

REPORT ON SECTOR INQUIRY INTO FINANCIAL TECHNOLOGIES IN PAYMENT SERVICES

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Rapporteurs

Competition Expert Cüneyd DAL
Competition Expert Bilge YILMAZ
Competition Expert Nezir Furkan KIRAN
Assistant Competition Expert Burçin GÜLEŞ
Assistant Competition Expert Derya ERMIŞ



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ABBREVIATIONS

ACM:	Authority for Consumers & Markets
AISP:	Account Information Service Provider
API:	Application Programming Interface
BAT:	The Banks Association of Turkey
BIS:	Bank for International Settlements
BRSA:	Banking Regulation and Supervision Agency
CBC:	Competition Bureau Canada
CBRT:	Central Bank of the Republic of Turkey
CMA:	Competition and Markets Authority
CMB:	Capital Markets Board
CNMC:	La Comisión Nacional de los Mercados y la Competencia
DRA:	Department of Revenue Administration of Ministry of Treasure and Finance of the Republic of Turkey
EP:	European Parliament
EU:	European Union
FCIB:	Financial Crimes Investigation Board of Ministry of Treasure and Finance of the Republic of Turkey
Fintech:	Financial Technologies
IAT:	Insurance Association of Turkey
ICC:	Interbank Card Center Inc.
IMC:	Insurance Information and Monitoring Center
IoT:	Internet of Things
ITCA:	Information Technologies and Communications Authority
NFC:	Near Field Communication
OECD:	Organization for Economic Co-operation and Development
P2P:	Peer to Peer
PBAT:	Participation Banks Association of Turkey
PCA:	Autoridade da Concorrência
PEMIAT:	Payment and Electronic Money Institutions Association of Turkey
PISP:	Payment Initiation Service Provider
PSD1/2:	Payment Services Directive 1/2
The Board:	Competition Board

The Law no 4054: The Law no 4054 on the Protection of Competition

The Law no 6493: The Law no 6493 on Payment and Securities Settlement Systems,
Payment Services and Electronic Money Institutions

The Law no 7192: The Law no 7192 on the Amendments to be made in the Law on Payment
and Securities Settlement Systems, Payment Services and Electronic
Money Institutions and in Other Laws

INTRODUCTION

- (1) The technology-oriented radical transformation observed in the financial sector has deeply changed the ordinary dynamics of financial markets. The areas such as banking, insurance and investment consultancy, which used to be static until recent times, are witnessing different types of workflows as well as innovative products and services due to digitalization and other global developments. The transformation in this area provides opportunities for growth to countries. In 2020, Turkey's gross domestic product increased by 1.8% and rose to TL 5.04 trillion. Among the economic activities included in gross domestic product, the sector whose total added value has increased the most is finance and insurance sector with a rate of 21.4%.¹
- (2) The pioneer of the digital transformation in the financial sector is the payment services which enables fund transfer between economic units. Payment services have an encouraging role in enhancement of economic activities and also contribute to the growth of economy, stability of the financial system, sustainability of trade and effective functioning of markets for goods and services. Beside the banks, entrepreneurial companies and big technology companies that have started operation in this area provide consumers with value added payment solutions and are increasing their presence in the market day by day. In question new players, who are trying to market their products and services, have the potential to end the direct relationship between banks and consumers or clients by way of sometimes cooperating and sometimes competing with banks thus they have been shaking incumbents' ongoing strong position in payment services.
- (3) The transformation, so-called financial technologies (fintech), is taking place in the finance sector in general and in payment services specifically. This transformation obliges sectoral regulators and competition authorities to take specific initiatives since the developments in fintech raise concerns about not only financial stability but also the competitive structure of financial markets. Several studies published by the competition authorities of the United Kingdom, Germany, Holland, Spain, Portugal, Canada, Mexico, and the European Union (EU) between 2016 and 2020 mention competition issues in the area of fintech and discuss how competition law tools can be used in this area.

¹ TSI (2021), "Dönemsel Gayrisafi Yurt İçi Hâsıla, IV. Çeyrek: Ekim-Aralık, 2020", <https://data.tuik.gov.tr/Bulten/Index?p=Donemsel-Gayrisafi-Yurt-Ici-Hasila-IV.-Ceyrek-Ekim---Aralik,-2020-37180>, Accessed: 05.05.2021

- (4) The primary task of sectoral regulators is “to establish new regulatory rules suitable for digitalization to protect financial stability in the sector” while competition authorities’ essential function is “to eliminate barriers to innovation and competition in the market”. Regulatory authorities and competition authorities have different tools to fulfill their expected mission, since they have unique roles. The dominating principle in the regulation of the finance sector is to ensure and protect financial stability, while the priority of competition authorities is to protect and promote competition in the market for goods and services. However, this difference in priorities should be interpreted as a complementary task-sharing rather than a conflict². Therefore, cooperation and dialog mechanisms between authorities are vital for regulating the finance sector in general and payment services specifically. It is observed that there is a close cooperation between competition authorities and sectoral regulators in many countries and besides ex-post interventions, competition authorities play an active role in creating regulatory rules.³ Within this framework, Consumer Data Right (CDR) prepared by the Australian Competition and Consumer Commission (ACCC) is an example of role sharing. CDR increases the opportunity to compare and switch between products and services by allowing consumers to have more control over their data. Consequently, service providers’ incentive to compete will increase, prices in the market will be more competitive and more innovative products and services will be provided in the market. Thus, cooperation between different authorities in related areas, especially data processing and its effects on competition, is noteworthy.
- (5) Taking into account the issues stated above, this study aims to emphasize the importance of benefiting the most from the radical transformation in the finance sector in our country and to show the necessity of cooperation between the relevant authorities in this area. During the preparatory process, opinions were taken from 45 undertakings/associations of undertakings consisted of banks, fintech firms, technology firms, e-trade marketplaces and professional associations and seven relevant public authorities. Besides, a comprehensive literature review was done. This study presents findings and suggestions concerning which actions may be taken and what kind of approaches may be adopted towards new developments in fintech within the scope of competition law. However, it should be noted that evaluations and findings should be

² OECD (2017), “10 years on from the Financial Crisis: Co-operation between Competition Agencies and Regulators in the Financial Sector”, [https://one.oecd.org/document/DAF/COMP/WP2\(2017\)8/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2(2017)8/en/pdf), p.6, Accessed: January 27, 2021

³ OECD (2020a), “Executive Summary of the Roundtable on Digital Disruption in Financial Markets”, [https://one.oecd.org/document/DAF/COMP/M\(2019\)1/ANN4/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2019)1/ANN4/FINAL/en/pdf), p.5, Accessed: January 27, 2021

frequently updated because the developments in fintech area may transform rapidly, and market dynamics may change in a short time.

(6) First, the Report examines the reasons why fintech has emerged and its effects on the financial sector. Second, the Report deals with the challenges that new players in payment systems face while marketing their products and services and the barriers to the growth of competition. Following that, the likely results of entry by big technology firms to financial markets are discussed. Lastly, in accordance with the study's findings, the Report includes suggestions concerning the development of the fintech ecosystem in our country.

(7) The Report essentially seeks the answers to the following six questions:

- *What are the features that differentiate fintech and what are the impacts of fintech on financial markets?*
- *What are the barriers to fintech's development and market failures?*
- *Which of those barriers are caused by regulatory rules, by incumbent undertakings' practices and by market dynamics?*
- *What are the national and international practices adopted to overcome those barriers?*
- *What will the role of big technology firms be in financial markets?*
- *Which measures can be taken to develop our country's fintech ecosystem?*

(8) The last point to be noted is that the findings and evaluations in this study mainly concern the transformation in payment services; however, other fintech related developments in other areas are also covered where appropriate. The main reason for prioritizing payment services is that it is the area in which the radical technological transformation in the finance sector has affected the most in our country like other parts of the world. Besides, competition problems in this area have been brought to the agenda of the Competition Board (the Board). However, as stated before, findings and evaluations discussed in this study also apply to different areas affected by fintech, such as borrowing and crowdfunding, insurance, crypto money, investment consultation and robo-advisors.

CHAPTER 1

FINTECH: NEW PLAYERS, NEW ROLES AND NEW SERVICES

1.1. General Overview

- (9) Financial technologies or fintech is an umbrella term that covers innovative products and services, new enterprises that enter the financial markets and big technology companies starting to offer financial services as a result of radical technological transformation observed in recent years. In order to understand the concept better, it is necessary to show the difference between the technological change in the past and technological transformation today in the finance sector.
- (10) The primary factor that differentiates fintech from the ongoing improvement and transformation in the finance sector is that fintech is a process which has triggered the creation of products and services that has changed or has the potential to change the system itself radically rather than the products and services built on the existing systems leading to limited development. This process can be understood by looking at the distinction of disruptive innovation-sustaining innovation⁴ in the literature. Unlike the limited technological innovations built on the products and services that are already in use, this process leads to the creation of unseen products and services, new types of platforms for marketing them and new players with new roles. For instance, the SMS verification method currently provided by banks, which is built on payment by debit cards or credit cards and increases the security of the payment system, can be regarded as a sustaining innovation, taking into account its effects in the market. However, payment services provided over electronic money accounts and marketed by the new players in the market (such as PayPal) or digital wallet solutions (such as Google Wallet), the use of which is increasing today, create value chains that are not experienced by consumers before. The center of traditional markets is moving towards new types of services.
- (11) On the other hand, since disruptive innovation is experienced via different business models applied by undertakings of different nature, other terms are also adopted in the literature besides fintech. For instance, "fintech" refers to enterprises present in the market with innovative services but limited customer portfolios and capital. On the other hand, "techfin" is used to refer to big

⁴ BOWER, J. L. and C. M. CHRISTENSEN (1995) "Disruptive Technologies: Catching the Wave", Harvard Business Review, Vol:73, No:1, p.43-53

technology and platform companies such as Google, Apple, Amazon, Facebook and Alibaba, which are currently dominant in other markets, have an extensive customer portfolio and capital sources and have started to offer various innovative payment services.⁵ While “insurtech” (insurance and technology)⁶ is used for fintech solutions in the insurance sector, “regtech” (regulation and technology) is used for referring to the compliance of undertakings with new types of regulatory rules. However, as there are no commonly agreed definitions for the said terms, this study uses fintech as an umbrella term.

