



FinCoNet

INTERNATIONAL FINANCIAL CONSUMER
PROTECTION ORGANISATION

Briefing Note

Market conduct supervisory implications of non-traditional financial entities offering financial services, especially payments

November 2023

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Disclaimer

This report is based on information and responses gathered between October and December 2022. Information cited in this report has been updated to the furthest extent possible during the drafting process. Nonetheless, subsequent changes in circumstances and practices may render some information out-of-date.

The opinions expressed and arguments employed herein do not necessarily reflect the official views of FinCoNet member organisations.

About FinCoNet

In November 2013, FinCoNet was formally established as a new international organisation of financial consumer protection supervisory authorities. FinCoNet is recognised by the Financial Stability Board and the G20.

The goal of FinCoNet is to promote sound market conduct and enhance financial consumer protection through efficient and effective financial market conduct supervision, with a focus on banking and credit.

FinCoNet members see the Organisation as a valuable forum for sharing information on supervisory tools and best practices for consumer protection regulators in financial services. By sharing best practices and by promoting fair and transparent market practices, FinCoNet aims to strengthen consumer confidence and reduce systemic consumer risk.

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Table of acronyms and abbreviations

AML	Anti-money laundering
ASIC	Australian Securities and Investments Commission
CFR	Council of Financial Regulators (Australia)
DORA	Digital Operational Resilience Act. Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector
EBA	European Banking Authority
ECB	European Central Bank
EU	European Union
ISO	International Organization for Standardization
MiCAR	Regulation on Markets in Crypto-assets. Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets
MNO	Mobile Network Operator
NFC	Near Field Communications
NTE	Non-traditional financial entity
POS	Point of sale
PSD2	Payment Services Directive (Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market)
PSP	Payment services provider
SBS	Superintendencia de Banca, Seguros y AFP (Peru)
SC3	FinCoNet Standing Committee 3

Glossary

Term	Definition
Account information service	Online services to provide consolidated information on one or more payment accounts held by the payment service user with either another payment service provider or with more than one payment service provider.
BigTech	Large company, with extensive customer networks, whose primary activity is digital services, for example social media platforms, telecommunications, online search engines and e-commerce.
Buy Now Pay Later	A financial service, usually offered during the checkout process, that allows a customer to receive a good or service immediately but fully defer the payment or pay for it in instalments. The customer often, though not always, does not pay additional fees or interest charges if the instalments are repaid on time and in full. Generally, it involves a tri-partite transaction among the consumer, the merchant, and the BNPL provider.
Credit transfer	A payment service for crediting a payee's payment account with a payment transaction or a series of payment transactions from a payer's payment account by the payment service provider which holds the payer's payment account, based on an instruction given by the payer.
Digital payments	Transactions involving an electronic transfer of funds (mobile payments and online payments, including payments made with payment cards, digital wallets, apps or contactless payments).
Digital platform	An infrastructure or a service that permits interactions and exchanges of information, goods, and/or services between multiple types of users, which can be producers, consumers, or a community, through digital means.
E-money	A monetary value stored electronically, including magnetically, represented by a claim on the issuer which is issued on receipt of funds for the purpose of making payment transactions, and which is accepted by a natural or legal person other than the electronic money issuer.
E-money account	Account based on e-money that can be offered by banks and other authorised deposit-taking financial institutions, as well as by non-deposit-taking payment service providers such as e-money issuers. Such accounts include prepaid accounts.
Electronic funds transfer (EFT)	A transfer of funds initiated through an electronic terminal, telephone, computer (including online banking) or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account.
FinTech	Technology-enabled innovation in financial services that could result in new business models, applications, processes, or products with an associated material effect on the provision of financial services.
FinTech firm	A FinTech firm is one that specialises in offering digital financial services to consumers or enables other providers to offer digital financial services.
Mobile Network Operator / Telco	A company that provides wireless voice and data communication for its subscribed mobile users.
Non-bank financial institution	An institution, different from a bank, that is allowed to provide certain financial services by virtue of the regulatory framework in place.

Non-traditional financial entities	Non-bank corporations (e.g., FinTech firms, BigTechs, Payment Gateways, etc.) that have not historically played a major role in the financial services market but that have recently become more active in the sector.
Digital wallet (or online / mobile wallets)	Procedures agreed between the provider and the consumer to initiate a payment from linked payment cards or accounts, which can be accessed through devices connected to the internet or through mobile communication systems (such as NFC and Bluetooth). It can be incorporated in banking tools made available to the consumer by their bank or offered by a third party.
Payment gateway	A procedure that facilitates a payment transaction by the transfer of information between a payment portal (such as a website, mobile phone or interactive voice response service) and the acquiring bank.
Payment initiation services	A service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider, often used for online purchases, acting as a bridge between the merchant and the customer.
Payment services	Activities that include, namely (i) services enabling cash to be placed on a payment account; (ii) services enabling cash withdrawals from a payment account; (iii) execution of direct debits; (iv) execution of payment transactions through a payment card or a similar device; (v) execution of credit transfers; and (vi) money remittance.
Remittances	Personal transfers or compensation of employees, made or received by households who reside in one country to or from households who reside in another country or jurisdiction.
Thematic reviews	Thematic reviews are in-depth analyses of limited topics—or themes—which can provide insights for market conduct supervisors.
Virtual card	Card-based payment service where a replica temporary card number with a reduced validity period, limited usage and a pre-defined spending limit is generated to be used for internet purchases. These cards may be proxies for physical debit or credit cards owned by the payer, allowing web payments without disclosing the details of the physical payment card.

Executive summary

The market entry of non-traditional financial entities (like FinTech firms) and large non-financial operators (i.e., BigTechs), which make intensive use of new technologies in the design and marketing of financial products and services, with additional and integrated functions, is resulting in a boost to the digitization of the sector and a reported increase in competition in the banking and financial sector. In this rapidly evolving context, new risks arise for customers, and further challenges are being faced by market conduct supervisors.

This report is based on the responses to FinCoNet Standing Committee 3's "Questionnaire on market conduct supervisory implications of NTEs (e.g., BigTechs, FinTech firms) offering financial services, especially payments", which was distributed to FinCoNet Members in October 2022 and was open for responses until December 2022.

The report aims to:

- Explore the importance assumed by NTEs entering the payments ecosystem and financial services market more broadly;
- Identify particular risks for consumer protection and the challenges faced by market conduct supervisors;
- Collect market conduct supervisors' approaches and initiatives.

The following key findings emerge from this Report:

Market changes due to the entry of NTEs

In the vast majority of the jurisdictions, at least one NTE provides digital payment services. FinTech firms, BigTechs and payment gateway providers are the most active, offering a wide range of services such as e-money accounts, digital wallets and payment initiation services.

NTEs, in particular FinTech firms, also offer other financial products, such as new forms of credit or credit-like products, (e.g., BNPL), crowdfunding services, account information services, investment products and crypto assets.

In terms of how NTEs enter the payment services market, partnerships with incumbents prevail; other strategies include direct entrance into the market (e.g., BNPL operators, FinTech firms specialised in credit transfers) and partnerships with card networks.

The entry of NTEs into the retail financial services sector has brought about changes in the market structure, especially in terms of increased market competition; further effects include fostering of technological development, increased interoperability, cost reduction and enhancement in financial inclusion.

Incumbents have reacted to the entrance of new players by creating partnerships with innovative operators (including FinTech firms), increasing investments in research & development, changing business models and finally, albeit less frequently, acquiring NTEs.

Risks to consumers and challenges for market conduct supervisors

The entry of NTEs into the payment services market presents the following key risks to consumers: cybersecurity risks, data protection issues, lack of information transparency, difficulties in comparing products and services and potential price discrimination. Scalability and competitive advantages of BigTechs were also mentioned among the relevant issues, as they could be uniquely well placed to scale the entry barriers of card schemes by using their technological expertise and large existing customer bases and they could become gatekeepers for in-person or online transactions, resulting in reduced incentives to innovate.

FinTech firms, digital platform providers and BigTechs are deemed as the most challenging types of institutions from the perspective of market conduct supervision.

Supervisory gaps emerge, due to the difficulties in including NTEs and the services they offer within the regulatory perimeter. In many cases, existing regulation only covers them indirectly, that is, when they enter in the market in partnerships with incumbents or if they offer a specific service. This is the reason why the most significant challenges materialize when NTEs offer services directly.

In relation to the risks above, the following key supervisory challenges have been identified by the authorities: the need for enhanced supervisory skills, ensuring appropriate internal controls by NTEs, identifying who should be responsible for operations, coordinating with other entities/authorities, ensuring uniformity of rules, preserving market competition and, at the same time, financial inclusion of less digital consumers.

Regulatory and supervisory responses

Most responding jurisdictions have specific regulations and supervise FinTech firms, while other NTEs (e.g., BigTechs, MNOs, payment gateway providers, digital platform providers) are not covered by a dedicated regulation, and are subject to supervision as long as they are licensed; however, in some cases they may fall under the scope of existing regulations (e.g., if regulation is activity-based or product-based, rather than based on the type of firm).

Regulators and supervisors are undertaking a range of actions in response to the entry of NTEs; the approach most commonly adopted by jurisdictions is monitoring developments through tools like innovation hubs and regulatory sandboxes or industry consultations and thematic reviews. To a lesser extent, new regulations have also been adopted or the regulatory perimeter / scope of existing regulation has been expanded.

In terms of supervisory powers, in most cases the authorities exercise the same powers as for any other institution offering the same services, as only in limited cases fewer powers are mentioned (limited to the incumbent financial institutions partnering with NTEs). Regarding supervisory tools, authorities have already in place or plan to use specific supervisory tools to monitor or analyse the digital payments activity or business models of these firms (e.g., implementation of dedicated oversight teams, proactive engagement meetings with larger firms, use of artificial intelligence and natural language programming).

Various initiatives on the supervision of the payment activity of NTEs have been undertaken or are undergoing in several jurisdictions to address market conduct challenges of these entities and to mitigate the risks for consumers. In some cases, these are targeted

supervisory initiatives (e.g. thematic reviews, issuance of guidance, etc.) and in other cases other they are not directly related to supervision (e.g., proactive engagement with incumbent financial institutions, dedicated working groups, information initiatives to raise awareness on the use of digital channels to access banking products/services).

Authorities deem that the challenges posed by NTEs require a stronger cooperation both at domestic and international level.

1. Introduction and purpose of the report

1.1. Background

The market entry of new non-traditional financial operators (like FinTech firms) and large non-financial corporations (i.e. BigTechs) which make intensive use of new technologies in the design and marketing of financial products and services with additional and integrated functions, is resulting in a boost to the digitization of the sector and a reported increase in competition in the banking and financial sector.

