

David G.W. Birch Member of the Payments & FinTech Lawyer Editorial Board
mail@dgbirch.com

Open Banking: A remedy against monopolies in data?

Ana Botin, the Executive Chairman of Santander, expressed her view that Europe's payments rules are unfair because the requirements that force banks to provide third party access to customer data are not similarly imposed on the large technology companies that will benefit from Open Banking in an article published by the *Financial Times* on 17 April 2018. Dave Birch, Member of the *Payments & FinTech Lawyer* Editorial Board, shares Botin's concerns, and in this opinion piece shares his thoughts on the potential for the Open Banking model to be used as a remedy against monopolies in data.

The general public may not be aware of it yet, but there is a fundamental and significant change in the world of banking underway. The sector is, literally, never going to be the same again because of this change: the move to 'Open Banking.' In computer terms, it's rather as if the UK banks are being obliged by regulators to install sockets in customer accounts that anyone can plug in to access those accounts (with the customers' permission, of course). Who knows what new businesses will be created by companies using these standard plugs to access your bank account? Who knows what new services will be delivered through the wires? It is an earthquake in the finance world and no one can be completely sure as to what the competitive landscape will look like when the shocks have settled.

If this sounds like a big deal, it is. And the push came not from the banks (except to the extent they thought it would avert

tougher remedies like being broken up), but from regulators who wanted to see more competition in banking. The regulators' frustration at both the national and European level has turned the UK banking industry into a laboratory, where a 'perfect storm' of the combination of the Competition and Markets Authority ('CMA') 'remedies,' the revised Payment Services Directive ('PSD2') coming from Brussels and the Treasury's push for competition in retail banking mean that new business models, never mind new products, will be developed and explored.

The perfect storm began in January with the implementation of the CMA remedies. At the heart of these is the requirement for banks to provide Open Banking and implement application programming interfaces ('APIs') for third parties to access bank accounts. Just as apps on your smartphone can use map data through the Google Maps API or post to

your Twitter stream using the Twitter API, apps will be able to pull your statement out through a HSBC API and tell my bank to send money through a Barclays API.

Across the Channel, the European Commission's PSD2 provisions for access to payment accounts include a similar set of requirements for what we in the business call 'XS2A' (weird shorthand for 'access to accounts'), the proposals which force banks to open up to permit the initiation of credit transfer ('push payments') and account information queries. While PSD2 does not mandate APIs, an Open Banking API is effectively the only way to implement the PSD2 provisions now that 'screen scraping' has been banned.

Thus there is a genuinely new financial services environment coming into existence. But who will take advantage of it? The incumbent banks or FinTech startups? Financial services

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innovators or entrepreneurs who want to harness the banking infrastructure for social good? Customers taking control or challenger banks able to deliver better services to them?

I don't think it's any of these. As I have often said, I think the regulators have made a miscalculation. In brief, forcing the banks to open up their treasure trove of customer transaction data to third parties is not going to mean a thousand FinTech flowers blooming, quite the contrary. It is going to tip the balance of power to a new, different and potentially more problematic oligarchy.

What is going wrong?

Back in 2016, I wrote¹ about regulators demanding that banks open up their APIs that "if this argument applies to banks, that they are required to open up their APIs because they have a special responsibility to society, then why shouldn't this principle also apply to Facebook?" My point was, I thought, rather obvious. If regulators think that banks hoarding of customers' data gives them an unfair advantage in the marketplace and undermines competition then why isn't it true for other organisations in general and the 'internet giants' in particular? As the Economist Diane Coyle has pointed out, economies and scale and insurmountable network effects mean that it will be very difficult for FinTech startups to scale up when they are competing with these giants.

Now, of course, when I write about this sort of thing no one pays any attention because I'm just some tech guy. But when Ana Botin, the Executive Chairman of Santander starts talking about it, I think the regulators, lawmakers and policy wonks are going to have to sit up and pay notice. In the *Financial Times* on 17 April 2018, Ana remarked on precisely that asymmetry in the new regulatory landscape. In short, the banks are required to open up their customer data to the internet giants but there is

no reciprocal requirement for those giants to open up their customer data to the banks. Amazon gets Barclays data, Barclays doesn't get Amazon data. Therefore, as Ana (and many others) suspect, the banks will be pushed into being heavily regulated, low margin pipes while the power and control of the giants will become entrenched.

Karina McTeague, Director of Retail Banking Supervision at the Financial Conduct Authority ('FCA'), recently said that while banks must be aware of their legal obligations in respect of data protection and consumer protection, and help customers protect themselves from the risks of fraud, they must present balanced information to customers in relation to regulated third party services available under the PSD2 regime. She said that banks "should allow their customers to make use of [API services] in relation to those payment accounts without penalty, including allowing their customers to share their credentials." In other words, banks have to give the keys of the kingdom to anyone who wants them. If Facebook can persuade me that it's in my interest to give them access to my personal data, I can press the button to give it to them and that's that.

On the other hand, if a financial services provider can persuade me to give them access to my Facebook data, Facebook can block them whether I press the button or not. This is not, incidentally, a theoretical ability. Remember the case of the insurer Admiral? They created an interesting scheme to allow people with limited credit histories access to insurance products using social media data. A social media profile is quite hard to fake if you know what you're looking for - the strength of links to other real profiles and the depth of data mean that really faking a profile is really hard to do. Admiral's idea was that if people were willing to grant them access to this data they could perform a form of

social identification and verification with an element of personality checking to identify people with traits conducive to good driving. You might think this invasive but if you're a careful 18 year old then getting your insurance bill reduced by thousands of pounds might be worth giving up access for, at least temporarily. Long story short, the trial ended when Facebook blocked Admiral² from getting access to the data.

What is to be done?

Earlier this year, I had the honour of chairing Scott Galloway at the KnowID conference in Washington. Scott is the author of 'The Four,' a book about the power of internet giants (specifically Google, Apple, Facebook and Amazon). In his speech, and his book, he sets out a convincing case for intervention. Just as the government had to step in with antitrust acts of the early 20th century in recognition of the fascist nature of monopoly capitalism, so Scott argues that they will have to step in a century on and, again, not to subvert capitalism but to save it. His argument centres on the breaking up of the internet giants, but I wonder if the issue of APIs might provide an alternative and eminently practical way forward?

Ana suggested that organisations holding the accounts of more than (for example) 50,000 people ought to be subject to some regulation to give API access to the consumer data and it seems to me that this might kill two birds with one stone: it would make it easier for competitors to the internet giants to emerge and might lead to a creative rebalancing of the relationship between the financial sector and the internet sector. Instead of turning back to the 20th century antitrust remedies against monopolies in railroads and steel and telecoms, perhaps Open Banking's real impact will be as the model for the 21st century antitrust remedy against monopolies in data, relationships and reputation.