

TheCityUK response to the FCA Call for Input on the potential data advantages of Big Tech firms over competitors in financial services

Introduction

About TheCityUK

TheCityUK is the industry-led body representing UK-based financial and related professional services (FRPS). We champion and support the success of the ecosystem, and thereby our members, promoting policies in the UK, across Europe and internationally that drive competitiveness, support job creation and enable long-term economic growth. The industry contributes over 12% of the UK's total economic output and employs nearly 2.5 million people, with two-thirds of these jobs outside London, across the country's regions and nations. It is the UK's largest net exporting industry and generates a trade surplus exceeding that of all other net exporting industries combined. It is also the largest taxpayer and makes a real difference to people in their daily lives, helping them save for the future, buy a home, invest in a business and protect and manage risk.

Background and Definitions

In the Financial Conduct Authority's (FCA) previous discussion paper, [DP22/5](#) 'The potential competition impacts of Big Tech entry and expansion in retail financial services', the FCA defined 'Big Tech' as "large digital companies with established technology platforms and extensive established customer networks", specifically referencing Google (Alphabet), Apple, Facebook (Meta) and Amazon. We have also included Microsoft under the scope of this response to cover all the so-called 'Big Five' tech firms.

Big data has a significant influence on various perspectives of business, including business process management, human resources management, research and development (R&D) management, business analytics, business processes and product governance, marketing and sales, enterprise operational performance measurement, policy making, supply chain management and operational resilience.

Executive summary

TheCityUK welcomes the opportunity to respond to the Financial Conduct Authority's (FCA) Call for Input on the potential data advantages of Big Tech firms over competitors in financial services. Data asymmetry exists in the financial services industry as is the case in other industries. The major difference is that regulated financial services are under a duty (regulatory, statutory or contractual) to make their data available. In contrast, unregulated firms in other industries are not so obligated.

Existing asymmetry with Big Tech could worsen as the tech and financial services sectors continue to merge, and Big Tech firms become more embedded in financial services.

It is our view that:

- Whilst it is impractical and unnecessary to bring every Big Tech firm within the financial services regulators' perimeter for all their business, the FCA should take steps to create more of a level playing field for financial services market participants with Big Tech firms.
- The scope of this work should be expanded to cover wholesale markets in addition to retail markets while taking care not to add undue compliance burdens to what is already a heavily regulated space.
- The FCA should consider creating an equivalent unit to the Competition and Markets Authority's (CMA) Digital Markets Unit (DMU), and for these two units to develop a close working and communication relationship.
- It should be for individuals to determine how and to whom their data are made available. The UK approach must ensure that these individuals are sufficiently educated to make informed choices about their data.

Responses to questions posed

Question 1

- a. What are the competition or data-based competition issues arising in wholesale markets?

Wholesale markets are driven by big data¹. More specifically, they are driven by the ability to own, collect, analyse, make derivative works from, and utilise these data. Transactions, such as the London Stock Exchange Group's (LSEG) acquisition of Refinitiv, and market events, including the ransomware attack on ION, demonstrate the importance of the ownership and receipt of big data.

Data are monetised by the financial services industry. There has been a long-running discussion about the costs of market data within the wholesale markets globally. In a post-G20 Pittsburgh Summit (2009) world, data - as well as work derived from those data - increasingly are considered (by trading venues) as proprietary to the trading venues rather than their participants. Market participants cannot operate without this data and, worth noting, are themselves deriving their own execution services and business from that data.

¹ In this response, we use the term "big data" to refer to large, diverse (structured and unstructured) and complex data sets which have various uses (particularly in financial services).

It is possible that these circumstances could allow for anti-competitive behaviours to develop. We understand that the FCA is conducting a separate review of these behaviours which are outside the scope of this response.

There are fewer concerns about data privacy in the issues relating to wholesale markets than there are with retail markets.

b. Are these similar or different to the issues that we are considering in retail markets?

