Santander

[redacted]

Ms. Margarethe Vestager
Commissioner for Competition, European Commission
margrethe-vestager-contact@ec.europa.eu

Madrid, July 15, 2019

Dear Margarethe.

I have been following with attention your outstanding work defending European values since we met last November 21. I am very pleased to see your appointment as Vice President-designate for the new European Commission. I am sure that you will continue to be as strong a pillar for the next term as you have been in the current one.

As the debate intensifies over rules of the game for payment services in a digital age, I wanted to share with you some of Santander's concerns and observations. **As a guiding principle, we believe that rules for the digital economy should lay the foundations now for fair competition that supports a diverse economy and avoids excessive concentration of economic power. This is critical if we are to foster a prosperous and inclusive society.**

This means:

- **Any payments platform that becomes a systemically important financial markets infrastructure should be regulated and supervised as such to safeguard financial and economic stability.** Given the propensity of platforms to dominate in their respective spaces, we risk creating a too-big-too-fail payments provider without too-big-too-fail regulations and backstops.

- **All payments providers should be subject to the same standard of accountability and responsibility in anti-money laundering, security, privacy and consumer protection.** We all need to protect users' data and help ensure they can make informed choices, while combatting financial crime.

- **Banks' payments units that do not take deposits should be treated like those of non-bank payments providers.** Authorities should adopt activity-based rules and not impose an additional layer of prudential regulation simply because activities are carried out within a bank or bank-affiliated group.

Santander

- **Just as PSD2 opens banks' transactional data to third parties, users should be empowered to share their transactional data with companies across different sectors to assure fair competition, increase choices for users and opportunities for businesses.** Combining payments and non-payments raw data such as online searches, purchases or travel, banks can provide better, safer, more targeted products and services, including more lending to small and medium enterprises, enhancing competition and consumer choice.

- Digital infrastructures with critical mass of users (for example, app stores) **should provide access to third-party providers under fair, transparent and non-subjective conditions.**

To promote fair competition, all payments providers should be subject to comparable levels of supervision and regulation. Banks payments' activities currently face an additional layer of oversight because they are part of a deposit-taking institution. Significant differences in many areas, from customer protection to prudential requirements, make it very difficult for banks to innovate at the speed and efficiency that the digital era requires, impairing their ability to compete and to serve customers, including by promoting broader access to financial services.

[redacted] a side-by-side comparison between a bank-based and a non-bank based peer-to-peer payments service [redacted]

Banco Santander offers competitive, safe and efficient payment systems wherever we operate. [redacted] We are a founding member of the Fnality International (previously known as Utility Settlement Coin, or USC) consortium of banks, which is developing a blockchain solution for instant, cost-efficient clearing and settlement, initially supporting the world´s major currencies, in collaboration with central banks and in accordance with regulations. Fnality offers the benefits of a digital payments infrastructure without creating the systemic risks.

We believe all these initiatives will ultimately help people and businesses prosper.

I would be delighted to discuss this further with you or your team or provide additional input you may require.

Best Regards

Banco Santander, S.A. [redacted] | www.santander.com
Ciudad Grupo Santander | Av. Cantabria, s/n | Edif. Pereda | Phone + [redacted]

ANNEX 1
SIDE-BY-SIDE COMPARISON OF BANK-PAY (A BANK-OWNED PAYMENT SERVICE) AND TECH-PAY (A NON-BANK PAYMENT SERVICE)

1. CUSTOMER PROTECTION

From a customer's point of view, [redacted] This disparate and asymmetrical treatment of such a sensitive matter is based on [redacted]

Dimensions	BANK-PAY	TECH-PAY
Customer protection	• [redacted] subject to banking consolidated groups' capital requirements [redacted] supervised currencies • [redacted] deposit guaranteed schemes • Advertising and disclosure requirements: [redacted]	• [redacted] capital requirements [redacted] (Libra) • [redacted] deposit-related regulations, [redacted] • Information and advertising on financial products/ services [redacted]
Customer experience	• Providing solutions to customers requires [redacted], customer and investor protection and responsible banking [redacted] onboarding procedures given	• [redacted] product launch, [redacted] cross-selling services, [redacted] onboarding [redacted]

	[redacted].	[redacted]
Data protection	• [redacted] <u>oversight:</u> • By data protection authority • [redacted]	• [redacted] <u>scrutiny of data protection authority,</u> [redacted]

What should change
• Financial consumer protection <u>rules should protect users irrespective of who provides the service</u>. Banking regulators should ensure that customers have clear and fair information when deciding whether to operate with a particular entity • Customers should <u>be informed when they will not have the protections associated with deposits or bank accounts</u> (especially in the case of e-money, cryptocurrencies or any other kind of "digital assets" deposits or accounts). Financial system regulators will need to enforce this. Information requirements under the EU Commission proposal for a Crowdfunding regulation could be a precedent. • Tech data-rich players should have a role in KYC procedures that shows at least the <u>same level of commitment and accountability as that of banks</u>

2. ABILITY TO COMPETE AND INNOVATE IN THE BENEFIT OF A THRIVING PAYMENTS ECOSYSTEM

Urgent review of prudential perimeter

From market diversity point of view, [redacted]

[redacted] BIS report on *Bigtech and the changing structure of financial intermediation* concludes that *"while Bigtechs could represent a source of increased competition for incumbent financial institutions, in some scenarios, their participation may not result in a more competitive market over the longer term. A greater market share of Bigtech may be associated with unchanged or higher concentration, along with a change in composition away from traditional players. A striking example is the mobile payments market in China, where two firms account for 94% of the overall market."*

Dimensions	Bank-pay	Tech-pay
Regulatory oversight and prudential regulation	• <u>Irrespective of the license under which</u> it operates, [redacted]	[redacted] license. [redacted]
Time to market	• [redacted] timeline driven by: ○ [redacted]	• [redacted] sandbox [redacted] [redacted] regulation regarding vendor management and ERM • Rules affecting product terms and conditions [redacted]
Cost	• [redacted] • Supervisory expectations [redacted] according to McKinsey, [redacted] • <u>Investment in software assets are</u> [redacted]	• [redacted] AML and FX irregularities [redacted] (Source: McKinsey report cited above) • [redacted] <u>deductions from capital</u>

[2] McKinsey: A vision for the future of cross-border payments https://www.mckinsey.com/~/media/McKinsey/Industries/Financial%20Services/Our%20Insights/A%20vision%20for%20the%20future%20of%20cross%20border%20payments%20final/A-vision-for-the-future-of-cross-border-payments-web-final.ashx

AML / Financial Crime	• [redacted] oversight and requirements on clients and related third parties [redacted] • KYC, AML processes [redacted]	• [redacted] banks' KYC/AML capabilities and compliance programs

What should change: When banks have independent subsidiaries that perform non- deposit/refundable funds'-taking activity, these should be left outside the prudential consolidation perimeter, so that they are not affected by regulation meant solely to protect bank deposits. This would enable banks to compete and innovate in payments, fully contribute to digital payments and the financial inclusion it brings with it, as well as enable the substantial resources of traditional banking groups to provide better and most cost-effective services to the public.

3. OTHER CONSIDERATIONS

a. Data sharing across sectors

From market welfare point of view, payments not only provides revenues but also generates very valuable data and is the core of the banking relationship. [redacted]

The payments system is a rich source of information. With PSD2, banks' customers have now the possibility to share their transactional data with third parties. However, customers still cannot make this election for the rest of their data in such an easy and safe manner. There are many ways in which data from other sectors can bring positive effects to the financial system and better opportunities for customers..

What should change: Complete the regulatory framework for data sharing beyond financial services to boost innovation and competition by giving users control over their data. Three pillars are needed for data sharing to be successful:

1. **Give control to the user**: People and businesses, as owners of the data they generate, must be in control of it and decide freely with whom to share it, to their own advantage.[3]
2. **Safety:** A data-sharing framework must ensure the secure transmission of data. APIs are the preferred method for this: they are safe, efficient and provide access to data on an immediate and ongoing basis. Access can be easily stopped whenever the user decides to do so.
3. **Value-added:** Users are the owners of their raw and observed data, but companies that build value around this data and enhance their quality should be able to retain this value. "Elaborated" or inferred data insights should not be shared between companies.

b. Access to infrastructures

Bigtechs have control over certain operational elements and resources that are becoming crucial to access and provide financial services within the digital environment [redacted] As they play simultaneously a role of relevant market players providing both direct financial services to customers and

[3] UK Furman Report :Unlocking digital competition

certain services (related to said operational elements/facilities) to incumbents, this can result in a restriction of products and services available, ultimately to the detriment of consumers and society as a whole.

Ensuring fair, equal and transparent access to third parties to key digital infrastructures must therefore be a priority. Fair competition is the route to more people being able to enjoy the greater choice and new services that digital technology offers.

What should change: Digital infrastructures with critical mass of users should give access to third-party providers under fair, transparent, and non-subjective conditions. These could include objective criteria based on price, security, quality or technical performance. The conditions for access should be public and subject to regulatory oversight.

c. Oversight of systemic risks

From systemic risks point of view, we share concerns expressed by many authorities regarding the adequacy and readiness of the regulatory and supervisory framework to oversight non-bank financial players. [redacted]

IMF Managing Director Christine Lagarde recently pointed to China, where two companies control more than 90% of the mobile payments market, as a unique systemic challenge to financial stability and efficiency.

Recent changes (such as PSD2 in Europe) have been developed with Fintech startups in mind and are allowing new players with relevant size to enter the market with lighter rules in terms of operational risk (including cybersecurity) or AML requirements.

The FSB recognizes[4] that changes in financial services are increasing a range of risks in the system including operational risks, cybersecurity risks, financial stability risks (such as systemic threats, procyclicality and excess volatility), and disintermediation risks.

In fact, the increased regulatory burden of traditional banks may have contributed greatly to the rise of the shadow banking sector[5]

What should change: When the service is provided by a **player with systemic size, the supervision should be enhanced**. Regulatory changes are needed for this to ensure these entities are captured by the financial supervisory perimeter, interconnection is taken into account and they have recovery and resolution rules in place where needed.

1. Strengthen the monitoring perimeter. Oversight of "non-banks"
2. International coordination among authorities is key; this is a global ecosystem.

---

[4] Financial Stability Implications from FinTech, June 17

[5] https://www.fdic.gov/bank/analytical/cfr/bank-research-conference/annual-17th/papers/15-piskorski.pdf

ANNEX 2: EFFECTS ON TIME TO MARKET THAT A BANK FACES WHEN LAUNCHING A NEW SOLUTION (SAME ACTIVITY AS A FINTECH)

<u>Time to market and pace of continuous improvement are essential in a digital world</u>. [redacted]

1. **Phase I - understand the problem.** [redacted]
2. **Phase II - create the solution.** [redacted]
3. **Phase III - deliver the product.** [redacted]

[redacted]

[redacted] policies are a regulatory requirement for banks (based on CRD IV and EBA Guidelines on Internal Governance). Regulations allow some flexibility, but they need to be consistent at group level (requirement cannot be modified for a specific subsidiary).

[7] The European Banking Authority's (EBA) Guidelines on outsourcing arrangements set out specific provisions for the governance frameworks of all financial institutions within the scope of the EBA's mandate with regard to their outsourcing arrangements and related supervisory expectations and processes.

[8] Product approval is also part of the requirements by CRD IV and EBA Guidelines on Internal Governance. It is subject to supervision.

From: CAB VESTAGER CONTACT
To: [redacted]
Subject: Ack - Digital Payments
Date: mercredi 17 juillet 2019 11:20:43
Attachments: MargaretheVestager.pdf
Annex-Payments letter-July 2019.pdf

Dear [redacted]
Thank you for your email to Commissioner Vestager .
It is our pleasure to acknowledge receipt of this. We will revert to you as soon as possible, and we usually need a couple of weeks to process the many requests for Commissioner Vestager.

Best regards,
Cab Vestager Team

From: [redacted]
Sent: Wednesday, July 17, 2019 10:49 AM
To: CAB VESTAGER CONTACT
Cc: [redacted]
Subject: Digital Payments
[redacted]
Banco Santander, S.A.

[redacted]

From: COMP D1 MAIL
Sent: jeudi 8 octobre 2020 13:07
To: [redacted]
Subject: [redacted] (CAB VESTAGER/53) - Meeting request with Santander [redacted]

From: /O=CEC/OU=CMS/CN=RECIPIENTS/CN=FERDIER
Sent: Thursday, October 8, 2020 12:14 PM
To: COMP D1 MAIL <COMP-D1-MAIL@ec.europa.eu>
Subject: FW: Important: Request (CAB VESTAGER/53) - Meeting request with [redacted] Santander

---

[redacted]
Sent: Friday, March 20, 2020 11:27 AM
[redacted] Important: Request (CAB VESTAGER/53) - Meeting request with [redacted], Chairman Santander

Dear [redacted],

Please see attached revised briefing for the call with Santander. Basis CAB 128 (former 53).

Regards,

[redacted]

[redacted]
Sent: Friday, March 20, 2020 8:39 AM
[redacted]
Subject: RE: Important: Request (CAB VESTAGER/53) - Meeting request with [redacted] Santander

Dear all,

Basis is working quite well so you can send me the latest version revised by [redacted] to be uploaded.
Thank you.
[redacted]

[redacted]
Sent: Thursday, March 19, 2020 6:52 PM
[redacted]
Subject: Re: Important: Request (CAB VESTAGER/53) - Meeting request with [redacted] Santander

One last thing: should there be excessive difficulties to upload the briefing please discuss with [redacted] for them to find out whether there could be a transmission
Many thanks

[redacted]
Date : jeudi 19 mars 2020 à 18:50:32
[redacted]
Objet : Re: Important: Request (CAB VESTAGER/53) - Meeting request with [redacted] Santander

[redacted] also need to adapt the objectives on both sides - which need to fit the current context. [redacted]

Please have a last look on the formulation of the objectives together with [redacted] I don't have to see it again.
Then it can be uploaded in the system -
Many thanks

[redacted]
Date : jeudi 19 mars 2020 à 17:12:32
[redacted]

[redacted]

Objet : RE: Important: Request (CAB VESTAGER/53) - Meeting request with [redacted] Santander

Dear Maria,

Please see attached the revised version (TC and CLEAN) of the Santander briefing, prepared by D5, D6, D12 and D1 colleagues.

