

# MAXIMIZING THE COMPETITIVE POTENTIAL OF OPEN BANKING: INSIGHT FROM THE CANADIAN CONVERSATION



BY GREG LANG<sup>1</sup>



<sup>1</sup> Greg Lang is Major Case Director and Strategic Policy Advisor in the Competition Promotion Branch of the Canadian Competition Bureau. The views expressed in this article are those of the author, and do not necessarily reflect those of the Commissioner of Competition, the Competition Bureau, the Department of Justice Canada, the Public Prosecution Service of Canada, or Innovation, Science and Economic Development Canada. This article will not predetermine the Commissioner of Competition's position in any current or future investigation or intervention pursuant to the Canadian *Competition Act*. The author thanks Matthew Strathern (Bank of Canada) and Mathew McCarthy (Competition Bureau) for their excellent research assistance in preparing this article.

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## Maximizing the Competitive Potential of Open Banking: Insight from the Canadian Conversation

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Open banking allows users to securely transfer information between financial service providers. This eases consumer switching and incentivizes the development of a range of innovative new financial service products. However, exchanging such sensitive information can require significant regulatory supervision to ensure privacy and data protection. This creates an opportunity for competition authorities to play a key role in ensuring that such regulations maximize competition and innovation while also satisfying these important public policy objectives. This article, which is based on the Competition Bureau’s recent submission to the Canadian Advisory Council on Open Banking, examines current regulatory design issues from the Canadian experience, and proposes measures that will best support a pro-competitive and innovative open banking system.

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# I. INTRODUCTION

Open banking enables greater competition and innovation.<sup>2</sup> By empowering customers to securely share their data between financial institutions, open banking simplifies switching and makes it easier for customers to find and choose the provider or product that best suits their needs. Encouraging switching places greater competitive pressure on incumbents, and supports the business models of new and innovative service providers. Additional financial services competition significantly enhances choice and brings about lower prices, increased convenience, and higher levels of innovation in an industry that is foundational for any economy.<sup>3</sup>

No open banking regime can effectively proceed without earning and keeping the trust of customers. Given that open banking involves the digital exchange of sensitive financial data, regulatory oversight can be necessary to ensure that market participants appropriately preserve consumer privacy and data security. Financial system regulators are therefore challenged to ensure a safe and secure open banking system, while also providing the maximum scope for businesses to bring about the beneficial competitive and innovative forces that are the intended outcomes of an open banking system. This creates a significant opportunity for competition authorities to play an important role in ensuring the development of effective open banking regulation.

This article examines how best to strike a regulatory balance between ensuring consumer privacy and data protection, and promoting greater competition and innovation. Informed by a preliminary examination of the development of open banking in the Canadian context, this article discusses some of the key design issues that have arisen in the Canadian regulatory discussion. Competition policy principles are then used as signposts to encourage pro-competitive open banking regulation.

# II. OPEN BANKING IN CANADA

The Government of Canada took its first formal steps towards open banking in its 2018 Budget. Recognizing both the competitive and innovative potential of open banking, as well as international efforts to implement open banking regimes, the Government of Canada announced that it would review the merits of a made-in-Canada open banking system.<sup>4</sup> Shortly thereafter, the Canadian Minister of Finance appointed an expert panel, dubbed the Advisory Committee on Open Banking (“Advisory Committee”) to undertake this review.<sup>5</sup> The Advisory Committee then published a consultation paper, in January 2019, to encourage a public conversation about the merits of open banking in Canada.<sup>6</sup> In January 2020, following a year-long consultation process, the Advisory Committee recommended that Canada move forward to establish an open banking regime.<sup>7</sup> The Minister of Finance then announced a second phase of work for the Advisory Council to continue to review implementation of a Canadian open banking system, with a particular focus on ensuring data security.<sup>8</sup> This work was temporarily delayed by the COVID-19 pandemic, but the Advisory Council is currently in an advanced state of this second phase review.<sup>9</sup>

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<sup>2</sup> This article significantly reproduces the Competition Bureau’s recent submission to the Canadian Advisory Council on Open Banking. See Competition Bureau, *Supporting a Competitive and Innovative Open Banking System in Canada* (January 18, 2021), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04571.html>.

