experience. Data portability has the potential to remove this barrier to changing service provider, therefore encouraging greater competition and enhancing economic outcomes for consumers. Alternatively, data portability could allow consumers to port their data profile to an intermediary to help them identify better services available at competing providers.

Data portability is well placed to drive competition in sectors where consumers provide data over time, whereby they develop an extensive data profile that other providers could use to anticipate their future behaviour, and tailor their service offerings. The insurance sector could provide a good example. Consumers provide a significant amount of data at the outset to receive a bespoke price quote. The need to 'recreate' their data profile with different providers could act as a disincentive to switch rather than renewing with their existing provider. Data portability in the insurance market

could potentially act to help remove this barrier, potentially making it easier and simpler for consumers to switch providers to achieve the best cover at the best price.

More generally, we believe there are criteria that can be used to identify consumer markets in which data portability could best drive competition:

- markets rich in personal data, either through initial on-boarding, or through consumer activity;
- markets where data can be used to provide a tailored, personalised or cheaper service;
- markets in which there are multiple service providers.

For data portability to have the most impact on competition there needs to be meaningful interoperability and agreement on common standards between market participants. The extent to which data is actually 'portable' to other providers - i.e. whether the data provided back to consumers is properly readable, understandable and useable by different providers - is key. Any requirement for the recipient firm to prepare or process the data in anyway upon receipt will create extra friction and will naturally limit the potential of data portability. While GDPR dictates that data should be shared in a commonly used format, if there are significant differences in the data that different firms provide, the benefits available will be limited. Ensuring data is shared in as uniform a way as possible would help ensure the benefits of data portability are fully realised and the positive impact on competition is delivered. It is therefore important that appropriate common standards are created around the relevant data sets, and adhered to by market participants. As the relevant useful data may differ between sectors, standardised data "templates" should be developed and agreed within sectors to ensure 'ported' data can be used without hesitation by different providers.

Furthermore, for data portability to best drive competition, the concept needs to become well established, be fully understood by consumers, and enjoy high levels of public awareness and trust. Any positive impact on competition will be limited if few consumers are aware of their right to data portability and the potential benefits it can deliver. Policymakers should therefore seek to maximise consumers' awareness of their data portability rights. Service providers should also be required to ensure consumers are aware of their rights and fully understand that they can request their personal data (in line with the established data templates) to share with other firms if they choose to.

2. Competition in Digital Financial Services

The digital revolution is impacting almost all sectors across the economy, and is changing the way we live our lives, from how we order a taxi and book a holiday, to the way we bank. Indeed, it has had a profound impact on the financial services sector: from online banking, to mobile apps, the digital revolution has transformed traditional models of banking and service delivery to fundamentally change how consumers manage their finances. Barclays has over 10m digitally active customers, with 6m customers regularly using the Barclays Mobile Banking app, and over the next few years, we expect almost all retail financial services to be conducted digitally, as consumers and clients increasingly choose online digital offerings over traditional channels such as branches.

While there have been a range of new entrants into financial services in the past, in recent years, the nature of competition within traditional financial services markets has been changing, as digitalisation has enabled new entrants to enter the market and challenge existing providers operating traditional banking models. For example:

- New financial services startups (fintechs) are emerging within the sector seeking to use technology, and often new data access frameworks, to innovate and transform certain services being provided to consumers.
- Larger firms, predominantly operating in sectors traditionally far removed from the regulated financial services sector (e.g. bigtech firms), are increasingly starting to engage in financial services activities while being outside of the regulatory perimeter.

While these new service providers have the potential to improve competition and drive innovation in traditional financial services markets, it is important to ensure the operating environment is fair and equal across market participants, regardless of the participant's home sector. However, currently, there are a number of instances where the regulatory operating environment for these new and emerging service providers is not equal to that of existing financial service providers. This creates a landscape with consumers potentially being exposed to greater risks, or existing providers facing competitive disadvantage. We explore these instances of an unequal operating environment below:

i. Consumer Protection

Many of the new service providers described above may not operate within the current regulatory perimeter for financial services and therefore will not be subject to important regulatory provisions intended to ensure sufficient levels of consumer protection. New digital financial products offered by these emerging financial service providers can carry many of the same risks as their traditional, non-digital equivalent products, but lack the protections provided by traditional service providers. There is a significant risk that consumers will find it increasingly difficult to understand the risk profiles of products offered by different providers and the associated protections they may or may not benefit from. For example, pre-paid card providers under the e-Money Regulations are one example where consumers may receive a service that looks and feels very similar to a current account, but consumers may not be aware that these providers offer significantly lower levels of consumer protection, including the fact that "deposits" of e-money are not covered by the deposit guarantee scheme. It is important to ensure that, as new differently regulated service providers enter the market, consumers continue to benefit from the strong consumer protection framework provided by the regulation of traditional existing providers.

ii. Access to Data

New requirements, introduced under the Second Payment Services Directive (PSD2), and the Open Banking framework in the UK, require the largest banks to share customer transaction data (at the customer's request) with TPPs, including potentially the large, data-rich technology (bigtech) firms. These requirements enable TPPs, and therefore bigtech service providers, to combine consumer transaction data with their vast non-transaction data to offer products and services to customers, often in direct competition with traditional, existing service providers.