Regards,

[redacted]

From: VELENTZA Maria (COMP) <Maria.Velentza@ec.europa.eu>
Sent: Wednesday, March 18, 2020 5:26 PM
[redacted]
Subject: RE: Important: Request (CAB VESTAGER/53) - Meeting request with [redacted] Santander

Dear all,
Thanks for the briefing
You need to update some parts, to reflect the latest developments due to the current crisis
[redacted]
Many thanks

[redacted]
Sent: Wednesday, March 18, 2020 11:17 AM
[redacted]
Subject: RE: Important: Request (CAB VESTAGER/53) - Meeting request [redacted] Santander

Dear Maria,

Please find attached an updated and consolidated briefing for the revived request for a conf call, initially prepared by [redacted].
Requested subjects are partly overlapping; it includes the [redacted] briefing as background. Thank

[redacted]

Best [redacted]

[redacted]
Sent: Tuesday, March 17, 2020 2:59 PM
[redacted]
Subject: RE: Important: Request (CAB VESTAGER/53) - Meeting request with [redacted] Santander

Dear [redacted]

I confirm that the [redacted] briefing is still up to date. Thanks for recycling it.

Best,

[redacted]

[redacted]
Sent: Tuesday, March 17, 2020 11:51 AM
[redacted]
Subject: Important: Request (CAB VESTAGER/53) - Meeting request with [redacted] Santander

[redacted]

Dear Colleagues,
This previously cancelled request is being revived.
You will soon get a new Basis request.
We presume the [redacted] briefing is still up-to-date so we can take the existing one in Basis 53.
We await confirmation from CAB on the deadline – we hope to be able to give D until Friday 12h to submit.
All the best,
[redacted]

From: [redacted] (CAB-VESTAGER) <[redacted]>
Sent: Tuesday, March 17, 2020 11:38 AM
To: COMP BRIEFINGS <COMP-BRIEFINGS@ec.europa.eu>
Cc: [redacted] (COMP) <[redacted]
Subject: RE: Request (CAB VESTAGER/53) - Meeting request with [redacted] Santander

Dear [redacted],
I cancelled the CAB /53 meeting last Friday .
However it was decided today to have a phone call on the 26th (meeting initially planned on 25th).
Sorry for inconvenience . Shall I introduce a new briefing request ?
Best,
[redacted]

From: COMP BRIEFINGS <COMP-BRIEFINGS@ec.europa.eu>
Sent: Tuesday, March 3, 2020 10:12 AM
To: [redacted] (CAB-VESTAGER) <[redacted]>
Subject: RE: Request (CAB VESTAGER/53) - Meeting request with [redacted], Chairman Santander

Merci [redacted], je vérifiais justement au cas où la date de la réunion avait changé.

Bonne journée

[redacted]

From: [redacted] (CAB-VESTAGER) <[redacted]
Sent: Tuesday, March 3, 2020 9:57 AM
To: COMP BRIEFINGS <COMP-BRIEFINGS@ec.europa.eu>
Cc: [redacted] (CAB-VESTAGER) <[redacted]>

Subject: Request (CAB VESTAGER/53) - Meeting request with [redacted], Chairman Santander

Dear colleagues,
I modified the deadline for this request , advancing it of 2 days (in order to be able to include the prep in the EVP agenda)
We believe this will not be a problem since the briefing was requested well in advance.
Best regards,
[redacted]

Briefing for Executive Vice-President Vestager
Call with [redacted], [redacted] Santander
26 March 2020

SUMMARY

- The call is with [redacted], **Group Executive Chairman, Santander.**
- From 14:00 to 14:30 at the Commissioner's Office

[redacted] Purpose of the call is to discuss the following topics: (i) [redacted]

Objective of the other side

[redacted]

Objective of the Commission

[redacted] To pass the message that the Commission is acting decisively in order to support economic actors in controlling damages caused by the COVID-19. [redacted]

- Emphasise that the Commission welcomes digital innovation in financial services , as this may benefit consumers and may boost the competitiveness of the sector: it provides opportunities for Fintechs, Big Techs as well as for incumbent banks with competitive digital strategies, like Santander.
- The Commission will ensure that a level playing field is maintained between established and new financial service providers. This will include antitrust enforcement where appropriate, but also advocacy and market monitoring. These actions complement regulatory activities from other Commission services.

[redacted] To learn about the current stance of Santander [redacted]

Briefing for Executive Vice-President Vestager

Call with [redacted], [redacted] Santander

26 March 2020

[redacted]

Briefing for Executive Vice-President Vestager
Call with [redacted], [redacted] Santander
26 March 2020

KEY MESSAGES

[redacted] The rapid digital transformation of the financial sector provides opportunities for incumbent banks with competitive digital strategies like Santander. This requires heavy investments in technology and digital transformation. [redacted]

- The role of competition policy is primarily to ensure that consumers benefit from increased choice and from competitively priced services.
- We ensure a fair competitive landscape through enforcement. This addresses incumbents, Big Tech and Fintechs alike, irrespective of their origin.

[redacted] We will for example monitor that Big Techs do not unduly leverage market power into adjacent financial markets or otherwise restrict competition. [redacted]

[redacted] We also want to continue ensuring that EU competition policy contributes to the competitiveness of the EU economy and of European companies. [redacted]

- We recognize that European firms may face a number of challenges in a global playing field since some third countries' economies operate by a different rulebook.

[redacted] In line with EVP Vestager's mission letter, the Commission regularly re-examines its competition tools and processes, reforming or adapting them where appropriate to ensure that they continue to fulfil their role. [redacted]

NECESSARY FACTS AND FIGURES

The need to stave off competitive threats from Big Tech firms and to remain relevant in an increasingly digital world has led financial institutions to invest heavily in technology and transformation.

DG COMP is continuing its ongoing preliminary investigations into Big Techs and digital finance issues [redacted]

DG COMP liaises with NCAs examining the issue. [redacted]

Briefing for Executive Vice-President Vestager

Call with [redacted], [redacted] Santander

26 March 2020

[redacted]

Contact [redacted], COMP D-1 ☎ [redacted]
Updated on: 18 March 2020

Briefing for Executive Vice-President Vestager

Call with [redacted], [redacted] Santander

26 March 2020

KEY MESSAGES

- We support initiatives for a competitive and innovative financial sector in the EU, including in payments with innovative mobile and electronic payment technology.
- New entrants put competitive pressure on the traditional revenue streams of incumbent banks. Digitisation also offers a wide range of opportunities to incumbent banks. By refocusing their existing business models, developing niche markets and/or teaming-up with IT-savvy new entrants, banks could get a competitive edge over competitors.
- The role of competition policy is to ensure that a level playing field is maintained. We actively monitor market conduct of dominant BigTechs and address possible abusive practices.
- [redacted]
- Data protection and security concerns are largely covered by horizontal regulation (e.g., the general data protection Regulation "GDPR") and sector regulation (e.g. the Anti-Money Laundering Directive). DG COMP ensures by means of advocacy that essential competition principles are respected by market participants and complement adoption and application of such legislation.

NECESSARY FACTS AND FIGURES

Digitisation and the entry of BigTechs and FinTechs on the financial services markets (especially the payment services markets) have put the existing banking model under pressure.

To cope with developments, incumbent banks focus on innovation, review their business model and/or team-up with IT-savvy new entrants.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Briefing for Executive Vice-President Vestager
Call with [redacted], [redacted] Santander
26 March 2020

[redacted]

Contact: [redacted], **COMP D-1** ☎ [redacted]	
Updated on: 13 March 2020	

Briefing for Executive Vice-President Vestager
Call with [redacted], [redacted] Santander
26 March 2020

EPI (FORMER PEPS-I): EUROPEAN PAYMENT INITIATIVE – HT.5723

KEY MESSAGES

- The Commission welcomes a pan-European solution for instant payments, in particular if it will be based on the innovative SEPA Instant Credit Transfer Scheme (SCT Inst).
- Such a pan-European solution for instant payments would align with the Commission's 2018 Communication 'Towards a Stronger International Role of the Euro'. The Communication advocates a fully integrated EU instant payments system to enhance innovation and to reduce vulnerabilities stemming from dependence on a small number of global providers of payments services.
- DG COMP is [redacted] following the initiative and the approach taken by the EPI. We recommend to ensure early competition compliance on matters including:

[redacted] Governance: [redacted]

[redacted] Standardization: [redacted]

(iii) Cooperation and exchange of information: introduce safeguards to avoid non-compliance with competition rules.

[redacted] Cost models: [redacted]

QUESTION

[redacted]

NECESSARY FACTS AND FIGURES

The EPI is an initiative taken by 20 of the biggest Euro-zone banks, [redacted] broadly supported by the ECB and national central banks.

Santander is among the 20 founding banks [redacted]

The EPI initiative proposes to jointly create a European payment scheme to compete with international card schemes (Visa, MasterCard) and Big Tech platforms.

[redacted]

[redacted]

[redacted]

Briefing for Executive Vice-President Vestager

Call with [redacted], [redacted] Santander

26 March 2020

[redacted]

Briefing for Executive Vice-President Vestager
Call with [redacted], [redacted] Santander
26 March 2020

[redacted]

Contact: [redacted], **COMP D-1** ☎ [redacted]
Updated on: 19 March 2020

Briefing for Executive Vice-President Vestager

Call with [redacted], [redacted] Santander

26 March 2020

COVID-19 RESPONSE – FLEXIBILITY IN STATE AID RULES

KEY MESSAGES

[redacted]

- The Commission has therefore, among several other actions, adopted a new Temporary Framework to enable Member States to take measures to ensure that businesses have the liquidity to keep operating. Possible measures include giving subsidised State guarantees on bank loans or granting public and private loans with subsidised interest rates.
- The new Temporary Framework recognises the important role of the banking sector to deal with the economic effects of the COVID-19 outbreak, namely to channel aid to final customers, in particular small and medium-sized enterprises (SMEs). The Temporary Framework makes clear that such aid is direct aid to the banks' customers, not to the banks themselves.
- [redacted].

[redacted]

NECESSARY FACTS AND FIGURES

[redacted]

Contact:	[redacted] ☎ [redacted] **Updated on: 19/03/2020**

Briefing for Executive Vice-President Vestager

Call with [redacted], [redacted] Santander

26 March 2020

Briefing for Executive Vice-President Vestager
Call with [redacted], [redacted] Santander
26 March 2020

BANKING CONSOLIDATION

MERGER DEFENSIVES

On the Commission's position on banking mergers

- The Commission welcomes the creation of strong banking groups through concentrations but only as long as they do not lead to increased market power, higher prices or less choice for consumers and creditors. Historically, cross-border concentrations have proven less problematic than domestic ones.

On the possible evolution of merger rules

- The EU is one of the world's leading economies. Firms of all sizes emerge because of the value they offer to the customer and ultimately society as a whole – from large companies competing on a global scale to small firms active only locally.
- EU competition policy significantly contributes to the competitiveness of the EU economy and of European companies. It enables growth, promotes efficiency and stimulates innovation.
- In line with EVP Vestager's mission letter, the Commission regularly re-examines its competition tools and processes, reforming or adapting them where appropriate to ensure that they continue to fulfil their role. In particular, it is currently reflecting on changes for competition enforcement in the digital sector.
- Any changes to the EU merger rules would need to be assessed carefully, notably in terms of (i) which perceived shortcomings they intend to address, (ii) which goals they aim to achieve, (iii) what the possible (intended and unintended) consequences of any such changes would be and (iv) whether there are alternative, more effective ways of achieving these objectives.
- European firms face a number of challenges in a global playing field since some third countries' economies operate by a different rulebook, relying on protectionism and state ownership.
- Other tools than competition law are better placed to address those challenges. The Commission has put forward several initiatives in this respect (strengthening a seamlessly working Single Market, investing in skills and talent, improving infrastructure, addressing market failure [IPCEI], controlling FDI, global subsidy disciplines, procurement mechanisms, etc.) and should continue doing so.

OTHER SANTANDER MERGER OPERATIONS

DG COMP [redacted] is currently looking at a consultation by [redacted] regarding [redacted]

The parties [redacted]

Contact: [redacted]

Updated on: 19 March 2020

Briefing for Executive Vice-President Vestager
Call with [redacted], [redacted] Santander
26 March 2020

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Former positions

[redacted]

Education

[redacted]

Briefing for Executive Vice-President Vestager

Call with [redacted], [redacted] Santander

26 March 2020

[redacted]

[redacted]

De: [redacted]
Enviado el: viernes, 24 de abril de 2020 10:22
Para: COMP-D1-MAIL@ec.europa.eu
Asunto: RE: Access to data and competition

Many thanks!

[redacted]

[redacted]

DISCLAIMER

"The views expressed are purely those of the writer and may not in any circumstances be regarded as stating a formal position of DG Competition or the European Commission."

From: COMP D1 MAIL <COMP-D1-MAIL@ec.europa.eu>
Sent: Friday, April 24, 2020 10:22 AM
To: [redacted]
Subject: RE: Access to data and competition

Dear [redacted]

I had already sent the invitation to Ms [redacted]

From: [redacted]
Sent: Friday, April 24, 2020 9:43 AM
To: COMP D1 MAIL <COMP-D1-MAIL@ec.europa.eu>
Cc: [redacted]
Subject: FW: Access to data and competition
Importance: High

H[redacted]

Could you please provide the (second) Santander person attending the Webex call the relevant logistical info?

Many thanks,

[redacted]

[redacted]

DISCLAIMER

"The views expressed are purely those of the writer and may not in any circumstances be regarded as stating a formal position of DG Competition or the European Commission."

From: [redacted]
Sent: Friday, April 24, 2020 9:11 AM
To: [redacted]
Cc: [redacted] COMP D1 MAIL <COMP-D1-MAIL@ec.europa.eu>
Subject: RE: Access to data and competition
Importance: High

Dear all,

Could you please send a link to my colleague [redacted]. She didn't receive it.

Ms [redacted], Director of Digital and Business Regulation

[redacted]

Thank you.

Santander

[redacted]
Head of Digital Policy
Banco Santander *TR ID: 799142914971-03*
Tel: [redacted]
Avenue des Nerviens 85 B-1040
Bruxelles

From: [redacted]
Sent: 16 April 2020 18:06
To: [redacted]
Cc: [redacted]
Subject: RE: Access to data and competition

Dear [redacted]

Santander will attend with:

Mr [redacted] Director Legal Services

[redacted]

Ms [redacted], Senior Policy Director

[redacted]

[redacted]

Ms [redacted] Director of Digital and Business Regulation

[redacted]

and myself:

Santander

[redacted]
Head of Digital Policy
Banco Santander *TR ID: 799142914971-03*
Tel: [redacted]
Avenue des Nerviens 85 B-1040 Bruxelles

From: [redacted]
Sent: 16 April 2020 10:58
To: [redacted]
Cc: [redacted]
Subject: #External Sender# Re: Access to data and competition

Dear [redacted]

The proposed date works for us, though due to time constraints we would have to limit the call to 30 min. (i.e.11:30-12:00).

Could you please provide us with the name and contact details of the colleague joining you on the call (which we will set up as Webex call).

Our assistant may contact you with relevant information on logistics.

Best regards,

[redacted]

From: [redacted]
Sent: 15 April 2020 13:10:51
To: [redacted] MAIL
Subject: RE: Access to data and competition

Dear [redacted]

Would 24 APR, 11:30-12:30 work for you? We might have our Head of legal joining.