The situation is slightly different in retail markets. Retail markets rely on wholesale intermediaries (e.g. brokers and prime brokers) to manage and execute order flow. Retail market participants have another set of concerns entirely: how to build, offer and manage products and services for their retail customers. This will be on the basis of a different big data set to the wholesale markets, one which focuses on eligibility, appropriateness and customer identity.

The other difference is the sources of big data available to those servicing the retail markets. The sources are myriad and even more unstructured (sentiment, social media etc). This comes with different pressures and concerns, such as the quality and veracity of the data, and how the data are gathered. How data are gathered is of particular concern. Every individual is likely to have received communications and offers from businesses or individuals to which they have not given consent to control or process their personal data and/or which may have been targeted only by reason of unauthorised monitoring of searches or communications.

c. Should we be expanding our scope to include wholesale markets?

Yes, the scope should be expanded to include wholesale markets. However, it should be taken into consideration that wholesale markets are already well-regulated, and any new rules might conflict with well-established rules and processes.

Question 2

a. To what extent does this data asymmetry hold between Big Tech firms and financial services firms in retail financial services markets? Please provide evidence and information.

Financial services firms in the UK are bound by the FCA's and the Prudential Regulation Authority's (PRA) rulebooks. Recent amendments to the financial promotion rules (e.g. those which require firms to have a reasonable basis for believing that a recipient of a promotion falls within one or other exemption or category of person) are paradigmatic. These rules do not apply to unregulated firms. Although the UK Information Commissioner's Office (ICO) polices the misuse of personal data, the use and misuse of technology to gather information about individuals is endemic because the only thing standing between an individual and the unauthorised gathering or use of his/her data is the ICO. Although the use

of website cookies is falling, a sufficient number of websites still use them and have “approve” click buttons that do not give the viewer the immediate ability to restrict the gathering or use of information by cookies. Recent law changes to ensure that an individual must positively accept the gathering of data about him/her often is circumvented by making it difficult for a viewer to refuse all cookies (e.g. there are two buttons: “accept”; or “manage”). Once the data are gathered, an individual will discover that they have been sold on or used only when they receive further communications from third parties.

b. What are the nature and drivers of any data asymmetry that exists?

The nature of the asymmetry that exists is simply that financial services firms have rulebooks and regulators which restrict their gathering, analysing and use of big data. The main reason for the asymmetry is the likelihood of getting caught for (mis)use of data. While this is not the fault of politicians, the FCA or the PRA, the line between financial services and technology provision is becoming increasingly difficult to identify. The effort of the FCA to ensure that virtual IBAN providers and/or payment services firms are clear as to the restrictions on what they are authorised to provide, and “finfluencers” are held to account are very welcome. However, more is required. The powers granted by the Financial Services and Markets Act (FSMA) 2023 will assist also, assuming the rules are effectively implemented.

c. Do you expect that data asymmetry to become more significant over time? If so, how?

We expect the asymmetry to worsen over time, particularly as Big Tech firms become more embedded in financial services and the lines between financial services and technology firms becomes blurred further.

Question 3 - Are there regulatory (or other) constraints that mitigate or prevent:

a. the asymmetry of data between Big Tech firms and other firms in financial services?

The FCA’s secondary competitiveness objective and the Competition Act 1998 (CA98) remit are an excellent start. We welcome, also, the proposals in relation to operational resilience and “critical third party” outsourcing from the perspective of bringing Big Tech firms somewhat and indirectly within the UK’s regulatory perimeter.

b. the adverse impact of this data asymmetry on competition?

As stated above, our belief is that the brakes on misuse of big data are focused on firms which are already within the regulatory perimeter. Outside that perimeter, firms answer only to the ICO in the UK, and this is only relevant to firms which are within the ICO’s jurisdiction).

Question 4 – We are seeking evidence that shows the value of the data that Big Tech firms collect from their core digital activities and/or when these are combined with financial services data in financial services. Please give specific examples.

