

**International
Comparative
Legal Guides**



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Slaughter and May

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Big Tech and Financial Services – Competition, Co-operation or Convergence?

Slaughter and May



Charles Randell CBE



David Shone

Will We Soon See Much Greater Convergence Between Big Tech and Traditional Financial Services?

There are a number of factors driving greater convergence...

There are a number of potential technological accelerators of convergence, including:

- increased adoption of digital channels by consumers;
- opportunities to monetise increasing amounts of customer data;
- progress in deploying disruptive technologies, including the large language models driving Generative AI; and
- new generations of processors that can further increase the potential of these disruptive technologies.¹

From the perspective of traditional financial services providers, there are:

- continuing pressures on margins in a number of sectors – with technology offering the prospect of reducing costs;
- opportunities to personalise and market products more effectively; and
- a need to respond to FinTech offerings, including Open Banking applications.

Finally, amongst financial services and digital regulators there are:

- growing expectations that all available data will be used by firms to produce good outcomes for consumers;
- expectations that customer support functions will be more responsive than at present, which technology may enable; and
- opportunities to use technology within the regulator, including RegTech/SupTech.

...but large technology businesses remain cautious...

Notwithstanding those drivers, big tech's entry into the financial sector remains relatively limited, and is generally restricted to capital-lite and regulation-lite products and strategies. These include payments, credit and insurance broking and targeted partnerships with financial sector businesses in which the technology business participant stays outside the regulatory perimeter.

...and the financial sector is constrained.

There are several factors that may constrain investment and innovation by financial sector businesses.

First, a number of businesses, including large incumbent financial sector firms, have **significant technology debt**, which they are having to address without the financial resources and greater ability to attract talent enjoyed by large technology businesses.

Secondly, where firms have an existing profitable business, they may have **little incentive to change** that business since change may increase costs of the existing product in the short term or cannibalise it in the longer term by bringing forward a lower margin offering.

Thirdly, the potential of the financial sector to use data to provide good outcomes for customers in competition with large technology businesses may be constrained by **data asymmetry**. Open Banking gives technology businesses access to banks' customer data to market services, but banks and other financial sector firms currently have no reciprocal right to access customer data from technology businesses. This is a question that the Financial Conduct Authority (FCA) is currently examining; see their Call for Input on this issue.² It is also the subject of recent legislation, including the Digital Markets, Competition and Consumers Act 2024, and the proposed Data Protection and Digital Information Bill, which did not survive the 2024 general election but may yet be reintroduced by a new government.³

Finally, there is **anxiety about the regulatory approach** to the use of some of these technologies. Although UK financial institutions have long been using machine learning and AI technologies in a range of processes such as pricing algorithms and customer service chatbots, there is real concern about the risk of regulatory enforcement action if more advanced technologies are found to produce poor outcomes for a small number of customers – even if they are predominantly beneficial for others. Against the background of the Government's approach to let AI develop without more prescriptive regulation at this stage (contrasting with the EU's AI Act), there are arguments for and against greater regulatory prescription – or at least detailed guidance – on the use of AI, with a range of views; some suggestions that the industry itself could do more to develop a code of conduct.

Nevertheless, the potential is large...

With the right technologies and with progress on Open Banking towards Open Finance, we could see very significant consumer benefits arising from a fundamental change in the relative bargaining power of suppliers and customers. There is a possible nirvana in which customer-oriented applications emerge to harness consumers' collective bargaining power and find the best deals across all financial services, with fewer agency problems and less need for customer engagement than in the existing price comparison website model.

...but progress may require new structures and regulations.

Against that background, there is a wide-ranging ongoing debate in the market about Open Banking, with frustration about the relatively slow progress since the Competition and Markets Authority (CMA) originally proposed this remedy, with a debate about the relative responsibilities of regulators and industry to provide the necessary momentum.

In order to maximise the benefits of Open Banking, it has been suggested that an Open Banking entity should be established with appropriate funding and governance. However, many of the benefits of Open Banking are public goods that are, therefore, unlikely to be produced without appropriate regulatory powers, and there are currently inadequate powers to require Open Banking to be funded. Delay in setting up a sustainable structure for Open Banking holds back Open Finance as well.

How Should Regulators Balance the Benefits and Risks of Convergence?

Greater use of advanced technologies in finance may bring benefits to some consumers but risks to others...

The benefits of technology may not be evenly distributed across consumers.

For example, cashless payment is convenient to many consumers, but others may struggle to adapt to a world without cash. Similarly, increasingly personalised product design and pricing in areas like insurance may bring advantages to some but result in others paying more or being excluded.