[redacted]
Head of Digital Policy
Banco Santander *TR ID: 799142914971-03*
Tel: [redacted]
Avenue des Nerviens 85 B-1040 Bruxelles

From: [redacted]
Sent: 06 April 2020 12:04
To: [redacted]
Cc: [redacted]
Subject: #External Sender# Re: Access to data and competition

OK, there is no immediate hurry from our side.

Best,

[redacted]

From: [redacted]
Sent: 06 April 2020 12:01
To: [redacted]
Cc: [redacted]
Subject: RE: Access to data and competition

Dear [redacted]

I don't think I will get a reply from our General Counsel for today. Let me get back to you once I have the green light from him.

Thank you.

Best,

[redacted]

[redacted]
Head of Digital
Policy
Banco
Santander *TR*
ID:
799142914971-
03
Tel: [redacted]
Avenue des
Nerviens 85 B-
1040 Bruxelles

From: [redacted]
Sent: 06 April 2020 09:40
To: [redacted]
Cc: [redacted]
Subject: #External Sender# Re: Access to data and competition

Dear [redacted]

My apologies for the confusion, it should have been today, Monday 6 April, 16.00-16.30.

Please let us know if this works for you.

Best regards,

[redacted]

From: [redacted]
Sent: 06 April 2020 09:35
To: [redacted]
Cc: [redacted]
Subject: RE: Access to data and competition

Dear [redacted]
Dear [redacted]

Did you mean Monday 6 or Wednesday 8?

I need to get any exchange with you cleared by our general Counsel in Madrid who is right now very absorbed due to all the measures banks have or are putting in place.

So please be patient with me until I will have a reply from him.

Best,

[redacted]

[redacted]
Head of Digital Policy
Banco Santander TR ID: 799142914971-03
Tel: [redacted]
Avenue des Nerviens 85 B-1040 Bruxelles

From: [redacted]
Sent: 01 April 2020 15:27
To: [redacted]
Cc: [redacted]
Subject: #External Sender# Re: Access to data and competition

Dear Mr [redacted]

Thank you for sharing Santander's paper "Towards an EU data economy" with DG COMP.

[redacted] and I would be happy to have a Webex call with you on **Monday 8 April 2020 from 16:00-16:30** to discuss some of the issues addressed in the paper from a competition perspective.

As competition law enforcers, we would in particular be interested to learn more about the type of Big Tech data Santander would seek access to and how the lack of access would affect its ability to compete on certain downstream markets.

Please let us know if the proposed timing works for you. We will send you additional information regarding the logistics of the call.

Best regards,

[redacted]

From: [redacted]
Sent: 31 March 2020 09:21
To: COMP D MAIL
Cc: [redacted]
Subject: RE: Access to data and competition

Thank you [redacted]

Dear [redacted]

I hope you are all doing fine and enjoying good health.

As a further background I attach to you a Santander paper on digital economy issues we see linked to BigTech leveraging into financial services markets. But I guess on the policy side we need to wait for DG Connect's consultation on the Digital Services Act.

Our main pain point is [redacted]

Happy to catch up with you over phone, Zoom, etc. if you have further questions.

Cheers and stay healthy!

[redacted]

Santander

[redacted]
Head of Digital Policy
Banco Santander *TR ID: 799142914971-03*
Tel: [redacted]
Avenue des Nerviens 85 B-1040 Bruxelles

From: COMP-D-MAIL@ec.europa.eu [mailto:COMP-D-MAIL@ec.europa.eu]
Sent: 30 March 2020 10:57
To: [redacted]
Cc: [redacted]
Subject: #External Sender# FW: Access to data and competition

Dear Mr [redacted]

Ms Velentza thanks you for your contribution and suggests you to liaise with our colleagues from the directorate, whom I copy in this email, to exchange further information.

All the best,

[redacted]

European Commission
DG Competition
Directorate D : Markets and cases III /Financial services

B-1049 Brussels/Belgium
Competition websites: http://ec.europa.eu/competition

From: [redacted]
Sent: Monday, March 30, 2020 9:55 AM
To: VELENTZA Maria (COMP) <Maria.Velentza@ec.europa.eu>
Subject: Access to data and competition

Dear Maria,

We've met last year at the EBF Digital ExCo.

I hear from Santander's HQs that you attended the call between EVP Vestager and [redacted]

One topic at the end of the exchange was about data and competition in digital finance. I would like to share with you a paper we recently submitted to DG FISMA B5, to explain the competitive situation around data access and BigTechs market entry in the payments markets.

In case you want to have more information I am happy to provide you with more [redacted] got the larger picture.

Thank you and stay healthy!

[redacted]

[redacted]
Head of Digital Policy
Banco Santander *TR ID: 799142914971-03*
Tel: [redacted]
Avenue des Nerviens 85 B-1040 Bruxelles

From: [redacted]
Sent: 25 March 2020 16:39
To: [redacted]
Cc: [redacted]
Subject: Thank you for the Zoom session & a Santander follow-up paper on our last discussion

Dear [redacted] and team colleagues,

Thanks again for the opportunity to listen to Santander´s views on data sharing in the digital economy. We believe data sharing – done well – will be key for EU´s economy to remain competitive on the global stage.

We wanted to follow up with a recap of **our position and rationale**; and **ask for a call for action from the EC**. We understand there are consultations underway in which we will gladly participate, developing these ideas.

Also, as we discussed, [redacted], our Chief Data Officer (in cc), is at your disposal for any addition questions on the use cases she shared; and bring new ones.

All the very best to you and we look forward to hearing your comments, questions.

[redacted]

[redacted]
Head of Digital Policy
Banco Santander *TR ID: 799142914971-03*
Tel: [redacted]
Avenue des Nerviens 85 B-1040 Bruxelles

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A Santander ViewPoint – February 2020

Towards an EU Data Economy

For the EU's economy to remain competitive on the global stage, Europeans need to turn the necessary digital transformation of EU's traditional industries into a global advantage. The question for EU policy makers today is how to create the right policy environment to support EU businesses becoming the innovators of tomorrow's world whilst preserving and promoting the core of our European values.

There is no easy answer – but it requires a **genuine horizontal approach** as today's sectors lines are increasingly less relevant. This will be a pre-condition to ensure the development of data-driven businesses in Europe and **help EU businesses re-invent themselves** to success globally.

We welcome the recent Commission's Data Strategy which intends to stimulate Europe's data economy. We support the Commission's ambition to create a 'data agile economy' by facilitating cross-sectoral measures for data access and use. We believe that regulatory initiatives are needed to best address the challenges faced by European companies transforming their business model to compete in the digital age.

WHAT ARE THE CONDITIONS FOR A SUCESSFUL & INNOVATIVE EUROPEAN DATA ECONOMY?

Based on our experience, we would like to highlight what we think would be the necessary conditions to create a more innovative digital economy, enabling all market players to improve their services towards their users. Similarly, to the Commission's current approach, we believe that enhancing the sharing of users' data across sectors must be done leveraging in the current data protection requirements enshrined in the General Data Protection Regulation.

1. Opening data – a critical condition for EU's digital transformation

Clearly data – and fair rules around its sharing and usage – is the heart of the matter. Europe has already showed in the payment space its ability to lead the way by creating the right conditions for data to be shared to ensure consumers get the best outcome & competition develop in payments. This EU regulatory framework (PSD2) was a disruptive regulation. It showed how facilitating safe, convenient and ongoing access to data could trigger an enormous range of innovation in the sector. In the end, the Directive facilitated the development of new fintech startups, but also it made us banks react and improve our value proposition to our customers. It also attracted the attention of 'Big-techs' who saw that was an interesting regulatory model to favor their entrance. It also showed all of this could be done in total alignment with the GDPR principles and purpose: by giving control to the user, limiting the purpose for which data accessed can be used and requiring other legal basis if this purpose wants to be enlarged. The PSD2 initiative proved that, through a regulatory intervention, the Commission fostered innovation and the emergence of new actors in the payment market.

At the same time, PSD2 has created an asymmetry in access to individual data. Banks can be asked to open access to their customers' payments data with third parties, but their customers' cannot easily share their user data locked in other sectors with other market participants when they are willing to do so. The question is how do we use this model to upgrade our EU rulebook to the new economic reality?

You have an opportunity to reflect on the consequences of PSD2 for the ecosystem and not only focus on machine generated data for building economic value within the EU. Much [redacted]

However, the Commission is envisaging to mandate more data sharing in the financial sector (Open Finance) without thinking about even level the playing field with Platforms after PSD2. Why is that possible in the financial sector without having determined a market failure, if this is a precondition for mandatory access to data in other contexts? [redacted]

2. Strategic approach of the EU proposals

The Commission should be analyzing the strategical consequences of the whole range of its proposals. This is a high risk strategy and depends on a perfect implementation fit for not destroying value in the European economy instead of creating opportunities for Europeans.

We fear that [redacted]

While empowering users and putting them in the center, opening cross-sectorial data would also contribute to developing a level playing field in all sectors, [redacted]

---

[1] *"Currently, a small number of Big Tech firms hold a large part of the world's data. This could reduce the incentives for data-driven businesses to emerge, grow and innovate in the EU today, but numerous opportunities lie ahead"*. EC A European Strategy for Data, Feb 20

3. Ensuring trust in the huge potential of data sharing across sectors

Cross-sectorial access to data is the only one to bring many benefits to customers but it needs regulatory intervention to happen. We welcome the Commission's views that cross sectorial data sharing could create the overarching framework for a data-agile economy. We strongly support the vision of a single European data space where personal as well as non-personal data, including sensitive business data, are secure and where businesses also have easy access to high-quality industrial data, boosting growth and creating value. We believe the Commission's Data Strategy shows positive horizontal elements for data sharing and that this approach should be further developed. We believe the creation of Common European data spaces that aim to facilitate the pooling, re-use and interoperability of data across sectors should act as a step towards a truly single European data market. We are concerned that [redacted]

As stated by the Commission, data-driven innovation will bring enormous benefits for citizens. Greater access to customers' data will enable companies across the economy to provide better services for those customers. Relevant data to improve financial services is not exclusively in hands of the financial sector, but goes well beyond to other market participants including e-commerce, public utilities services, or the government itself. A Data Strategy should therefore be cross sectorial by definition, but this is particularly true for financial data.

In order to facilitate cross-sectorial data sharing of customers' data, we back the Commission's idea to enhance users' portability rights by creating portability APIs under the General Data Protection Regulation (GDPR). This will help customers gain more control over who can access and use their [redacted]

As explained throughout the document, we encourage the [redacted]

In addition, such enhanced portability right should also capture SMEs needs. The future European framework should seek to enable companies to port their data from one provider to another. For example, a small business selling on a specific online marketplace and generating data through this interaction, should be able to provide access to this data to crowdfunding platforms, banks, investment funds or individual investors to get access to different financing options. This would improve market contestability and avoid 'lock in' effects, enhance competition, and support SMEs which may lack IT resources.

A data agile economy and the benefits that can emerge from it will only be achieved if a level playing is guaranteed for all actors. In that regard, we urge the Commission to ensure data access for customers across sectors: the future European framework should not lead to open access to data from one sector without ensuring similar access in another. We also believe that such access right should not apply only to address market failure. Instead, we consider that such data access right should be justified by empowering customer and innovation through data sharing. Integrating this justification will facilitate data sharing practices while putting the customer at the center of those practices by aligning such data sharing with GDPR requirements (purpose limitation principle, and legal basis for processing.

4. Managing the speed is critical: actions should not be fragmented at sectorial level

The European strategy for data looks at the right direction but shows a **high execution risk**. It is critical to check what will be done and when[redacted]

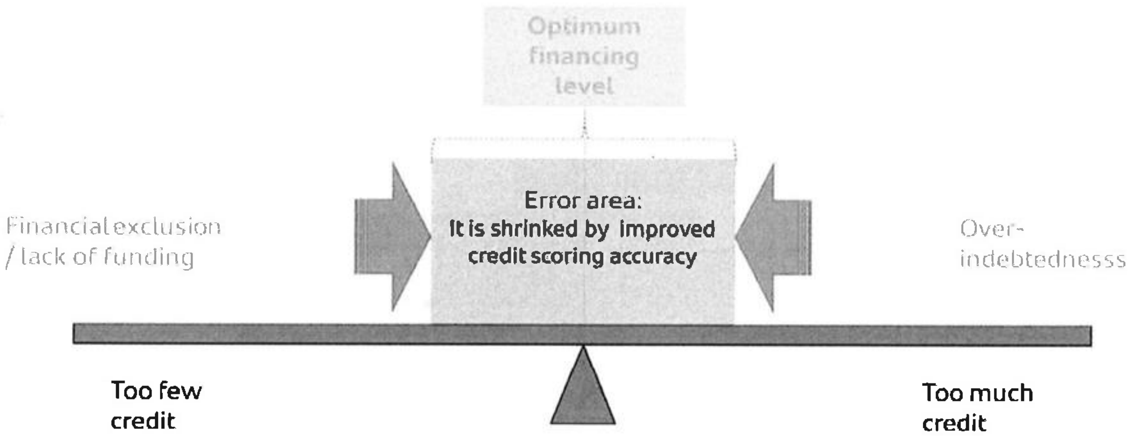
- **Rules for further data sharing** at sectorial level[redacted]
- Rules for cross-sectorial or at least platform data sharing will take much longer... with the risk of non-being executed, since both the Data Act and the review of the Online Intermediation Services Regulation, which are strategical to ensure a level playing field, are still not open for discussion.
- Finally, we fear that the market failure approach that the Commission is taking in[redacted]
- **We are also worried that FISMA will lead the financial sector data space**. In addition to this being very siloed and short-sighted, we fear that they can take an incremental, quick-win approach, to show progress, by not looking beyond the data in the hands of traditional financial service providers. This lacks a strategic vision on the competition implications of a measure like this and fails to see that:
    - The value to consumers is o[redacted]
    - The traditional definition of sector does not work anymore[redacted]

A Santander ViewPoint – February 2020

[redacted]

WHAT ARE THE EXPECTED BENEFITS OF A WIDER DATA SHARING IN THE FINANCIAL SECTOR?