1.2. Factors Promoting the Growth of Fintech

(12) It would be an incomplete approach to attribute the growth of fintech only to the development of technology, leading to a misinterpretation of the expectations in this area. While it is out of the discussion that the most important locomotive of the transformation in the finance sector is digitalization, it is necessary to mention other factors triggering this process. Important factors that have triggered fintech, digitalization being in the first place, are listed below:

- *Digitalization*

(13) The most crucial factor feeding fintech is technology, which is growing geometrically today, together with digitalization.⁷ In line with the development of technology, it is possible to develop digital-based products and services in the finance sector. For instance, until recently, bank branches have been the most critical and common channel for banking services; today, consumers frequently use internet banking and mobile banking applications. Globally increasing use of smartphones and the internet allows online innovative services to reach consumers. Moreover, large-scale data can be processed and meaningful results can be obtained due to the development of technologies such as artificial intelligence, algorithm and internet of things⁸ (IoT). Those results enable marketing individualized new products and services.

⁵ ZETZCHE, D.A, R.P. BUCKLEY, D.W. ARNER ve J.N. BARBERIS (2017), “From FinTech to TechFin: The Regulatory Challenges of Data-Driven Finance”, EBI Working Paper Series, 2017 - No:6

⁶ ACCENTURE (2017), “The Rise of Insurtech”, https://www.accenture.com/t00010101T000000_w_/gb-en/_acnmedia/PDF-50/Accenture-Insurtech-PoV.pdf, Accessed: 27.01.2021

⁷ OECD (2015), “Hearing on Disruptive Innovation in the Financial Sector”, [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2\(2015\)9&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WP2(2015)9&doclanguage=en), p.5, Accessed: 27.01.2021

⁸This technology enables any physical object to connect to the internet and communicate, collect data and share data with other parties

(14) Certain procedures that have to be followed for the provision of financial services have changed with digitalization and become faster and more practical. For instance, physical contracts that have to be signed during face-to-face meetings for the provision of financial products and services (such as initiation of payment, opening an account, granting loans) are being replaced by electronic contracts signed via digital identity verification methods. The abovementioned developments provide elasticity to undertakings in providing financial services and lead to the adoption of innovative workflows.

- *Different Expectations from Services*

(15) As a natural consequence of the digitalization process, the preference and expectations of financial services customers have been changed radically. The increasing use of internet and smartphones rises customers' expectations to get various financial services, especially payment services, through these channels. Especially after the population so-called "Generation Z" started to attain a place in university and work life, this customer group has become the primary customer group of payment services and their preference and expectations are now directing the market. In accordance with the changing consumer preferences, electronic service platforms are becoming the main channels where consumers experience innovative payment services without the limitations of offline channels. Many technologies such as payment by QR, digital wallet, mobile payment methods and electronic money accounts are emerging in the market, increasing the diversity of payment services.

(16) On the other hand, since incumbent players have a wide operation area, it is not possible for them to change their legacy technology entirely. Thus banks do not have the necessary elasticity for establishing technological infrastructure tailored to individual needs.⁹ On the other hand, fintech companies are generally active in limited products and services where they have the necessary expertise, so they can find fast solutions suited to consumers' different demands thanks to developing technology.

- *Failures in the Classical Banking System*

(17) One of the reasons of the fintech-driven transformation is the failures of the current banking system. Especially after the 2007-2008 global economic crisis, many banks went bankrupt,

⁹ OECD (2020b), "Digital Disruption in Banking and its Impact on Competition", <http://www.oecd.org/daf/competition/digital-disruption-in-banking-and-its-impact-on-competition-2020.pdf>, p.13, Accessed: 27.01.2021

economies experienced bottlenecks and afterwards macroeconomic problems rose. As a result, the traditional banking system's functioning was questioned. The said conjuncture resulted in losing trust in the incumbents. Public authorities tightened the regulatory rules in this area because of the multiplier effect caused by the banking system's problems.¹⁰ In fact, due to tightened measures aiming to protect financial stability, competition in the market was restricted, banks avoided risks and consumers had difficulty in accessing certain banking products and services such as loans.¹¹

(18) Another consequence of stricter regulations in the sector was that players in the banking sector had to bear higher costs for compliance with the regulations, thus such compliance costs¹² became a vital entry barrier. It becomes difficult for incumbents to develop innovative products and services because regulatory rules increased and became casuistic. Undertakings have the freedom to compete in a limited area within the framework of the existing regulatory framework. These factors lead to the growth of the gap between the opportunities provided by the existing banking system and the qualifications that the customers are expecting from the system. Consequently, the demand for alternative services has increased. On the other hand, besides the objective of protecting financial stability, the importance of having a competitive structure for the finance sector has been understood recently. Accordingly, public authorities started to promote the developments that might increase competition in the sector.

- *Unbanked Population*

(19) Another important reason why new players, new roles and alternative products and services have emerged in the finance sector is the unbanked population, whose share is high in many countries' population. The share of this group in the total country population changes depending on countries' development level. They cannot reach existing banking products and services and be integrated into the financial system due to various reasons. Different groups such as residents in rural areas where there are few bank branches, those producing goods/providing services at home,

¹⁰ Our country witnessed a similar situation after 2001 crisis. After the crisis stricter regulations were adopted for the banking sector within the framework of compliance to the Basel Committee decisions.

¹¹ CBC (2017a), "Technology-Led Innovation in the Canadian Financial Services Sector – A Market Study", [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/FinTech-MarketStudy-December2017Eng.pdf/\\$FILE/FinTech-MarketStudy-December2017-Eng.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/FinTech-MarketStudy-December2017Eng.pdf/$FILE/FinTech-MarketStudy-December2017-Eng.pdf), p.42, Accessed: 27.01.2021

¹² Among the said costs, there are costs for the qualified personnel (experts, consultants, software developers, etc.) needed for understanding and complying with the specific regulatory rules beside the costs for installing the necessary structure for compliance with regulatory rules.

freelancers, students without a loan history have difficulty accessing different banking services specific and individualized products.

(20) The most important reason for this is the strict banking regulations mentioned above. The said regulations, which are put into effect by virtue of several needs such as protecting consumers, increasing service quality, or sustaining product and service supply, cause incumbent players to provide services in certain patterns and sometimes avoid risks. As a result, a high amount of guarantees may be demanded in a loan application or a requirement on an enterprise to have a certain amount of turnover may be sought in a POS service. However, customers who cannot fulfill those requirements are deprived of banking services and constitute the unbanked population. On the other hand, since banks market wide range of products and services, it is more challenging for them to develop services tailored to individual needs. They may focus their attention on corporate banking activities whose returns are higher; thus specific demands of consumers at the retail level may not be met. The above mentioned facts, together with low level of financial literacy, result in lack of financial access, which is an undesired situation for countries. Lack of financial access brings along various financial failures, especially an increase in the shadow economy. Moreover, the ability of fintech firms to provide more flexible and faster solutions in the market serves for integration of unbanked population in the financial system in many countries.¹³ For instance, M-Pesa, which is operating in Kenya and extending its activities in other countries of the African region, enables consumers to make payments and money transfers via SMS infrastructure over traditional mobile devices thanks to its cooperation with telecommunication firms. The fact that 17 million people out of the 51 million population in Kenya have M-Pesa account is an excellent example for how fintech can extend financial inclusion.

- *Customer Portfolio Effect*

(21) In addition to fintech enterprises, big technology companies such as Google, Apple, Facebook, Alibaba and Amazon are entering into different financial markets, especially payment services and increasing their effects in those markets. The most important incentive that directs those companies to operate in financial markets is the huge customer portfolio they have thanks to their activities in other markets. Depending on the comprehensive user data they gather in various areas varying from social network platforms to online ad activities; from calling services to digital

¹³ OECD (2020b), p.7

retailing, big technology firms benefit from advancing algorithm and artificial intelligence technologies and analyze users' payment habits and expectations and needs in financial areas. Those companies have a wide variety of opportunities with respect to accessing capital and take advantage of economies of scope by adding payment services to their existing product and services.¹⁴ Consumers' increasing demand for getting different types of products and services out of a single point highlights big technology companies in fintech.

1.3. Basic Statistical Indicators

- (22) Investors are interested in the advantages and opportunities of fintech as well as the potential of the actions to be taken by fintech firms to change the dimension of financial services. The said potential of fintech firms can be revealed only through investments made in this area. The increase in the investments made in fintech enterprises in recent years indicates both fintech firms' need for investment and investors' interest in the market. The recent global data about the subject show that the investments in fintech enterprises are 28.8 billion USD in January-April 2021 period¹⁵ whereas the investment in fintech is 105.2 billion USD in 2020 in general according to KPMG data.¹⁶
- (23) Regarding the course of investments made up to now, as seen in Chart 1, enormous amounts of investments have been made in fintech companies and the investments still tend to increase. However there has been a fall as of the first quarter of 2020 due to the economic contraction caused by Covid-19 outbreak but strategically important investments still have been made in 2020.¹⁷

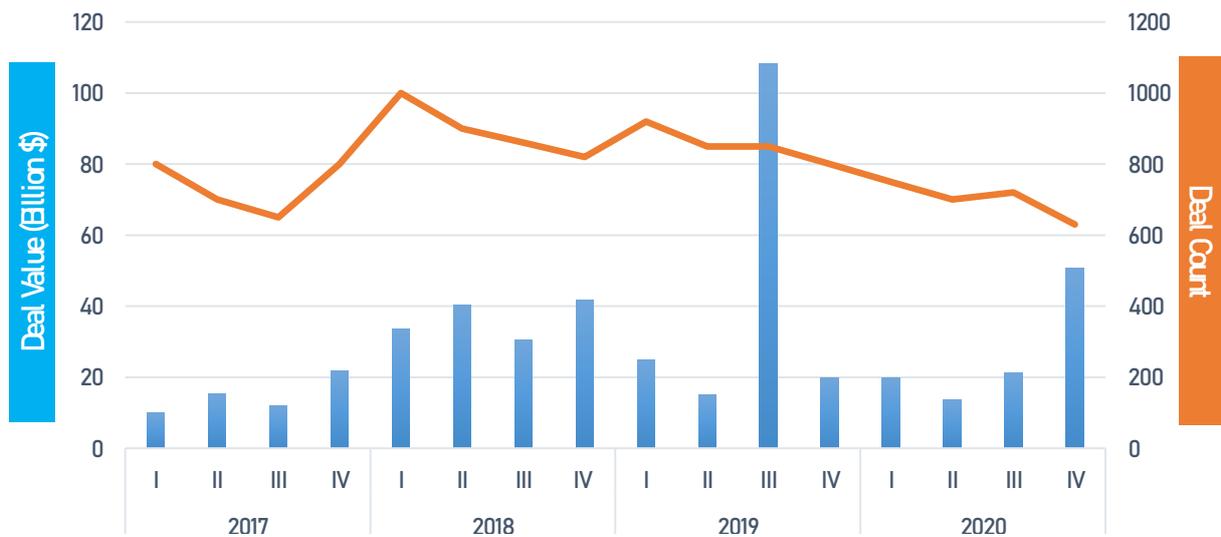
¹⁴ VAN DER BEEK, A. (2017), "FinTech and Competition Law: FinTech as Driver of Competition?", *Journal of Financial Law*, Vol: 2017, No:5, p.163