This report explores how the entry of NTEs into the payments ecosystem (and the financial services market more broadly) is affecting consumers, and the challenges this poses for market conduct supervisors.

This report builds on prior work carried out by FinCoNet on related topics. In particular, after the reports released by FinCoNet in 2016 (*Online and mobile payments: Supervisory challenges to mitigate security risks*) and 2018 (*Online and mobile payments: An overview of supervisory practices to mitigate security risks*), in May 2022 a briefing note was published on *Supervisory challenges relating to the increase in digital transactions, especially payments*, aimed at exploring the impact of digitalisation and the increase in digital transactions, especially payments, since COVID-19. The note identified effective approaches that conduct supervisors employ to harness the benefits of digital transactions and mitigate the risks for consumers. In particular, it considered challenges for supervisors associated with cybersecurity risks and tackling financial scams, which have increased significantly in many jurisdictions since the outbreak of the pandemic.

On the basis of the previous work, FinCoNet SC3 developed a survey to gather insights on how the entry of NTEs into the payments ecosystem (and the financial services market more broadly) is affecting consumers and challenging market conduct supervisors. In particular, the survey was built to reflect on the implications of BigTechs offering digital payment services, consider the role of NTEs, dive deeper on the extent to which the regulatory and supervisory framework addresses security standards for payments, develop case studies on specific supervisory challenges or gather best practices on data reporting. Responses to this survey formed the basis of this report.

1.2. Overview of the survey

To prepare this report, SC3 developed the “Questionnaire on market conduct supervisory implications of NTEs (e.g. BigTech, FinTech firms) offering financial services, especially payments” (see *Appendix A: Questionnaire* for the full text of the Survey), which was distributed to FinCoNet Members in October 2022 and was open for responses until early December 2022.

The Survey consisted of three parts:

- A. Market changes, which intended to gather information on the importance of NTEs entering the payments ecosystem and financial services market more broadly;
- B. Risks to consumers and challenges for market conduct supervisors, which aimed to identify particular risks for consumer protection and the challenges faced by market conduct supervisors;

- C. Regulatory and supervisory responses, which aimed to collect market conduct supervisors' approaches and initiatives on this subject.

The Survey was distributed to a large number of jurisdictions and representative bodies, including FinCoNet members and observers. A total of 18 participating authorities from 18 jurisdictions provided responses to the Survey (see *Appendix B: List of responding authorities* for a full list of respondents).

1.3. Purpose and structure of the report

This report aims to:

- Explore the importance assumed by NTEs entering the payments ecosystem and financial services market more broadly;
- Identify particular risks for consumer protection and the challenges faced by market conduct supervisors emerging from the massive recourse to digitalization;
- Collect market conduct supervisors' approaches and initiatives aimed at ensuring that innovation does not result in a detriment for consumers.

The report is organised as follows:

- Chapter 2 provides an overview of the digital payment services and other financial products or services most commonly offered by NTEs in the different jurisdictions. It also provides insights on how these entities enter into the payment services markets and on the impact they have on the market structure, exploring also the consequences for incumbent financial institutions.
- Chapter 3 reports on the most relevant risks that consumers are facing when using services, especially digital payments, provided by NTEs. It also elaborates on the supervisory challenges posed or amplified by these firms, again with a focus on payments, and also in connection with the arrangement used by them to enter the market.
- Chapter 4 describes the current regulatory and supervisory framework and the range of actions undertaken by regulators and supervisors in response to the entry of NTEs. It provides insights on the supervisory powers and tools that can be used in supervising these entities as well as on the need for cooperation with other domestic or international authorities in charge of financial consumer protection issues.
- Chapter 5 synthesises the key findings that can be drawn from this report and discusses the next steps regarding the work of SC3.

2. Market changes due to the entry of NTEs

This chapter provides an overview of the digital payment services and other financial products or services most commonly offered by NTEs in the different jurisdictions. It also provides insights on how these entities enter into the payment services markets and on the impact they have on the market structure, exploring also the consequences for incumbent financial institutions.

2.1. Types of entities in the market and services offered

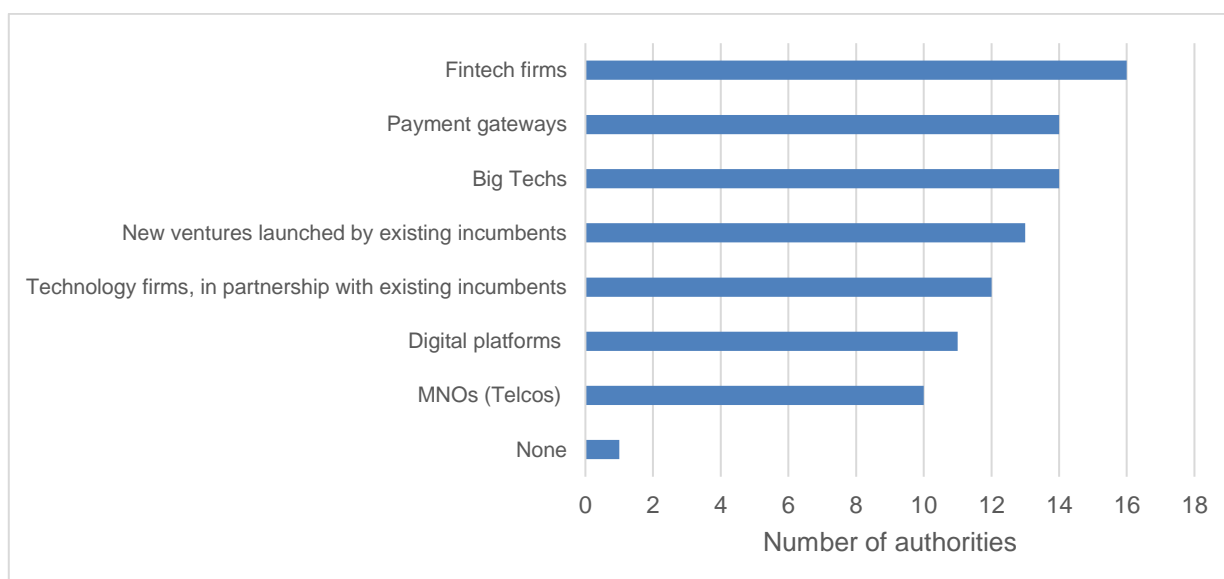
NTEs offering digital payment services

The vast majority of the respondents (N=16) indicated that at least one NTE offers digital payment services, while only two respondents reported the absence of NTEs in the digital payment market. The biggest share of digital payment services market is covered by FinTech firms, BigTechs and payment gateways which have been indicated by the vast majority of the respondents.

Some respondents (N=3) also cited, as providers, companies traditionally specialised in other areas (e.g., commodities, corporate management software, etc.), e-money issuers, money transfer business or payday lenders.

A closer examination of NTEs offering digital payments services across jurisdictions is provided in Figure 1 below. Box 1 provides an example of a national digital payment platform established to speed up retail payments, which can be accessed indirectly by smaller institutions and non-bank providers.

Figure 1. NTEs offering digital payment services



Note: N=18. NB types of entities are not mutually exclusive.

Source: FinCoNet Standing Committee 3 Questionnaire, December 2022.

Box 1. National Payments Platform in Australia

In Australia, the payments industry launched the National Payments Platform (NPP) in 2018 to enable consumers, businesses and government agencies to make real-time, information-rich payments 24 hours a day, every day of the week. The NPP's PayID service provides the option for payments to be addressed to the account owner's registered mobile phone number, email address or Australian Business Number (ABN) rather than to a Bank-State-Branch (BSB) and an account number.

As of October 2022, more than 110 entities (including sub-brands and subsidiaries) offering NPP's PayID service to their customers. Fourteen of these are participants in the NPP, while the others, comprising smaller financial institutions and non-bank providers, access the platform indirectly through the services of a sponsoring participant. The initial uptake of the NPP was somewhat slower than had been expected, however, as of October 2022, more than 88 million Australian bank accounts can send and/or receive payments via the NPP. Over 13 million PayIDs have been registered.

NPP transactions picked up significantly over 2019/20 as financial institutions progressed the rollout of core functionality to the end users. The Australian Government also started using the NPP for certain payments, including real-time funding of government agencies and some emergency welfare and disaster payments.

Source: [NPP Roadmap October 2022](#)

Payment-related services provided by the indicated NTEs

Concerning the main payment-related services, FinTech firms are the most active in the sector offering a wide range of services ranging from payment initiation services, physical and virtual cards, digital wallets, e-money accounts and credit or electronic funds transfer. The payment services most commonly offered by NTEs are e-money accounts (i.e. payment accounts where e-money is stored), digital wallet, and payment initiation services. It is also worth noting that FinTech firms are almost the only NTEs offering remittances. BigTechs in most jurisdictions offer digital wallet options. E-money accounts are widely offered by all NTEs, except payment gateway providers which offer this service only in four jurisdictions.

Table 1 below provides a detailed overview.

Table 1. Payment-related services offered by NTEs (number of authorities)

	FinTech firms	BigTechs	MNOs (Telcos)	Digital platforms	Payment gateways
Payment initiation services	14	6	3	5	8
Physical payment cards	12	3	1	6	4
Virtual cards	11	5	5	4	2
Digital wallets	11	14	5	7	3
E-money accounts	13	9	8	7	4
Credit transfers or electronic funds transfers	14	5	5	3	7
Remittances	11	2	2	3	3

Note: N=18.

Source: FinCoNet Standing Committee 3 Questionnaire, December 2022

Other financial products provided by the indicated NTEs

FinTech firms lead NTEs in offering also other financial products such as new forms of credit or credit-like products (e.g. BNPL), crowdfunding, account information services, investment products, and crypto assets. A wide range of financial services is also offered by digital platforms including credit products, investment products, crypto assets and cash back or points reward systems. Finally, half of respondents indicated that BigTechs offer credit products.

Table 2 below presents these other financial offerings in greater detail.