When it comes to banking, more data can help improving our services which rely on the quality and amount of information available to best advice our customers. In fact, irresponsible lending or exclusion are both 'errors' (providing too much credit or too little) that can be improved by having more data and better prediction tools. [redacted]



Examples of improvement for citizens and SMEs:

o Increased funding capacity - Research by NBER on digital footprints: This NBER research concludes [redacted]

[redacted]

- Improved credit scoring - Bank of International Settlements (BIS) research on Big Tech data: Platform data and data via social media has the potential to enrich credit scoring models. In the case of Mercadolibre (Argentina), 30% of its portfolio would have fallen into the high-risk cluster as assessed by a traditional credit bureau. Widening the pool of data used improves lendability for many customers and thus opens new options for them.
- Better fraud detection - [redacted]
- Predict cash flows for SMEs - [redacted]
- Assess capacity to repay short-term load - [redacted]
- Tailored financial advice – [redacted]

[redacted]

- [redacted]
- [redacted]

People are sometimes scared of how "big data" might be used in some sectors. For instance in the financial sector, some worry it could lead to financial exclusion. But when it comes to banking, more data does not mean more irresponsible lending nor more exclusion. More access to data would also foster financial inclusion, especially to access credit which is critical to create economic opportunities (CEPS/ECRI paper[2]). Payments data is not enough for this, other sources of data have showed to be more useful to fulfill the needs of the underserved (case of MercadoLibre in Latam)[3].

At the end it is about creating choice to the customers & citizens for real, instead of leaving it to Bigtechs to decide what to do with their users' data and who to provide access to and under which conditions. In the provision of financial services to EU citizens, **citizens would benefit if they were given a secure framework to exercise their choice to share their data (from all sectors) with their chosen providers.**

Our analysis shows that for example in the provision of financial services to EU citizens and SMEs, both would benefit if they were given a secure framework to exercise the choice to share their data (from all sectors) with their chosen providers.

In order to create the abovementioned conditions for success, we have imagined a set of 5 principles to guide the Commission's work towards a data agile economy. We believe that the combination of these principles will contribute to opening-up data across sectors in way that can both benefit companies in fair manner and keep the customer at the centre of the overall approach.

PRINCIPLES FOR AN EU FRAMEWORK WHICH WILL CAPTURE THE "VALUE OF DATA" FOR EU GLOBAL COMPETITIVENESS

Principle 1 – Future regulatory framework should enable greater access to personal and non-personal data improving services to the benefits of customers

EU policy makers should be going into a more ambitious data sharing framework where added-value can be delivered to customers. To this end, the Commission should especially be pointing to non-financial data as the benefits for consumers will be considerably greater. **The focus of any future data sharing framework should be put on the revision of the online intermediation services regulations (e.g. P2B regulation; ecommerce directive review – due Q4 2020).** Online intermediation services' data that can be of high value yet easy to collect could be for example:

[2] CEPS/ECRI Data sharing in credit markets (http://www.ecri.eu/sites/default/files/accis_ecri-ceps-ue_data_sharing_in_credit_markets-web_0.pdf)
[3] See BIS Working Paper on Fintech and Financial Inclusion and also Working Paper on Big Tech and the changing structure of financial intermediation.

[redacted]

[redacted]

[redacted]

Principle 2 – A fair cross-sector approach is needed to ensure maximum benefits to our society

The digital transformation needs to be thought holistically, not alongside strict sector lines as new "competitors" are emerging from parallel sectors (see how big tech are entering financial services). This is critical for maintaining a fair competition landscape across all sectors. The whole initiative of data spaces should be harmonized at cross-sectorial level: **no mandatory data sharing should be triggered in a sector (banking) where players from other sectors also compete but don't have similar requirements.**

Principle 3 – Give control to the user by creating a framework that is consumer-centric

People and businesses, as owners of their data must be in control of it and decide freely with whom and for what purpose they share it.

We strongly agree with the Commission's approach that users should be in control of their data and who they share it with. The data space framework should not work at the back of citizens, by setting up a system by which companies share their data without giving them the possibility to do the same. When personal data is considered, GDPR's standards must apply, so the journey should be more consistent with the right to data portability: the initiative should be left to the citizen to decide how to share his data and with whom. What is now needed is the appropriate technical framework to make this true, and to extend this right to companies who should also be empowered to decide on the data they generate. **Respect for the users' decisions should be mandatory –even if the data shared is anonymized, the combination of data from different sectors can finally drive to a de-anonimization of the data and the identification of individuals.**

Principle 4 – Safety

In line with the Commission's data strategy, we believe a future legal framework should create the right conditions for the **secure transmission of data**. APIs are the preferred method for this as they are safe, efficient and provide access to data on an immediate & ongoing basis. In addition, access can also be easily stopped whenever the user decides to.

Principle 5 – Clarify the different nature of data to be shared

Users are the owners of their raw & observed data (ex – their transactions history); but companies are building "value" around the data, and enhance its quality and need to be able to retain this value. This delineation needs to be outlined clearly by policy makers to simplify the debate [redacted]

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[redacted]

Annex: How to put the users at the center in a data sharing framework. Examples for financial services[4]:

Data access and sharing for better credit assessment ○ What is the **customer problem** we want to solve for? Lack of access to finance ○ Description of the **use case** Many studies have shown that non-financial data are useful to improve creditworthiness assessment. [redacted] Once the customer gets the finance, he could be able to cut the access to his data for all players or just leave the chosen finance provider, in case they agreed to do so (could be part of the lending conditions, to improve monitoring) ○ **Which data** needs to be accessed? [redacted] ○ What would be the **specific benefit to the consumer or business user**? The consumer will always benefit by a better creditworthiness assessment, in the sense that access to more data will improve creditworthiness assessment by avoiding errors (provide too much credit or too few. We can better balance the needs of finance with the needs to control overindebtedness. Error area will be reduced. And this will only play at the benefit of consumers. Also, this will empower him to widen the range of potential finance providers and thus increase competition in the sector. Finally, the consumer will be benefitted by a more solvent financial ecosystem, in which risk is better priced.
Data access and sharing for empowering consumers ○ What is the **customer problem** we want to solve for? Poor financial decisions in terms of spending habits and household resources allocation. ○ Description of the **use case** [redacted]

[4] These examples are prepared for the financial services industry, but other industries would show similar levels of improvements. [redacted]

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[redacted]

[redacted]

- **Which data** needs to be accessed?

For this specific use case, [redacted]

- What would be the **specific benefit to the consumer or business user**?

[redacted]

[redacted]

Data access for better SME financial advisory services

- What is the **customer problem** we want to solve for?

Poor financial decisions in terms of cash-flow planning and selection of best lending products.

- Description of the **use case**

[redacted]

- **Which data** needs to be accessed?

The most relevant data in this case is [redacted]

- What would be the **specific benefit to the consumer or business user**?

In this case, the direct benefit is for the [redacted]

[redacted]

Data access and sharing for fraud detection and prevention

- What is the **customer problem** we want to solve for?

Fraud being one of the most relevant causes for consumer mistrust on the digital economy.

- Description of the **use case**

Banks are committed to fight fraud and money laundering by putting their knowledge and information at the service of the ecosystem. However in the current digital economy other data could be more useful to this objective. For fraud detection and also AML fight behavioural data is very powerful, and today many of these interactions happen in the digital space.

[redacted]

- **Which data** needs to be accessed?

[redacted]

- What would be the **specific benefit to the consumer or business user**?

In this case, the direct benefit for the customer is to avoid fraud. [redacted]

Data access for improving financial advisory services / or financial advice related to pension and social security

- What is the **customer problem** we want to solve for?

Individuals lack of proper understanding of financial markets, which blocks them channelling funds to long term investments. This is also harming the long term financing of the European economy.

- Description of the **use case**

Lack of proper understanding of capital markets have generated that individual investors' portfolios are not always properly balanced with their future needs and actual preferences. [redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

Data that would be useful to [redacted]

[redacted]

- What would be the **specific benefit to the consumer or business user**?

In this case, the direct benefit for the customer is to have a full picture of his future financial needs and resources to help them make the best asset allocation decisions for his future

[redacted]

Subject: FW: Access to data and competition

From: [redacted] (COMP) <[redacted]>
Sent: Tuesday, March 31, 2020 6:26 PM
To[redacted] (COMP) <[redacted]>
Cc: COMP D1 MAIL <COMP-D1-MAIL@ec.europa.eu>
Subject: RE: Access to data and competition

Many thanks [redacted],

for this exhaustive summary. Fine to ask clarifications, [redacted]

What we should therefore focus on is examination if there are any concrete, substantiated restrictions of competition; [redacted]

We can set up a call for the week after Easter once you are back (are you still intending to take holidays as planned?)

Best [redacted]

From: [redacted] (COMP) <[redacted]>
Sent: Tuesday, March 31, 2020 3:23 PM
To: [redacted] (COMP) <[redacted]>
Subject: Fw: Access to data and competition

Dear [redacted],

Pease find below the main takeaways from [redacted]

[redacted]

[redacted]

General approach:

It is useful for DG COMP to listen (and not to take position) [redacted] It is our role to ensure that regulation does not unlevel the playing field. [redacted]. The banking community should be aware that competition policy and industrial policy do not contradict each other; this being said, there is not necessarily a full overlap between both.

Possible issues to raise:

[redacted]

Best,

[redacted]

[redacted] (COMP)

Subject: FW: HT.5080 Minutes of the call with Santander

From: [redacted] (COMP) [redacted]@ec.europa.eu>
Sent: Friday, April 24, 2020 5:43 PM
To: VELENTZA Maria (COMP) <Maria.Velentza@ec.europa.eu>
Cc: COMP D MAIL <COMP-D-MAIL@ec.europa.eu>; COMP D1 MAIL <COMP-D1-MAIL@ec.europa.eu>; [redacted]@ec.europa.eu>; [redacted] (COMP) <[redacted]@ec.europa.eu>; [redacted] (COMP) [redacted]@ec.europa.eu>; [redacted] (COMP) <[redacted]@ec.europa.eu>
Subject: HT.5080 Minutes of the call with Santander

Dear Maria,

Please find below the minutes of our call with Santander on 24 April 2020.

Best regards,

[redacted]

Mr [redacted]
EUROPEAN COMMISSION
Competition Directorate General
[redacted]

DG COMP: [redacted], [redacted]
Santander: [redacted]

Summary:

- The call with Santander took place following a discussion between its [redacted] with EVP Vestager and the publication of a Santander paper "Towards an EU data economy" .

- The Santander paper raises the [redacted]

[redacted] first asked Santander to explain the effects caused by PSD2 on banks. The general picture is that APIs provided by banks to third parties may limit effective access. [redacted]

- [redacted] explained that [redacted] data access requests both have a regulatory and a competition angle. The regulatory angle is clear, however a competition analysis would have to be based on precise descriptions of the data access required and would have to show how restricted or no access would affect competition on a particular market. [redacted]

<u>Follow-up:</u>

- Santander promised to continue the dialogue on this matter with DG COMP; [redacted]

From:	[redacted]
To:	COMP STATE AID GREFFE
Subject:	State Aids
Date:	mercredi 27 mai 2020 10:06:18
Attachments:	image001.png image002.png

Good morning,

I am contacting you due to the figures of the State Aids. Is there any updated document you can share in which all the state aids are, with the corresponding figures and the division between countries?

Thank you very much in advance.

Best,

[redacted]

Santander

[redacted]

Banco Santander

Avenue des Nerviens 85 B-1040 Bruxelles

Tel: +32 22 865 562

From: [redacted]
To: [redacted]@santanderbenelux.be
Cc: COMP A3; COMP STATE AID GREFFE
Subject: State Aids
Date: vendredi 29 mai 2020 17:11:32
Attachments: A-3ID002663-State Aids.pdf

Dear [redacted]

The State aid Scoreboard is the European Commission's document that reports a comprehensive overview of all State aid expenditure made by Member States. You can find the latest release, namely the 2019 State aid Scoreboard, at this link. Please note that the 2019 State aid Scoreboard report expenditure as of end of 2018.

Please, also note that data on State aid spending is available in the EUROSTAT Dissemination tool for Statistics. The data covers the period 2000 - 2018, can be easily downloaded from the website and includes the following tables/breakdown:

- Overall State aid spending by MS/year and Scoreboard objective
- Overall State aid spending by MS/year and instrument
- Overall State aid spending by MS/year and type of measure (GBER vs notified aid)
- Overall State aid spending by MS/year and GBER article
- Overall State aid spending by MS/year to agriculture and rural development
- Overall State aid spending by MS/year to fisheries and aquaculture
- Overall State aid spending by MS/year to the railway sector
- Approved and used aid by MS/year to the financial sector

Should you be interested in the COVID-19 related State aid decisions, you can consult the dedicated State aid rules and coronavirus webpage. It includes the document "Coronavirus Outbreak - List of Member State Measures approved under Article 107(2)b TFEU, under Article 107(3)b TFEU and under the Temporary State Aid Framework", which provides a list of all COVID-19 related State aid decisions approved by the Commission and is updated daily.

Best regards,

[redacted]

European Commission
DG COMPETITION
Unit A3 - State Aid Strategy

[redacted]

[redacted]

Subject: FW: Public consultation on the European Commission initiative for a New Competition Tool

From: [redacted] (COMP) [redacted] **On Behalf** [redacted] (COMP)
Sent: Friday, June 19, 2020 10:36 AM
Cc: [redacted] (COMP) [redacted] COMP D1 MAIL <COMP-D1-MAIL@ec.europa.eu>
Subject: Public consultation on the European Commission initiative for a New Competition Tool

Dear Sir/Madam,

The rapid digitalisation of society and the economy is creating new risks to fair competition in both digital and non-digital markets, by making it easier for market power to become concentrated in the hands of those companies best able to monitor their customers and competitors' behaviour.

In view thereof, the European Commission has published on 2 June 2020 an inception impact assessment as well as an open public consultation inviting comments on the need for a possible New Competition Tool that would allow addressing structural competition problems in a timely and effective manner (**https://ec.europa.eu/commission/presscorner/detail/en/ip**). Stakeholders can submit their views on the **inception impact assessment** until **30 June 2020** and respond to the open **public consultation** until **8 September 2020.**

This initiative is also of relevance to the **financial services sector** and the companies represented by your organisation. One of the issues on which the European Commission seeks feedback is whether an eventual New Competition Tool should solely apply to the digital sector, or should have a broader application to other sectors, including the financial services sector. Therefore, we would like to ask you to reach out to your membership by encouraging them to actively engage in this initiative and provide us with their feedback by submitting their views on the inception impact assessment and responding to the questionnaire by accessing the above link. Alternatively, you could also collect the joint views of your membership and submit it to DG COMP as a single document.

If you have any questions on the initiative or would like to discuss it with us, we would be available to set up a call. The contact person for your queries is: Ernst Ferdinandusse (in CC).

Thank you in advance for your interest, and best regards,

[redacted]
Administrative Agent
Case and Secretarial Assistance (Antitrust)

European Commission
Directorate Generale Competition
[redacted]

[redacted]

[redacted]

De: [redacted]
Enviado el: viernes, 10 de julio de 2020 9:47
[redacted]
[redacted]**:** Santander's recent responses to DG [redacted]
Datos adjuntos: 200626 Suggestions to adapt the bank regulatory framework to digital.doc....pdf; 200626 Digital Finance for Europe.pdf; 200626 European Data Strategy for Finance.pdf; EUDigiFinconsJune2020.pdf

Dear [redacted]

I hope you are doing fine!?