¹⁵ <https://fintechistanbul.org/2021/05/05/startups-watch-kuresel-fintech-raporu-nisan-2021/>, Accessed: 10.05.2021

¹⁶ KPMG (2021), "Pulse Of Fintech H1 2020", <https://assetp.kpmg/content/dam/kpmg/xx/pdf/2021/02/pulse-of-fintech-h2-2020.pdf>, p.8, Accessed: 10.05.2021

¹⁷ KPMG (2021), p.14

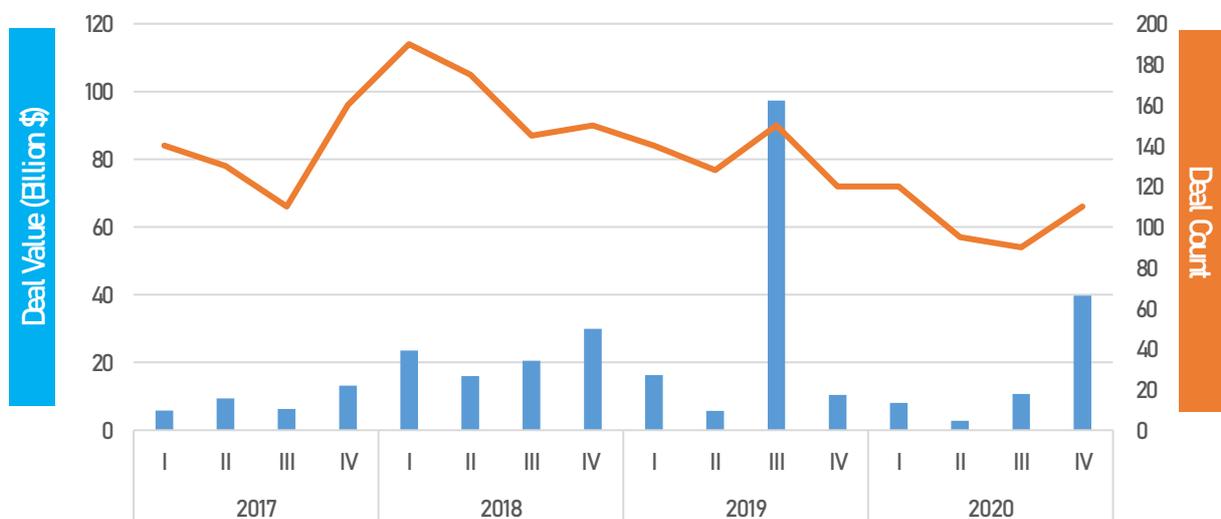
Chart 1: Global Investments in Fintech as of Time



Source: KPMG (2021)

- (24) A similar tendency is seen with respect to mergers and acquisitions in the fintech sector. Chart 2 shows the data regarding global mergers and acquisitions in fintech area:

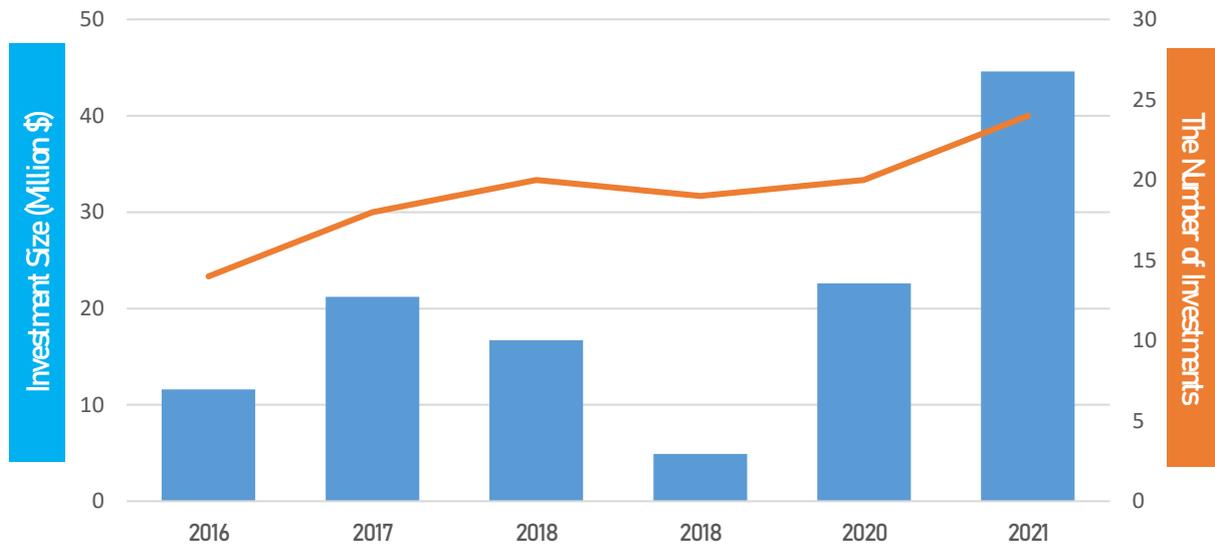
Chart 2: Global M&A in Fintech



Source: KPMG (2021)

- (25) The investments in fintech enterprises tend to grow, which paves the way for our country's becoming a host for new projects and cooperations in this area. Thanks to the breath of fresh air brought by financial services based on technology, fintech enterprises are drawing attention in our country. Chart 3 shows the annual breakdown of the number of investments in fintech enterprises and the total size of investments:

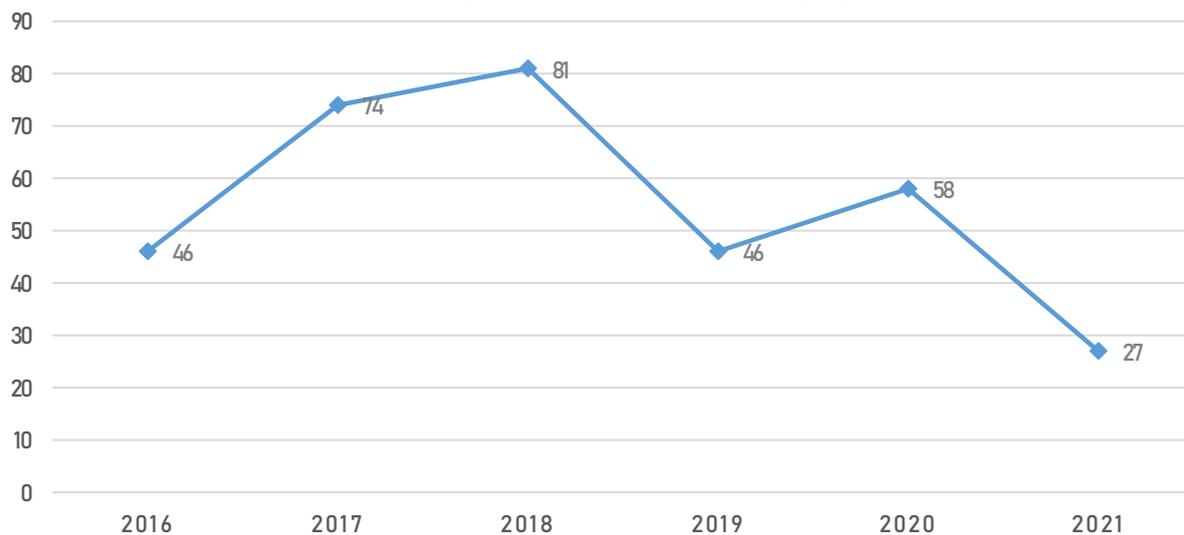
Chart 3: Fintech Investments by Years



Source: Startup.Watch (2021)¹⁸

- (26) The data regarding the number of fintech enterprises in the last five years in Turkey show that the number of fintech enterprises has been fluctuating. Until 2017, the number of newly established enterprises was more than the previous year. The number of fintech enterprises established reached the highest rate in 2018; 81 fintech enterprises were established. The number of newly established fintech enterprises were fluctuating between 2018 and 2021:

Chart 4: The Number of Fintech Enterprises Established in Turkey by Years



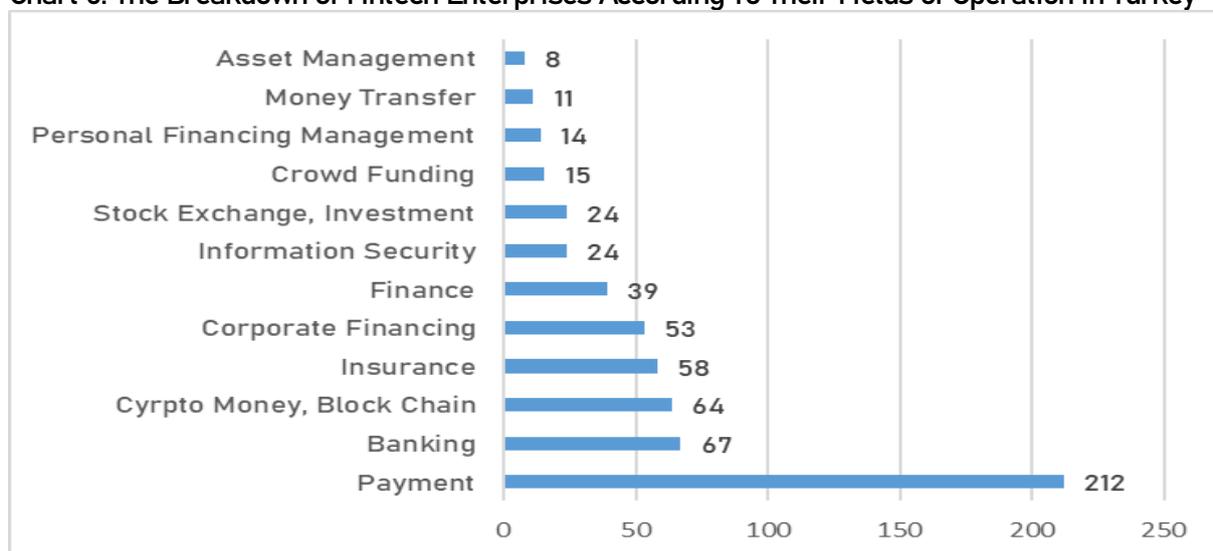
Source: Startup.Watch (2021)

¹⁸ Startup.Watch (2021), "Fintech Snapshot for Turkey v.0.4", <https://startupp.watch/reports>, p.1, Accessed: 25.11.2021

(27) On the other hand, it should be noted that according to Startup.Watch data, as of the first five months of 2021, 589 fintech enterprises were established and 505 of them still exist.¹⁹ Most of the fintech enterprises established in Turkey is still existing, which is a promising fact about the development of the fintech ecosystem in our country. Those enterprises can integrate into the ecosystem in a wide variety of fields from money transfer to crowd funding, from personal financing management to insurance. Moreover, those enterprises mostly operate in the area of payment services.

