

'I Access Your Data, You Access Mine'. Requiring Data Reciprocity in Payment Services

Fabiana Di Porto

Article 36 of the EU Payment Services Directive 2 No. 2015/2366 (hereinafter also referred to as PSD2) awards digital operators, called third party payment providers (TPPs), the right to freely access users' payment accounts data (known as XS2A rule), typically detained by incumbent banks, to provide payment initiating services (PIS) or account information services (AIS). The stated goal of the XS2A rule is to let develop an infant industry: that of Fintech payment services.

However, mounting evidence suggests that unlike Fintech startups, big techs may benefit from the norm putting a much stronger challenge to established banks, which have less access to data about consumers' behavior (preferences, habits and conducts), less analytics capacity, and thus are put to a competitive disadvantage by the XS2A rule. According to many, that may result in competition harm and consumer welfare reduction in the medium-long run.

The article revisits the very rationales for introducing the XS2A rule, by critically assessing its asserted goals (Part 1).

It then suggests (Part 2) that to level the playing field among the market players involved, and increase its overall proportionality, the norm be revisited. In the relationship between big techs and the banks, we propose to complement the XS2A rule with a 'reciprocity clause'.

Instead of free accessing customer account data, big tech would pay by counter-providing access to the behavioral data in their possession, pertaining to the same customers concerned by the XS2A, and upon their consent. Data thus transmitted would only be available upon condition that they are used to increase the efficiency of the payment service provision.

Reciprocity would greatly enhance data circulation among market participants, while fostering competition among them, creating incentives for more innovation, and strengthening the overall proportionality of the XS2A rule.