I wanted to share with you our recent responses to DG [redacted] and some complementary position papers around digital finance, data and competition. As we filed them as no name we would like to ensure you all will see them.

On a second note I wanted to inform you that I will be leaving Santander early August and before everyone heads off to Summer vacation I wanted to thank you for all the open eyes and ears and supporting me and Santander on digital finance/competition issues in the past. That was really a great experience.

As long as there will be no successor on digital policy I would like to connect you with my colleague [redacted] (in cc). [redacted] has been with Santander for many years and she will take over as the new Head of the Brussels office end of August. Please do not hesitate to reach out to her.

If you would like to stay in touch with me I can be reached at [redacted] or [redacted]

Thanks again and have a great Summer vacation.

[redacted]

Santander

[redacted]
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Suggestions to adapt the banking regulatory framework to digital

While banks have traditionally been the key providers of financial services, the growth of the market and new technologies have helped the emergence of a new generation of non-banks in financial services. It is anticipated that these new entrants will play a greater role in the sector in future.

In particular, many non-banks such as big technology platforms have entered the market for retail payments and SME lending. These large tech platforms seek to enhance their access to consumer data and their ability to exploit that data for reaching and selling to customers. These new entrants differ from banks in that their main business is to take deposits and lend.

Customer expectations are also driving this change in financial services space. Despite the differences in the way banks and non-banks are regulated, consumers do not perceive the services offered to be of differing risk profiles.

As argued in the report "Bigtech banking"[1], when big tech companies enter markets with complex vertical value chains, they monopolize the layer or layers where they operate, entrench those monopolies by taking advantage of network effects, and extract value from all other layers by:

a) Vertically integrating with upstream and/or downstream companies;

b) Discriminating in favour of their own upstream/downstream businesses in their core platforms;

c) Leveraging data superiority to monopolize adjacent markets;

d) Intrusive data gathering; and

e) Maintaining control of key consumer gateways, operating systems and infrastructures.

[redacted]

These players are typically entering into payments, the gateway into a broader range of financial services. With huge customer data bases and large scale (millions of users, footprint), they are leveraging this - together with their flexible technology - to enter Europe, placing themselves at the customer interface.

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[1] Padilla and De la Mano, 2018 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3294723

[redacted]

[redacted]

After the COVID crisis, the provision of financial services through digital channels is only going to increase. We see the focus by European authorities on facilitating the adoption of e-technology, but we believe there is a lack of perspective regarding the changes in business models we need to accomplish to be successful in the digital context. If we want to adopt a platform business model, or move into adjacent markets, the whole platform will be subject to banking regulation.

Platforms are very successful because they deliver clear benefits to customers. They are also very helpful to business users, who can have access to a wider range of consumers. This is why the growth of platform providers has been exponential in terms of users and satisfaction.

However, banks are competing in this challenging space with a hand tied behind our back. Banks and non-banks are regulated differently, even when engaging in the exact same economic activity. When you want to evolve from a bank doing digital to be a digital provider of banking services, your digital activities are still treated as those of a bank. Competitively, this locks banks out of true competition in innovation of digital financial services.

In addition to the strategic evolution we need to make, we face regulatory barriers and increasing supervisory expectations that slow our ability to provide digital services at speed. We need to reconcile the possibility to test and assume risks (key for innovation) with the requirements of robust banking regulations (built to protect depositors).

The following paragraphs list in detail the barriers and examples [redacted]

Barrier 1: Governance requirements

We need to accelerate the development of the digital business within banks. To do so we need to provide them with the right talent, processes and governance, at the same level as our competitors have.

The solution would be to allow banks to create standalone entities to develop and accelerate technology and innovation businesses to serve the Group's banks at arms-length, as any other party in the open market.

[redacted]

Today, governance requirements affect how these new entities can perform their operations when they are part of a bank, but not in non-banks. Governance requirements are set to ensure robust procedures across banks, including ensuring that their decisions are taken by the qualified persons, at the right moment and with the right elements of judgment. However, they are currently set in a manner that the criteria are those of the entire banking group.

Although different rules allow for a proportional approach, the governance framework limits the degree at which this proportionality can be applied to banking groups, especially if they are considered global systemic entities. The lack of clarity and the difference in criteria on how to apply proportionality to different kind of entities adds to this problem.

The reason is that both CRD IV and EBA guidelines on Corporate governance call for an institution-level governance framework:

CRD IV – Article 74

1. *Institutions shall have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks they are or might be exposed to, adequate internal control mechanisms, including sound administration and accounting procedures, and remuneration policies and practices that are consistent with and promote sound and effective risk management. The remuneration policies and practices referred to in the first subparagraph shall be gender neutral.*
2. *The arrangements, processes and mechanisms referred to in paragraph 1 of this Article shall be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the institution's activities. The technical criteria established in Articles 76 to 95 shall be taken into account.*

CRD IV – Article 109

2. *Competent authorities shall require the parent undertakings and subsidiaries subject to this Directive to meet the obligations set out in Section II of this Chapter on a consolidated or sub-consolidated basis, to ensure that the arrangements, processes and mechanisms required by Section II of this Chapter are consistent and well-integrated and that any data and information relevant to the purpose of supervision can be produced. In particular, they shall ensure that parent undertakings and subsidiaries subject to this Directive implement those arrangements, processes and mechanisms in their subsidiaries not subject to this Directive, including those established in offshore financial centres. Those arrangements, processes and mechanisms shall also be consistent and well-integrated and those subsidiaries shall also be able to produce any data and information relevant to the purpose of supervision. Subsidiary undertakings that are not themselves subject to this Directive shall comply with their sector-specific requirements on an individual basis.*

EBA GUIDELINES ON INTERNAL GOVERNANCE

Title I – Proportionality

17. *The proportionality principle encoded in Article 74(2) of Directive 2013/36/EU aims to ensure that internal governance arrangements are consistent with the individual risk profile and business model of the institution, so that the objectives of the regulatory requirements are effectively achieved.*
18. *Institutions should take into account their size and internal organisation, and the nature, scale and complexity of their activities, when developing and implementing internal governance arrangements. Significant institutions should have more sophisticated governance arrangements, while small and less complex institutions may implement simpler governance arrangements.*
19. *For the purpose of the application of the principle of proportionality and in order to ensure an appropriate implementation of the requirements, the following criteria should be taken into account by institutions and competent authorities:*
    a. *the size in terms of the balance-sheet total of the institution and its subsidiaries within the scope of prudential consolidation [...];*

Title III – Governance framework

Organisational framework in a group context

82. *In accordance with Article 109(2) of Directive 2013/36/EU, parent undertakings and subsidiaries subject to that Directive should ensure that governance arrangements, processes and mechanisms are consistent and well integrated on a consolidated and sub-consolidated basis. To this end, prudential consolidation should implement such arrangements, processes and mechanisms in their subsidiaries not subject to Directive 2013/36/EU to ensure robust governance arrangements on a consolidated and sub-consolidated basis. [...].*

83. *The management body of a subsidiary that is subject to Directive 2013/36/EU should adopt and implement on the individual level the group-wide governance policies established* ***at the consolidated or sub-consolidated level, in a manner that complies with all specific requirements under EU and national law.***
84. *At the consolidated and sub-consolidated levels, the consolidating institution should ensure* ***adherence to the group-wide governance policies*** *by all institutions and other entities within the scope of prudential consolidation, including their subsidiaries not themselves subject to Directive 2013/36/EU. When implementing governance policies, the consolidating institution should ensure that robust governance arrangements are in place for each subsidiary and consider specific arrangements, processes and mechanisms where business activities are organised not in separate legal entities but within a matrix of business lines that encompasses multiple legal entities.*
85. *Parent undertakings and their subsidiaries should ensure that the institutions and entities within the group comply with all specific requirements in any relevant jurisdiction.*

How does this create an unlevel playing field for banks versus non-banks with which we compete?

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Table 1: Time to market for bank tech innovations	
Phase 1 – Understand the problem	[redacted]
Phase 2 – Create the solution	[redacted]

Phase 3 – Deliver the solution	[redacted]
[redacted]	

How could the regulatory framework be amended to solve this?

We understand these activities – or the entities in which they are carried out - should not be subject to the whole bank Governance Model but should be able to apply proportionate governance infrastructure

The CRD already mentions proportionality, so we propose to just change the EBA guidelines to precise how proportionality can also be applied to entities with other corporate purposes.

EBA GUIDELINES ON INTERNAL GOVERNANCE

Title I – Proportionality

17. *The proportionality principle encoded in Article 74(2) of Directive 2013/36/EU aims to ensure that internal governance arrangements are consistent with the individual risk profile and business model of the institution, so that the objectives of the regulatory requirements are effectively achieved.*
18. *Institutions should take into account their size and internal organisation, and the nature, scale and complexity of their activities, when developing and implementing internal governance arrangements. Significant institutions should have more sophisticated governance arrangements, while small and less complex institutions may implement simpler governance arrangements.*
19. *For the purpose of the application of the principle of proportionality and in order to ensure an appropriate implementation of the requirements, the following criteria should be taken into account by institutions and competent authorities:*

a. the size in terms of the balance-sheet total of the institution and its subsidiaries within the scope of prudential consolidation;

b. the geographical presence of the institution and the size of its operations in each jurisdiction;

c. the legal form of the institution, including whether the institution is part of a group and, if so, the proportionality assessment for the group;

New letter:

(c'). in a Group or Sub-Group structure, the activity of each entity, taking into account whether it is an undertaking subject to a specific regulation.

d. whether the institution is listed or not;

e. whether the institution is authorised to use internal models for the measurement of capital requirements (e.g. the Internal Ratings Based Approach);

f. the type of authorised activities and services performed by the institution (e.g. see also Annex 1 to Directive 2013/36/EU and Annex 1 to Directive 2014/65/EU);

g. the underlying business model and strategy; the nature and complexity of the business activities, and the institution's organisational structure;

h. the risk strategy, risk appetite and actual risk profile of the institution, taking into account also the result of the SREP capital and SREP liquidity assessments;

i. the ownership and funding structure of the institution;

j. the type of clients (e.g. retail, corporate, institutional, small businesses, public entities) and the complexity of the products or contracts;

k. the outsourced activities and distribution channels; and l. the existing information technology (IT) systems, including continuity systems and outsourcing activities in this area.

l. the degree of development and maturity of their activities and services, in particular in the context of innovation and digital transformation life cycle. For those undertakings providing digital services at an embryonic stage, the governance framework should be proportionate to the risks embedded in their business models.

Title III – Governance framework

Organisational framework in a group context

84. At the consolidated and sub-consolidated levels, the consolidating institution should ensure adherence to the group-wide governance policies by all institutions and other entities within the scope of prudential consolidation including their subsidiaries not themselves subject to Directive 2013/36/EU. This adherence should be proportionate to their activities as stated in section 19l. When implementing governance policies, the consolidating institution should *ensure that robust governance arrangements are in place for each subsidiary and consider specific arrangements, processes and mechanisms where business activities are organised not in separate legal entities but within a matrix of business lines that encompasses multiple legal entities.*

Barrier 2: Software deductions from capital

Banks are generally required to deduct software investments from their core capital, making these investments prohibitively expensive. Banks must pay for them with the most important resource they have to carry out their business - capital that has to be replenished as it is drawn down. This means software investments add to the cost of capital.

How does this create an unlevel playing field for banks versus non-banks with which we compete?

Non-banks do not have to deduct software investments from their capital. This creates an unlevel playing field for banks that is affecting both organic innovation and also the acquisition of fintechs.

[redacted]

[redacted]

[redacted]

How could the regulatory framework be amended to solve this?

We very much appreciate that the European Commission has mandated the EBA to analyse under what conditions software should be not be deducted. There needs to truly be a significant capital relief - and as soon as possible, as time is of the essence given the massive shift to digital channels by our customers. The EBA's proposal under consultation is a simple and practicable approach based on prudential amortisation, [redacted]

[redacted].

The Covid-19 pandemic has shown us how important it is for all types of companies across the European Union , and this is also the case for banks , to have the appropriate technology systems in place to be able to react and continue providing services in the face of unexpected situations.

Barrier 3: Remunerations

EU banking remuneration regulations are a substantial impediment to recruit digital talent to EU banks. [redacted]

This is mainly because of two items in EU banking remuneration regulations affecting the individuals which form part of the Material Risk Takers (MRTs) collective of a banking entity:

- [redacted] IV Art. 94.1.g)i) and ii) –and is not modified by CRD V, which is to be transposed into EU countries' regulations by the end of 2020-.
- The obligation to defer the delivery of a substantial part of variable remuneration for at least 3 years (minimum threshold to increase to 4 years with CRD V) and to pay at least 50% in equity instruments. This is covered by CRD IV Art. 94.1.l) and m) which are updated by CRD V to increase the minimum deferral period to be not less than four to five years and to exclude from deferral executives of entities which assets are not higher than €5Bn, as well as executives whose variable remuneration is below €50k.

How does this create an unlevel playing field for banks versus non-banks with which we compete?

Remuneration limits for banks are:

- Bonus caps: Bonuses [redacted]
- [redacted]
- [redacted]

[redacted]

Digital talent is scarce, so this harms the capacity of European banks to access the best talent or increases the cost to recruit, as the limits on remuneration must be offset with other attractive features such as higher fixed salaries. When [redacted]

How could the regulatory framework be amended to solve this issue?

For entities within bank groups that provide digital services (including payments), the solution should be to amend article 109.5 of the CRD V, which states that those undertakings that provide certain services (including payment services) should be included in the scope of the governance requirements.

Additionally, to exclude payments institutions (a critical digital service), CRD V should be amended due to the inclusion within the scope of remuneration requirements of those undertakings that provide certain services (including payment services), on an individual basis.

[redacted]

In this regard, there are some proposals which have been put forward in feedback to various regulatory initiatives:

- [redacted]
- [redacted]
- [redacted]

Barrier 4: Outsourcing

The procedures that financial institutions must follow to approve new technological providers are not comparable to that of non-regulated entities. This includes banks and payment service providers.

Especially problematic are the following requirements:

- **Sub-outsourcing assessment** is one of the critical issues for the risk assessment, due diligence and oversight of outsourcing providers. Monitoring the sub-outsourcing chain **depends on suppliers** reporting on changes in their supply chain but also on our capacity to access and perform the due diligence of sub-service providers. Assessing sub-outsourcing activities through the **whole** [redacted]
- **Requiring unrestricted rights to audit suppliers,** which in certain cases become very problematic and difficult to apply in practice, since for example it will be subject to the supplier's willingness to allow this clause in their agreements. [redacted]
- **Communication requirements**. Lack of clarity on what is considered "adequately inform competent authorities in a timely manner" regarding the planned outsourcing of critical services results in some jurisdictions in **procedures that de facto imply prior approval**.
- **Intra-group outsourcing**. According to the guidelines, intragroup outsourcing is subject to the same regulatory framework as outsourcing to non-group service providers. [redacted]
- **Perimeter delimitation.** There is not a consistent determination of which activities carried out by third parties are to be considered outsourcing, largely depending on the subjective appreciation of the local supervisor that may consider, [redacted]
- **Critical or important functions.** The definition is not clear enough. This raises uncertainty and creates an artificially unlevelled playing field depending on subjective decisions.