<sup>3</sup> Competition Bureau, *Technology-led Innovation in the Canadian Financial Services Sector: A Market Study*, (December 14, 2017), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04322.html>.

<sup>4</sup> Government of Canada, *Fostering Innovation and Competition, Review of Open Banking*, BUDGET 2018 (February 27, 2018), <https://www.budget.gc.ca/2018/docs/plan/toc-tdm-en.html>.

<sup>5</sup> Press Release, Department of Finance Canada, Minister Morneau Launches Advisory Council on Open Banking (September 26, 2018), <https://www.canada.ca/en/department-finance/news/2018/09/minister-morneau-launches-advisory-committee-on-open-banking.html>.

<sup>6</sup> Department of Finance Canada, *A Review into the Merits of Open Banking* (January 2019), <https://www.canada.ca/en/department-finance/programs/consultations/2019/open-banking.html>.

<sup>7</sup> Advisory Committee on Open Banking, *Consumer-directed Finance: the Future of Financial Services* (January 31, 2020), <https://www.canada.ca/en/department-finance/programs/consultations/2019/open-banking/report.html>.

<sup>8</sup> Press Release, Department of Finance Canada, Minister Morneau announces second phase of open banking review with a focus on data security in financial services (January 31, 2020), <https://www.canada.ca/en/department-finance/news/2020/01/minister-morneau-announces-second-phase-of-open-banking-review-with-a-focus-on-data-security-in-financial-services.html>.

<sup>9</sup> Isabelle Kirkwood, *Following Delay, Federal Government To Reopen Virtual Consultations On Open Banking*, BETAKIT (November 4, 2020), <https://betakit.com/following-delay-federal-government-to-reopen-virtual-consultations-on-open-banking/>.

As Canada's competition authority, the Competition Bureau ("Bureau") has actively participated in the development of Canada's open banking regime. The Bureau initially studied open banking as part of its FinTech Market Study, conducted during 2016-17.<sup>10</sup> In its market study report, the Bureau supported greater open access to systems and data, including open banking, as a key driver of competition and innovation in the financial sector.<sup>11</sup>

The Bureau then made follow-on submissions in support of open banking to the Minister of Finance in October 2017, and to the Advisory Council in February 2019.<sup>12,13</sup> The Bureau's most recent submission — in response to the Advisory Council's second phase review — was made in January 2021.<sup>14</sup> At present, stakeholders await the outcomes of that second phase review.

### III. COMPETITION PRINCIPLES FOR OPEN BANKING DESIGN

Effective regulation is crafted with a clear understanding of the policy goals it seeks to achieve. Financial industry regulators are responsible for ensuring the stability of a country's financial system and, in the particular case of open banking, for managing customer privacy and data protection issues. However, beyond such immediate goals, decision makers should always seek to understand the effects that proposed regulation may have more broadly. A key area of importance for all regulators is ensuring that regulations support a competitive and innovative economy.<sup>15</sup>

#### A. Competition in the Canadian Financial Sector

The Canadian financial sector is relatively concentrated. Canada's five largest banks enjoy substantial market shares across much of the financial services industry, and there is tight regulatory control over both entry and operations.<sup>16</sup> Accordingly, Canadian customers show weak competitive engagement with banks — relatively few Canadians switch their banking providers each year, and relatively few Canadians have tried innovative new banking products, relative to their international peers.<sup>17</sup> Open banking is an important means of stimulating greater competitive engagement between customers and financial service providers.

