



FinTech sector inquiry: the French Competition Authority issues its

opinion

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***Resume:** On April 29, 2021, the French competition authority published its opinion on the sector of new technologies applied to payment activities. Faced with the major changes in the payments sector, the Authority has identified several points of vigilance.*

The new technological world is about to replace and complete the old world of banking. Will the competition authority save the banks? On January 13, 2020, the authority decided to conduct an assessment of the competitive situation in the sector of new technologies applied to financial and payment activities. In addition, on April 29, 2021¹, the French Competition Authority published its opinion.

Technological innovation and changes in regulations have allowed the arrival of new players in the payments sector who have developed innovative payment methods for consumers and new diversified services².

There are therefore 3 main types of players cooperating in the sector.

These new players, known as FinTech and Big Tech, have emerged in addition to the traditional banking players who are also participating in market developments. Faced with these new transformations, the authority has therefore established several points of vigilance.

Will the French authority's analysis pay off? Before answering this question, let's go back to the French competition authority's analysis of the market and the various players.

¹French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities

² European commission, Yannick Le Dorze, Press release, "FinTech" sector inquiry: the French Competition Authority issues its opinion, published on 29 April 2021

I - The emergence of new players in the face of new technologies and new regulations in the payment sector:

The authority shows that there is coexistence between the various players in the sector (A), but this sector presents numerous barriers to entry (B).

A - The coexistence of new players and traditional banking players:

- Agreements between FinTech and banks:

Banks and traditional players have entered into agreements that allow them to benefit from FinTech innovations while the latter benefit from the distribution channels, customer base and reputation of banks³.

- Agreements between Big Tech and banks:

Banks and Big Tech have also entered into agreements that allow banks to offer their customers services such as Apple Pay, Google Pay or Samsung Pay as an illustration⁴.

- National and European agreements between banking groups:

At the national level, there are agreements between banking groups that have allowed the emergence of new players such as Paylib or Lyf Pay in the contactless payment sector. At the European level, there has also been the European Payment Initiative (EPI), which aims to create a pan-European payment system⁵.

Thus, the Authority highlights the role played by FinTech and Big Tech in developing new innovative services by seizing all the opportunities created by regulation. It also notes that traditional banking players are using different strategies to stay in touch with the most innovative segments of the market: takeovers through acquisitions, equity investments, internal development.

In the eyes of our readers, this new competition and interaction between players seems at first sight good for the functioning of the market.

³French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P64

⁴French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P66

⁵French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P68

B - Analysis of the relevant market and barriers to entry:

1 - A dynamic market mainly two-sided:

- A mainly two-sided and multi-sided market:

The authority highlights that certain markets in the payment sector are two-sided in nature⁶.

The card payment sector is a two-sided market as it reminds us in Groupement des Cartes Bancaire⁷. This is now the leading payment method in terms of number of transactions. For example, Apple and Google rely on this payment method to offer their new services.

Nevertheless, the authority recalls that platforms are generally multi-sided in nature (social networks / search engine)

- A dynamic market that is difficult to define:

The sector is very dynamic with the emergence of many innovative products or services⁸. These new services are often integrated or combined as a stand-alone

service. However, this strong dynamism makes the definition of relevant markets complex because the scope of the products or services offered on the market is difficult to identify precisely and durably.

2 - Regulatory and economic barriers to entry, as well as barriers related to access to certain infrastructures and data:

- Regulatory barriers to entry⁹:

Regulation is important in this sector and has many objectives. It can contribute to ensuring the stability of the monetary and financial system, to fighting money laundering or the financing of terrorism.

However, certain activities are outside the scope of the monetary and financial code. For example, services that are similar to payment services without falling under the code, such as contactless payment with Apple Pay.

⁶French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P72

⁷ Decision No. 11-D-11 of July 7, 2011 concerning practices implemented by the Groupement des Cartes Bancaires

⁸French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P74

⁹French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P84

- Economic barriers¹⁰:

Economic barriers will be reflected in the existence of direct and cross network externalities in certain two-sided markets. They will also result in economies of experience and economies of scale.

In addition, these barriers help explain how FinTechs decide to enter the sector by relying on pre-existing distribution networks.

- Barriers related to access to certain infrastructure and data¹¹:

In this regard, we can first highlight the effective access to the NFC antenna of smartphones, which has an impact on the development of mobile payment solutions. In addition, the opinion highlights the impact of access to the various APIs developed by payment service providers.

II - An analysis of the competitive balance leading to the revelation of points of vigilance:

The authority assesses the strengths of the various players in the sector to determine its competitive balance (A). It is in the light of

this analysis that it defines the points of vigilance for the future (B).

A - The competitive balance on the market:

1 - The historical players:

The different historical actors and notably the banks have several advantages¹². They are players who have been in the market for many years.