(28) The weight of the enterprises in the payment system can be seen from Chart 5, which shows the breakdown²⁰ of 589 fintech enterprises according to their fields of operation:

Chart 5: The Breakdown of Fintech Enterprises According To Their Fields of Operation in Turkey



Source: Startup.Watch (2021)

(29) On the other hand, the volume of trade and financial operations is gradually growing due to globalization. This leads to an increase in the number of domestic and international payment transactions. With this increase, users are searching for the fastest, most convenient and reliable payment tools more and more. E-trade becomes a part of daily life, which triggers the discovery of digital based financial solutions. Fintech enterprises' core business is payment services. They take a bigger slice from the cake with respect to investments; consequently, innovative business models emerge in this area. On the other hand, due to the Covid-19 outbreak, which affected the whole world, the shopping habits have changed deeply from physical payment to digital payment.

¹⁹ Startup.Watch (2021), p.1

²⁰ Although payment and money transfer is classified as two different activities, in article 12 of the Law no 6493 money transfer activities are listed as a payment service.

With the effect of the new order caused by the Covid-19 outbreak, e-trade volume increased annually by 66% in Turkey and by 18% globally.²¹ It is estimated that retail e-trade will increase by 20.2% in Turkey and by 8.1% globally until 2024.²² Depending on this, it is inevitable that people and institutions will prefer payment tools that enable payment on e-trade platforms.

- (30) The role of internet access cannot be denied in the change in financial services created by the gradual growth in e-trade volume. First of all, regarding the internet access rate, according to WeAreSocial data published in April 2021, 60.1% of the world population uses the internet. Among those users, the share of internet access via mobile phone is 92.8%.²³ Internet usage rate in Turkey is 78%, above the global average.²⁴ According to January 2021 data, 71% of Turkey's population uses social media actively.²⁵ 97.2% of the users aged between 16 and 64 owns a smart phone in Turkey. Those users spend eight hours a day on the internet on average.²⁶
- (31) As of January 2021, at a global level 35.2% of internet users aged between 16 and 64 stated that the main reason why they use the internet is managing finance. In our country, 68.6% of the population aged above 15 has bank accounts and 41.6% of them has credit cards; the percentage of women with a credit card is 32.5% and the percentage of men with a credit card is 50.8%.²⁷ The percentage of banking and financing service apps use is 48.2% in our country.²⁸ The percentage of users who use mobile payment services is 14.8%.²⁹ Statistics concerning methods used in e-trade payments are given below:

²¹ <https://www.eticaret.gov.tr/haberler/10040/detay>, Accessed: 05.05.2021

²² STATISTA (2021a), "Retail E-commerce Sales CAGR in Selected Markets 2021-2025", <https://www.statista.com/statistics/220177/b2c-e-commerce-sales-cagr-forecast-for-selected-countries/>, Accessed: 05.05.2021

²³ WE ARE SOCIAL and HOOTSUITE (2021a), Digital 2021 April Global Statshot Report, <https://datareportal.com/reports/6-in-10-people-around-the-world-now-use-the-internet>, p.12, Accessed: 05.05.2021

²⁴ WE ARE SOCIAL and HOOTSUITE (2021a), p.15

²⁵ WE ARE SOCIAL and HOOTSUITE (2021b), Digital 2021: Turkey, <https://datareportal.com/reports/digital-2021-turkey>, p.17, Accessed: 09.05.2021

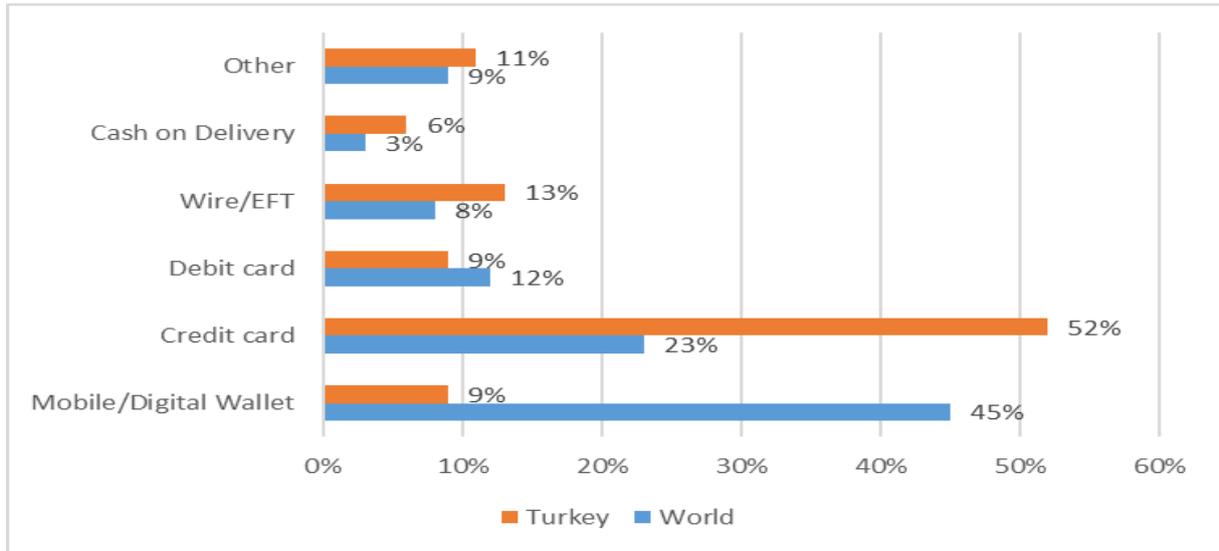
²⁶ WE ARE SOCIAL and HOOTSUITE (2021b), p.21-22

²⁷ WE ARE SOCIAL and HOOTSUITE (2021b), p.71

²⁸ WE ARE SOCIAL and HOOTSUITE (2021b), p.65

²⁹ WE ARE SOCIAL and HOOTSUITE (2021b), p.66

Chart 6: Usage Rates of Payment Methods Used in E-Trade Payments (2020)



Source: Worldpay (2021)³⁰

- (32) As seen from the chart, in 2020, while globally 45% of total e-trade payments is made by mobile or digital wallets, this rate is only 9% in Turkey. It is estimated that the rate of payment by mobile/digital wallet will rise up to 52% globally in 2024. Depending on this, it is possible to say that although e-trade growth and internet usage rates are high in our country, the rate of adoption of digital payment solutions is still low.
- (33) With respect to payment by card in 2020³¹ in our country, the use of debit cards in payments has been increasing; one out of three payments is made by debit cards. The use of prepaid cards in payments has increased by two fold compared to the previous year. On the other hand, contactless payments have become popular lately. Consumers have started to prefer contactless payments in almost all areas in 2020, therefore the number of transactions made via contactless payments have increased. The number of contactless credit cards, contactless debit cards and contactless prepaid cards has increased in the following rates: 20%, 58% and 26%.³² In addition, the number of contactless transactions in our country has increased by 3.5 fold compared to the previous year in 2020, rising up from 0.5 to 1.73 billion.³³

³⁰ WORLDPAY (2021), "The Global Payment Reports", <https://worldpay.globalpaymentsreport.com/en/>, p.9 and p.125, Accessed: 05.05.2021

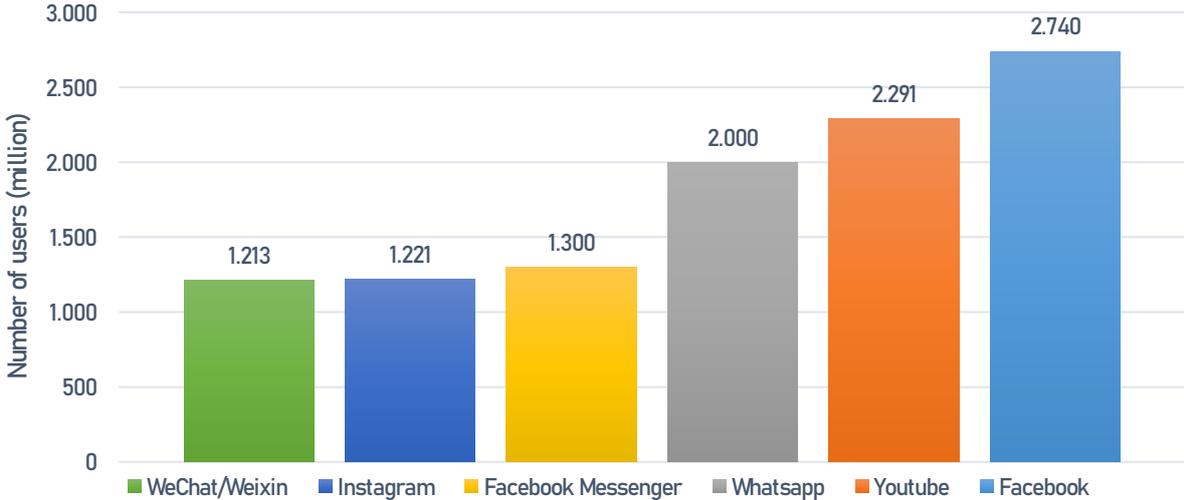
³¹ ICC (2021a), "2020 Faaliyet Raporu", <https://bkm.com.tr/raporlar-ve-yayinlar/faaliyet-raporlari/>, p. 49, Accessed: 09.05.2021

³² ICC (2021a), p. 11

³³ ICC (2021a), p. 11

- (34) On the other hand, with the fast digital transformation in financial services, payments by card on the internet have increased and grown by 37% up to TL 260 billion.³⁴ Within this framework, the share of payments by card on the internet in total payments by card has gone over 22%.
- (35) In addition mobile contactless payments have increased. As of the end of 2020, the number of transactions in mobile contactless payment transactions provided by members of Interbank Card Center (ICC) has increased by 40% compared to 2019 to 4.3 million transactions³⁵. Besides, 1.5 million payment transactions were made through QR code; the total cost of those transactions is TL 292 million.³⁶
- (36) On the other hand, big technology companies started to offer services in fintech. Those companies reach large masses worldwide by means of their activities. The number of active users of some of those companies on social media platforms as of 2020 is shown below:

Chart 7: Social Media Platforms with the Highest Number of Users (2020)