Table 2. Other financial products offered by NTEs (number of authorities)

	FinTech firms	BigTechs	MNOs (Telcos)	Digital platforms	Payment gateways
Account information services	12	4	1	4	3
Generic credit products	10	9	3	8	1
New forms of credit or credit-like products: BNPL	13	5	2	4	1
New forms of credit or credit-like products: early payroll/salary services	11	1	0	3	0
Savings accounts	6	1	1	2	0
Crowdfunding	13	2	0	5	0
Investment products	12	1	0	7	0
Crypto assets	12	2	0	6	0
Building credit history	7	0	1	1	0
Cash back or points rewards systems	10	3	6	7	1

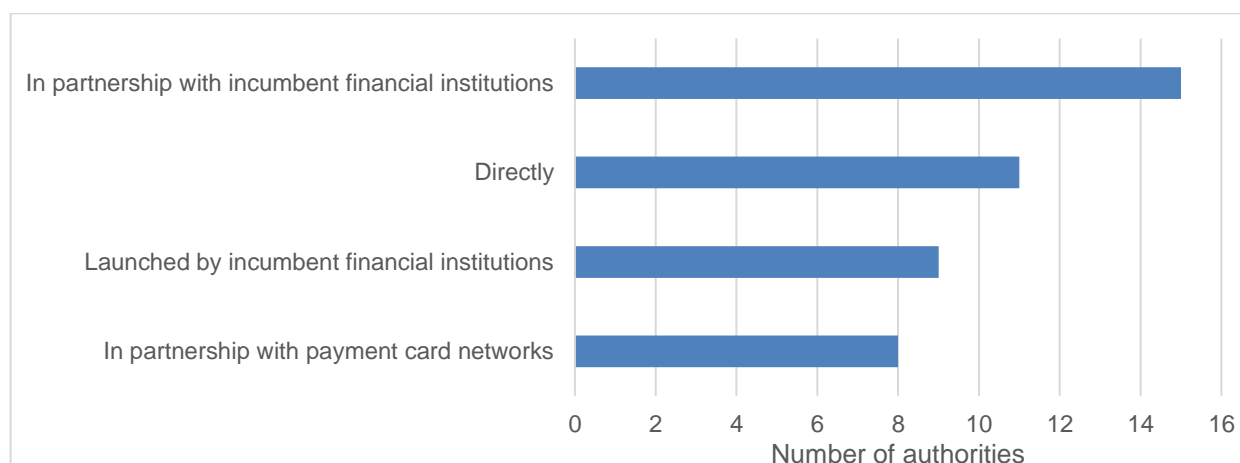
Note: N=18.

Source: FinCoNet Standing Committee 3 Questionnaire, December 2022

2.2. How NTEs enter the payment services markets

Respondents indicated that a vast majority of NTEs typically enter the market in partnership with traditional entities (N=15) or directly (N=11), although NTEs launched by incumbent financial institutions (i.e., a subsidiary of an incumbent) (N=9) and partnerships with payment card networks (N=8) are also common, as shown in the Figure 2 below.

Figure 2. How NTEs enter the payment services market



Note: N=18.

Source: FinCoNet Standing Committee 3 Questionnaire, December 2022

NTEs may decide to enter the market through partnerships with incumbent institutions in order to bring in the required capacity and knowledge in payment technologies, or because of the presence of regulatory barriers to enter the market directly. Reference was made in some open-ended Questionnaire responses, for example, to the fact that only licensed banks are authorised to pool funds or take deposits, which means that these new entrants must seek traditional entities' sponsorship in order to offer such services. In this respect, some respondents highlighted that BigTechs must collaborate with banks in order to link a customer's digital wallet to a credit or debit card. In some cases, the partnership between NTEs and incumbents is also the result of strategies adopted by the latter in order to compete with new entrants; many incumbent institutions indeed not only set up subsidiaries (e.g., online banks) but also invest or acquire FinTech firms.

Concerning the entrance process, some jurisdictions also described establishing regulatory processes for licensing NTEs as payment service providers, while one respondent reported the absence of entrance restrictions for NTEs, notwithstanding the compliance with market conduct regulations. Finally, in one case, specifically in the peer-to-peer lending market, the NTEs are restricted to only serve in the form of bridging borrowers to lenders using online platform and are prohibited from providing payment services.

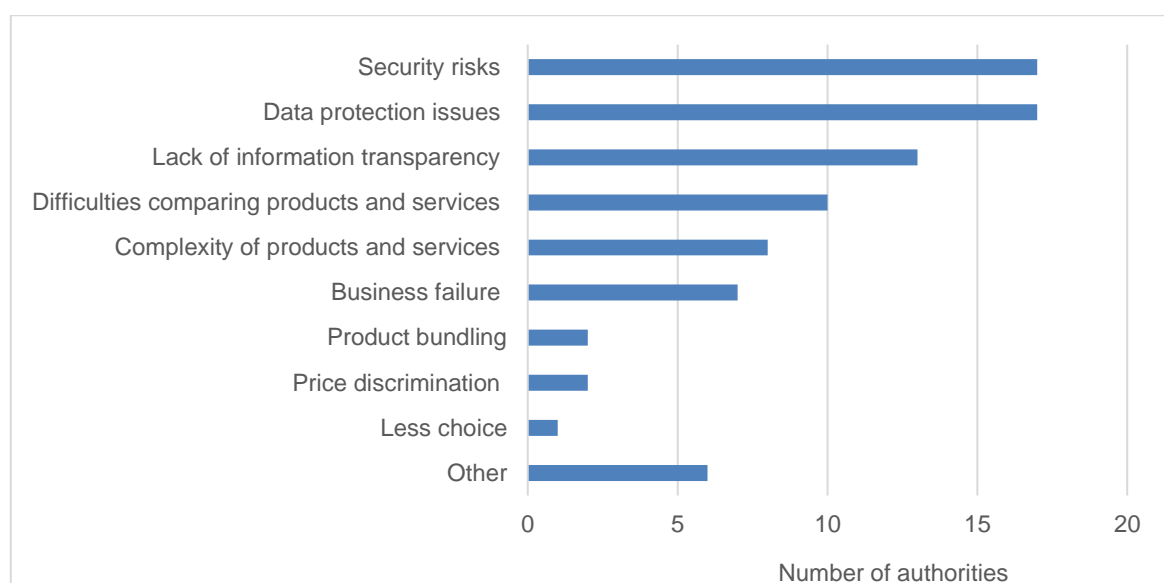
3. Risks to consumers and challenges for market conduct supervisors

This chapter reports the most relevant risks that consumers are facing when using services, especially digital payments, provided by NTEs. It discusses the supervisory challenges posed or amplified by these firms, again with a focus on payments, and also in connection with the arrangements used by them to enter the market.

3.1. Main risks faced by consumers

In the view of the respondents, the main risks that consumers face when using services provided by these NTEs are presented in Figure 3 below and detailed in the following paragraphs. As one respondent noted, the risks originating from NTEs are often the same risks that arise from incumbent institutions (e.g., cybersecurity, data privacy, and market conduct) – the difference is in the measures taken by the entities to mitigate these risks as in this jurisdiction incumbents usually must adopt stronger measures than NTEs, since incumbents are required to comply with stricter regulatory requirements concerning the management of risks.

Figure 3. Key risks faced by consumers



Note: N=18.

Source: FinCoNet Standing Committee 3 Questionnaire, December 2022

Security risks

According to the information provided by respondents, due to economic constraints, NTEs may be focused solely on developing their core business and, as a result, cyber security (security incidents, business continuity, frauds and scams) may not be addressed adequately, and also because NTEs may not be subject to regulatory requirements. In jurisdictions where NTEs are licensed as payment services providers, they may be required to report to the central bank the major operational or security incidents related to the provision of payment services. Security issues are also amplified by the fact that NTEs rely

on telecommunications infrastructure not only for back-end but also for front-end provision of financial services, which increases their vulnerability to security risks.

Data protection issues

Respondents noted that consumers may not be fully aware about the authorisation they provide regarding the usage of their personal data. Indeed, even if they accept the conditions for their data treatment, they do not often have a clear idea of what this authorisation entails. Personal data (in particular, data referring to consumer behaviour) may be used to profile clients with direct consequence on the access to, and pricing of financial services. Personal (current and historical) information could be used for example in credit scoring procedures with direct consequence on conditions and terms of products offered to clients. Some respondents further noted that data leaks occurred in the past and may occur in the future.

Lack of information transparency

The issues highlighted by the respondents in this respect are linked to the fact that, in most cases, NTEs are not within the perimeter of the existing consumer protection regulatory frameworks; therefore, the provision of pre-contractual documents may not be mandatory, and the information provided may not be as comprehensive and transparent as information provided by licensed financial entities, making it more difficult for consumers to make a well-considered choice. Moreover, the participation of several entities in the offering of digital financial products makes it difficult for customers to have a clear understanding of which entity is providing the service and, consequently, where to request information and assistance, to report problems and to submit a complaint.

Difficulties comparing products and complexity of services

Respondents noted that consumers may find it difficult to make comparisons among different products, as NTEs may specialise in market niches and even reshape existing services, increasing their complexity, or even because consumer understanding of FinTech products is limited and customers may be in a disadvantaged position. As one respondent noted, the ability for consumers to compare products has been complicated by the fact that many of the new services offered appear simple at first glance but are revealed to be much more complex when further unpacked. Furthermore, the provision of financial services by NTEs is often combined/bundled with non-financial products and services and provided via digital platforms where different providers participate, making it difficult to identify the entities involved and allocate the responsibilities for the service provided.

Business failures

BigTechs' access to a vast amount of customer data and offering a wide range of services may have a competitive advantage providing services with a price which is not sustainable for other financial entities.

Moreover, all respondents recognise that competition issues may arise should BigTechs achieve dominance in financial services market, leading to a lack of effective choice for

consumers. In particular, scalability and advantages of BigTechs could make them gatekeepers for in-person or online transaction resulting in reduced incentives to innovate.

Price discrimination based on customer data analytics

According to the information gathered, this issue is generated by the use of consumers' past data in order to guide business decisions and establish the price of services offered. In particular, the widespread use of machine learning algorithms based on consumer data in order to make quick loan pre-qualifications and approvals could generate disparate treatment.

3.2. Entities posing risks and supervisory challenges

All respondents (N=18) recognized the plurality of NTEs as risky for consumers or for the smooth functioning of the market. Regarding the types of NTEs posing risks to consumers, respondents identified FinTech firms (N=8), digital platforms (N=8) and BigTechs (N=6) as the most significant.

Not only do these entities operate in a fast-growing market, but they also involve a wide diversity of parties by integrating financial and non-financial products. However, one respondent reported that, at this point, NTEs pose low risks for consumers in their specific jurisdiction, in view of low transaction volumes for digital payments and the limits on cross-border activity imposed by the domestic market conduct regulator.

The identification of NTEs as a source of risk is linked to the difficulties of adequately supervising NTEs. Indeed, nearly all respondents reported that the entrance of these firms has amplified supervisory challenges, as these entities are deemed challenging to be supervised.