As commented, the EBA guidelines on Outsourcing arrangements also extend their scope to the **use of cloud**, which could also be considered outsourcing and therefore subject to these requirements. Requirements set in some jurisdictions such as the need for a pre-notification become especially onerous for this technology increasing the time-to-market of cloud solutions compared to other non-regulated entities.

The **lack of clarity of the Guidelines** leave plenty of **room for interpretation in many requirements and for national "gold-plating"**. [redacted]

[redacted]

How does this create an unlevel playing field for banks versus non-banks with which we compete?

The procedures banks must follow to **approve new technological providers,** as well as the **flexibility needed to access cloud services,** are more rigorous than those applied to non-banks. [redacted]

Examples of how this creates unlevel playing field are:

- **Communication requirements.** [redacted]
- **Perimeter delimitation.** [redacted]
- **Contractual elements required in outsourcing agreements**: According the EBA guidelines on Outsourcing, banks need to be able to include in their outsourcing arrangements clauses specifying e.g. whether or not sub-outsourcing of critical or important functions, or material parts thereof, is permitted; or ensuring full access to all relevant business premises ("access and information rights") as well as unrestricted rights of inspection ("audit rights") to both banks and their competent authorities, or to any other person appointed by them or the competent authorities. [redacted]
- **Monitoring the sub-outsourcing chain**: EBA guidelines require financial institutions to perform the risk assessment and monitoring of sub-outsourcing activities through the whole outsourcing chain which will not be feasible in many cases. [redacted]

[redacted]

- **Data location restrictions**: Data localization requirements still exist in the EU, requiring financial institutions to include in their contracts with CSPs that the servers where the data will be located will need to be in Europe. This requirement means that suppliers who cannot provide this service, or who may not be willing to include such a clause in their contracts, are de facto excluded. This requirement does not apply to other sectors.
- **Restriction on sub-outsourcing chains in some regions:** In some jurisdictions it is not possible to carry out the so-called chain outsourcing, under which a subcontractor would entrust part of the activities performed on behalf of the supplier to further subcontractors. [redacted].
- **Intragroup outsourcing:** [redacted].

The cost of compliance with these requirements is very high, requiring extra resources to meet all these obligations. Non-regulated competitors do not face these requirements.

[redacted]

[redacted]

How could the regulatory framework be amended to solve this issue?

For entities within bank groups that provide digital services (including payments), the solution should be to amend EBA guidelines for internal governance to allow for proportionality, so the supervisory expectations should be reduced depending on the corporate purpose of each entity, its activities and the supervisory practices and expectations applied to those for similar competitors.

In addition, we believe that there is room for improvement in the regulatory framework:

- Reducing fragmentation at EU-level requires **establishing minimum baseline requirements avoiding gold-plating,** and **consistently harmonizing supervisory practices across jurisdictions**.

- The Commission should **mandate EBA to amend its guidelines on outsourcing.** We propose in particular the following amendments:
  - Sub-outsourcing: a financial entity should only be responsible for the direct relationship with its provider. Further responsibility to ensure that the sub-outsourcing complies with the agreed terms should lie within the company that decides to sub-outsource.
  - Communication requirements: it should be clarified that a notification process is sufficient and that a previous authorization should not be required.
    - [redacted]
    - [redacted]
- The Guidelines should **be sufficiently detailed** to avoid differences in interpretation, and also **become mandatory for national supervisors** and **supersede other national regulations**.
- Regarding in particular to the use of the **cloud**, it is also essential to remove **data localization requirements,** allowing companies to store and process data wherever they choose. Ensuring the free flow of data, with appropriate security measures, is key for financial institutions to harness the benefits of cloud computing.
- The Commission should also consider a **specific oversight of third party providers (such as cloud providers) that become critical** for the financial sector ensuring that risks at system level are properly managed.
  - This makes even more sense considering the relevance of cloud infrastructures also for other sectors, and would be at the same time more efficient allowing companies to leverage the certainty provided by CSPs oversight.
    - [redacted]
- [redacted]

Barrier 5: Supervisory expectations

In addition to the regulatory requirements, banks need to ensure they meet supervisory expectations. Sometimes, innovations or internal measures require supervisory approvals before their adoption by the banks. Some examples are:

- [redacted]
- [redacted]
- [redacted]

How does this create an unlevel playing field for banks versus non-banks with which we compete?

Banks who need to ensure supervisory approval can only move at the pace of their supervisors. [redacted]

- [redacted]
- [redacted]

How could the regulatory framework be amended to solve this issue?

- For entities within bank groups that provide digital services (including payments), the solution should be the amendment to the EBA guidelines for internal governance to allow for proportionality. This could lower supervisory expectations, s depending on the corporate purpose of each entity, its activities and the supervisory practices and expectations applied to those for similar competitors.
- In addition, other regulatory measures should be considered:
  - **Reducing market fragmentation within the EU** requires **establishing minimum requirements that become mandatory for national supervisors to recognize, superseding other national regulations.** [redacted] The Commission should **mandate EBA to clarify its requirements**. Any **data localization requirements** should be removed, allowing companies to store and process data wherever they choose. The regulatory framework should remain **technology neutral,** follow a **risk-based approach**, and ensure a **level playing field for all industries.**
  - **More guidance is also welcomed** to provide **certainty about supervisors' expectations** about compliance with existing rules (e.g. GDPR, regarding the appropriate levels of explicability or the sufficiency of measures implemented to avoid discrimination when using AI), and to ensure the **same interpretation across the EU**. **A global consistent approach is needed** to ensure consumers and investor protection, and facilitate technology adoption in Europe.
  - [redacted]
  - [redacted]

[redacted]

[redacted]

[redacted]

Contagion risks. A specific consideration for reputational risk

Banks' engagement in digital innovation should not put at risk the solvency of a bank nor create potential financial stability.

The solutions we have provided above are trying to balance the need to allow European banks to facilitate the development of digital finance and the capacity of supervisors to be able to detect if this is creating risks to the bank's solvency

As with other players in the digital ecosystem, trying to avoid any risk from digital activity, even low probability risk, is impossible. As with any other activity that banks perform, a risk appetite level needs to be set, under which we need to be able to innovate with fewer constraints.

A specific example is reputational risk. [redacted]

[redacted]

[redacted]

[redacted]

Risks of an unlevel playing field in digital financial services. What are the consequences for the economy?

The disparate treatment banks face creates two important sets of risks.

New risk - outside the regulatory perimeter.

Shadow banking

[redacted]

The issue here is not the creation of new sources of credit, which is welcomed when it is done responsibly and with appropriate oversight and risk management. But lending, like deposit holding, are core banking functions that are carried out in a very carefully managed system of rules and expectations that reflect the need for exceptionally robust prudential standards as well as the risks of pro-cyclicality inherent in credit provision.

[redacted][3] Regulators have worked hard over the last decade to prevent banking activity from moving outside the regulatory

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[2] AltFi, Cambridge Centre for Alternative Finance. 2018

[3] Concerning the specific lending activity, the BIS (BIS and FSB report on Fintech Credit, Market structure, business models and financial stability implications) has found that Fintech credit gives rise to a number of challenges for regulators, such as potential deterioration of lending standards, increased procyclicality of credit provision, and a disorderly impact on traditional banks, for example through revenue erosion or additional risk-taking. FinTech credit also may pose challenges for regulators in relation to the regulatory perimeter and monitoring of credit activity.

perimeter into the "shadow banking" system. Despite these efforts, many financial activities now occur outside this perimeter.

Financial stability risks, related to lending activities

Moral hazard may be increased relative to the status quo because platforms follow an originate-to-distribute model with small or no stakes in the loans generated.

Adverse selection is [redacted]

Monopolisation risk

In addition, the entry of digital platforms is also creating monopolisation risk (Padilla and De la Mano, Bigtech banking 2018):

[redacted]

- [redacted]
- [redacted]

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted]

The unintended consequences of an unlevel playing field

Risks can appear if banks cannot compete due to a stricter regulatory framework than necessary for the real risks that the activities create.

In this case, there could be:

Financial stability risks, related to bank disintermediation:

[redacted]

The economy is dependent on banks' ability to lend and provide liquidity, especially in the EU. [redacted]

[redacted]

[redacted]

European Data Strategy for Finance

For the EU's economy to remain competitive on the global stage, Europeans need to turn the necessary digital transformation of EU's traditional industries into a global advantage. The question for EU policy makers today is how to create the right policy environment to support EU businesses becoming the innovators of tomorrow's world whilst preserving and promoting the core of our European values.

There is no easy answer – but it requires a **genuine horizontal approach** as today's sectors lines are increasingly less relevant. This will be a pre-condition to ensure the development of data-driven businesses in Europe and **help EU businesses re-invent themselves** to success globally.

We welcome the Commission's recent Data Strategy which aims to stimulate Europe's data economy. We support the Commission's ambition to create a 'data agile economy' by facilitating cross-sectoral measures for data access and use. We believe that regulatory initiatives are needed to best address the challenges faced by European companies transforming their business model to compete in the digital age.

In each of the cases presented below, the principle of wider and regulated data sharing is central to the policy solution. Guaranteed real time transmission of customers' data in a way that is safe and efficient can improve products, widen financial inclusion, foster competition, and support the fight against fraud, as it allows to provide more convenient just in time offerings.

Three pillars are needed for data sharing to realise its full potential:

1. **User control**: People and businesses, as owners of the data they generate, must be in control of it and decide freely with whom to share it, to their own advantage.[1] Ensure reciprocity across industries, [redacted].
2. **Safety:** A principle of user ownership must go hand in hand with a principle of user protection. Any data sharing framework must ensure the secure transmission of data. APIs are the preferred method for this: they are safe, efficient and provide access to data on an immediate and ongoing basis. Access can be easily stopped whenever the user decides to do so.
3. **Value added:** Users are the owners of their raw and observed data, but companies that build value around this data and enhance its quality should be able to retain this value. "Elaborated" or inferred data insights should not be subject to data sharing obligations.

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[1] UK Furman Report :Unlocking digital competition

[2] Google, Amazon, Facebook, Apple, Alibaba.

[redacted].

After COVID, the capacity of the financial sector to collaborate with authorities and provide support to the economy is being tested at extreme. This is not the moment to adopt another data sharing obligation only upon the financial sector (and especially banks), for the benefit of the only players that have benefited from COVID situation.

[redacted]

[redacted].

Within the financial space, we consider it necessary that this new regulatory framework- that forces the financial companies to open data -would also include big online intermediation services. Otherwise there is a risk that the unlevel playing field will persist as the big online intermediation services continue to benefit from others sharing their data)

Regarding privacy and cyber: we believe APIs are very powerful to ensure that only the relevant data is accessed by the authorized party. We believe it is also necessary to ensure that companies trying to obtain access have proved they have the means to protect privacy and cybersecurity, as provided for under PSD2. A licensing or authorization regimes are needed, depending on the category of data to be accessed and supervision should be put in place to ensure not only these risks but also GDPR is properly respected.

Different approach in the financial space: competition issues

PSD2 create an asymmetric position in Europe which large tech companies are able to gain access to the data of European users, while banks do not have the [redacted]

[redacted].

Leave the choice to users

We believe consumers can understand perfectly why certain data could be useful in other contexts, irrespective sectorial boundaries, as it happened during the COVID crisis, where everybody understood perfectly that telecom and technology platforms data were extremely relevant to solve a healthcare use case.

Consumers are already providing access to some data in certain contexts. For example, in Spain, parents looking for a place in a private school for their children already provide access to their tax data so that their financial capacity is assessed.

Users should not be obliged to share their data, but be left the real choice to choose doing so. For users to be willing to provide data, some conditions should be met

- Usefulness: they would do it if they see there is positive consequences for them. For that, there should be a use case in which they see value.
- Convenience: practical solutions that allow individuals to exercise control, such as mobile and online dashboards or apps.
- Trust: security conditions and data protection would give comfort to consumers sharing their data.

One category of data is not enough

PSD2 has been implemented with no clear effect in terms of disruptive innovation in the market nor benefits to consumers. Account aggregators are not game changers in terms of providing value to customers.

However they are revealing important competitive issues in terms of access to financial data for other purposes not really linked to finance. We believe the main reason for the lack of success is that the PSD2 only opened the access to a very limited set of data, just from banks, and not from other players of the financial ecosystem.

The benefits of Open Finance will be very much dependent on whether the initiative is once again limited to open the data that is now held by banks instead of all the data that is useful in the financial ecosystem. That is, whether customers shall be given the opportunity to give access to the data from all financial service providers, [redacted].

[redacted] where they should put their resources at the service of supporting the European recovery. This is especially true, if this initiative is developed quicker than the Digital Services Act's initiative to open data from online platforms.

However, in the case that the Open Finance initiative includes data across sectors, we believe this can produce very positive results in terms of:

- More innovative and convenient services for consumers and investors, which are not limited to aggregating information but to analyse it and go beyond current value propositions.
- Efficiencies for the industry by making processes more automated, robust and traceable, with the opportunity to have a 360º view of the customer and provide solutions for the long term (i.e. investment advice that is not only based on the current preferences of investors but also on future employability indicators).
- Business opportunities for new entrants in the financial industry, but also for existing firms that create value for consumers.
- New opportunities for incumbent financial services firms, including through partnerships with innovative start-ups.
- Easier access to bigger sets of data, hence facilitating development of data dependent services.
- Enhanced access to credit for small businesses and individuals that are poorly banked.

Ecosystems of data

Data sharing is key if users, both consumers and businesses are to truly benefit from the opportunities their data could offer for improving the way they access and use financial services.

A broad framework, beyond financial services, has to be developed. Users must be able to share their data held by others [redacted]) with different service providers. The focus should not be solely on financial products, but on use cases and ecosystems. Otherwise the only result will be incremental innovation. More access to data will enhance all the products and services. But also the way the customer is served, the risk management, etc.

True innovation will only come if consumers and business users are able to obtain finance in a manner that is more aligned with their needs, and which evolve in the different stages of their life. No customer wants a mortgage: what he wants is a home. No customer wants a pension product: what he wants is to stay financially safe in its future. We call the EU Commission to abandon the rigid focus on financial products in order to focus at customers' financial needs, which will be better matched with a broader perspective of just the bunch of products that customer holds today.