Source: Statista (2021b)³⁷

- (37) As seen above, the said companies' applications are preferred by a significant number of users worldwide. Most of those companies' activities in financial services are limited compared to their

³⁴ ICC (2021a), p. 11

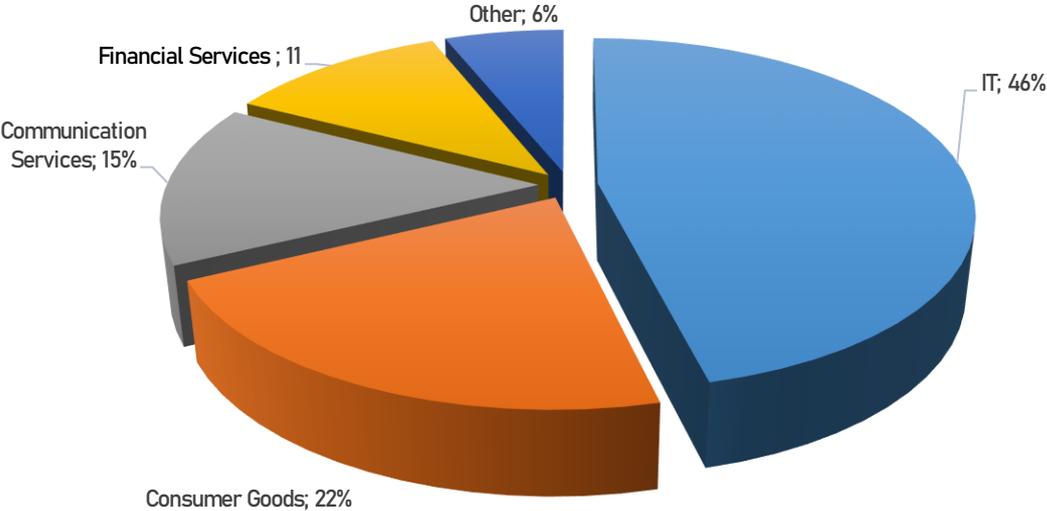
³⁵ ICC (2021a), p. 11

³⁶ ICC (2021b), "Mobil Temassız/Karekodla Yapılan Ödeme İşlemleri", <https://bkm.com.tr/mobil-temassiz-karekodla-yapilan-odeme-islemleri/>, Accessed: 09.05.2021

³⁷ STATISTA (2021b), "Most popular social networks worldwide as of January 2021, ranked by number of active users" <https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/> Accessed: 05.05.2021

other services now. The breakdown of big tech companies' revenues according to sectors are as follows:

Chart 8: The Breakdown of Big Tech Companies' Revenues according to Sectors



Source: BIS (2019)³⁸

- (38) The share of big tech companies' revenues obtained from financial services market corresponds to 11% of their total revenues. Moreover, it is possible to say that their activities in this area are increasing rapidly. For instance ApplePay, which started operation in the US in 2014, has 292 million users in 2018, 441 million users in 2019 and 508 million users in 2020.³⁹ PayPal, which is an older company in this field, has 377 million active users as of 2020.⁴⁰
- (39) Within the framework of the statistical information given in this section, it is seen that the fintech ecosystem is attractive for angel investors as well as big capital companies today. Quality and variety of financial services are increasing with current developments. Customer oriented, fast and innovative approach is gaining importance. Fintech companies and big tech companies by offering financial services produce disruptive innovation and created alternative digital channels for consumers. In recent years, consumers have been embracing fintech services more and more.

³⁸ BIS (2019), "Annual Economic Report", <https://www.bis.org/publ/arpdf/ar2019e3.pdf>, p.56, Accessed: 05.05.2021

³⁹ STATISTA (2021c), "Apple Pay user number 2016-2020", <https://www.statista.com/statistics/911914/number-apple-pay-users/> Accessed: 05.05.2021

⁴⁰ STATISTA (2021d), "Active PayPal accounts worldwide 2010-2021, by quarter" <https://www.statista.com/statistics/218493/paypals-total-active-registered-accounts-from-2010/> Accessed: 05.05.2021

According to a study made by the research firm Ernst&Young, the use of fintech services by consumers raised to 64% in 2019 and this rate is increasing nearly by two fold every two years.⁴¹

⁴¹ EY (2019), "Global FinTech Adoption Index 2019", https://www.ey.com/en_gl/ey-global-fintech-adoption-index, p.6, Accessed: 23.05.2021

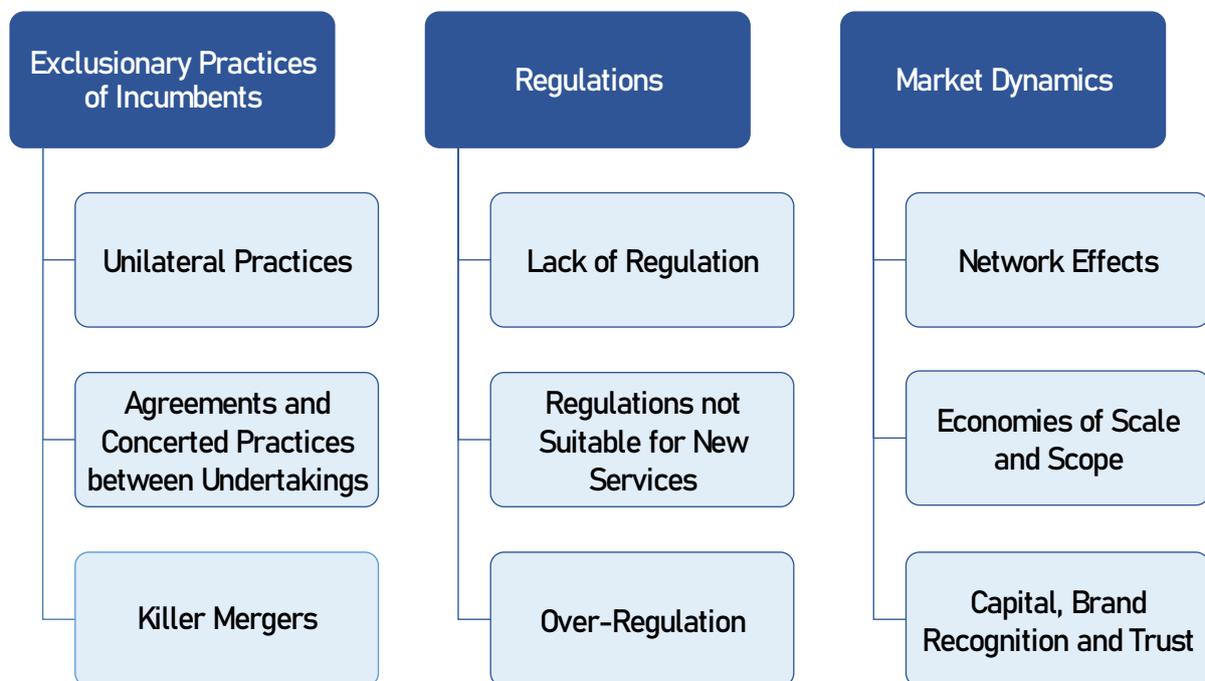
CHAPTER 2

BARRIERS TO THE GROWTH OF FINTECH AND CHALLENGES FOR NEW PLAYERS

2.1. General Overview

- (40) With the increasing effect of fintech, new players have started to offer services. Traditional workflow is being replaced by innovative, user friendly and value added workflows. As a result of the increased competition, consumers have more options and can access products and services under more favorable conditions. However, fintech-driven competitive and innovative transformation processes in financial markets may sometimes be interrupted and it may not be possible to benefit from the full potential promised by fintech. Taking into account the barriers to the growth of fintech and challenges for new players, it is seen that there are mainly three different reasons for those: problems caused by incumbents' exclusionary practices, problems caused by regulations and problems caused by market dynamics.

Figure 1: The Main Barriers to the Growth of Fintech



(41) It is possible to point out other factors that slow down the growth of fintech in addition to those listed in Figure 1. For instance, regulatory arbitrage between countries stemming from different regulatory rules and bottlenecks peculiar to countries decrease fintech's growth rate globally. However, considering the difficulty of analyzing those factors individually, the main barriers listed in Figure 1 are discussed below.

2.2. Exclusionary Practices of Incumbents

(42) As stated above new players enter especially in payment services market due to the growth of fintech. Sometimes, banks see fintech companies as essential business partners as they develop complementary solutions and increase the value of banking services in the eye of consumers. Banks may cooperate with fintech companies closely.⁴² However, in some cases incumbents may see fintech companies as a threat to their commercial activities and develop strategies to protect their strong position and prevent customers from choosing competing fintech companies. Although some strategies such as increasing R&D investments and advertisement budgets can be regarded ordinary under the scope of free market economy principles, certain strategies adopted by incumbents may fall under the scope of competition law. Certain unilateral conduct by dominant undertaking(s), agreements between incumbents to make entry difficult or concerted practices require the use of competition law tools as they distort competition in the market.

(43) Although some practices of incumbent undertakings do not constitute violation under the scope of competition law, they may lead to inefficiencies due to their results and require regulatory intervention. For instance, some practices by an undertaking that is not dominant such as refusal to deal, independently of its competitors may be limited by regulatory rules and the efficiency in the market may increase.

2.2.1. Market Structure Leading to Exclusionary Practices

(44) Before getting to incumbent firms' practices, the elements which compose a payment transaction and the roles of the relevant parties are explained so that the subject will be more understandable. From a commercial perspective, certain activities such as depositing, transferring or withdrawing of funds pending on payer's or payee's order are necessary to realize a payment transaction. For instance, in a purchase and sale relation, the consumer pays for the goods or services to the merchant as a result of the purchase. Payment may be made by cash, check, transfer/EFT or

⁴² OECD (2020b), p.19-20

bank/credit card. In a payment by credit card, which is the most common retail payment method; a money transfer should be made from the payer's bank account to the payee's bank account by a not-on-us⁴³ transaction. To realize the payment transaction, the customer's (payer) credit card information and payment information is transferred over the POS system to the merchant's (payee) bank (acquirer). The acquiring bank connects with the payer's bank (issuer) via the switch system⁴⁴ and requests for authorization for the payment in question. The issuer approves the transaction after the necessary checks and the transaction is realized. The main reason for making the said workflow over the settlement institutions is that settlement systems can avoid the workload and costs caused by bilateral agreements by integrating many payment system providers into a central system. In the settlement systems, banks can set the common interchange fees they pay to each other under certain criteria.⁴⁵ Similarly, in transfers made over the EFT system, money is transferred via a central structure where many banks are integrated and transactions are realized under certain standards in a secure way.