#### B. Open Banking Supports Competition and Innovation

Canadian regulators prioritize financial system stability through a high degree of regulatory control.<sup>18</sup> This is obviously an important objective, and this focus has allowed Canada to weather some significant financial crises.<sup>19</sup> However, restraints on entry and business conduct can also act counter to market forces, insulating incumbents from competition, and generally making it more challenging for businesses to introduce new products, expand their current product offerings, or grow into new territories.

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10 Competition Bureau, *FinTech Market Study Portal*, <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04188.html>.

11 Competition Bureau, *supra* note 3.

12 Competition Bureau, *Potential Policy Measures to Support a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future* (October 12, 2017), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04313.html>.

13 Competition Bureau, *Submission by the Interim Commissioner of Competition to the Department of Finance Canada – Review into the merits of open banking* (February 11, 2019), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04416.html>.

14 Competition Bureau, *Supporting a Competitive and Innovative Open Banking System in Canada* (January 18, 2021), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04571.html>.

15 Competition Bureau, *Strengthening Canada's Economy through Pro-Creative Policies* (August 20, 2020), <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04546.html>.

16 Office of the Superintendent for Financial Institutions Canada, *Oversight of Canada's Financial System*, [https://www.osfi-bsif.gc.ca/Documents/WET3/FinSystem/eng/FinSystem-Infographic\\_eng.pdf](https://www.osfi-bsif.gc.ca/Documents/WET3/FinSystem/eng/FinSystem-Infographic_eng.pdf).

17 Competition Bureau, *supra* note 12.

18 Office of the Superintendent for Financial Institutions Canada, *supra* note 16.

19 Jean Boivin, Former Deputy Governor, Bank of Canada, *The "Great" Recession in Canada: Perception vs. Reality*, Remarks at Montréal CFA Society (March 28, 2011), <https://www.bankofcanada.ca/2011/03/great-recession-canada-perception-reality/>.

By promoting greater customer mobility in the financial sector, open banking can enable greater competitive vibrancy.<sup>20</sup> When switching is easier, customers are more able to take advantage of competitive alternatives, which in turn incentivizes businesses to bring valuable new offers to market.<sup>21</sup> A greater openness to switching increases competitive vigor between incumbent service providers, and promotes the entry and expansion of new and innovative service providers. These effects allow customers to benefit from additional options, lower prices, and greater levels of innovation.

## IV. PRO-COMPETITIVE ELEMENTS OF OPEN BANKING DESIGN

Each design element of an open banking system has the potential to affect competition and innovation. Ensuring a maximally effective system requires decision makers to assess the competitive impacts of each proposed rule, and adapt such elements where necessary. This is the idea of competition assessment: the methodical and conscious evaluation and adjustment of regulation to achieve pro-competitive and innovative outcomes.<sup>22</sup>

The Bureau's January 2021 submission to the Advisory Council identified six general areas in which an open banking regulatory framework could affect competition.<sup>23</sup> They are: (i) universal principles that apply generally to open banking regulatory design; (ii) API standard setting; (iii) accreditation requirements for participation in the open banking system; (iv) treatment of liability in case of security or privacy breaches; (v) ensuring that data access is provided on a reciprocal basis; and (vi) methods of redress when the system requires regulatory intervention.

### A. Universal Principles

The Bureau's 2017 FinTech Market Study Report elaborates a number of broad recommendations for decision makers to consider when crafting pro-competitive financial industry regulation.<sup>24</sup> Six of these recommendations apply directly to the design of an open banking regime. In particular, regulations should be:

- (i) Technology-neutral and device-agnostic: regulatory language should be sufficiently flexible to accommodate and encourage new and yet-to-be developed technologies.
- (ii) Principles-based, rather than prescriptive: regulation should be aimed at achieving a policy goal and, wherever possible, should neither specify nor endorse any one particular method of business operations.
- (iii) Based on the function an entity carries out: service providers should compete on a level playing field. Wherever possible, customers of any given product should have the same protections regardless of a provider's business model.
- (iv) Proportional to risk: regulatory oversight and control should be a function of the risk that an activity may bring to the financial system, with lower-risk activities being granted greater regulatory freedom.
- (v) Harmonized across geographical boundaries: correspondence of regulation between jurisdictions makes it easier for firms to enter and operate across borders.
- (vi) Reviewed frequently: regulations should be reviewed regularly to ensure that they are achieving their policy goals and responding appropriately to marketplace developments. This is of even greater importance in areas where there is significant technological innovation.