We believe that all data generated by users in their interactions with all kind of service providers should be available for them to share with whom users wish (please note that we do not believe that the products or services generate the data, but the interactions of users with these services: this is important to distinguish, because we support that the data generated by the providers, which create additional value to the users-generated data should not be accessible).

Data is organized in ecosystems and the one that refers to a user provides more information about the needs and characteristics of such a user than just a limited context of his or her digital life, so just making partial data queries will lead to poorer outcomes.

[redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]

[redacted]

The best way to assess which data is necessary, is to look at which is the customer's pain point that we want to solve. Then, look around for an ecosystem of data. In fact, this is exactly what the Commission did in the Green Data Space, where instead of looking for green data in a specific sector, they are looking for varied sources of data in different sectors, in order to have the best knowledge to solve the case.

We are proposing some ideas:

[redacted]

[redacted]

[redacted].

The solution: more data for better credit profiling

What is already possible

There is now a large body of research that testifies to the power of additional data in improving credit scoring. For example:

- **Research by NBER[3] on digital** [redacted]

- **Bank of International Settlements (BIS) research on Big Tech credit:** Platform data and data via social media has the potential to enrich credit scoring models. In the case of Mercadolibre (Argentina), 30% of its portfolio would have fallen into the high-risk cluster as assessed by a traditional credit bureau. Widening the pool of data used improves creditworthiness of many customers and thus opens new options for them.

- The Bank of England published a paper in March 2020 on **Open Finance for SMEs[7]**, identifying the following benefits
  - SMEs would be able to harness the power of their data to access the finance they need to grow. The initiative would expand the sources of data that lenders could access, such as data held at insurance and utilities companies, as well as search, ratings and social media data could help to build richer credit files.
  - SMEs would have full control of their data and its sharing; data transfer is permissioned by the SME and actioned via APIs

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[3] Credit Scoring using digital footprints. US National Bureau of Economic Research, Berg, Burg, Gombovi, Puri, 2018.

[4] The AUC is a simple and widely used metric for judging the discriminatory power of credit scores. The AUC ranges from 50% (purely random prediction) to 100% (perfect prediction) and is closely related to the Gini coefficient (Gini= 2*AUC–1). The AUC corresponds to the probability of correctly identifying the good case if faced with one random good and one random bad case. An AUC of 60% is generally considered desirable in information-scarce environments, while AUCs of 70% or greater are the goal in information rich environments.

[5] Credit Scoring using digital footprints. US National Bureau of Economic Research, Berg, Burg, Gombovi, Puri, 2018.

[6] The AUC is a simple and widely used metric for judging the discriminatory power of credit scores. The AUC ranges from 50% (purely random prediction) to 100% (perfect prediction) and is closely related to the Gini coefficient (Gini= 2*AUC–1). The AUC corresponds to the probability of correctly identifying the good case if faced with one random good and one random bad case. An AUC of 60% is generally considered desirable in information-scarce environments, while AUCs of 70% or greater are the goal in information rich environments.

[7] https://www.bankofengland.co.uk/-/media/boe/files/fintech/open-data-for-sme-finance.pdf?la=en&hash=FD4BC43BBD61EDEC5F8460C6BB7488EFDE647581

- The same platform also has the potential to deliver a "personal financial passport" for individuals. Such use cases would put into practice the recommendations from the Digital Competition Expert Panel Report (Furman Review). This data mobility would allow consumers to move their personal information from one platform to another, to avoid lock-in and open the door to new services.
- Access to government-verified data, including passport and tax data, such as tax returns, with the permission of the SME can also reduce significantly the likelihood of falsified applications, simultaneously reducing fraud and credit risk.

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

The challenge

What more we could do

EU customers now have the opportunity to ask for data portability under the new General Data Protection regulation (GDPR). However, very often data-holders respond to such queries with cumbersome formats and slow timelines which are not compatible with a customer's preference for much greater immediacy.

Under the framework created by PSD2, banks now provide access to customer's information to third parties in a structured, safe and consistent manner. However, for other kind of data held by other players, they depend on third parties' willingness to provide access to customers' data in a convenient format. This is sometimes solved through bilateral agreements among data holders, however has the problem of being limited to the negotiation power of the parties.

Many other use cases could unblock more credit potential for Europe. For example:

- If a [redacted]

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[8] The BadRate is calculated: #Bad clients/# total clients, where bad clients that will be default in the next 6 months.

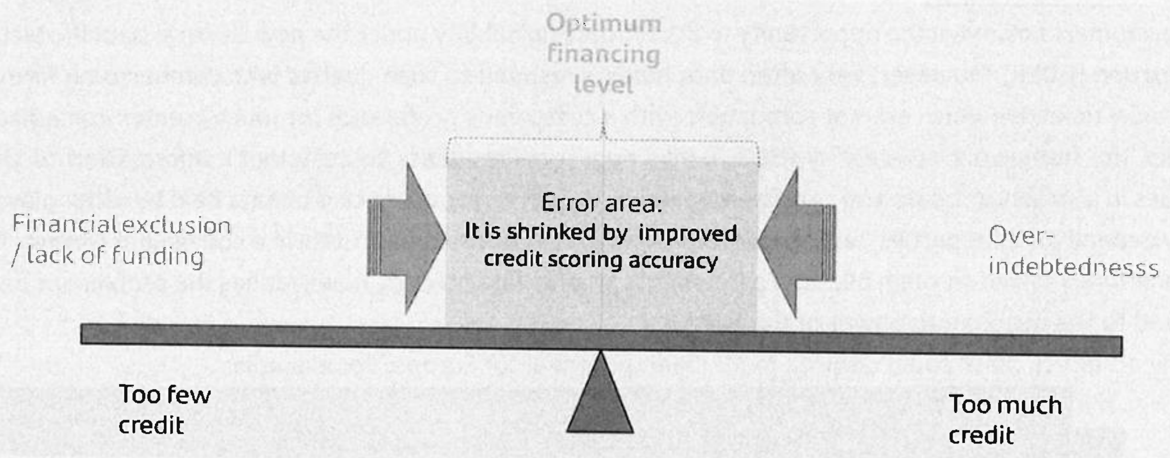
[redacted]

True portability puts the data owner in control – not the firm holding his data. [redacted]

The aim of a European data policy should be to complete the regulatory framework for data sharing to boost innovation and competition by giving users genuine control over their data.

What would be the specific benefit to the consumer or business user?

The consumer will always benefit by a better creditworthiness assessment, in the sense that access to more data will improve creditworthiness assessment by avoiding errors (provide too much credit or too few). We can better balance the needs of finance with the needs to control overindebtedness. Error area will be reduced. And this will only play at the benefit of consumers.



Also, this will empower the consumer to widen the range of potential finance providers and thus increase competition in the sector. Finally, the consumer will be benefitted by a more solvent financial ecosystem, in which risk is better priced.

Case 2. Data access and sharing for empowering consumers

Problem: Consumers may not be taking the best financial decision

Very often, consumers make poor financial decisions in terms of spending and the allocation of household resources. At the same time, it is difficult for a financial advisor to get a broad picture of the consumer needs in order to facilitate this service.

The solution: more data for better consumer decisions

[redacted]

[redacted].

Which data needs to be accessed?

For this specific use case, the key access is to the purchase logs in a defined online marketplace and more importantly, the wish list before a purchase is done. With this access, when the customer selects an item for his wish list, the financial advice provider would tell him if he can afford it or if he needs to wait to get this article. It could even say whether he would need finance and in which terms.

What would be the specific benefit to the consumer or business user?

There is a short-term benefit to the consumer, which is having a tool to better control his finances, not only at an ex-post manner (when he has actually spent money), but in an anticipated way. Thus, he can make better consumption decisions.

[redacted]

[redacted]

[redacted]

[redacted].

The solution: more data for better corporate management

[redacted].

What would be the specific benefit to the consumer or business user?

In this case, the direct benefit is for the SME that can receive this additional service from different potential providers: either the platform itself or anyone else that is more specialised in financial advice.
Second round benefits could be for the EU economy that is sustained by SMEs. While making SMEs more financially wise, the ecosystem will be strengthened.

Case 4. More personalised financial offerings for individuals

Problem: Adapting financial offers to customers' needs is challenging in a world which is changing quickly

Financial products and services for both businesses and retail customers could be more customised to the benefit of the customer.

The solution: more data to improve financial offers

What we are doing

[redacted]:

- ✓ [redacted]
- [redacted]

What more we could do

There are many ways in which a better approach to data could help improve product customisation and foster competition.

- ✓ **In B2C markets,** [redacted].
- ✓ [redacted].

It should be stressed that in both cases, the sharing of data would remain the prerogative of the customer and the process be transparent so he remains in control of his data.
Additional examples are:

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

The challenge

The current GDPR approach to data portability does not extend the concept to non-personal data. Company data is included in the non-personal data category, which [redacted]

[redacted].

As a basic principle, the regulatory framework for data sharing should include companies' data. Two basic routes are available for driving this.

- Competition policy: the [redacted]
- [redacted].

What would be the specific benefit to the consumer or business user?

There are many ways in which access to this data would facilitate more personalized products and services:

- [redacted]
- [redacted]
- [redacted].

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9 [redacted].

10 [redacted]

Case 5. Helping citizens to plan for their future while channeling funds to the economy

The Problem: financial advice related to pension and social security

Individuals lack of proper understanding of financial markets, which prevents them from channeling funds to long term investments. This is also harming the long term financing of the European economy.
Lack of proper understanding of capital markets mean that individual investors' portfolios are not always properly balanced between their future needs and current preferences. [redacted]

The solution: more data to understand investors' needs and expectations

In order to build a financial portfolio, some key elements are:

- [redacted]
- [redacted]
- [redacted]

[redacted])

The challenge

Customers who are willing to share such data to [redacted].

What would be the specific benefit to the consumer or business user?

In this case, the direct benefit for the customer is to have a full picture of his future financial needs and resources to help them make the best asset allocation decisions for his future and be able to adapt not only to market moves, but also to changes in their personal situations.

Case 6. Improve security for consumers and build a safer economy

The Problem: financial crime

The threat of fraud facing banks and payments firms has grown dramatically in recent years[14]. [redacted]

The solution: more data to improve safety

<u>What we are doing</u>

Banks are committed to fight fraud and money laundering by putting their knowledge and information at the service of the ecosystem.

Specifically on fraud, we are improving detection in a range of ways:

- We [redacted]
- [redacted].

<u>What more we could do</u>

Data sharing across industries would improve fraud management through advanced analytics, both facilitating the identification of fraud cases by considering a larger variety of data in the predicting models and, also, by reducing false positives, which is a source of friction with customers. In the current digital economy other data could be more useful to this objective. For fraud detection and also AML fight behavioural data is very powerful, and today many of these interactions happen in the digital space.

[redacted]

- [redacted]
- [redacted]

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[14] For one assessment by McKinsey, see: https://www.mckinsey.com/~/media/McKinsey/Industries/Financial%20Services/Our%20Insights/Combating%20payments%20fraud%20and%20enhancing%20customer%20experience/Combating-payments-fraud-and-enhancing-customer-experience.ashx. The same report concludes: "advanced analytics provide a tangible reason to integrate data across siloes, a means to automate and enhance expert knowledge, and the right tools to prevent, predict, detect, and remediate fraud".

[redacted]

- [redacted].

The challenge

PSD2 empowers consumers and businesses to choose who to share their payments data with, under what conditions, in a safe way. This is a first step to unlocking opportunities for innovation and boosting competitiveness. According to the IIF[15], "information sharing is key for financial institutions (FIs) and law enforcement agencies to track and identify suspicious activities".

[redacted].

Any strategy that makes it easier for customers to request and require the sharing of their data, coupled with an extension in the scope of data that can be shared, would contribute to an improvement in the capacity to tackle fraud.

What would be the specific benefit to the consumer or business user?

In this case, the direct benefit for the customer is to avoid fraud. [redacted]

Case 7. Improve the identification process for better experience

The Problem: customer identification

The identification of customers is a key issue for banks, since they don't only need to take care of the common customer identification means but also ensure compliance with AML/CTF rules. [redacted]

The solution: more data to improve onboarding

<u>**What we are doing**</u>

An approach to Personal [redacted]

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[15] https://www.iif.com/Publications/ID/258/Deploying-Regtech-Against-Financial-Crime

[redacted]

What more we could do

We are working with different players to develop solutions to this important issue.

- [redacted].
- [redacted]

The challenge

We are developing these ideas with [redacted].

What would be the specific benefit to the consumer or business user?

[redacted]

[redacted].

Digital Finance for Europe

To compete globally, Europe must make sure that European companies can compete fairly at home

As we set the rules for the digital economy, we need to make sure that European companies are able to compete fairly right across the EU. Without a single market, they will never be able to scale up and compete on equal terms with the biggest global players.

In finance, however, progress towards the single market is hindered by fragmented rules on issues ranging from consumer credit to information to customers, to anti-money laundering legislation.

Given the speed with which technology continues to evolve, we also think it is vital that regulators take a principles-based approach to regulation rather than trying to specify everything in detail: otherwise we risk choking off the very innovation that we should be seeking to encourage.

EU Directives which allow widely different implementation (and national gold-plating) clearly lead to market fragmentation. We therefore encourage the Commission to reduce national divergence as far as possible by prioritising the use of maximum harmonisation instruments and by widening the remit of the European Supervisory Authorities.

Ensuring companies have fair access to crucial infrastructure will foster competition and strengthen customers' choice by avoiding innovative solutions are filtered by the infrastructure provider. If we want financial firms to embrace digitalisation, they will need to be regulated proportionately. If we want to foster competition and inclusion, we also need to strengthen the control that citizens and SMEs have over their data.

- **We support the European Commission's ambition to reduce regulatory barriers, ensure European technological and digital sovereignty and develop a data-sharing framework with the citizen at its centre**
- **Banks' Fintech activities should be regulated just like non-bank Fintech activities**, so long as they do not put core banking at risk. We hope that the European Commission will take this opportunity to reconsider its approach to banking regulations which hinder European banks from becoming true digital champions, by allowing more proportionality in the way that fintech business is governed when developed by banks.
- **Data access should be mandated at a consistent speed across sectors**, to provide citizens' and SMEs' with powerful tools to control their data while ensuring a level playing field. The Commission should not impose additional requirements on banks while their main tech competitors remain out of scope (even as they become increasingly important players in the financial sector).

- **Ensuring European scale can be attained is critical for European** [redacted] **Cross-border business needs to be facilitated with an urgent effort to harmonise rules across the EU.**
- **Fair access to infrastructure is required to address issues raised by** [redacted]. These platforms today have the power to set the rules on vital digital infrastructures which their potential competitors simply have to accept and which impose technologies and business models, and affect how products can be delivered to customers. This crushes market contestability and customer choice, which clearly connects the dynamics already established in financial markets with the Commissions' Digital Services Act and New Competition Tool initiatives.