In particular, a majority of the respondents deem that Fintech firms are the most challenging (N=11), primarily because these firms are not within the regulatory and supervisory perimeter and, secondly, because of their increasing relevance in the market, the innovation they foster, and the technology behind their business models.

Furthermore, a significant number of jurisdictions reported difficulties in the supervision of BigTechs (N=8), as these entities could pose critical issues concerning competition, size and contribution to the fragmentation of the payments value chain. A few respondents also referred to challenges in the supervision of digital platforms (N=6) (because of the engagement of different parties) and payment gateways (N=4) (as they provide services directly to merchants, including unsophisticated micro and small enterprises, and so they may not be subject to consumer protection regulatory requirements).

Finally, one respondent reported that supervisory challenges are not directly related to a particular activity carried out by NTEs, as what matters is whether these entities have effective controls in place or not, or whether the resources available to supervise these firms are sufficient compared to their increasing relevance in the digital payments market.

The general finding emerging from the survey is that regulatory gaps are the most relevant source of difficulties for supervisory authorities. Several respondents reported how the NTEs and the services offered by them often fall outside the regulatory perimeter, since the regulation covers them only indirectly if they offer a specific service or when they enter in the market in partnerships with incumbents. Indeed, in this case, the NTEs can leverage on the incumbents in terms of compliance with the existing regulation. On the contrary, when

NTEs enter the market directly, they often fall outside the regulatory perimeter and so, according to most respondents, supervisory challenges are amplified since these entities are not subject to most forms of prudential and consumer protection and investor or depositor protection regulation. Indeed, when asked to identify the type of arrangement posing the most significant challenges for market conduct supervisors, respondents overwhelmingly selected “When NTEs offer services directly” (N=13), compared to “When NTEs offer services in partnership with incumbent financial institutions” (N=1).

To conclude, the risks to customers mentioned in the previous paragraphs and the lack of a uniform and complete regulation covering all NTEs and the services offered by them, entail the following concrete challenges for conduct supervisors:

- **Need for enhanced supervisory skills.** New and more complex business models, relying heavily on digitalisation and sophisticated technology, which may differ significantly from those of the incumbents, imply the need for supervisors to enrich their skills, in order to be able to deal with new and more complex business models, which are distinct from those of the traditional financial entities that authorities are used to supervise.
- **Ensuring appropriate internal controls by NTEs.** Effective internal controls are critical to ensuring compliance with the applicable regulation in the financial sector and may have a direct, positive effect in terms of enhancing effective consumer protection. Some responding authorities reported the inadequacy of the compliance and risk management systems of NTEs, resulting in poor controls which might be not suitable to properly manage conduct risk, thus posing more challenges to conduct supervisors (and, ultimately, more risks to consumers).
- **Identifying who should be responsible for operations.** The increasing development of NTEs goes hand in hand with the systematic unbundling of traditional financial products and the fragmentation of the value chain. As a result, it may be difficult to identify the entity responsible in case of misconduct, especially when several third-party technical providers are involved; furthermore, as activities underlying financial services may also be outsourced abroad, supervisors may experience additional burdens to identify the applicable regulatory framework and/or the supervisory authority best placed to take action.
- **Coordinating with other entities/authorities.** In case of cross border activities, in particular for BigTechs and digital platforms, the absence of a uniform regulatory framework across countries could generate problems of coordination among authorities and applicability of opposing or not properly coherent rules.
- **Ensuring uniformity of rules.** Under certain circumstances, regulation may not be properly neutral; for instance, NTEs within a banking group may be subject to a more restrictive regulation than digital providers that do not have relevant ties with the banking sector.
- **Preserving market competition.** In some cases, BigTechs may be reaching a dominant position in the financial sector, leveraging on their access to a vast amount of customer’s data leading to a competitive advantage in providing services at a price that might not be sustainable for other financial entities. Moreover, the increasing dependence on these players and the critical role they are assuming are considered risky for the stability and smooth operation of the payment market as a whole.

- **Preserving financial inclusion and customer protection of less digital consumers.** The increasing presence of third-party providers offering digital payment services gives rise to concerns about the access of older or less technologically skilled people to services as well as about their exposure to the risk of taking decisions without being fully aware of their consequences, or being victim of fraud when using these services.

4. Regulatory and supervisory responses

This chapter describes the current regulatory and supervisory framework and the range of actions undertaken by regulators and supervisors in response to the entry of NTEs. It provides insights on the supervisory powers and tools that can be used in supervising these entities as well as on the need for cooperation with other domestic or international authorities in charge of financial consumer protection issues.

4.1. Current regulatory and supervisory framework

According to the responses gathered, the issuing of specific regulation applicable to NTEs is still limited and, in most cases, covers FinTech firms (N=8), while for the other types of NTEs (e.g., BigTechs – N=2, MNOs – N=2, Payment gateways – N=3, Digital platforms – N=2) only in few jurisdictions a dedicated regulation exists.

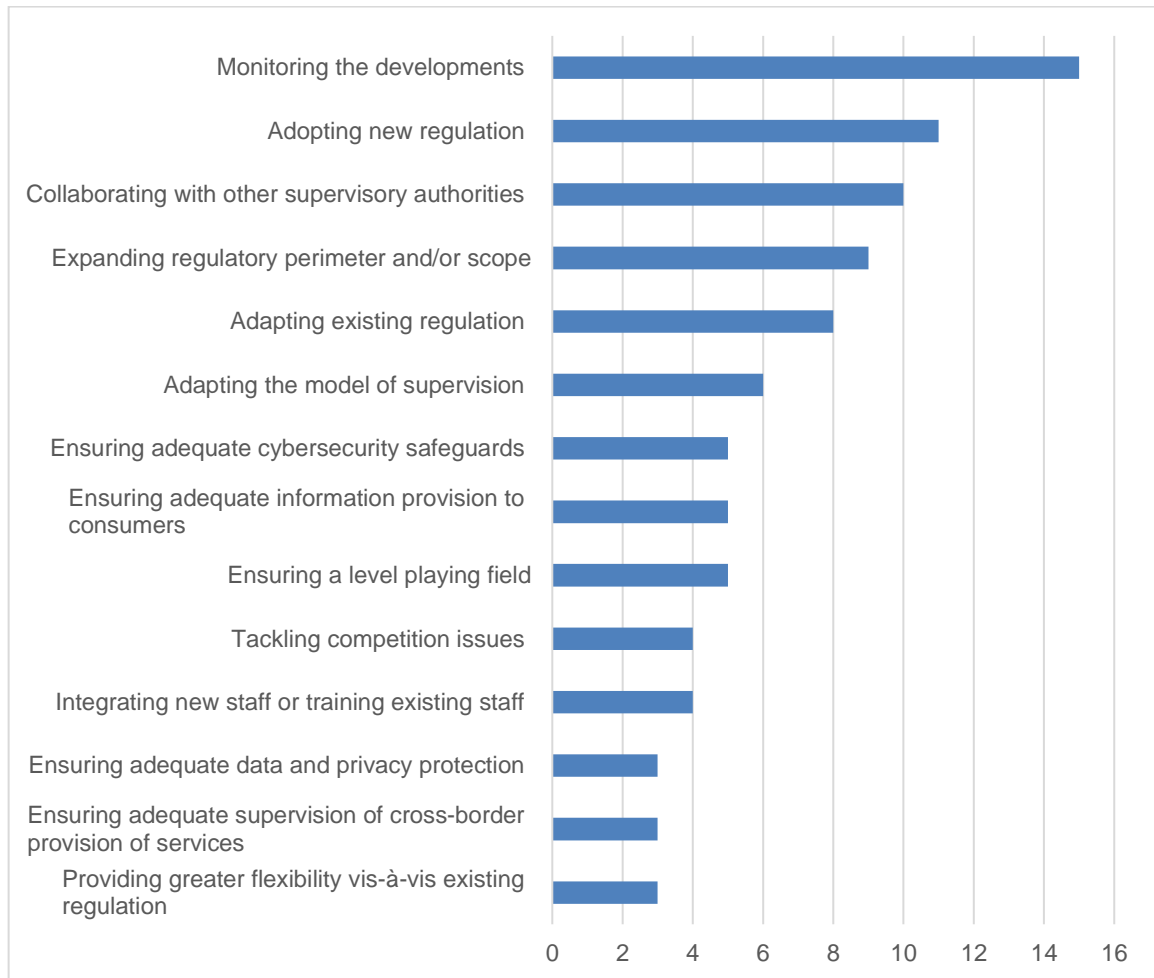
This is probably because in several jurisdictions these firms may fall under the scope of existing regulation as what matters in its application is the activity or product/service - for which the entities need a licence - rather than the firm type, as pointed out by some respondents.

Furthermore, it is also worth highlighting that there are some relevant regulations recently published (e.g. MiCAR and DORA) for which further details are provided in section 4.2 below).

Accordingly, as far as the supervisory framework is concerned, most respondents reported that FinTech firms are supervised in their jurisdictions (N=11) and that NTEs are commonly subject to supervision if they are licensed.

4.2. Actions taken by regulators and supervisors

As shown in Figure 4, regulators and supervisors are undertaking a range of actions in response to the entry of NTEs, the monitoring of developments being the most common approach among jurisdictions (N=15). This activity not only supports risk-based supervision but is also a key component of customer-centric approaches to consumer protection, which are becoming especially useful in the context of more advanced and complex digital financial services.

Figure 4. Actions undertaken in response to the entry of NTEs (number of authorities)

Note: N=18.

Source: FinCoNet Standing Committee 3 Questionnaire, December 2022

With regards to the monitoring of developments, all respondents (N=18) rely on more than one channel to monitor/interact with NTEs. As illustrated in Figure 5, the most commonly used tools to monitor and interact with NTEs were innovation hubs, which allow a direct connection between market operators and authorities, and sandboxes, setting a controlled testing ground to enable technological innovations in the financial system to be put into practice (N=14) (see Box 2)

Box 2. Innovation hubs and sandboxes implemented by the Bank of Italy, the Banco de Portugal and the Bank of Spain

In **Italy**, a communication channel (*Canale FinTech*) was established in 2017 by the Bank of Italy to implement a point of contact through which operators can dialogue with the Bank of Italy to present projects in the field of financial services and of payments, based on innovative technology, or to propose technological solutions designed for banks and financial intermediaries. Moreover, since the end of 2020 Bank of Italy has created the

FinTech Milano Hub in order to cooperate with other international authorities, to modify the existing regulation, and to allow a direct connection among institutions, market operators, and academia.

In **Portugal**, the innovation hub (*Portugal Finlab*) is a communication channel between innovators (new players in the market or incumbent institutions having innovative tech-based financial projects or products) and the Portuguese supervisory authorities. Through it, the authorities provide guidelines to the participants on how to navigate and operate in the regulatory system.