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20 At the same time, open banking may not be sufficient, on its own, to ensure widespread entry in respect of all Canadian financial services products. New financial service providers, or existing providers who wish to expand into a new product line, face a number of significant barriers to entry.

21 See, for example, Paul Klemperer, *Competition when Consumers have Switching Costs: An Overview with Applications to Industrial Organization, Macroeconomics and International Trade*, 62 *REVIEW OF ECONOMIC STUDIES*, 515-39 (1995), <https://www.nuffield.ox.ac.uk/users/klemperer/competition.pdf>.

22 Competition Bureau, *supra* note 15.

23 Competition Bureau, *supra* note 14.

24 Competition Bureau, *supra* note 3.

## B. API Standard Setting

An Application Programming Interface (“API”) is a digital means of exchanging information between financial service providers.<sup>25</sup> APIs require a standard to present data in a consistent and predictable fashion and, therefore, regulators may wish to require or endorse one particular standard as the basis for an open banking system. There are two extreme approaches that can be taken to API standard setting. One approach involves a regulator defining a universal standard for information exchange that would apply to participants in an open banking regime (“Common Standard”). This is the approach that has been taken in the United Kingdom and Australia.<sup>26,27</sup> A second approach allows API standards to vary between service providers (“Individual Standard”). This has been the approach adopted in Japan and Europe.<sup>28 29</sup>

By analogy with verbal communication, a Common Standard approach requires that each service provider’s system speak the same language, whereas an Individual Standard allows each system to speak a unique language. In both cases, the same information is being transmitted but, under an Individual Standard, a degree of translation is required.<sup>30</sup>

A Common Standard most directly facilitates entry by non-incumbent, competitive financial services providers (“Competitive Providers”). Under a Common Standard, a Competitive Provider would need only to develop a system that accommodates information compliant with the Common Standard. Under an Individual Standard, that same Competitive Provider would need to translate information between the sender’s API format and the data format used by the Competitive Provider’s system. Adding even greater complexity is the fact that these systems would then have to be adapted every time that any service provider changes its API standard. In this sense, a Common Standard reduces the time, cost, effort, and complexity for Competitive Providers, easing their business case to compete.<sup>31,32</sup>

Having said that, a Common Standard can negatively impact innovation and dynamic competition between standards. Common Standards are by definition rigid, and deviation from these standards, even in circumstances where there may be value in doing so, could require a number of bi-lateral agreements between financial service providers to act outside of a pre-determined Common Standard.<sup>33</sup> This lack of flexibility can reduce the incentives for service providers to bring about innovative ways of exchanging data, to the detriment of dynamic competition.<sup>34</sup>

A middle-ground approach may be most favorable in respect of both competition today, and the adaptability of competition in the future. Entry into downstream financial services is most ably facilitated today by a Common Standard that specifies mandatory data fields, performance specifications, and technical documentation.<sup>35</sup> However, any adoption of Common Standards should be done with flexibility as a key objective

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25 Advisory Committee on Open Banking, *supra* note 7.

26 Open Banking Implementation Entity, *Open Banking Guidelines for Open Data Participants* (July 2018), <https://www.openbanking.org.uk/wp-content/uploads/Guidelines-for-Open-Data-Participants.pdf>.

27 Australian Competition and Consumer Commission, *Explanatory Statement Proposed Competition and Consumer Rules*, (August 2019), <https://www.accc.gov.au/system/files/Proposed%20CDR%20rules%20-%20Explanatory%20Statement%20-%20August%202019.pdf>.