- (45) In the abovementioned payment transaction process, beside the said traditional workflow and incumbent players, fintech companies are also included in the system with several value added services. Some of the fintech firms provide only unilateral service to the customers or merchants (unilateral service providers) while others provide services to both customers and merchants (payee).⁴⁶
- (46) According to Law on Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions no 6493 (the Law no 6493), fintech firms that have payment institution license can be regarded as a unilateral service providers. Payment institutions market virtual POS they purchased from banks to merchants over a single POS software. Thanks to that service, merchants that cannot conclude member merchant agreements (POS agreements) with each bank individually can benefit from virtual POS of all banks over a single integration formed by the relevant payment institution. In addition to the unilateral service providers that serve for the receiver, there are unilateral service providers that serve for the payers – the customers – in

⁴³ Not-on-us means that the institution which issues the pre-paid card, debit card or credit card to be used in a payment transaction is different from the institution which acquires that pre-paid card, debit card or credit card.

⁴⁴ Basically, switch system is the service that enable forwarding card transactions belonging to other members which ICC members accept by means of ATM and POS terminals to the relevant member for authorization query.

⁴⁵ See the Board decision dated 26.02.2015 and numbered 15-09/129-58 on Debit Card Exchange and the decision dated 08.06.2017 and numbered 17-19/294-130 on Credit Card Exchange.

⁴⁶ BIS (2014), "Non-banks in retail payments", <https://www.bis.org/cpmi/publ/d118.pdf>, Access 19.01.2021, p.9

the market. Fintech firms that enable consumers to make payments fast and securely in their daily lives are under that group. For instance, after Payment Services Directive 2, (PSD2)⁴⁷ entered into force in the EU, “provision of account information services” and “initiating payment order services” became more efficient in the market. The legal infrastructure of those services was established by the provisions added to the Law no 6493 in our country. Thanks to those services, consumers can see all their payment accounts via a single interface and can initiate a payment order through those accounts.

(47) Fintech firms providing bilateral services provide different but complementary services to the payer and the receiver to realize the payment transaction. Due to that aspect, the most known fintech firms which are subject to network externalities are electronic money institutions. In the business model, pioneered by PayPal globally and applied by electronic money institutions, which operate according to the Law no 6493 in our country, even consumers who do not have a bank account can pay for goods or services to the contracted merchants via their accounts at the electronic money institution.

⁴⁷ EU Directive dated 25.11.2015 and no 2015/2366

Box 1: Payment and Electronic Money Institutions under the Scope of the Law no 6493

The Law no 6493 regulates the procedures and principles regarding payment and securities settlement systems, payment services, payment institutions and electronic money institutions. The Law has brought important changes to payment services ecosystem and establishes detailed regulatory frame for the infrastructure and functions such as payment system, settlement, securities settlement system and interchange. Beside the existing infrastructure and functions, the Law no 6493 covers procedures and principles regarding the new players in the financial system, such as payment institutions and electronic money institutions.

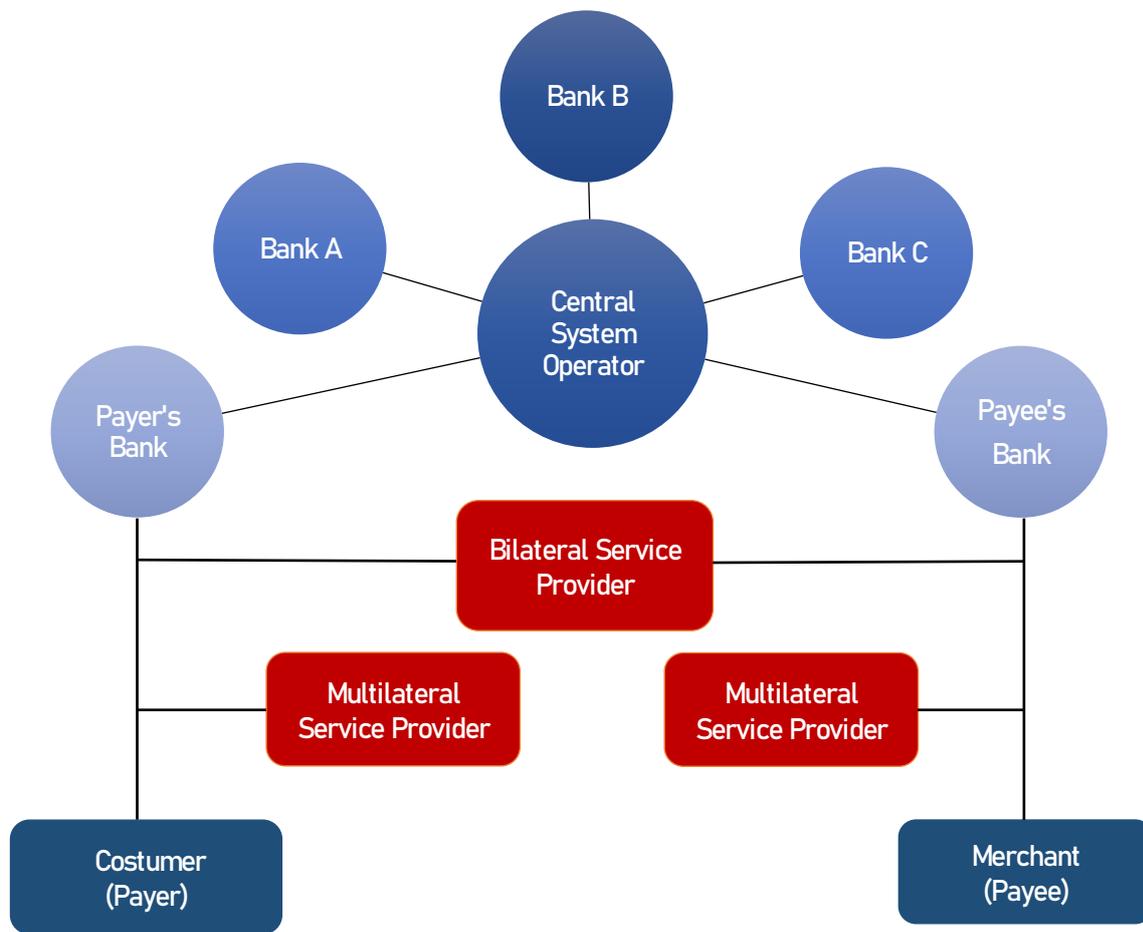
The Law no 6493 has brought legal status to payment institutions and electronic money institutions and describes them as payment service providers like banks. Payment institutions, in some business models, provide POS they get from the banks to merchants and operate like a reseller in that sense. In this way, it is possible to provide POS services to merchants to which banks cannot reach. In addition, merchants can avoid costs to be born as a result of integrating separately with a lot of banks to obtain POS services by means of making an agreement with a single payment institution that has POS agreements with many banks.

Electronic money institutions are institutions that issue electronic money. Electronic money is described as the monetary value which is issued on the receipt of funds, stored electronically, used to make payment transactions. The basic function of those institutions is to enable persons who do not have a bank account to make payments with their electronic money account. Electronic money institutions transfer the funds collected in return for electronic money to a separate account at banks ultimately.

Payment institutions and electronic money institutions need the services and infrastructures provided by banks for the transactions they make as a result of their functions due to various reasons. In case of inability to access to those services and infrastructures, the quality of the services provided to consumers and merchants in the downstream market and in some cases becomes impossible for both types of institutions. On the other hand, it is possible to say that the common feature of both payment institutions and electronic money institutions is to provide banking services indirectly to segments where banks cannot reach. In addition, the said institutions sometimes provide more flexible solutions to consumers and merchants as well as cost advantages and service variety.

(48) In light of the explanations above, Figure 2 shows the parties of a payment system:⁴⁸

Figure 2: A payment System and Its Parties



(49) When it comes to the roles of fintech firms in realizing a payment transaction, it is seen that such firms can provide services to the customer directly, however they generally stand between banks and consumers/merchants. At the retail level, fintech firms compete with banks in services such as virtual POS, e-wallet, initiating a payment order but also they need the existing banking infrastructure to provide those services.

⁴⁸ According to the Law no 6493, payment system is defined as the structure that has common rules and provides the infrastructure required for the clearing and settlement transactions carried out in order to realize fund transfers arising from transfer orders among three or more participants whereas securities settlement system is the structure that has common rules and provides the infrastructure required for the clearing and settlement transactions carried out in order to realize securities transfers arising from transfer orders among three or more participants. However, in practice payment system can be used for both payment systems and securities settlement system. (For additional information see <https://www.tcmb.gov.tr/wps/wcm/connect/73289f67-d210-4f49-8902-6e14ecae055d/OdemeSistemleri.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-73289f67-d210-4f49-8902-6e14ecae055d-m5lk6L->)

- (50) The infrastructure needed may vary depending on the service provided. For instance a payment system offering virtual POS services may need to obtain virtual POS from banks and define the applications peculiar to credit cards issued by banks such as installments on its virtual POS. In order for an electronic money institution to operate, it is necessary that an account for that electronic money institution must be opened at banks and electronic money institutions should have indirect access to EFT system. In order to provide services that enable consumers to view their accounts in a consolidated way on a single application screen, bank customers' account information needs to be forwarded to fintech companies via a special API (Application Programming Interface) technology.⁴⁹
- (51) Consequently, fintech companies that cannot access directly to banking and payment infrastructures, especially clearing, settlement and EFT systems, due to some regulatory rules and market dynamics, have to take infrastructure/integration services from banks in order to remain in the market and offer their services to the customer.
- (52) There is a vertical relation between fintech companies and banks where banks are providers and fintech firms are buyers because fintech firms depend on banking infrastructure in their operations and the existing banking infrastructure is controlled mainly through banks. Within the scope of this relationship, while fintech companies buy services from banks in the upstream market, they compete with those banks in the downstream market.⁵⁰ This kind of relationship, which can also be seen in telecommunications, retail and port services, may cause undertakings in the upstream market to carry out practices such as refusal to deal, margin squeezing, top slice rebates and consequently restriction of competition in the market.

⁴⁹ Article 3(1)(c) of the Directive on Information Systems of Banks and Electronic Banking Services API is defined as "*application programming interface created for enabling a software to use the functions defined in another software*".

⁵⁰ However in some cases banks outsource services from fintech companies to improve their products and services.

Box 2: Telecommunications Sector Example

Telecommunication market is a frequently used example to analyze the consequences of a case where an incumbent compete with new entrants and provide inputs to those at the same time. It is known that incumbent undertakings have infrastructure advantages with respect to providing broadband internet services to the final consumer because if there is an infrastructure established by the incumbent in a certain route, it is not possible for the alternative operator to install additional infrastructure due to the regulations. Therefore the only option for the alternative operator for providing services to the final consumer may be facility sharing, that is allowing other operators to use passive infrastructure such as pipes channels and meshes owned by electronic communication network operators in return for a fee.