In **Spain**, the Law 7/2020, for the digital transformation of the financial system, set a controlled testing ground to enable technological innovations in the financial system to be put into practice (Spanish Sandbox).

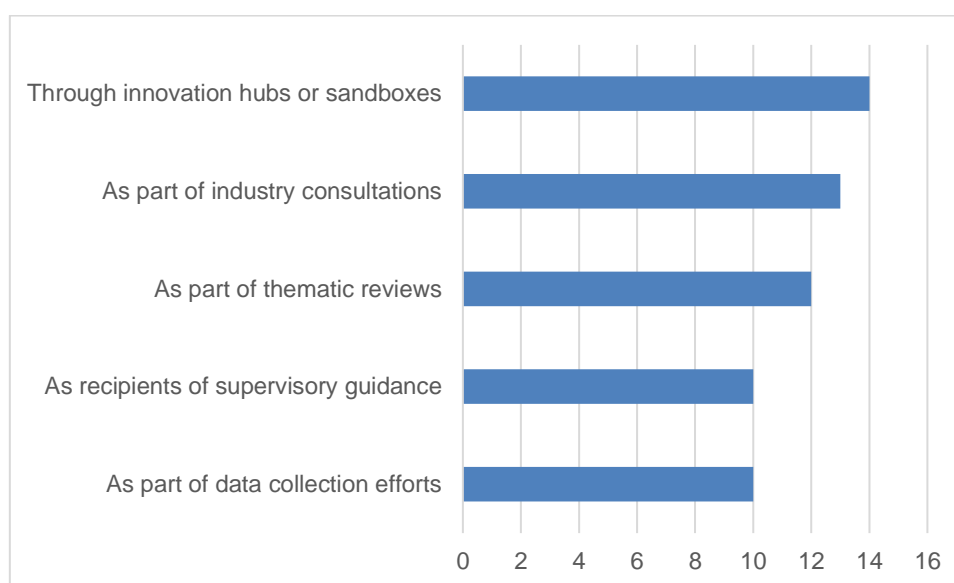
In order to be accepted in the Sandbox, projects are required:

- to provide technological innovation applicable to the financial system;
- add value in, at least, one of the following aspects: (i) facilitate regulatory compliance; (ii) imply a potential benefit for financial services' users in terms of cost reduction, better quality, access and availability of financial services, or higher consumer protection; (iii) increase the efficiency of entities or markets; (iv) enhance regulation or the exercise of the financial supervision.

Projects may be promoted by any natural or legal party, individually or together with other persons, including technological firms, financial entities, credit administrators, associations, public or private research centres and any other interested person.

The sandbox has a wide scope, both in terms of the type of project and the promoter, which may be a NTE. Besides, where relevant, the sandbox assesses market conduct aspects associated to the project and, in particular, whether risks for consumers are properly addressed. The ultimate goal of the sandbox is to enable technological innovations in the financial system to be put into practice while ensuring that risks (including market conduct) are properly addressed and consumers are protected.

), followed by industry consultations (N=13) and thematic reviews (N=12).

Figure 5. Channels used to monitor and interact with NTEs (number of authorities)

Note: N=18.

Source: FinCoNet Standing Committee 3 Questionnaire, December 2022.

A number of other channels or occasions of interaction were also mentioned, including: (i) meetings and correspondences when new business processes/products are launched by the firms; (ii) complaints against the NTEs (made directly to the authority or shared by another authority); (iii) supervision processes in case of regulated entities and (iv) market conduct oversight of incumbent financial institutions and payment card networks partnering with NTEs.

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In addition to the market monitoring tools mentioned above, it is worth highlighting other tools that may be implemented. The Consultative Group to Assist the Poor (CGAP) Market Monitoring Toolkit includes, among others, phone surveys, mystery shopping, analysis of consumer contracts, and social media monitoring. Another valuable tool may be represented by the setting up of a Consumer advisory panel, a formally established group of experts that engages with a financial sector authority to elevate the voice of consumers on proposed policies and emerging risks. These panels may be an effective tool to integrate consumer perspectives into financial regulation and alert regulators to harmful practices.

Returning to Figure 4, most respondents (N=11) also adopted new regulation in response to the entry of NTEs. Within the European Union, the Digital Finance Strategy adopted by the European Commission in September 2020 is followed to adapt the existing regulation to facilitate innovation; among the main initiatives of this strategy there are the recently published MiCAR and DORA. In particular, these regulations are aimed at filling a gap in existing EU legislation by ensuring that the current legal framework does not pose obstacles to the use of new digital financial instruments and, at the same time, ensures that such new technologies and products fall within the scope of financial regulation and operational risk management arrangements of firms active in the EU.

Outside Europe, new regulations have also been adopted in some jurisdictions (N=3, see Box 3). In other cases, the regulatory perimeter and/or scope of existing regulation has been expanded (N=9) or adapted (N=8) in order to cover also the NTEs.

Box 3. Regulatory initiatives in Canada, Mauritius, Brazil and Australia

The **Government of Canada** is in the process of implementing the “Retail Payment Activities Act”, which, in addition to requiring many NTEs to register with the Bank of Canada as payment service providers, would require those entities to maintain operational risk management frameworks for preventing and monitoring cyber risk. Furthermore, in November 2022, FCAC, the Office of the Superintendent of Financial Institutions (prudential regulator) and the Canada Deposit Insurance Corporation (CDIC) issued public expectations for incumbent financial institutions considering offering crypto-assets, either directly or through a partner. Regulated entities are expected to clearly understand the risks of any planned crypto-asset activities and ensure that these risks have been properly addressed. Regulated entities must also ensure any crypto-asset activities comply with existing federal financial laws including the Bank Act, Insurance Companies Act, Trust and Loan Companies Act, and Proceeds of Crime (Money Laundering) and Terrorist Financing Act, as well as any regulations or guidance issued by federal and provincial regulatory agencies. Finally, in its Budget 2022, the Department of Finance Canada announced the Canadian government’s intention to launch a financial sector legislative review focused on the digitalization of money and maintaining financial sector stability and security. Finance Canada launched consultations with stakeholders on digital currencies, including crypto-currencies, stablecoins, and central bank digital currencies in November 2022.

The **Bank of Mauritius**, after the adoption in 2018 of the National Payment Systems Act (NPS Act) setting the framework for regulation, oversight and supervision of the national payment systems and payment systems being operated in Mauritius, issued the National Payment Systems (Authorisation and Licensing) Regulations in 2021 (NPS Regulations), aimed at providing clear guidelines to prospective payment service operators in performing payment services. In particular, the NPS Regulations provide for: (i) the authorisation process of operators of payment systems, clearing systems or settlement systems (Authorisation); (ii) the licensing of payment service providers (Licence); (iii) the form and manner for applying for an Authorisation or a Licence; and (iv) the applicable fee for obtaining an Authorisation or a Licence.

The **Banco Central do Brasil (BCB)**, as part of its regulatory agenda focused, among others, on encouraging competitiveness and allowing the safe entry of NTEs into the financial market; in this respect, a number of regulations have been adopted, or amended, to duly take into account NTEs:

- a) to promote greater competition in the regulatory arena, BCB included payment initiation service providers as payment institutions (supervised entities via BCB Resolution No. 81 of March 25, 2021), so that the provision of payment services is not exclusive to payment institutions and so that financial institutions can provide these services as well;
- b) the Conselho Monetário Nacional (CMN) has recently authorized other supervised entities (direct credit companies and the peer-to-peer loan companies) to also act as payment initiation service providers, through Resolution CMN No. 5,050 of November 25, 2022.

The **Australian** Government has initiated law reform to modernise Australia’s Payments System. The Reform is considering the scope of regulation and the supervisory tools,

including: updating the regulatory framework to include a new licensing framework; more competition and transparency across systems; more collaboration amongst regulators; and steps to reduce small business transaction costs. The review recommended, amongst other things, that:

- consumers and business should be at the centre of policy design and implementation. Policy design should (i) encompass a strategy that prepares the ecosystem for future innovation and addresses challenges in a holistic manner, (ii) promote safety to protect the businesses and consumers that use the payments ecosystem, and (iii) aim to ensure that consumers and business can understand their rights and obligations, and to reduce regulatory barriers to entry for new firms offering new services to consumers and businesses;
- a single, tiered payments licensing framework should be introduced; and
- consumers and business should be made aware of their options and rights, including through financial literacy initiatives.

A significant number of respondents (N=10) also reported collaboration or interaction with other supervisory authorities as one of the key actions to address the entry of NTEs, as several authorities are involved in the supervision of these firms under different perspectives, making the implementation of an open dialogue and set up of an appropriate mechanism for sharing information and coordinating activity essential.

4.3. Supervisory powers and tools

In terms of supervisory powers, the majority of respondents reported exercising the same powers as for any other institution offering the same services (N=12). Accordingly, none of the respondents mentioned having additional powers over NTEs and most of them (N=12) have not implemented specific reporting requirements to collect data for monitoring purposes, arguing - in most cases - that, if the entity is licensed, it is consequently subject to the reporting requirements in place. In addition, some respondents pointed to the existence of alternative tools suitable to gather information on the activity carried out by NTEs (see Box 4). In limited cases the respondents mentioned they have fewer powers (N=3), with their powers limited to the incumbent financial institutions partnering with NTEs.

Box 4. Alternative tools to gather information on the activities carried out by NTEs

Every two years, the **Bank of Italy** conducts a fact-finding survey (FinTech Survey), with the aim to detect the use of FinTech technologies in the Italian financial industry. The survey covers the entire banking system and a further sample of non-bank intermediaries. NTEs are not directly included unless they are members of a financial group involved in the survey. These firms are also captured in the survey if a financial group holds an equity stake or has a partnership with a NTE.

Regulatory sandboxes implemented in several countries like **Spain, Italy, Netherlands, Australia, Egypt, Mauritius, Peru**, can also contribute to the aim of gathering information on NTEs. The sandboxes set a controlled testing ground to enable technological innovations in the financial system to be put into practice and could also be suitable for

collecting information on the NTEs willing to roll out an innovative financial concept or products, even if in partnership with incumbent financial institutions.

Furthermore, detailed analysis and information collection may also be done on an ad hoc basis, as the **Financial Conduct Authority (FCA)** has done in the United Kingdom. In particular, in the context of the increasing presence of BigTechs participating in financial markets across the world, the FCA in October 2022 launched a Discussion Paper setting out its analysis of the potential beneficial and harmful implications of such an expansion on competition and consumers and seeking to launch a discussion on the issue among interested stakeholders. Looking at the experience of other jurisdictions where BigTechs play a bigger role in financial service, the FCA carried out an assessment of whether the UK market could evolve in a similar way.