While PSD2 provides third parties with real-time, secure access to bank transaction data, no similar framework or provisions exist requiring service providers in other sectors to share their consumer data (at the customer's request) with third parties and potentially banks. While consumers can seek to make use of data portability provisions under GDPR to share their non-transaction data with traditional, existing service providers, consumer data only has to be provided within 30 days, and on a one-off, rather than an ongoing, basis.

This asymmetry in data access is a clear example of an unequal operating environment between traditional and emerging service providers. Embracing a safe and secure 'open data' economy in which consumers can easily and securely share their data between sectors would enable more innovation, greater competition and ultimately benefit the end consumer.

iii. Regulatory Perimeter and Arbitrage

Traditional, existing financial services providers are subject to significant, direct and ongoing supervisory oversight by the relevant financial services regulators. While this can be a resource intensive undertaking, it ensures systemically important firms adhere to appropriate rules and frameworks to protect the financial system as a whole, and the individual consumer.

In contrast, non-financial services firms offering products that are close substitutes to traditional financial services for consumers but covered by different regulatory regimes, may not be subject to the same level of oversight, or indeed any oversight at all, if they operate outside the regulatory perimeter – for example, pre-paid card providers under the e-Money Regulations. There is a risk that regulators' rules will fail to apply equally and in a similar manner to both traditional financial service providers and emerging service providers operating outside their remit.

As a result, there is also a risk that the proportion of activity regulators can influence will shrink due to regulatory arbitrage, and the proportion of customers outside of their protection will grow.

To ensure a fair and equal operating environment, there is a need for effective and ongoing supervision of all providers of financial services, regardless of the providers traditional 'home' sector and even to look beyond permissioned, product based regulation toward an outcomes based/impact assessment regulation (looking at the end-to end process and risks for consumers). Ultimately, there is a need for cross-sectoral regulation, based on the principle of 'same activity, same risk, same regulation'.

iv. Prudential Requirements and Financial Stability

Major retail banks, as systemically important financial institutions, are subject to the regulator's framework of strict prudential requirements intended to ensure their resilience to financial shocks and protect the financial stability of the broader economy. These requirements are key to managing risk, protecting consumers and protecting the financial system as a whole. The rules were introduced or enhanced over the last decade, and are designed to cover traditional financial services providers. However, as discussed previously, the market for financial services has been changing with emerging service providers increasingly engaging in financial services activity outside of the regulatory

framework. These new service providers, both fintechs and bigtechs, are not subject to the framework of prudential regulation that traditional, existing service providers are. While these emerging firms may pose less stability risk to the financial system, there is a strong case from a consumer protection perspective, that they should be required to adhere to certain aspects of the framework, for example, deposit guarantee requirements, recovery and resolution/bail-in requirements, and operational resilience requirements.

v. Broader Societal Expectations

There is a significant difference in societal and policymaker social responsibility expectations placed upon traditional, existing service providers and emerging providers. Given their long history in the market, and their traditional role in society, established providers are subject to high expectations to support all areas of society, even where there may be limited benefit to the firm. For example, established retail banks are required to support financial inclusion across society in the provision of basic bank accounts. New emerging providers are currently insulated from such expectations to support financial exclusion, and instead are focussing their efforts on growth opportunities. As financial services are increasingly provided digitally, Government should consider how social responsibilities for the banking sector should be shared within the sector, regardless of business model or primary home sector. Ultimately, new emerging providers offering financial services should be required to serve the wider societal roles and expectations placed on established providers.

Policy Recommendations

- **Regulatory Perimeter and Arbitrage** – In considering competition in digital financial markets, it is important that policymakers assess and understand the changing market dynamics, the impact of emerging market participants and the provision of products that are close substitutes to traditional financial products.
- **Regulation must be technology and business model neutral** - new and emerging entrants offering financial services akin to traditional banks should be subject to the same regulatory rules and requirements as traditional banks, regardless of their primary business or home sector. Ultimately, policymakers should ensure equality of regulation, supervision, market access and obligations arising from participation in the financial services market, i.e. ‘same activity, same risk, same regulation’.
- **Introduction of data sharing frameworks in data-rich sectors** - policymakers should consider whether competition in digital markets can be improved for the benefit of consumers through the introduction of data sharing frameworks in data-rich sectors, for example the technology sector.