Indeed, banks have acquired an unrivalled experience in the mastery of compliance with applicable regulations and they enjoy a strong reputation and a good reputation regarding security and data protection.

In addition, traditional banks enjoy some of the lowest transaction costs in the market due to their customer bases and business volumes. This volume allows banks to have a good knowledge of their customers' habits.

Finally, their financial strength, the experience they have acquired over many years in the design and operational management of payment solutions is a competitive advantage, as is their ability to assert their interests with public authorities.

¹⁰ French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P88

¹¹ French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P93

¹² French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P101

2 – FinTech:

The main competitive advantage of FinTechs is based on the idea that they have lower fixed costs¹³. They do not incur the costs of maintaining interbank infrastructures, nor those of physical bank branch networks. Moreover, they are not bound by sometimes obsolete technologies.

Thus, FinTechs are agile and position themselves in niches to simplify the "customer journey", which favors the creation of easy-to-use payment solutions adapted to new uses.

3 - Big Tech:

The Big Tech players have a very large community of users that helps them to develop rapidly in the payment sector¹⁴. These players benefit from a market image and a reputation that allows them to attract and retain users.

In addition, they have access to large volumes of user data that they can process and analyze. This allows them to assess financial health data of the users and tailor their offerings

more effectively to their preferences and needs.

Furthermore, Big Tech benefits from an incomparable financial power and technical mastery of their ecosystem via their platform. The digital giants can therefore offer a very fluid customer experience that is difficult to compete with.

These players also have lower marginal costs than those incurred, which allows them to offer their solutions to consumers. Finally, they also take advantage of the unavoidable nature of their services to obtain advantages from their partners or providers.

B - Points of vigilance raised by the authority¹⁵:

1 - A risk of strengthening BigTech's market power and foreclosing consumers:

As we have seen, BigTech collects a huge amount of data during their activities, which could give them a significant advantage in the payment sector. At the same time, the data collected with payment services could allow them to reinforce the attractiveness of their platforms.

¹³ French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P102

¹⁴ French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P104

¹⁵ French competition authority, Opinion n° 21-A-05 of April 29, 2021 on the sector of new technologies applied to payment activities, P108

In addition, certain practices relating to mobile contactless payment solutions, including the pre-installation of solutions in certain telephones, could present risks for competition by locking consumers into a given ecosystem and can be observed as an abuse of a dominant position.

In this matter we can make the connection between the concern of the authority and that of the commission that is investigating Apple Pay¹⁶. Executive Vice-President Margrethe **Vestager**, in charge of competition policy, said: *"Mobile payment solutions are rapidly gaining acceptance among users of mobile devices, facilitating payments both online and in physical stores. This growth is accelerated by the coronavirus crisis, with increasing online payments and contactless payments in stores. It appears that Apple sets the conditions on how Apple Pay should be used in merchants' apps and websites. It also reserves the "tap and go" functionality of iPhones to Apple Pay. It is important that Apple's measures do not deny consumers the benefits of new payment technologies, including better choice, quality, innovation and competitive prices. I have therefore decided to take a close look at Apple's practices regarding Apple Pay and their impact on competition."*

¹⁶ European commission, Antitrust: Commission opens investigation into Apple practices regarding Apple Pay, 16 June 2020

2 - A risk related to the holding of data by payment service providers managing accounts:

The authority reminds us that we must be vigilant regarding the conditions under which the payment account data that certain Fintechs need to offer their services are made available. It is therefore necessary to ensure that the development of activities carried out by payment initiation and account information service providers is not hindered by restrictions that make access to data less fluid or that negatively affect the experience of customers using the services offered by these partners.

3 - Competitive risks related to the use of blockchain

The risks associated with blockchain may fall under the rules prohibiting anti-competitive agreements or those prohibiting the abuse of a dominant position and may be caused by the player(s) controlling access to the blockchain, the users of the blockchain or the "miners".

4 - The risk of challenging the universal banking model and marginalizing traditional banking players

The universal banking model, which makes it possible to provide certain services that are considered "unprofitable" if offered in isolation, such as the deposit and cashing of checks and cash, could be challenged by developments in the sector.

The Authority specifies that it seems unlikely to envisage today a scenario in which FinTechs would emancipate themselves entirely from the banking system by creating their own infrastructures. However, the Authority points out that Big Tech, without having the experience of the banks in the payment sector, masters or even controls certain innovative technologies that could play a decisive role in the service chain. Their

presence in the payment sector could thus be strengthened, through the conclusion of new partnerships with banking players.

Thus, according to the Authority, there is a risk that traditional banking players will eventually be confined to execution tasks involving significant fixed costs (regulatory charges, physical network, payment infrastructures) while being marginalized in the value distribution chain.

However, one may wonder whether it is relevant to want to protect the old world at all costs when the new digital economy and the new associated services seem to be more favorable to the consumer.

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