28 Deloitte, *Open Banking Around the World: Towards a Cross-Industry Data Sharing Ecosystem* (November 29, 2018), <https://blogs.deloitte.co.uk/financialservices/2018/11/open-banking-around-the-world-towards-a-cross-industry-data-sharing-ecosystem.html>.

29 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, recital 93, (2015), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>.

30 Diana Milanese, *A New Banking Paradigm: The State of Open Banking in Europe, the United Kingdom, and the United States*, TTLF WORKING PAPERS No. 29 (2017), <https://law.stanford.edu/publications/a-new-banking-paradigm-the-state-of-open-banking-in-europe-the-united-kingdom-and-the-united-states/>.

31 Giuseppe Colanegelo and Oscar Borgogno, *Data, Innovation and Transatlantic Competition in Finance: The Case of the Access to Account Rule*, EU LAW WORKING PAPERS No. 35 (2018), <https://law.stanford.edu/publications/no-35-data-innovation-and-transatlantic-competition-in-finance-the-case-of-the-access-to-account-rule/>.

32 Several Canadian service providers are moving to adopt a Common Standard. See James Bradshaw, *Canadian Financial Institutions join Data Exchange to Speed Up Development of Open Banking*, THE GLOBE AND MAIL (July 29, 2020), <https://www.theglobeandmail.com/business/article-canadian-financial-institutions-join-data-exchange-to-speed-up/>.

33 Colanegelo & Borgogno, *supra* note 31.

34 Open Banking Implementation Entity, *supra* note 26.

35 Robert Bodle, *Regimes of Sharing: Open APIs, Interoperability, and Facebook*, 14 INFORMATION, COMMUNICATION & SOCIETY 3, 320-37 (2010), <https://www.tandfonline.com/doi/abs/10.1080/1369118X.2010.542825>.

to enable new and innovative use cases.<sup>36</sup> Ultimately, a well-designed system will incentivize rapid entry by Competitive Providers today, while providing sufficient scope for a dynamic competitive process to ensure that a Common Standard system can accommodate valuable innovation in the future.<sup>37</sup>

### C. Accreditation Requirements

Open banking requires service providers to exchange sensitive customer financial information. In order to safeguard this information, it may be necessary for service providers in an open banking system to be accredited — that is, for each service provider to demonstrate that its systems are sufficiently robust, and that it has proper compliance measures in place, to minimize risks associated with data transmission.

Accreditation typically involves a centralized accreditation body. Such an accreditation body reviews the systems and business processes of a service provider, and approves service providers to participate in the open banking system. The UK, EU, Japan, and Australia have all adopted some form of centralized accreditation.<sup>38</sup>

Accreditation requirements must be carefully tailored to support competition and innovation. Overly strict requirements could establish significant regulatory burdens that: (i) make it difficult for Competitive Providers to enter and compete, or (ii) are wholly incompatible with a Competitive Provider's business model.<sup>39</sup>

Additionally, the composition of any accrediting body is important to competition. Accrediting bodies, in their role of approving participants in the open banking system, have the power to exercise significant control over marketplace outcomes. The Bureau's *Interac* abuse of dominance case provides an illustrative example.<sup>40</sup> Interac is an electronic interbank system that, among other things, facilitates Canada's debit card payment system. In this case, a number of Canadian financial service providers, through their joint control of the Interac system, promulgated rules that had the effect of preventing other service providers from accessing the Interac network. To avoid similar exclusionary behavior in the context of open banking, any accrediting body should be independently-led, and no party or group of parties that has a stake in the commercial outcomes of an accreditation decision should be able, on its own, to determine accreditation.