3. Powers and Tools Available to Competition Authorities

Competition authorities in the UK already have significant powers and tools at their disposal to deal with issues in the digital economy, particularly compared with other jurisdictions. For example:

- **Mergers** - the CMA has wide ranging discretion to scrutinise mergers and acquisitions in the digital markets. The presence of a share of supply test in the UK merger control jurisdictional thresholds means that the acquisition by large firms of small digital firms with low turnover and relatively small market shares may be subject to review by the CMA. For example, the CMA has recently been able to review Blackbaud's acquisition of JustGiving, and JustEat's acquisition of HungryHouse, by virtue of the share of supply test, despite the turnover of these targets being well below the UK CMA's turnover thresholds of £70m.¹ In addition, the CMA is currently reviewing the completed acquisition of iZettle by PayPal.²
- **Anti-trust enforcement** - the CMA and concurrent regulators have a broad range of powers to investigate and remediate suspected anti-competitive behaviour. The CMA has already used these powers to investigate companies in the digital sector. For example, the CMA is currently investigating the use of most favoured nation clauses in contracts relating to the online sale of home insurance products.³ The CMA also issued a decision in 2016 fining an online seller of posters and frames for agreeing with another online seller not to undercut each other's prices on the Amazon marketplace (implemented through automated repricing software).⁴
- **Market studies and investigations** - The CMA (and concurrent regulators, such as the FCA) can also conduct wide ranging market studies, and market investigations in the case of the CMA, if they consider that competition is not working well in a particular market. For example, the CMA investigated the supply of digital comparison tool services, publishing its final report in September 2017.
- **Advocacy** - In addition to these formal investigatory tools, the UK competition authorities regularly engage in advocacy work, including informally gathering information and steering the debate in important areas of interest which concern the digital economy. For example, the CMA has held stakeholder roundtables on consumer vulnerability in digital markets⁵ and has recently published a study into pricing algorithms and whether they could be used to support illegal practices.⁶ Online and digital markets have also been designated a theme of

¹ JustGiving had UK turnover of £25m and HungryHouse had UK turnover of £29m. See:

<https://www.gov.uk/cma-cases/blackbaud-giving-merger-inquiry>; <https://www.gov.uk/cma-cases/just-eat-hungryhouse-merger-inquiry>.

² <https://www.gov.uk/cma-cases/paypal-holdings-inc-izettle-ab-merger-inquiry>

³ <https://www.gov.uk/cma-cases/price-comparison-website-use-of-most-favoured-nation-clauses>

⁴ <https://www.gov.uk/government/news/cma-issues-final-decision-in-online-cartel-case>

⁵ <https://www.gov.uk/government/publications/vulnerable-consumers/consumer-vulnerability-in-digital-markets-summary-of-stakeholder-roundtable>. Barclays attended a session on 26 June and has more recently engaged the CMA in relation to vulnerability work it has conducted.

⁶ The CMA's Economic working paper on the use of algorithms to facilitate collusion and personalised pricing as published on 8 October, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746353/Algorithms_econ_report.pdf.

particular strategic importance in the CMA 2018/2019 business plan.⁷The CMA has also established a new Data, Technology and Analytics (DaTA) Unit, whose purpose is to enhance the CMA's understanding of the digital economy and make sure its practices, interventions and capabilities keep pace with the evolution of business models and practices.⁸

It is not clear that there is a competition law enforcement gap in the UK as far as digital markets are concerned. However, to the extent that the Government proposes to expand the tools and powers available to UK competition authorities to deal specifically with digital markets, Barclays would urge that careful consideration should be given to any additional rules, in order to ensure that they do not give rise to unintended consequences for digital or other sectors.

One relevant factor which requires special consideration in digital markets is the use and treatment of data, as data often becomes central to the services being offered in digital markets. There is therefore a need to ensure that competition authorities and regulators work together with consumers and industry in determining the correct treatment of data, whilst respecting that many firms have collected data by legitimate means as a result of investments made by them, with the data used by firms to improve their offers to customers. By getting the parameters for the use of such data right, Barclays considers that competition can flourish to benefit the consumer in a secure manner.

Having commented on the broad scope of existing competition law powers in the UK above, we note that where Government and policy makers have concerns about issues in the digital economy, they should also consider whether these could be more effectively addressed through regulation rather than through competition law enforcement, in order to speed up benefits to consumers. This is particularly in light of the typical timescales from initiation of competition cases to the implementation of remedies, and where complex issues are involved. For example, the benefits of measures as innovative and advantageous for customers as the UK's Open Banking regime could, in future, be realised in a more timely and efficient manner if implemented through regulation, rather than largely through a competition authority's findings and remedies (in that case, the CMA's Retail Banking Market Investigation Order 2017 led to the launch of Open Banking in 2018, following the CMA's 2014-2016 market investigation). Such regulation should still, of course, be subject to detailed comment and consultation with the relevant stakeholders, in order to enhance the effectiveness of any new regulation and to mitigate the risk of any unintended effects on, for example, innovation.

Care should also be taken to ensure that the application of both competition law and regulation is well considered and consistent. For example, authorities should be careful that their level of regulatory oversight does not give rise to an uneven playing field. Authorities should in particular be mindful of the effects on consumers of their actions, for example, when some players are subject to less regulatory oversight than others by virtue of having a different business model. As noted in

⁷ See 1.8 on page 4, and from 1.16 on page 6 of the business plan, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/704594/Annual_Plan-201819.pdf.

⁸ See 1.21 on page 7 of the business plan.

section 1, when assessing the retail banking sector, it is important to consider not only fintechs alongside established and challenger banks, but also to consider other categories of new entrants.