Under certain circumstances, jurisdictions – e.g., Emerging Markets and Developing Economies – may consider “test-and-learn approaches” as alternatives to a sandbox or a hub. Under a “test and learn approach”, the regulator defines an *ad hoc* framework for safeguarded live testing of a specific innovation. This could be suitable when a financial innovation is deemed potentially beneficial, but more information needs to be gathered to overcome uncertainty, without the need for establishing a permanent testing framework. This approach has been used, for example, in Kenya, Philippines and Tanzania.

As concerns the supervisory tools, a number of respondents (N=8) reported having already in place or are planning to use specific supervisory tools to monitor or analyse the digital payments activity or business models of the NTEs. Examples of these specific tools are the following: dedicated oversight teams, definition of specific reporting requirements on e-money issuing, monitoring of regulatory reporting, proactive engagement meetings with larger firms, use of peer comparisons to assess outlier firms for example on prudential measures.

Furthermore, as described in Box 5 below, the use of artificial intelligence and natural language programming has been considered valuable by some authorities, which use them to analyze consumers’ complaints in order to identify specific NTEs or products that require more intensive supervision. While these initiatives apply more broadly than just to NTEs, their development will have implications for the supervision and monitoring of NTEs.

Regarding the supervisory tools, it is also worth mentioning that, for some respondents (N=5), general-purpose supervisory tools already in place may be effective in order to supervise NTEs, especially when these firms are covered by the regulatory framework in place (however, as pointed out in Chapter 3. , there is a widespread difficulty in including them under the scope of current regulation).

Box 5. Examples of artificial intelligence tools

The **Bank of Italy** is working on the “RepTech” project – still being developed – which uses social media data and natural language processing (of complaints) to define a global sentiment analysis score for each financial institution and a separate score for each area of interest for consumer protection (e.g., payment services).

The **Bank of Mauritius** is also considering the use of “RegTech” in the future to ensure compliance with legal and regulatory requirements.

The **Banco Central do Brasil** Complaint System (“RDR”) provides record and categorization of complaints sent by customers through BCB communication channels. The current categorization system, carried out by BCB’s Institutional Relations Department, provides input for statistical consultation and by keywords to help the supervisory authority to devise supervisory planning and carry out inspections.

Market conduct supervisors have conducted, are conducting or plan to conduct targeted initiatives on the NTEs’ payment activity in most jurisdictions (N=10). Such initiatives include: pilot studies on specific products offered (e.g., BNPL), consultations targeting NTEs to gather information on FinTech projects/solutions offered and thematic reviews. A closer examination of some targeted activities is available in Box 6 below.

Box 6. Supervisory activities targeting NTEs

The **Financial Sector Conduct Authority (FSCA)** in South Africa, in consultation with other regulators, issued a warning to consumers to make them aware of the risks associated with the use of “Instant-Electronic Funds Transfer (EFT)” online payment services offered at e-commerce stores (i.e., stores which facilitate the purchase and sale of goods or services via the internet). The warning encouraged consumers in particular:

- to be extra vigilant and ensure that they do all their checks, including contacting their banks for advice, before proceeding with something marketed under the premise of convenience;
- to make use of industry supported solutions like paying with their card (debit or credit card);
- to not share their online or internet banking logon credentials with any third-party.

A similar approach was followed by the **Bank of Italy** concerning BNPL issue. BNPL schemes have proliferated widely in the absence of a specific regulatory framework, since their typical features (low amounts, zero charges, repayment within 3 months) make them exempt from the requirements set out by the EU Consumer Credit Directive (CCD). The lack of a specific regulation increased the risks for consumers (over-indebtedness, possible misunderstanding of the safeguards connected to the contract signed, incorrect understanding of late fees). Discussions are ongoing at the European level to address this situation, possibly by including BNPL in the perimeter of the revised CCD directive. In the meantime, on the 28th of October 2022 the Bank of Italy issued a communication on BNPL

schemes in order to draw consumers' attention to potential risks and to the safeguards provided by the Italian regulatory framework protecting bank customers.

In 2021, the **Financial Consumer Agency of Canada (FCAC)** conducted a pilot study of FinTech firms offering BNPL products. This study involved public opinion research examining Canadians' use of BNPL products offered by FinTech firms. FCAC found that 34% of Canadians were familiar with BNPL services and that 8% had used a BNPL service between September 2019 and March 2021. The pilot study found that most user experiences with BNPL services were positive; however, the study highlighted risks requiring further exploration, including risks of over-borrowing and over-indebtedness. Other important risks included the following: impacts for financially vulnerable Canadians, impact of missed payments, level of understanding of key BNPL features, impact on credit scores, and dispute resolution. FCAC also mentioned its intention to continue the monitoring of domestic and international BNPL developments.

The **Bank of Mauritius** plans to set up a supervisory framework for NTEs. The Bank has already issued a Guideline on Mobile Banking and Mobile Payments (updated last in 2015), which is being updated in light of new developments. The Bank is also working on a Guideline on Open Banking and another one on Cyber and Technology Risk Management. The rationale behind these initiatives is to provide fresh guidance to a burgeoning industry and to align the existing guidance for the NTEs with international developments. A National Risk Assessment is also underway, which will include a sectoral risk assessment of the NTEs licensed by the Bank of Mauritius.

In Australia, the **Australian Securities and Investments Commission (ASIC)** undertook a review to modernise the ePayments Code. The ePayments Code was modified in June 2022 to expand its scope to include payments made using the "New Payments Platform". Subscribers of the Code have a year to comply with the updated Code. Other changes relate to compliance monitoring and data collection, mistaken internet payments, unauthorised transactions, complaints handling and facility expiry dates.

The Australian Competition and Consumer Commission (ACCC) is currently conducting an Inquiry on Digital Platforms examining competition and consumer issues relating to digital platforms, covering the risks to consumers such as scams.

Beyond the specific supervisory initiatives mentioned above, respondents also reported having developed a range of other initiatives to address the market conduct challenges stemming from the activity of these NTEs and to mitigate the risks for consumers, such as the following:

- proactive engagement with incumbent financial institutions partnering with FinTech firms to ensure they have adequate monitoring and controls in place to account for the market conduct of their partners;
- working groups dealing with payment card network operators;
- information initiatives to raise awareness in relation to the use of digital channels to access banking products and services;
- set-up of a reporting framework concerning the activities (number of interested active users, third party providers, Application Programming Interface calls, transactions, etc.) related to Open Banking services (i.e. Payment Initiation Service, Account Information Service);

- meetings to allow (supervised) entities to share initiatives about innovative technologies and business models.

Box 7 below sets out three examples of specific situations in which supervisory authorities responded to challenges or risks arising from the entry of NTEs.

Box 7. Case studies: supervisory responses to the market entry of NTEs

Case study 1: Amazon-Cofidis partnership in Italy

Cofidis SpA, a financial intermediary active in the consumer credit business in Italy, launched a revolving credit line of limited amount and duration (€1,500 and 24 months maximum) that can be used only for the purchase of suitable goods and services on Amazon's web site (so called 'CreditLine'). The consumer, when selecting the payment method on Amazon's web site, can opt for "Pay with Cofidis" and then he is re-directed on Cofidis' web site for finalizing the online request of credit. The creditworthiness assessment is performed by Cofidis and then the client is informed about the amount of the credit line granted via email. Although in this specific case the credit is granted by a financial intermediary, the Bank of Italy deems important to monitor how the role of Amazon in the provision of financial services may evolve over time.

Case study 2: Fees applied by a digital platform contrary to current regulation in Brazil

The Banco Central do Brasil mentioned a particular situation where a digital platform acted as a domestic correspondent for an incumbent entity. However, the digital platform charged fees other than those strictly related to the incumbent's financial products and services, which is forbidden according to current regulation. The supervisory responses were meetings, supervisory letters and filing of an administrative case seeking sanctions against the incumbent entity for non-compliance with the domestic correspondent regulation.

Case study 3: Dutch regulator clarifies application of PSD2

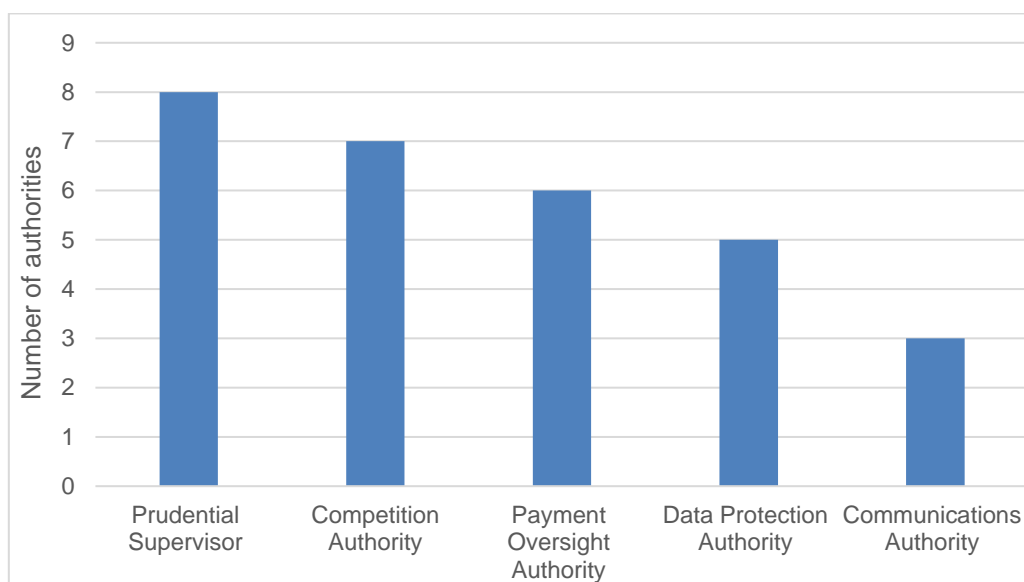
With respect to the PSD2 directive, stakeholders in the Netherlands and other European countries have noted that the regulation has not always been effective and efficient in achieving its objectives. Notably, many non-bank actors have reported difficulties in connecting to banks' APIs to access payment data (see [A study on the application and impact of Directive \(EU\) 2015/2366 on Payment Services \(PSD2\) FISMA/2021/OP/0002](#) for more details). Furthermore, there have been discussions, including in the Netherlands, about what kind of payment accounts are within the scope of PSD2 and which are not. To address these concerns and questions, the Dutch regulator (AFM) published a clarification on its [website](#) (site is in Dutch).