Finally, in order to encourage competition and innovation, an accrediting body may wish to use a form of provisional or tier-based accreditation. Such an approach could provide some degree of conditional or preliminary accreditation to Competitive Providers, permitting them to enter the system sooner in their product development lifecycle, even when they have not yet satisfied every ultimate regulatory requirement. This would allow Competitive Providers the flexibility to meet accreditation requirements as their use-case expands.

### D. Treatment of Liability

Since open banking requires the exchange of sensitive customer financial information, a question arises of how customers could be made whole in the case of a security or privacy breach.<sup>41</sup> Regardless of which party — the initiator or the receiver of the data — is ultimately liable, there are two main approaches to ensuring that customers can be compensated for any resulting losses. First, service providers could be required to hold capital balances that would be used to cover losses from a security breach. Second, service providers could be required to carry insurance against such losses.

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36 Luís A. Bastião Silva, Carlos Costa, and José Luís Oliveira, *A Common API for Delivering Services over Multi-Vendor Cloud Resources*, 86 JOURNAL OF SYSTEMS AND SOFTWARE 9 (2013), <https://www.sciencedirect.com/science/article/abs/pii/S0164121213001052>.

37 Such changes could be affected through a redress mechanism discussed in greater detail below.

38 Accreditation could also be performed through bilateral contracts between individual data providers; however, this model features significant exclusionary incentives, and also involves less direct supervision of service providers.

39 Deloitte, *supra* note 28.

40 *Director of Investigation and Research v. Bank of Montreal et al.*, Competition Tribunal CT-1995-002, <https://decisions.ct-tc.gc.ca/ct-tc/cd/en/item/462733/index.do>.

41 See, for example, Australian Competition and Consumer Commission, *Competition and Consumer (Consumer Data Right) Rules 2019* (August 2019), <https://www.accc.gov.au/system/files/Proposed%20CDR%20rules%20-%20August%202019.pdf>; and European Commission, *Payment Services Directive: Frequently Asked Questions* (January 12, 2018), [https://ec.europa.eu/commission/presscorner/detail/fr/MEMO\\_15\\_5793](https://ec.europa.eu/commission/presscorner/detail/fr/MEMO_15_5793).

In either case, regulatory requirements must be carefully designed to avoid negative effects to competition and innovation. If potential entrants face high capital requirements to take part in open banking, this will impose entry barriers that may limit innovation and have a negative impact on competition.<sup>42</sup> If mandatory insurance is required, then regulators must first ensure that a robust insurance market exists, and carefully consider the role that large financial institutions play in that market. For example, if incumbents underwrite the insurance policies of Competitive Providers, these incumbents may have the ability and incentive to raise premiums as a means of limiting entry.<sup>43</sup>

### **E. Reciprocity of Data Access**

Reciprocity is the concept of allowing flow of financial information between all participants in the open banking system. Reciprocity can drive greater competition between service providers, and bring about incentives for a broader range of firms to participate in open banking.<sup>44,45</sup>

Key to an effective reciprocity regime is the appropriate distinction between “proprietary” and “non-proprietary” data. In this context, non-proprietary data is required by an open banking system to be made available between service providers, whereas proprietary data is not shared from one service provider to another. The ability to designate certain information as proprietary is central to a service provider’s incentive to invest in innovative products; without such protection, competing service providers could free ride on that innovation.<sup>46</sup> However, improperly designating data as proprietary can obscure competitively important information from rivals, making them less able to use customer data to deliver competitive financial products.

Regulators may therefore be charged with making a clear distinction between proprietary and non-proprietary data that is sufficiently flexible across many potential use cases. The Bureau’s experience, including in its *Toronto Real Estate Board* abuse of dominance case, is that businesses could illegitimately claim that certain data is proprietary as a means of frustrating the competitive process.<sup>47</sup> Accordingly, regulators should ensure that there is demonstrated evidence to legitimize claims that certain data should be not be shared.