Our view is that all data are valuable in one way or another. In financial services, while it may be very difficult to generate alpha from sentiment data (or unstructured social media posts), those data can be used for other purposes. These purposes include risk and HR management and systems optimisation. Big data are useful also in identifying markets for growth or new products/services, identification which can be undertaken using sentiment, credit card, internet use/cookies and other data collected regularly by Big Tech firms from multiple global sources.

The challenges faced by financial services firms is access to those data from staff. These firms are constrained by the FCA/PRA handbooks as well as UK General Data Protection Regulation (GDPR). The power of social media scraping (a major source of data for Big Tech firms) was demonstrated in the “short squeeze” in 2022 and the “gamification” of retail markets (including the emergence of the “meme stock” phenomenon). It is worthwhile considering also that Big Tech owns the major social media platforms on which financial services institutions’ staff communicate with each other and with clients. Privacy settings should not permit the platforms or their operators to access the contents of any communications on these platforms. There are other, valuable data that can be gathered, such as location of user(s) and other metadata. These data will not be available to financial institutions unless they are monitoring and recording the communications themselves.

Question 5 – Can you provide information on alternate data sources that financial services firms can replicate or substitute for Big Tech firms’ data. Please give specific examples

It is unlikely that financial services firms can replicate or substitute for Big Tech firms’ data in practice. Some firms may engage with the likes of Experian² or Equifax³ for data enrichment, for example when carrying out demographic profiling for marketing purposes or credit assessment. However, these uses of anonymised data are for specific purposes. Financial services firms are mindful of compliance with data protection rules and have minimised the personal data they process relating to their customers. Consequently, they do not have the repositories of behavioural or social data that the Big Tech firms have.

There are myriad businesses offering data analytics now – getting whatever they can and offering it as a service. As mentioned above, two examples which stand out in financial services are the data bureaux, Experian and Equifax. The card schemes are also active in this space e.g. Mastercard⁴ and Visa. Presumably, as they see a threat to their revenue from open banking and alternative payment methods, they have been looking for new ways to

² <https://www.experian.co.uk/business/data-quality/analytics>

³ [Equifax Ignite — A one-stop data and analytics solution suite](#)

⁴ https://www.mastercardservices.com/en/test-learn?campaign_id=7016e000002apVd&channel=sep&cmp=2023.q3.rca-sem-testlearn.data%20analytics%20tools&keyword=data%20analytics%20tools

monetise the data which they obtain as “gate keepers” to what is still a significant part of the financial activity of the population.

Question 6 – Can you provide evidence on the extent to which competitor financial services firms can access Big Tech data. Where relevant, please outline any contractual terms or conditions that are placed on financial services firms for accessing this data.

Evidence regarding the extent of access, which would be through contractual terms, is challenging to provide due to the proprietary and often confidential nature of the relevant agreements. The following is understood to exist.

Big Tech firms have formed partnerships or offer Application Programming Interfaces (APIs). This provides access to certain types of data. For example, Google has provided APIs for financial institutions to integrate Google Pay into their systems.

The creation of artificial intelligence (AI) applications can require the fine-tuning of an AI foundation model. This fine-tuning typically uses specific data. Big Tech firms hold large, typically cloud-based data and these may be able to be used by financial services firms which are engaged in the creation of AI applications. After the initial fine-tuning, subsequent access to large data sources is necessary to improve or update the AI application software. So-called multi-homing exists and should be encouraged to continue to exist. Financial services firms can use the large data source of different Big Tech suppliers. They are not by necessity and should not by contract be required to use the Big Tech supplier of the original data source.

The European Union’s Digital Market Act 2022 (DMA) creates an opportunity, pursuant to Article 6, for financial services firms to gain access to data held by Big Tech firms deemed ‘gatekeepers’. The actual scope and practical implementation of this data access right is currently unclear given (a) the DMA has only very recently begun to take effect and (b) some first decisions taken by the EU Commission under the DMA are being challenged before the European Court of Justice. The UK should consider equivalent rules to the DMA pursuant to the Digital Markets, Competition and Consumers Bill.