4.4. Cooperation with domestic and international authorities

The challenges posed by NTEs require at times strong cooperation among domestic authorities that have a stake in the development and oversight of digital payments. Most respondents (N=12) currently have in place arrangements for cooperation with other domestic authorities to better address such issues, especially with the Competition Authority, the Prudential Supervisor and the Payment Oversight Authority. A closer

examination of the authorities with whom a cooperation arrangement is in place at domestic level concerning digital payments services provided by NTEs is provided in Figure 6 below.

Figure 6. Domestic authorities cooperating with international authorities on the oversight of NTEs offering digital payments



Note: N=18.

Source: FinCoNet Standing Committee 3 Questionnaire, December 2022

This cooperation tends not to be specific to payments and players in the digital ecosystem, but broader in nature, and is crucial given that in many jurisdictions the regulation and supervision of payments are shared by different authorities (see Box 8). National authorities cooperate with internal departments and other financial supervisory authorities (depending on the governance configuration – e.g., a central bank performing a dual prudential and market conduct oversight function, or performing one of the functions in collaboration with an authority performing the other function) and in the latter case this tends to happen within a council or committee of financial supervisors.

The cooperation may also rely on the establishment of a Memorandum of Understanding (MoU); examples were noted with the Central Bank, the Prudential Authority, the Competition Authority, the Communications Authority, and the Data Protection Authority. Cooperation within and between authorities covers aspects such as the exchange of information and coordination in supervisory efforts. A couple jurisdictions also indicated having cooperative forums and groups specific to FinTech firms that intend, among other aspects, to provide a safe space for experimentation and promote dialogue between authorities and market players.

Box 8. Examples of domestic cooperation

In **Italy**, the Central Bank chairs the Italian Payments Committee (Comitato Pagamenti Italia), a public/private permanent cooperation forum that aims at developing the market for payments in Italy. Among the members of this Committee are representatives of the market (e.g., representatives of banking institutions, payment institutions, and consumers) and the Public Administration. There is also the FinTech Committee, coordinated by the Ministry of Finance. Among others, this Committee observes and monitors the evolution of FinTech, promotes dialogue among market operators, public authorities, and other institutions, and promotes collaboration and information exchange with foreign institutions and competent authorities.

In **Portugal**, the Conselho Nacional de Supervisores Financeiros – CNSF (National Council of Financial Supervisors) was established to enhance coordination among financial supervisory authorities. Its permanent members comprise the Governor of the Banco de Portugal, who chairs the Council, the member of the Board of Directors of the Banco de Portugal responsible for supervision, the Chairman of Comissão do Mercado de Valores Mobiliários – CMVM (Securities Market Commission) and the Chairman of Autoridade de Supervisão de Seguros e Fundos de Pensões - ASF (Insurance and Pension Funds Supervisory Authority). Within the CNSF a working group on financial technology innovation was created to facilitate the cooperation and exchange of views among the three Authorities in relation to innovation matters.

In the **United Kingdom**, in addition to cooperation with other financial regulatory and supervisory authorities, the FCA works closely with the Payment Systems Regulator, which regulates the UK's payment system. The FCA is also a member of the Digital Regulation Cooperation Forum, (DRCF) alongside the UK's Competition and Markets Authority, the Information Commissioner's Office, and the Office of Communications. This forum, set up in 2020, aims to drive greater regulatory co-operation and deliver coherent approaches to digital regulation.

Several respondents also indicated that they participate in initiatives and discussions related to digital payments at an international level. An overview of the international bodies where those initiatives and discussions take place is provided in Figure 7 below.

Figure 7. International bodies facilitating cooperation in digital payments

Global level	Regional level
<ul style="list-style-type: none"> • World Bank • FinCoNet • International Monetary Fund (IMF) • Alliance for Financial Inclusion (AFI) • Bank for International Settlements (BIS) • Financial Stability Board (FSB) • International Organisation of Securities Commissions (IOSCO) 	<ul style="list-style-type: none"> • Arab Monetary Fund (AMF) • European Banking Authority (EBA) • European Forum of Innovation Facilitators (EFIF)

Source: FinCoNet Standing Committee 3 Questionnaire, December 2022

Some specific initiatives were also highlighted, including the “IOSCO Multilateral Memorandum of Understanding” concerning Consultation and Cooperation and the Exchange of Information (MMoU). This MMoU sets an international benchmark for cross-border cooperation and provides tools to help combat cross-border fraud and misconduct. Cooperation at an international level is relevant to ensure cross-border interoperability of payments systems and international standards to improve the speed, transparency, and price of cross-border payments and to share information and discuss new and evolving global trends and risks (e.g., Central Bank Digital Currencies (CBDCs) or BNPL business models). For instance, the BIS Committee on Payments and Market Infrastructures (CPMI), the BIS Innovation Hub, the IMF, and the World Bank recently published a joint report about multilateral platforms for cross-border payments.¹

In the European context, the European Banking Authority’s Subgroup on Innovative Applications’ (SGIA) mandate includes identifying and investigating financial innovations, identifying the risks of financial innovations, and contributing to the establishment of a common European approach towards technological innovation, facilitating entry into the market of actors or products relying on technological innovation, through the exchange of information and best practices.

Financial Stability Board groups were also referenced, namely the Analytical Group on Vulnerabilities, the Financial Innovation Network, and the Working Group on Regulatory Issues of Stablecoins.

The liaison with individual regulators, on an ad hoc basis, is also relevant to address specific matters (e.g., provision of safeguarding accounts for payments and e-money firms).

5. Key findings and next steps

The following key findings emerge from this Report:

Market changes due to the entry of NTEs

- In almost all jurisdictions at least one NTE provides digital payment services. FinTech firms, BigTechs and Payment Gateways are the most involved in this sector offering a wide range of services among which the main ones are e-money accounts, digital wallet and payment initiation services.
- NTEs, in particular FinTech firms, also offer other financial products, such as new forms of credit or credit-like products, (e.g., BNPL), crowdfunding, account information services, investment products and crypto assets.
- Regarding how NTEs enter into the payment services market, partnerships with incumbents prevail, however there are also many cases of direct entrance into the market. (e.g., BNPL operators, FinTech specialised in credit transfer) and partnership with card networks.
- NTEs' entry into the retail financial services sector has given rise to changes in the market structure, especially in terms of increasing market competition, fostering of technological development, increasing of interoperability, cost reduction and financial inclusion improvement.
- Incumbents have reacted to the entrance of new players by creating partnerships with innovative operators – including FinTech companies, increasing investments in R&D, changing business models and finally, less frequently, acquiring of NTEs.

Risks to consumers and challenges for market conduct supervisors

- The entry of NTEs into the payment services market presents the following key challenges: security risks, data protection issues, lack of information transparency, difficulties in comparing products and services, cross-border interoperability of payments systems and potential price discrimination. Scalability and competitive advantages of BigTechs was also mentioned among the relevant issues, potentially reducing incentives for innovation and creating entry barriers with consequences also for consumers in term of services' price.
- FinTech firms, digital platforms and BigTechs are not only the riskiest for consumers but also the most challenging to be supervised, in the authorities' view.
- Supervisory gaps emerge, due to the difficulties in including NTEs and the services offered by them within the regulatory perimeter (this is why the most significant challenges often materialise when NTEs offer services directly) but also due to the difficulties regarding the supervision of non-traditional financial entities operating cross-border. Indeed, in many cases, existing regulation is not uniformly applicable across countries and covers these entities only indirectly when they enter the market in partnerships with incumbents or if they offer a specific service.

- In relation to the risks above, the following key challenges have been identified by the authorities: need for enhanced supervisory skills, ensuring appropriate internal controls by NTEs, identifying who should be responsible for operations, coordinating with other entities/authorities, ensuring uniformity of rules, ensuring cross-border interoperability of payments systems and international standards to improve the speed, transparency, and price of cross-border payments, preserving market competition, ensuring financial inclusion of less digitalized consumers.

Regulatory and supervisory responses

- The majority of the jurisdictions supervise and have specific regulation applicable to FinTech firms. The other types of NTEs (e.g. BigTechs, MNOs, Payment gateways, Digital platforms) are subject to supervision, if they provide services that are submitted to a relevant regulation (as for instance payment services). Indeed, what matters is the activity or product/service provided rather than the firm type (same service, same regulation and same obligations for the relevant provider).
- Regulators and supervisors are undertaking a range of actions in response to the entry of NTEs. First, they are monitoring developments through different tools (like innovation hubs and regulatory sandboxes or industry consultations and thematic reviews), and secondly, new regulations have also been adopted or the regulatory perimeter / scope of existing regulation has been expanded.
- In terms of supervisory powers, in most cases the authorities exercise the same powers as for any other institution offering the same services, as only in limited cases fewer powers are mentioned (limited to the incumbent financial institutions partnering with NTEs). Regarding supervisory tools, authorities have already in place or plan to use specific supervisory tools to monitor or analyse the digital payments activity or business models of these firms (e.g., implementation of dedicated oversight teams, proactive engagement meetings with larger firms, use of artificial intelligence and natural language programming).
- Targeted supervisory initiatives or other initiatives (e.g., proactive engagement with incumbent financial institutions, dedicated working groups, information initiatives to raise awareness on the use of digital channels to access banking products/services) on the NTEs' payment activity have been carried or are ongoing in several jurisdictions to address market conduct challenges of these entities and to mitigate the risks for consumers.
- Authorities deem that the challenges posed by NTEs require stronger cooperation both at domestic and international level.

5.2. Next steps

The entry of NTEs into the financial services sector will continue to shape the market landscape and bring about opportunities, risks and challenges for consumers and conduct supervisors alike. While many such firms enter the market with a focus on digital payment services, as highlighted in this report, they have and will continue to expand their offerings into credit, investments and savings products. For example, while this report was being finalised, Apple announced its savings account in the United States.

Global standard-setting bodies and international fora are closely watching these developments to determine effective approaches that regulators and supervisors can take in response. It is important to note that FinCoNet's mandate of market conduct supervision is somewhat unique compared to most such bodies and fora. While international discussions on digital payments abound, a targeted focus on financial consumer protection and market conduct supervision is not always the main priority of discussions taking place in other global fora. Therefore, FinCoNet has an important role to play in assisting supervisory authorities to exchange information and views on the risks faced by consumers and the most effective supervisory responses. Through ongoing discussions, workshops and potentially future research, FinCoNet will continue its role facilitating exchange and collaboration.