### **F. Methods of Redress**

Even the most well-designed regulations are challenged by unanticipated circumstances. For example, a regulatory rule may fail to foresee a new technology, or an accreditation criteria may prove unsuitable for a certain class of providers. It is, therefore, paramount that an effective redress system be put in place to settle issues as they arise. Failing to do so may result in the benefits of competition being either delayed or denied.

There are many models of effective redress. One model would be to have a regulatory body empowered to hear and decide disputes. Another could involve decision-making by an expert committee, recognizing that some matters may require significant technical or marketplace expertise to resolve.<sup>48</sup> From a competition perspective, similar to the discussion of accreditation bodies above, any redress body should be independently-led, and no party or group of parties that has a stake in the commercial outcomes of a redress decision should be able, on its own, to determine a matter.

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42 U.K. Competition & Markets Authority, *Retail Banking Market Investigation: Barriers to Entry and Expansion* (July 14 2015), [https://assets.publishing.service.gov.uk/media/55a4eb9040f0b61560000005/Barriers\\_to\\_entry\\_and\\_expansion\\_-\\_capital\\_requirements\\_\\_IT\\_and\\_payment\\_systems.pdf](https://assets.publishing.service.gov.uk/media/55a4eb9040f0b61560000005/Barriers_to_entry_and_expansion_-_capital_requirements__IT_and_payment_systems.pdf).

43 For a further discussion of these effects, see Competition Bureau, *Non-Horizontal Mergers* in MERGER ENFORCEMENT GUIDELINES (2011), [https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html#s11\\_0](https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03420.html#s11_0).

44 Advisory Committee on Open Banking, *supra* note 7.

45 Implementing reciprocity conditions can be complex. Some jurisdictions, like Australia, are currently exploring the meaning of reciprocity between many different classes of service providers. See, for example, Australian Competition and Consumer Commission, *Consumer Data Right Rules Framework* (September 2018), [https://consultation.accc.gov.au/communications-1/consumer-data-right-rules-framework-consultation/supporting\\_documents/ACCCConsumerDataRightRulesFramework.pdf](https://consultation.accc.gov.au/communications-1/consumer-data-right-rules-framework-consultation/supporting_documents/ACCCConsumerDataRightRulesFramework.pdf).

46 In this sense, the fact that other service providers can profit from the innovations of others decreases the return to those innovations, therefore making them less likely.

47 *Commissioner of Competition vs. Toronto Real Estate Board et al.*, Competition Tribunal CT-2011-003, <https://decisions.ct-tc.gc.ca/ct-tc/cd/en/item/462552/index.do>.

48 This is similar to Canada’s competition law model, where the Competition Tribunal is a quasi-judicial administrative body that determines matters with a panel comprised of at least one member of the Federal Court and at least one lay member, who is not a judge but is rather a knowledgeable individual appointed by the government. This system recognizes that some matters may require specialized knowledge or experience beyond that expected of a Federal Court judge. For more information, see *Competition Tribunal Act* (R.S.C., 1985, c. 19 (2nd Supp.)), <https://laws.justice.gc.ca/eng/acts/C-36.4/FullText.html>.



## V. CONCLUSION

A successful open banking regime is one that maximizes competition and innovation. A conscious focus on prioritizing pro-competitive considerations through the regulatory design process will ensure that open banking brings about the lower prices, increased convenience, and higher levels of innovation that are characteristic of competitive markets. By communicating and advocating for these benefits, competition authorities have an important role to play in ensuring that open banking regimes can successfully deliver on their competitive and innovative potential.

The Canadian regulatory discussion has identified a number of key areas where regulations should be tuned to best deliver these competitive and innovative outcomes. Regulators should be focused on adequately supporting both static competition today, by incentivizing rapid entry by new firms and products, and dynamic entry in the longer term, by ensuring that regulations are sufficiently flexible to adapt to disruptive developments. These factors carry through a wide range of specific regulatory elements: API standard setting, accreditation, liability, reciprocity, and mechanisms of redress.



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