As a result of the regulations* made by Information Technologies and Communications Authority (ITCA), incumbent operators are subject to an obligation to share their infrastructure with other operators under certain conditions. In this regard, in cases where incumbents have an indispensable channel for reaching the consumers, it is clear that vertical agreements may be used to ensure new entries.

On the other hand, the decision of the Board dated 09.06.2016 and numbered 16-20/326-146 shows that despite the regulations, the Law no 4054 on The Protection of Competition (the Law no 4054) is applicable. The decision is related to the complaints that Türk Telekomünikasyon A.Ş. abused its dominant position by means of delaying, complicating and preventing the applications for facility sharing, delayed facility sharing process by not complying with the procedure and principles set in the legislation, and complicated settlements by imposing unfavorable contract terms. The Board found that the undertaking had dominant position in the market for “physical infrastructure elements such as pipe, channel, mesh, manhole, pole and tower and unlighted fiber” and in the market qualified as the downstream market which is defined as “physical infrastructure” and it refused to deal by means of the practices mentioned above. As a result, it was concluded that Türk Telekom complicated the activities of competing undertakings that applied for facility sharing by means of refusal to deal and led to anticompetitive market foreclosure and violated article 6 of the Law no 4054 for the period analyzed.

Within this framework, the case law consisted of Board decisions concerning telecommunications sector is important for cases where fintech companies have to use a channel/infrastructure owned by incumbent financial institutions .

*<https://www.btk.gov.tr/tesis-paylasimi-duzenlemesi>, Accessed: 13.05.2021

2.2.2. Competition Law Approach to Exclusionary Practices

(53) As a type of violation under the Law no 4054, exclusionary practices may be in the form of rivals colluding to foreclose the market to the other players, or it may take the form of a conduct by the dominant undertaking in the market which aim to complicate the operations of rivals in the market. In the following paragraphs, first unilateral exclusionary practices and then exclusionary practices resulting from an agreement between competitors are addressed within the context of fintech markets. Lastly, the effects of acquisitions in the fintech sector are also examined since they can lead to restriction of innovation in the market under some circumstances, similar to exclusionary practices.

2.2.2.1. Unilateral Practices

(54) Article 6 of the Law no 4054 prohibits one or more undertakings from abusing their dominant position in a market for goods or services within the whole or a part of the country on their own or through agreements with others or concerted practices. The same provision considers among abuses of dominant position those types of conduct which aim to prevent, directly or indirectly, another undertaking from entering into the area of commercial activity or complicate the activities of competitors in the market as well as which, by means of exploiting financial, technological and commercial advantages created by dominance in a particular market, aim to distort competitive conditions in another market for goods or services.

(55) These actions may be classified as exclusionary conduct and carried out in various forms by dominant undertakings. Examples may be given as refusal to deal, predatory pricing, price/margin squeeze, exclusivity/single branding agreements, discount systems and tying practices⁵¹. For the exclusionary conduct to become an infringement under Article 6 of the Law no 4054, the undertaking executing them must hold the dominant position in the relevant market(s).

(56) Dominant position is defined in Article 3 of the Law no 4054 as *the power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers*. In order to determine whether an undertaking holds dominant position, first it is necessary to define the relevant market(s). One pillar of the relevant market encompasses the relevant product market, while the other is comprised of the relevant geographical market. In

⁵¹ See Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings

general, the scope of the relevant product market is determined by those products and/or services which are substitutes in the eyes of the consumers in terms of characteristics, price or intended use. On the other hand, a relevant geographical market is defined as those regions where undertakings operate in the supply and demand of their goods or services, where the competitive conditions are sufficiently homogeneous and can be separated from neighboring regions since the competitive conditions are appreciably different from those regions.

(57) Even though relevant market determination is relatively easy for static markets, it may not always be as easy in dynamic markets where the effect of technology is felt more intensely. Achieving clear market definitions in dynamic markets is harder for various reasons, including the fact that a newcomer to the market may reach significant market share in a short time by developing innovations, the fact that improving technology leads to radical changes in the features of products and services, as well as the fact that markets are shaped by network externalities. In fact, “competition for the market” is as important as “competition in the market” for these markets, and undertakings try to alter the center of the market via differentiated products and services.

(58) In particular, multi-sided markets,⁵² which bring together different customer groups that interact with each other due to network externalities and in which the value attached to the product or service is related to the number of users on the platform are differing from traditional markets. In multi-sided markets, it is harder to calculate the conventional indicators taken into consideration in market analyses and to reveal the relationship between the demand and the supply.⁵³ In the assessments conducted on these markets, essential steps of an accurate market definition are the examination of the characteristics of the platform and relevant business models and the analysis of the reaction of the groups using the platform to each other's behavior via various methods, without adhering to the calculations based on price, cost, profitability, etc. Yet, in these markets that lack traditional pricing policies and involve different pricing choices for customer groups, market analyses based on price-based tests conducted without regard to the interdependency between users may lead to incorrect market definitions and dominant position identifications. It is obvious that a wider or narrower market definition than it should be lead to inaccurate interventions in the market. For instance, where the market is defined in accurately

⁵² GÜNDÜZ, H. (2009), “Çift Taraflı Pazarlarda Rekabet Hukuku Uygulamaları”, Competition Authority Expert Thesis, Ankara, <https://www.rekabet.gov.tr/Dosya/uzmanlik-tezleri/97-pdf>, p.4, Accessed: 14.07.2021

⁵³ DOĞAN, C. (2021), “Rekabet Hukuku ve İktisadi Bağlamında Dijital Platformlar”, On İki Levha Yayıncılık, İstanbul, p.93

narrower, a merger/acquisition that could lead to efficiencies may be banned, resulting in loss of welfare or, if an undertaking is erroneously found to hold dominant position over-enforcement may cause distortion of the well-functioning market mechanism.⁵⁴ In that context, it could also lead to negative outcomes for the undertakings targeted by the interventions, such as violating of the freedom to deal, damaging the brand image and reducing the incentives for investment. On the other hand, where the market definition is more comprehensive than necessary, then the strong positions of the actual dominant undertakings may be ignored and conduct that requires intervention via competition law instruments may go unmonitored.

- (59) Fintech developments in the financial sector are transforming seemingly static traditional financial markets into dynamic ones. For instance, payment services which used to be provided over banks and credit cards have nowadays a more technology-focused appearance due to biometric technologies, QR Code applications, digital wallets, electronic money accounts, etc. The technological transformation observed in the markets impacted by fintech necessitates that, not only classical business flows but also other business flows that serve to meet the similar needs of the consumers be taken into account, and final market definitions be made with this in mind.
- (60) In exclusionary conduct analyses, after the relevant market is identified, the next stage examines whether the undertaking whose practices are under investigation holds dominant position in the relevant market. For example, for the payment services market, facilities/infrastructure such as credit cards, POS, payment accounts, etc. constituting the upstream market is produced, supplied or operated by the banks. Since the fact that the current regulatory rules require a banking license to access the infrastructure in question and to provide certain types of services (e.g., deposit collection) and the fact that acquiring a banking license is subject to strict conditions,⁵⁵ including high capital adequacy, it is hard for new nonbank players to gain a foothold in the relevant upstream market.
- (61) In Turkey, looking at the number of organizations with banking licenses and the market shares of these organizations, even though single or joint dominant position does not exist in terms of

⁵⁴ AKTEKİN, E. (2017), "Relevant Product Market Definition In Two-Sided Markets Under EU Competition Law", *Competition Journal*, V:18, I:1, p.87, <https://www.rekabet.gov.tr/Dosya/rekabet-dergileri/dergi-18-1-web-20180622113244264.pdf>, Accessed: 14.07.2021

⁵⁵ See Articles 7 and 8 of the Banking Law no 5411

operating the relevant banking infrastructure,⁵⁶ in some specific cases, each bank may be said to hold dominant position concerning ownership of its own customers' data.⁵⁷ For instance, an electronic money organization may open an account in any bank to access the EFT system in an indirect way, in which case the bank itself does not have dominant position. However, in terms of the account information provision service, for each specific customer, the account information of the relevant customer cannot be procured from a bank other than the one where the customer has his/her account. In that sense, the bank with the customer's account exclusively holds the account information needed to provide account information services to that customer and it may be in a dominant position in accessing that information. A similar scenario can be developed for the installment sales transactions for credit card programs, with narrow market definitions specific to each credit card brand.

- (62) Case-law established in the telecommunications sector may be instructive at this juncture. As known, in SMS and call services, for a user on a network to communicate with a user on another network, there must be a connection between the two networks and it is necessary to provide wholesale level access to the network serving the other user in order to be able to supply SMS and call services at the retail level. The Board's *SMS Termination* decision⁵⁸ involves assessment within this framework and defines relevant product market based on mobile operators due to the fact that a separate relevant product market forms for each network in terms of call termination services at the wholesale level. In parallel with these assessments, concerning those undertakings providing the relevant financial services, each bank may be found to hold dominant position for the customer data owned.
- (63) Following the definition of the relevant market and establishment of dominant position, whether the practices carried out by the dominant undertaking in the relevant market fulfill the specific conditions required for a finding of infringement must be examined.⁵⁹ Looking at the matter in terms of "refusal to deal" conduct, which is among the most common types of unilateral

⁵⁶ In light of the Banks Association of Turkey (BAT) data showing the size of assets for the banks as of 30.06.2020, the Herfindahl Hirschman Index (HHI) for the banking services market in general is calculated to be around 916, indicating a market structure with low concentration.