...including risks to consumer trust.

The Citizens Advice complaint about an alleged ethnicity premium in motor insurance is a sign of **the lack of transparency of pricing algorithms** (the “black box problem”), and whether – as more and more personal data might be used in the future to determine individuals’ pricing or to decide whether they were offered products at all – there should be a requirement for firms to be more transparent with consumers about the factors that determine their access and pricing. Some of these trends might call into question the very social purpose of insurance and some other products.⁴

The FCA’s secondary growth and competitiveness duty may affect the balance...

The FCA’s new secondary objective of economic growth and competitiveness may affect the regulator’s approach to balancing the benefits and risks of technological innovation and market entry by large technology businesses.

...as may the approach of regulators in other jurisdictions.

Finally, changes in the approach of overseas regulators towards competition and data protection concerns relating to big technology businesses may influence the approach of UK regulators, given the perceived impact on international competitiveness of an approach that is out of line with others – as well as the difficulty of enforcement against businesses operating global product lines.

What Does Convergence Between Technology and Finance Mean for Regulatory Architecture, Skills and Toolkits?

There are numerous regulators in this space...

In addition to the FCA, the Bank of England (in particular through the Prudential Regulation Authority), the Payment Systems Regulator, the Pensions Regulator, the Office of the Information Commissioner, Ofcom and the CMA (including its new Digital Markets Unit) all play important roles in determining the speed and shape of technology adoption and convergence.

...with some formal co-operation structures...

The creation of the Digital Regulators Cooperation Forum is an interesting development. Some powers to regulate technology firms, such as powers to impose conduct regulation on businesses with Strategic Market Status, would sit centrally with the CMA, although the impact would affect FCA objectives and those of other regulators. In such a case, would regulatory co-operation produce the focus and speed required?

...but some concerns about effectiveness, consistency and clarity of regulation.

There can be significant barriers to exchange of information between regulators, with restrictive gateway definitions. Consistency and clarity of regulation, such as with data protection regulation, is essential. There are uncertainties about how and when firms can use customer data and there is a perception that the expectations of the Information Commissioner’s Office and the FCA can conflict.

Regulators may need to say more about the limitations of their perimeter.

The FCA publishes an annual Perimeter Report drawing attention to areas at the edge of or beyond the regulatory perimeter that may need greater intervention. The FCA may need to do more to highlight the limited extent of its regulation of large technology businesses and the dependencies and connections with other regulated sectors.

Regulators may also need to define and equip the “supervisor of the future”.

The current model, where innovation is often dealt with by specialist functions such as sandboxes, has been successful, but as complex technologies increasingly become a feature of the financial mainstream, it is important to anticipate the skills, data and processes that will need to be deployed in day-to-day supervision and enforcement functions. This has significant implications for FCA hiring and training practices as well as FCA technology projects.

Conclusion

There are extraordinary opportunities that advances in technology may bring to both financial services and regulatory effectiveness, but also challenges that need to be overcome in order to maintain consumer trust, safety and competition while supporting innovation.

Endnotes

1. See, e.g. Doerr, S, Jon Frost, Leonardo Gambacorte and Vatsala Shreeti, “Big techs in finance”, BIS Working Paper no. WP1129, October 2023. Available at: <https://www.bis.org/publ/work1129.pdf>; “The potential competition impacts of Big Tech entry and expansion in retail financial services”, Financial Conduct Authority Feedback Statement FS23/4, July 2023. Available at: <https://www.fca.org.uk/publication/feedback/fs23-4.pdf>.
2. “Potential competition impacts from the data asymmetry between Big Tech firms and firms in financial services”, Financial Conduct Authority, Call for Input, November 2023. Available at: <https://www.fca.org.uk/publication/call-for-input/potential-competition-impacts-data-asymmetry-between-big-tech-firms-and-firms-financial-services.pdf>.
3. Part 3 of this Bill will support the extension of an open data economy, where customers can require businesses that hold their data to provide it to others. See Slaughter and May briefings here <https://thelens.slaughterandmay.com/post/102htf9/introducing-the-uks-data-protection-and-digital-information-bill> and here <https://thelens.slaughterandmay.com/post/102ia1g/uk-privacy-reform-progresses-data-protection-and-digital-information-bill-in-p>.
4. See “AI and Personal Insurance”, Centre for Data Ethics and Innovation, 12 September 2019. Available at: <https://www.gov.uk/government/publications/cdei-publishes-its-first-series-of-three-snapshot-papers-ethical-issues-in-ai/snapshot-paper-ai-and-personal-insurance>.



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