Question 7 – Can you provide information, including examples and analysis conducted, that would show whether the competition benefits and harms that we have identified are emerging or are likely to emerge in the future, as well as any other competition impacts?

The Apple Card issued by Goldman Sachs is an example of Big Tech and financial services collaboration, notably with a Big Tech firm and one of the larger financial services firms. Public criticism claiming gender bias and other pitfalls could be indicative of the pitfalls in the algorithms used. While there are positive comments on the functionality and use of Apple Card, it is difficult to measure. However, it is noteworthy that this collaboration is into retail banking.

The foreshadowing of competition risks for actors in the fintech space is arguably a contributory factor to the failed initial public offering (IPO) by Ant Group⁵ and the stalled launch by Facebook (now Meta) of Libra/Diem cryptocurrency. Besides any discussion of genuine competition concerns, there is arguably a vacuum of regulatory guidance which creates excessive risk profiles for initiatives by Big Tech and other digital technology players. This could disrupt the incumbent financial services players with a positive outcome.

Question 8 – Do you have views on ways regulation can enable competition benefits to materialise while mitigating potential harms?

Regulation only applies to those at which it is directed, which are within the jurisdiction of the relevant regulator and if the downsides for breach are material. Whilst it is impractical and unnecessary to bring every Big Tech firm within the financial services regulators' perimeter for all their business, it will be of immense assistance to the financial services market participants if there was more of a level playing field with Big Tech. Examples of this approach would be to include Big Tech in the "distribution chain" for the Consumer Duty or drafting standard terms of business for retaining tech firms which seek to provide services and products to financial services firm clients. The FCA could also consider issuing guidance on the Regulated Activities Order (RAO) and the Financial Promotions Order which would widen the scope of activities such as "arranging", "advising", "providing credit", "operating a platform [to conduct credit broking etc]" and "financial promotion" to capture the activities of Big Tech firms.

While the focus of the FCA's consultation is on Big Tech, the flipside is that there exist 'institutional' financial services firms with large volumes of data. Access to this data by fintech start-ups and small players could foster innovation. Competition law is a potential tool to require such financial services firms to provide data access to such fintech players. Meanwhile, these access rights could be denied to Big Tech firms, perhaps using a system similar to the EU's DMA. In this way, a fintech player would be able to access the data of the institutional (very large) financial services firms, but Big Tech 'gatekeepers' would not.

Given the dynamic nature of fintech, it may be appropriate for the FCA to create an equivalent unit to the CMA DMU, and for these two units to develop a close working and communication relationship.

To the extent that tech firms developing financial services could create greater risks and system instability, the FCA should expressly include them in its market stability assessments.

Question 9 – Please outline, with suitable evidence, other significant factors which may contribute to Big Tech firms gaining market power and/or becoming 'gatekeepers' in financial services. Please ensure these are new or additional factors, beyond those identified in DP 22/5 and FS 23/4.

⁵ The fintech arm of Alibaba: [Ant Group - Home](#)

Our view is that [DP 22/5](#) and [FS 23/4](#) are comprehensive in their analysis and identification of relevant factors. We refer specifically to Figure 1 on page 15 of [DP 22/5](#).

One additional factor is the education of users. While users of the products and services of Big Tech tend to be aware of the extent of the data gathered about them and how those data are monetised⁶, many will not appreciate the value of their own data. There are a number of nascent projects which will seek to permit individuals to restrict access to, and monetise, their own data. Also, this type of restriction is anathema to various initiatives in the EU such as the European strategy for data⁷ which approaches data on the basis that the more data that becomes available for use in the economy and society, the greater the benefit to individuals and businesses, if the EU is able to create a “single market for data”. As often is the case with the EU, the approach is that centralising data pools within governmental (or EU) institutions is the way forward. We do not believe the UK should follow this approach. Ultimately, it should be for individuals to determine how, and to whom, their data are made available. The UK’s approach should be to ensure that these individuals are educated sufficiently well that the choices they make are informed and their data are kept up to date.