Selected references

- ACPR Fintech department study on digital players in the financial sector - [Digital players in the financial sector: a step towards profitability?](#)
- EBA final report on response to the non-bank lending request from the CfA on digital finance - [Report on response to the non-bank lending request from the CfA on Digital Finance.pdf \(europa.eu\)](#)
- EBA thematic report on the impact of FinTech on PIs' and EMI's business models - [EBA BoS 2019 \(Thematic report on the impact of FinTech on PIs' and EMIs' business models\).docx \(europa.eu\)](#)
- Characterisation of PI, EMI and FinTech entities operating in Portugal - [Comercialização de produtos e serviços bancários nos canais digitais em Portugal - Resultados do 2.º questionário às instituições financeiras em 2018 \(bportugal.pt\)](#) (only in Portuguese)
- EBA report on the use of digital platforms - [EBA Digital platforms report - 210921.pdf \(europa.eu\)](#)
- Commercialisation of banking products and services in digital channels in Portugal (2018) - [Commercialisation of banking products and services in digital channels in Portugal \(2018\) | Portal do Cliente Bancario \(bportugal.pt\)](#)

Appendices

Appendix A: Questionnaire

FinCoNet Standing Committee 3: “Supervisory challenges relating to the increase in digital transactions (especially payments)”

Questionnaire on market conduct supervisory implications of non-traditional financial entities (e.g., BigTech, FinTech entities) offering financial services, especially payments

Background

In May 2022, FinCoNet published a briefing note, produced by FinCoNet’s Standing Committee 3, on *Supervisory challenges relating to the increase in digital transactions, especially payments*. The briefing note explores the impact of digitalisation and the increase in digital transactions, especially payments, since COVID-19. The report identifies effective approaches that conduct supervisors employ to harness the benefits of digital transactions and mitigate the risks for consumers. In particular, it considers challenges for supervisors associated with cybersecurity risks and tackling financial scams, which increased significantly in many jurisdictions since the outbreak of the pandemic.

Following the publication of the briefing note, and based on a consultation among its members, Standing Committee 3 decided that their next report would look at how the entry of non-traditional financial entities into the payments ecosystem (and the financial services market more broadly) is affecting consumers, and the challenges this poses for market conduct supervisors.

Scope

The Survey consists of three parts:

- A) **Market changes**, which intends to gather information on the importance of non-traditional financial entities entering the payments ecosystem and financial services market more broadly;
- B) **Risks to consumers and challenges for market conduct supervisors**, which aims to identify particular risks for consumer protection and the challenges faced by market conduct supervisors;
- C) **Regulatory and supervisory responses**, which aims to collect market conduct supervisors’ approaches and initiatives on this subject.

Instructions for responding to the Survey

- Respondents are kindly requested to complete the Survey by **Friday 18 November 2022**.
- If possible, please complete the survey online:
<https://survey.oecd.org/index.php?r=survey/index&sid=948117&lang=en>. If you cannot do so, you can fill out this Word document and submit it to the Secretariat.
- Feel free to include any statistical information that supports your responses.
- While the Survey does not ask for any confidential information, respondents should clearly mark any information that is confidential if they wish to provide it.

funds transfers (EFTs)						
Remittances	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Please indicate the other financial products or services most commonly provided by the non-traditional financial entities.

	FinTech firms	BigTechs	MNOs (Telcos)	Digital platforms	Payment gateways	Other (as specified above)
Account information services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Generic credit products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
New forms of credit or credit-like products: BNPL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
New forms of credit or credit-like products: early payroll/salary services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Savings accounts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crowdfunding	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Investment products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cryptoassets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Building credit history	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cash back or points rewards systems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. How do non-traditional financial entities typically enter the payment services market in your jurisdiction?

- Directly
- In partnership with incumbent financial institutions

- In partnership with payment card networks
- Launched by incumbent financial institutions (i.e., a subsidiary of an incumbent)
- Other: please specify

4.1. Please elaborate.

5. *The entry of non-traditional financial entities into the financial sector – namely, in the payment services segment - may lead to changes in the market structure of the retail financial services sector, with consequences for incumbent financial institutions. Do you perceive this to be the case in your jurisdiction?*

- Yes
- No

5.1. Please describe the main impacts for incumbents (e.g., loss of customers, lower profitability).

6. *What are the main measures or strategies that incumbents are adopting to respond to the impact of the entry of new players in your jurisdiction? Please order the following options.*

<i>Response</i>	<i>Ranking (1-5)</i>
Changes to business models	
Increased investments in R&D and in the adjustment of IT infrastructures	
Acquisition of non-traditional financial entities	
Partnership with innovative operators – including FinTech companies	
Other: specify	

Section B: Risks to consumers and challenges for market conduct supervisors

7. *Identify the five main risks that consumers are facing when using services provided by these non-traditional financial entities:*

- Product bundling, whereby products are sold as a single combined product, which may result in contracting services which the consumer has no need for or which may be unsuitable;
- Difficulties comparing products and services;
- Security risks;

- Lack of information transparency;
- Data protection issues;
- Complexity of products and services;
- Price discrimination based on customer data analytics;
- Less choice, considering that some BigTechs may dominate a certain market;
- Business failure;
- Other. Please specify.

7.1. *Please elaborate.*

8. *Concerning digital payments, which types of non-traditional financial entities pose the most significant risks to consumers?*

- FinTech firms
- BigTechs
- MNOs (Telcos)
- Digital platforms
- Payment gateways
- Other. Please specify.
- None

8.1. *Please elaborate.*

9. *In your jurisdiction, are supervisory challenges amplified when the entry of non-traditional financial entities leads to changes in the market structure of the retail financial services sector?*

- Yes
- No

10. *Please describe the challenges faced by market conduct supervisors due to the entry of non-traditional financial entities and, if possible, relate these to the risks listed in question 7.*

11. *Concerning digital payments, which types of non-traditional financial entities pose the most significant challenges to market conduct supervisors?*

- FinTech firms
- BigTechs
- MNOs (Telcos)
- Digital platforms
- Payment gateways
- Other. Please specify.
- None

11.1. *Please elaborate.*

12. *Which type of arrangement poses the most significant challenges for market conduct supervisors when non-traditional financial entities enter the financial market and the digital payments market? (Select only one answer).*

- When *non-traditional financial entities* offer services directly
- When *non-traditional financial entities* offer services in partnership with incumbent financial institutions
- Other: please specify

12.1. *Please elaborate.*

Section C: Regulatory and supervisory responses

13. *Through which of the following channels do you monitor / interact with non-traditional financial entities?*

- As part of data collection efforts
- As part of thematic reviews
- As part of industry consultations
- Through innovation hubs or sandboxes

- As recipients of supervisory guidance
- Other: Please describe

14. Do you have specific regulation applicable to non-traditional financial entities? Please, describe:

- FinTech firms:
- BigTechs:
- MNOs (Telcos):
- Digital platforms:
- Payment gateways:
- Other. Please specify:

15. Which non-traditional financial entities are supervised in your jurisdiction?

- FinTech firms
- BigTechs
- MNOs (Telcos)
- Digital platforms
- Payment gateways
- None
- Other. Please specify.

16. Which supervisory powers can be exercised with regards to these entities? (Select only one answer)

- The same powers as for any other institution offering the same services
- Fewer powers – please specify:
- Additional powers – please specify:

17. Please specify if, in your jurisdiction, market conduct supervisors have conducted, are conducting or plan to conduct a targeted initiative (thematic review, issuance of guidance, etc.) on the activity related to payment services provided by the non-traditional financial entities listed in question 1. Please elaborate on the rationale behind the initiatives and describe the main achievements, where available.

18. Has your Authority implemented specific reporting requirements for non-traditional financial entities?

- Yes
- No

18.1. Please describe.

19. The challenges posed by non-traditional financial entities may require stronger cooperation with other **domestic authorities** that have a stake in the orderly development of digital payments. Do you have memoranda of understanding (or other kind of arrangements) with other domestic authorities on these issues?

Yes

No

19.1. If yes, please indicate with which authorities:

Competition Authority

Data Protection Authority

Payment oversight Authority

Prudential supervisor

Communications Authority

Other: please specify

20. Please describe the scope of any such arrangements with other domestic authorities.

21. The challenges posed by non-traditional financial entities may also require stronger cooperation at an **international level** with other authorities in charge of financial consumer protection issues. Please provide details on the initiatives undertaken in this respect, if any.

22. Do you have in place, or you are planning to use specific supervisory tools to monitor or analyse the digital payments activity or the business models of the non-traditional financial entities?

Yes

No

22.1. If yes, please describe the tools you have in place or you are planning to use.

23. *Has your Authority developed any other initiative to address market conduct challenges of these non-traditional financial entities and to mitigate the risks for consumers? Please specify.*

24. *Which of the following actions are regulators and supervisors undertaking in your jurisdiction in response to the entry of non-traditional financial entities? Please indicate the five main responses among the following options.*

- Adopting new regulation
- Adapting existing regulation
- Expanding the regulatory perimeter and/or scope of existing regulation
- Monitoring the developments
- Providing greater flexibility vis-à-vis existing regulation
- Adapting the model of supervision
- Integrating new staff or training existing staff to stay up to date with digital expertise
- Ensuring a level playing field between incumbents and *non-traditional financial entities*
- Collaborating or interacting with other supervisory authorities
- Ensuring adequate supervision of cross-border provision of services
- Ensuring adequate information provision to consumers
- Tackling competition issues
- Ensuring adequate data and privacy protection
- Ensuring adequate cybersecurity safeguards
- Other: please specify

24.1. *Please elaborate.*

25. *Could you please describe, in detail, a particular situation in your jurisdiction related to these non-traditional financial entities, specifying the challenges and risks identified, as well as the regulatory and supervisory responses taken?*



Appendix B: List of responding authorities

Jurisdiction	Responding authority
Australia	Australian Securities and Investments Commission (ASIC)
Brazil	Banco Central do Brasil
Canada	Financial Consumer Agency of Canada
Egypt	Central Bank of Egypt
France	Autorité de Contrôle Prudentiel et de Résolution
Hong Kong, China	Hong Kong Monetary Authority
Indonesia	Otoritas Jasa Keuangan (OJK)
Ireland	Central Bank of Ireland
Italy	Bank of Italy
Japan	Financial Services Agency
Mauritius	Bank of Mauritius
The Netherlands	Authority for the Financial Markets (AFM)
Ontario (Canada)	Financial Services Regulatory Authority of Ontario
Peru	Superintendencia de Banca, Seguros y Afps (SBS)
Portugal	Banco de Portugal
South Africa	Financial Sector Conduct Authority (FSCA)
Spain	Banco de España
United Kingdom	Financial Conduct Authority



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