Oscar Borgogno[1] and Aurelien Portuese[2]

The L&E of Antitrust Market Investigations: A Framework for Addressing Data Bottlenecks in Retail Banking

Long Abstract

This article presents a comprehensive analysis of the law and economics framework governing antitrust interventions in developing countries, focusing on the critical role of agency expertise in conducting effective market investigations involving retail financial markets.

As financial technology (FinTech) continues to innovate rapidly, reducing transaction costs and enabling new entrants to compete in financial markets, the landscape of retail banking is being fundamentally transformed. Consumers now have easier access to a broad array of data-enabled financial products and services, while new firms leverage technological advancements to offer innovative, cost-effective solutions. FinTech providers are pioneering services across various domains, including domestic and cross-border payments, customer relationship management, retail and commercial banking, and wholesale financial markets.

However, these innovations bring to the forefront a significant challenge: access to transaction data, which is crucial for fostering competition and enabling new business models. The reuse of account and transaction data forms the backbone of many FinTech services, making the type and structure of data collected by financial institutions particularly valuable. Customer account data, in this context, serves as a vital resource for developing new consumer-oriented services. Yet, traditional banks often act as gatekeepers, restricting access to this data, which is essential for many FinTech firms to thrive. This reluctance to share data creates a "data bottleneck", hindering the development of a more competitive and dynamic market environment.

In retail banking, the ability of FinTech firms to offer value-added services, such as price comparison tools and personalized financial advice, hinges on seamless access to up-to-date consumer data. Historically, access to such data without explicit consent from banks involved methods like screen-scraping, where consumers shared their banking credentials with third-party providers. While this allowed some level of data access, it also exposed consumers to substantial risks of fraud and data breaches, leading to regulatory pushback and the eventual prohibition of these practices by the European Banking Authority (EBA).

The experience of the United Kingdom provides a valuable example in addressing these challenges through antitrust intervention. Recognizing that incumbents were unlikely to voluntarily share customer data with potential competitors, the UK Competition and Markets Authority (CMA) in 2016 determined that a market-driven solution to enhance data sharing was unlikely to arise. Consequently, the CMA adopted the XS2A rule from the European Union's Payment Services Directive 2 (PSD2) to establish a more equitable data-sharing framework. This regulatory approach aimed to empower consumers by allowing them to authorize third-party access to their financial

[1] Banca d'Italia; George Washington University – Competition and Innovation Lab Fellow; https://orcid.org/0000-0003-0721-4442; oscar.borgogno@bancaditalia.it Any opinions expressed in this paper are personal and are not to be attributed to the Bank of Italy.
[2] George Washington University – Competition and Innovation Lab, Research Professor.

data, thereby enhancing their ability to make informed choices among competing products and services.

The economic rationale behind the CMA's intervention was to strengthen the bargaining position of retail banking customers, enabling them to benefit from a competitive market environment. By facilitating access to consumer data for authorized third-party providers, the Open Banking initiative helps consumers overcome informational asymmetries and navigate the market more effectively. This approach not only promotes consumer welfare but also drives greater competition among financial service providers, reducing the traditional power imbalances between banks and their customers.

Drawing lessons from the UK's Open Banking remedy, this article explores how similar market investigation frameworks can be implemented in developing countries, where regulatory expertise and market conditions may differ significantly. We argue that the effectiveness of such interventions largely depends on the level of expertise within the antitrust agency teams conducting these investigations. By offering an analytical economic framework tailored to the unique challenges of developing markets, we provide guidance for antitrust agencies seeking to address structural competition weaknesses, such as data bottlenecks in retail banking.

To effectively address these challenges, we propose an economic incentive framework that aligns the interests of the various stakeholders involved in the data-sharing ecosystem: antitrust authorities, consumers, financial firms, and data intermediaries. Antitrust authorities must be incentivized to build and maintain high levels of expertise and independence to conduct thorough market investigations. This can be achieved by linking agency funding and resources to measurable outcomes such as market openness and consumer welfare improvements. Consumers, on the other hand, should be incentivized to actively manage their data rights, in particular through the ability to benefit from the sharing of their own data.

Financial firms, including incumbent banks and new FinTech entrants, need economic incentives to participate in a fair data-sharing framework. These incentives could include a reward for providing safe data access or regulatory reliefs for those who comply with open data standards and actively contribute to market transparency. Conversely, penalties could be imposed on entities that engage in anti-competitive behaviours by denying data access to competitors. Data intermediaries, which play a crucial role in facilitating secure and efficient data transfers, should be encouraged to adopt best practices in data management and security, potentially through certification programs and public endorsements. By aligning the incentives of all these agents, a more dynamic and competitive financial market can emerge, benefiting consumers and fostering innovation in developing economies.

In conclusion, the rapid evolution of FinTech presents both opportunities and challenges for developing markets. While technological advancements can lower transaction costs and enhance market entry for new players, the potential benefits of FinTech depend on the establishment of fair data access mechanisms. This article contributes to the ongoing discourse on law and economics by highlighting the importance of regulatory expertise and economic incentives in designing effective market interventions that promote competition, innovation, and consumer empowerment in developing economies. By building on the experience of the UK Open Banking remedy, we aim to provide a roadmap for fostering inclusive and competitive financial ecosystems in developing countries that have not yet introduced market investigation remedies into their antitrust toolboxes.

Keywords: Internet of Things; ecosystems; platforms; data sharing; interoperability; standards; API; Open Banking; antitrust; regulation.