Question 10 – We welcome information on how partnerships between Big Tech firms and financial services firms have evolved, the potential benefits they bring, and any potential competition concerns.

Partnerships between Big Tech and financial services firms reflect the value of big data and the ability of Big Tech firms to dominate in the collection and storage of big data. Data sets are important to different firms for different reasons. Some like Big Tech’s global reach; others like the ability to collaborate on data enrichment. Although Big Tech firms have not moved *en bloc* into financial services, if and when they do so, they will need to change the way in which they collect, analyse and use those data in order to comply with their regulatory obligations. The greater concerns at present are that:

- a) Big Tech firms may act in ways which restrict competition between financial services firms; and
- b) Big Tech firms’ products and services may cross the line into the regulatory perimeter without them being authorised and regulated.

A possible challenge to the benefits of collaboration is that there might be over-reliance on Big Tech to the detriment of other tech firms. In this regard, government, through its procurement activities, and the FCA through its existing powers and market oversight role, has an ability to manage or at least encourage a more inclusive base of technology companies and financial services firms. This can occur through mandating open access, preferencing and creating regulatory controls on Big Tech and their equivalent in the financial services sector.

⁶ See for example, Table 1 on page 10 of [DP 22/5](#)

⁷ <https://digital-strategy.ec.europa.eu/en/policies/strategy-data>

We give the example above of LSEG's acquisition of Refinitiv. Historically, large financial services institutions have been more likely to acquire tech firms than they are to launch competitive products and services, or to enter partnerships with Big Tech⁸. Some exceptions to this rule are set out in [DP 22/5](#). The concerns identified by the FCA regarding the power Big Tech firms have to restrict access to products and services are well-founded. For example, if one of the major mobile application platform providers will not permit development or use of a financial services firm's application on its platform, to whom would users of that application turn to access it?

Initially technology firms (including Big Tech firms) collaborated in the sense that the technology firms provided services to the financial services firms (e.g., cloud services). As a result of Big Tech firms leveraging their user data and platforms, collaboration expanded to retail financial services (e.g., digital payments and insurance). The next iteration is a closer collaboration where there is arguably a blurring between Big Tech and the financial services firms⁹. We are still in the early stages of financial services firms deploying the innovation they could stimulate through access to the vast data held by Big Tech firms. This includes providing services to underserved markets, thus expanding financial inclusion. By the same token, government (central and local) which distributes large sums of money to individual citizens pursuant to various social financing schemes, could create both efficiencies in distribution and more comprehensive distribution system through collaboration with Big Tech and financial services firms.

The requirement to be regulated as a financial services business means that Big Tech firms are cautious about entering the financial services space, although we have noted our concerns above regarding the enforcement of the regulatory perimeter and Big Tech firms having the power to restrict access to certain data in an anti-competitive way. A retained advantage for financial services firms is that they are already bearing the regulatory burden, which acts as a cost of entry to taking part in the market. Therefore, Big Tech firms will not necessarily compete with financial services firms (at least directly) if the Big Tech firms do not have the appetite to become regulated financial services businesses themselves. That is not to say that some Big Tech firms are not interested. However, the failure of the Libra/Diem cryptocurrency highlights the existing hurdles.

We are aware of one partnership between an international financial institution (known for its credit card products and services) and a Big Tech firm. The details and parties are confidential. The Big Tech firm enables its counterparty to pay for products on the Big Tech firm's platform using their reward points. The agreement does not involve data enrichment services (i.e. the Big Tech firm does not share any purchasing preference information with the counterparty relating to its customers).

⁸ This has been for a number of reasons, not the least of which is that start-up fintech firms do not have the resources or the systems in place to assist large financial institutions satisfy their own regulatory obligations (e.g. operational resilience) and the large number of legacy systems which these institutions have in place into which the limited-practice applications offered by small fintech firms need to be incorporated.

⁹ As noted earlier, the Apple Card – a collaboration between Apple and Goldman Sachs – is an example of this.