Digitalisation is blurring **boundaries between sectors, but prudential regulation has not kept up with the rate of change. A fintech subsidiary of a bank, for example, has the same** prudential regulation applied to it as though it were a traditional bank, even though its activities do not pose a significant risk to the core bank. This not only means that big techs have a lighter regulatory regime when running a fintech than a bank; it makes it harder for banks to innovate, meaning that they suffer a double disadvantage.

Core banking activities are highly regulated for good reasons. However, it is not proportionate to apply this level of regulation to everything within the perimeter of a bank group. If banks are to innovate effectively and competitively, then governance requirements should be applied proportionately, taking into account what precise role an operating unit within a banking Group performs, [redacted]).

We need a regulatory framework that **fosters innovation and technology uptake in the financial sector. Cloud** for example provides the flexibility required to compete in a digital environment, while also facilitates the use of other technologies such as Big Data and AI. However the EBA guidelines on outsourcing -which apply to cloud- have set a demanding framework for financial institutions, requiring extra resources to meet all these obligations which non-regulated competitors don't have to comply with. [redacted]. Reducing fragmentation at EU-level requires establishing minimum baseline requirements consistently harmonizing supervisory practices across jurisdictions. Besides, those requirements that hamper outsourcing and the use of cloud should also be amended.

Fair access to platform infrastructure

[redacted]

Infrastructure providers can use their power to their competitive advantage. They can cross-subsidise their services, collect and analyse huge volumes of data, and tie and bundle financial and non-financial services.

When an infrastructure provider practically sets the rules for a financial activity, **FISMA should consider holding them to the regulatory and supervisory standards for that activity** at minimum. A company which profits by setting the rules for a significant part of the payments market should at least be regulated as a payment institution.

[redacted]

[redacted]).

The conditions for access to vital technological infrastructure should be:

- **Contestable:** An infrastructure provider should have a procedure to contest the decision.
- **Objective:** There should be clear, non-discriminatory, and transparent criteria for access.
- **Reasonable:** At a fair cost which does not hinder competition with the provider itself.

These would be some of the ex-ante measures that could be integrated in the discussion about ex-ante regulation for competition in the digital context under the Digital Services Act.

Cross-sector data sharing supports citizens and competition

We welcome the European Commission's strategy on data. . **Cross-sector data access is vital to the success of data sharing for citizens and for businesses**. We strongly support the Commission's clear statement that citizens' must be at the heart of future data sharing initiatives.

However, we are very concerned that **the practical implementation of the Commission's strategy could result in major competitive distortions**. Developing Europe's data framework through sectoral "data spaces" could easily lead to different requirements for different players; different sectors moving at different speeds; and a proliferation of different standards.

The report from the high-level forum on capital markets union recommends to introduce a harmonised open finance regulatory framework covering financial **and non-financial** information. Given this, we encourage the Commission to create a level playing field when rolling out its data strategy. Indeed, the difficulty of classifying such platforms in any of the sectors mentioned, even within the Data strategy, highlights the need for a truly cross-sectorial approach to data access.

As regards data in financial services per se, the **financial sector should not be required to provide additional access to data before similar requirements exist for other sectors. In particular** [redacted]

Data access requirements should provide citizens and SMEs with genuine control over all of their data and should foster competition across the market. [redacted]

The data framework should be:

- **Citizen-centric:** Consumer and SMEs should have the power to decide which data about them to share and with whom, which fully complies with GDPR.
- **Horizontal:** Users should be able to move their data across sectors as a rule rather than as an exceptional circumstance.
- **Mandatory:** Access requirements should be obligatory to ensure a fair and standardised market.
- **Secure:** The data access framework should include effective security protocols.
- **Standardised:** Data should be shared in a standard manner through common interfaces (APIs).

Of course, it is also important that the data framework preserves the incentives to create value around data. The framework should therefore distinguish between raw data and inferred data. Companies should not be required to share their elaborated data.

Our vision of the digital future

The digital revolution presents Europe with a window of opportunity to develop an integrated and competitive single market; to ensure that European companies can scale and compete globally; and to empower European citizens and companies with practical digital rights.

We firmly believe that these are not competing objectives but fit together.

Ensuring companies have fair access to crucial infrastructure will foster competition and strengthen customers' choice. Ensuring that financial firms are regulated proportionately will ensure that they can embrace digitalisation and provide innovative solutions to consumers, while being ready to support the European recovery from COVID. Strengthening citizens' and SMEs' control over their data will foster competition and inclusion.

However, the digital revolution is also a pressing challenge which has brought new market dynamics. Financial sector firms are increasingly competing with non-financial firms, and policymakers must have a careful eye to competition dynamics when considering any new measures in this space. This is especially important for the successful development of Europe's data framework.

[redacted]

Subject: FW: Santander's recent responses to DG FISMA

From: [redacted]@santanderbenelux.be>
Sent: Friday, July 10, 2020 11:34 AM
To: [redacted] (COMP [redacted]@ec.europa.eu>
Cc: COMP DL D1 <COMP-DL-D1@ec.europa.eu>; [redacted]@gruposantander.com
Subject: RE: [redacted]

Thank you for your kind words [redacted]!

Best,

[redacted]

Santander [redacted]

From: [redacted] [[redacted]]
Sent: 10 July 2020 11:20
To: [redacted]
Cc: COMP-DL-D1@ec.europa.eu; [redacted]@gruposantander.com
Subject: #External Sender# FW: [redacted]

Dear [redacted],

Thank you very much for sharing with DG COMP the interesting Santander position papers [redacted], which address a number of topical regulatory financial matters. Many of the issues discussed also have a competition angle and are therefore relevant for our work.

We highly valued your frank and open cooperation with DG COMP and wish you all the best in the pursuit of your further career.

We look forward to liaising with [redacted], the new Santander contact person in Brussels.

Kind regards,

[redacted]

From: [redacted] <[redacted]@santanderbenelux.be>
Sent: Friday, July 10, 2020 9:47 AM
To: [redacted] (COMP) <[redacted]@ec.europa.eu>; [redacted] (COMP)

<[redacted]@ec.europa.eu>
Cc: [redacted] <[redacted]@gruposantander.com>
Subject: Santander's recent responses to DG FISMA [redacted]

Dear [redacted],

I hope you are doing fine!?

I wanted to share with you our recent responses to [redacted]

On a second note I wanted to inform you that I will be leaving Santander [redacted]

As long as there will be no successor on digital policy I would like to connect you with my colleague [redacted] has been with Santander for many years and she will take over as the new Head of the Brussels office end of August. Please do not hesitate to reach out to her.

If you would like to stay in touch with me I can be reached at [redacted]

Thanks again and have a great Summer vacation.

[redacted]

Santander [redacted]

European
Commission

Draft Programme – Hearing

'The Interchange Fees Regulation in a rapidly evolving payment landscape: Impact and way forward'

December 7th, 2020

at Charlemagne Building, room Alcide de Gasperi
Rue de la Loi 170, Brussels

8.15– 9.00	Registration, welcome coffee
9.00– 9.15	**Introductory speech: *Executive Vice-President Margrethe Vestager (tbc)***

Panel 1 – Caps on Interchange Fees, other fees and pass-through to consumers

9.15–11.00

[Decreases in Interchange Fees have translated partly into lower merchant costs which will be passed through to consumers over time. How to explain the partial pass-on of savings? Higher acquiring margins? Increased scheme fees from international card schemes especially since 2018? Do rebates and incentives from schemes play a role? Has there been circumvention of the caps or of the definition of commercial cards? Are lower caps beneficial? Do the cap levels effectively limit costs of card payments?]

Moderator: René Plank, DHoU, D1, DG Competition

Speakers:

- *Mark Barnett, President MasterCard Europe;*
- *Massimo Doria, Head of the Directorate on Retail Payment Instruments and Services of Italian central Bank;*
- *Jakob Hald, Director General, Danish Competition Authority.*

Further speakers to be confirmed

11.00–11.30 Coffee break

Panel 2 – Transparency and business rules

11.30–13.00

[*IFR increased transparency and promoted choice of application to accept for merchants and to use for consumers. It also made cross-border acquiring easier. Have merchants made use of their ability to set a default choice at the Point Of Sale (POS)? Has this, together with transparency regarding the interchange fees and the Merchant Service Charges, enhanced their bargaining power? Are consumers steered by merchants to use specific payment applications and are they enabled to make an effective choice at the POS? Are there technical or otherwise obstacles to increased choice and transparency? Why is cross-border acquiring not more widely used?*]

Moderator: Barbara Brandtner, HoU, D1

Speakers:

- *André Bajorat, Managing Director and Global Head of Strategy, Deutsche Bank;*
- *Virginie Beaumeunier, Directrice générale de la Concurrence, de la Consommation et de la Répression des fraudes DGCCRF;*
- *Monique Goyens, Director, BEUC, the European Consumers Organisation.*
  Further speakers to be confirmed.

13.00–14.00 LUNCH

14.00–14.15 Keynote speech: *MEP Chair ECON Irene TINAGLI*

14.15–15.45 **Panel 3 – Recent developments in retail payments: a new dynamics?**

[*What are the new payment means on the rise? Are the COVID-19 trends of increased use of contactless payment by consumers likely to persist in the long run and what would be the policy implications? IFR is technology neutral e.g. it applies also to wallets/technical service providers regarding the choice of card-based payment application at the POS. However, innovative payment means are increasingly hard to categorise as card-based or non-card based. Should the IFR address these situations if the lines are blurred – and if so in what way? Would other fees than interchange fees warrant further analysis and should they possibly be treated in a similar way as interchange fees under the IFR? Does innovation impact the traditional rationale and competition enforcement analysis related inter alia to fees? What is necessary to* *foster competition and innovation, including between card and non-card based means of payment?*]

Moderator: *Maria Velentza, Director, DG Competition*

Speakers:

- *Charlotte Hogg, Executive Vice President and Chief Executive Officer for Europe, Visa;*
- *Ulrich Bindseil, Director General of the Market Infrastructure and Payments European Central Bank (ECB);*
- *Martijn Snoep, Chairman Dutch Competition Authority;*
- *Chirag Patel, Global Head of Payments at Banco Santander.*

Further speakers to be confirmed.

(Q&A session)

15.45–16.00 **Closing speech*: Olivier Guersent, Director General, DG Competition.***

[redacted]

Subject: FW: Invitation to speak at the Commission public hearing on 'the Interchange Fees Regulation in a rapidly evolving payment landscape: Impact and way forward

From: [redacted] **On Behalf Of** VELENTZA Maria (COMP)
Sent: Friday, July 17, 2020 2:50 PM
To: [redacted]
Cc: [redacted]
Subject: Invitation to speak at the Commission public hearing on 'the Interchange Fees Regulation in a rapidly evolving payment landscape: Impact and way forward

Dear [redacted],

Please find attached the formal invitation for your participation as a panellist at the hearing on 'the Interchange Fees Regulation in a rapidly evolving payment landscape: Impact and way forward' on 7 December 2020, and the draft agenda for the hearing (confidential) – as discussed previously [redacted].

Yours sincerely,

Maria Velentza

Director - European Commission
Directorate-General for Competition
Directorate D: Markets and cases III: Financial services
MADO 10/27
B-1049 Brussels/Belgium
☎ +32-2-29-51723
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European Commission

Draft Programme – Hearing

'The Interchange Fees Regulation in a rapidly evolving payment landscape: Impact and way forward'

December 7th, 2020

at Charlemagne Building, room Alcide de Gasperi
Rue de la Loi 170, Brussels

8.15- 9.00	Registration, welcome coffee
9.00- 9.15	**Introductory speech: *Executive Vice-President Margrethe Vestager (tbc)***

Panel 1 – Caps on Interchange Fees, other fees and pass-through to consumers

9.15–11.00

[Decreases in Interchange Fees have translated partly into lower merchant costs which will be passed through to consumers over time. How to explain the partial pass-on of savings? Higher acquiring margins? Increased scheme fees from international card schemes especially since 2018? Do rebates and incentives from schemes play a role? Has there been circumvention of the caps or of the definition of commercial cards? Are lower caps beneficial? Do the cap levels effectively limit costs of card payments?]

Moderator: *René Plank, DHoU, D1, DG Competition*

Speakers:

- *Mark Barnett, President MasterCard Europe;*
- *Massimo Doria, Head of the Directorate on Retail Payment Instruments and Services of Italian central Bank;*
- *Jakob Hald, Director General, Danish Competition Authority.*

Further speakers to be confirmed

11.00–11.30 Coffee break

Panel 2 – Transparency and business rules

11.30–13.00

[IFR increased transparency and promoted choice of application to accept for merchants and to use for consumers. It also made cross-border acquiring easier. Have merchants made use of their ability to set a default choice at the Point Of Sale (POS)? Has this, together with transparency regarding the interchange fees and the Merchant Service Charges, enhanced their bargaining power? Are consumers steered by merchants to use specific payment applications and are they enabled to make an effective choice at the POS? Are there technical or otherwise obstacles to increased choice and transparency? Why is cross-border acquiring not more widely used?]

Moderator: *Barbara Brandtner, HoU, D1*

Speakers:

- *André Bajorat, Managing Director and Global Head of Strategy, Deutsche Bank;*
- *Virginie Beaumeunier, Directrice générale de la Concurrence, de la Consommation et de la Répression des fraudes DGCCRF;*
- *Monique Goyens, Director, BEUC, the European Consumers Organisation.*

  Further speakers to be confirmed.

13.00–14.00 LUNCH

14.00–14.15 Keynote speech: *MEP Chair ECON Irene TINAGLI*

14.15–15.45 **Panel 3 – Recent developments in retail payments: a new dynamics?**

[What are the new payment means on the rise? Are the COVID-19 trends of increased use of contactless payment by consumers likely to persist in the long run and what would be the policy implications? IFR is technology neutral e.g. it applies also to wallets/technical service providers regarding the choice of card-based payment application at the POS. However, innovative payment means are increasingly hard to categorise as card-based or non-card based. Should the IFR address these situations if the lines are blurred – and if so in what way? Would other fees than interchange fees warrant further analysis and should they possibly be treated in a similar way as interchange fees under the IFR? Does innovation impact the traditional rationale and competition enforcement analysis related inter alia to fees? What is necessary to

foster competition and innovation, including between card and non-card based means of payment?]

Moderator: *Maria Velentza, Director, DG Competition*

Speakers:

- *Charlotte Hogg, Executive Vice President and Chief Executive Officer for Europe, Visa;*
- *Ulrich Bindseil, Director General of the Market Infrastructure and Payments European Central Bank (ECB);*
- *Martijn Snoep, Chairman Dutch Competition Authority;*
- *Chirag Patel, Global Head of Payments at Banco Santander.*

Further speakers to be confirmed.

(Q&A session)

15.45–16.00	**Closing speech*: Olivier Guersent, Director General, DG Competition.***