⁵⁷ ACM (2017), p.29

⁵⁸ The Board's *SMS Termination* decision dated 08.11.2018 and numbered 18-42/670-329

⁵⁹ ACM (2017), "Fintechs in the payment system: The risk of foreclosure", <https://www.acm.nl/sites/default/files/documents/2018-02/acm-study-fintechs-in-the-payment-market-the-risk-of-foreclosure.pdf>, p.26-28, Accessed: 19.01.20

exclusionary practices, a dominant undertaking's refusal to deal can only become an infringement if it concerns a product or service that is indispensable for competition in the downstream, if it is likely to eliminate competition in the downstream and if it causes consumer harm.⁶⁰ In that sense, when examining conduct that have exclusionary effects through a refusal to deal, the restriction of the freedom of contract is balanced with the condition that the product or service comprising the subject of the refusal must be indispensable for competition. In fact, any product or service that is deemed indispensable for competition in the downstream market must objectively carry this characteristic. Objective indispensability is defined as the lack of a substitute for the input in question under the current circumstances. However, it is also taken into consideration whether the input that is deemed to be indispensable could be procured or manufactured in the foreseeable future. Once it is established that the input comprising the subject matter of the refusal to deal fulfills the indispensability condition, the Board evaluates whether a refusal to deal by the dominant undertaking is likely to eliminate effective competition in the downstream market.⁶¹

- (64) In analyzing "price/margin squeeze,"⁶² which is another form of unilateral exclusionary conduct, it is examined whether the undertaking in the dominant position performing the conduct is vertically integrated, whether the product subject to price/margin squeeze is indispensable for operation in the downstream market and whether the margin between the upstream and downstream products is too low to allow an undertaking that is as efficient as the undertaking dominant in the upstream to profit in the downstream. Similarly, infringement analyses concerning other exclusionary conduct by dominant undertakings (e.g., tying, discount systems) may look at different factors, depending on the nature of the conduct in question. At the same time, it may be said that the common feature of the practices in question is the fact that they lead to significant exclusionary or foreclosure effects in the relevant market, as a result of which the product variety, innovation and quality is restricted in the market.
- (65) When fintech companies lack the infrastructure essential for their operations due to either regulatory rules or market dynamics, they are forced to procure services from the banks. Where

⁶⁰ See Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings, p.9-10

⁶¹ See Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings, p.10

⁶²Price squeeze is when an undertaking active in vertically related markets that is dominant in the upstream market sets the margin between the prices of the upstream and downstream products at a level which does not allow even an equally efficient competitor in the downstream market to trade profitably on a lasting basis (See Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings, p 61).

they cannot to procure these services from the banks, many products and services developed by fintech companies cannot meet with the customers. In fact, products and services developed by nonbank market players are value-added services. Where they are not integrated with existing payment infrastructure the downstream market remains largely closed to fintech companies. Closing the market to new players removes the competitive pressure fintech companies put on the banks, as a result of which the service variety for the consumer in the downstream market is reduced and innovation in the market is interrupted. As a result, conduct in the form of a refusal to deal applied by incumbent undertakings dominant in the upstream market may lead to the exclusion of fintech companies to a large extent, thereby to the restriction of competition and innovation in the market, and finally to consumer harm. These conducts can require imposition of administrative fines on the relevant undertaking(s) as per Article 6 of the Law no 4054.

- (66) In summary, the essence of an assessment under Article 6 is examining whether the conduct in question leads to actual or potential anti-competitive market foreclosure. The phrase “actual or potential anti-competitive market foreclosure” brings a standard for assessing the effects of the exclusionary conduct. This standard has two sides, namely i) exclusion of competitors from the relevant market or competitors being unable to enter the relevant market in the first place and ii) decrease in consumer welfare, as a result of the failure of the competitive process. When examining the existence of anti-competitive market foreclosure, numerous factors including the position of the dominant undertaking, the barriers to entry and growth in the relevant market, economies of scale/scope, network effects, and the positions of the competitors, customers or suppliers are taken into consideration. On the other hand, when examining refusal to deal against fintech companies, it must also be noted that the financial system is built upon the element of trust and an investigation must be conducted into whether the relevant fintech company can meet the safety standards. Additionally, it must also be considered whether the fintech companies have the necessary operation infrastructure when providing financial services to the consumer, since they lack an operational network as sophisticated as those of the banks.

2.2.2.2. Agreements and Concerted Practices between Undertakings

- (67) In addition to unilateral conduct, exclusion of new players in the market can also result from strategies competitors develop via agreements or concerted practices. As known, Article 4 of the Law no 4054 prohibits agreements and concerted practices between undertakings, and decisions and practices of associations of undertakings which have as their object or effect, or likely effect

of the prevention, distortion or restriction of competition directly or indirectly in a particular market for goods or services.

- (68) As made clear by the phrasing of Article 4 of the Law no 4054, to find that an infringement has taken place, there must exist an agreement/concerted practice/association of undertakings decision which has as its object or effect or likely effect the restriction of competition. An infringement exists without requiring to conduct a detailed examination into the potential effects of the relevant practice that have occurred or may occur, based on the fact that it has the restriction of competition as an object. At the same time, if it is thought that the relevant agreement does not have the restriction of competition by object but that it does or could lead to a restrictive effect in the market, then a detailed examination in terms of actual or potential effects is required.
- (69) In the field of payment services where industry associations are active and coordination among undertakings is relatively easy, it must be closely investigated whether standards adopted by incumbents and the conditions offered to fintech companies stem from anti-competitive agreements or concerted practices between rivals. In fact, a look at the practices comprising the subject matter of recent decisions by competition authorities shows that standards adopted via association of undertakings or bilateral agreements between undertakings may be designed to foreclose the market to new players.
- (70) For instance, in its *Deutsche Kreditwirtschaft* decision⁶³ the German competition authority Bundeskartellamt ruled that the standards set out by the German Banking Industry Committee in the field of online banking were not required for ensuring the security of banking transactions, but they served to prevent the use of innovative products and services developed by nonbank service providers in the market, and they distorted the competition between different payment service providers.
- (71) When we look at Turkey, in the *Bonus* decision,⁶⁴ the Board examined the cooperation established among the banks within the framework of the Bonus branded credit card program, and found that payment institutions could be excluded from the market for acquiring merchants due to the provisions banning sub-licensing in the agreements and that this could negatively impact

⁶³ Bundeskartellamt's *Deutsche Kreditwirtschaft* decision dated 29.06.2016 and numbered B4-71/10

⁶⁴ The Board's *Bonus* decision dated 07.09.2017 and numbered 17-28/462-201

consumer welfare. Thus, it was decided that the co-branding agreements signed between competitors could not be granted an individual exemption under Article 5 of the Law no 4054, however that individual exemption could be granted to the relevant agreements provided the provisions preventing banks from establishing sub-licensing agreements with payment institutions in the Bonus platform were removed.

(72) In the Board's *ICC Card Data Storage* decision⁶⁵ concerning the card data storage service provided under the ICC umbrella, it is noted that competition was restricted in the market by the banks' refusal to provide to other organizations in the market the infrastructure and integration services they offered to ICC, and it was ruled that the service in question should be terminated since the card data storage service provided by ICC did not meet the requirements for individual exemption. Of particular import are the following observations in paragraph 74 of that decision, concerning the competition between the banks and non-bank service providers:

“...while there is horizontal competition between non-bank payment service providers and banks in many service types related to payments, at the same time there is a vertical relationship in which the banks are the suppliers and the non-bank payment service providers are the buyers. This situation brings about the introduction of certain standards which allow the banks to create obstructions for non-bank payment service providers when they want to use the banking infrastructure or which complicate their operations.”

(73) In the Board's *Money Transfer* decision⁶⁶ on intermediation services for international money transfers, the claims examined concerned the assertions that exclusivity agreements signed between the banks and various organizations on international money transfers prevented other payment and electronic money organizations from opening accounts at the banks and thus the market was foreclosed to other payment and electronic money organizations. Consequently, the decision ruled that the agreements signed between the banks and various organizations were restricting competition due to the exclusivity provisions in those agreements and thus did not meet the requirements for individual exemption.

⁶⁵ The Board's *ICC Card Data Storage* decision dated 12.06.2018 and numbered 18-19/337-167

⁶⁶ The Board's *Money Transfer* decision dated 08.08.2018 and numbered 18-27/442-212

- (74) Another Board decision in the field of fintech is the IMC Payment Gateway decision⁶⁷, which examines the payment gateway service⁶⁸ that was intended to be provided by the Insurance Information and Monitoring Center (IMC). Aiming to create a payment service infrastructure, the project was coordinated by the Banks Association of Turkey (BAT) in order to ensure safer and seamless receipt of the payments in the insurance sector, and the decision analyzed the potential effects of the project on the competition between various payment service providers. The decision focuses on the potential exclusionary effect of the fact that, within the framework of the payment project in question, a payment gateway service would be provided by the IMC, operating under the Insurance Association of Turkey (IAT), which is the association of undertakings whose members are competing insurance companies. In that context, the decision notes the competitive problems created by the fact that IMC was operating under IAT, and it draws attention to the close shareholders relationship and contractual connections between insurance companies and banks (e.g. bancassurance agreements), emphasizing the potential competition issues that could arise if the same kind of integration the project stipulates that the banks should grant to IMC were not also offered to other payment gateway providers. Even though the decision does not grant exemption to the provision of payment gateway services by IMC, the collaboration in question was granted an individual exemption for a period of three years, on the grounds that cooperation between the banks could lead to efficiencies in the market in a business flow which does not include IMC. The Board decision takes into account the protection of the competitive structure of the market as well as the safety and stability that cooperation in the payments field could create, setting up a delicate balance between financial stability, competition and continuing innovation.
- (75) An examination of the Board decisions concerning the relevant markets shows that the Board prefers an effect-based approach in exemption analyses. In fact, rather than establishing that the agreements between the undertakings are restrictive of competition by object, above mentioned decisions set forth the common strategies adopted by the incumbent undertakings in the position of suppliers and the restrictive effects the cooperation by these undertakings have on competition in the market.

⁶⁷ The Board's *IMC Payment Gateway* Decision, dated 24.12.2020 and numbered 20-55/769-341

⁶⁸ Payment Gateway is a service which allows a business that signs separate card acceptor agreements with banks in order to receive virtual POS services to set up technical integration for each of the banks in question and receive payments over a single interface into which all of these integrations are connected.

- (76) According to the effect-based approach exemplified in the decisions mentioned above, the standards and requirements specified by the incumbents must be analyzed to see if they are objectively necessary. As a matter of fact, standardization and commercialization agreements signed by incumbent undertakings may sometimes increase efficiency in the market, such as in the joint ATM network project⁶⁹ which was granted an exemption by the Board, but sometimes they lead to prevention of entry into the market by means of requirements which do not serve a reasonable purpose or which are discriminatory.
- (77) Coming to a conclusion based on how competition in the market is affected due to the relevant business models exemplify an effective competition analysis approach in relation to fintech for competition authorities, and it is expected that decisions in parallel with this case-law will become the norm in the future. Due to its importance, it must be noted that, following this approach, a natural outcome of an effect-based analysis is assessing whether there were any efficiency gains by the undertaking conducting the restrictive practice. In that context, the basis of an efficiency-focused assessment is whether the undertaking can create economic benefits that outweigh the negative impact of its infringing conduct on competition. Thus, it is crucial to see if the relevant conduct leads to efficiency in the relevant market, increasing consumer welfare. First of all, the efficiency gains in question must occur or must be likely to occur as a result of the allegedly infringing conduct. This conduct must be indispensable for the materialization of the efficiencies in question. Additionally, efficiencies which are likely to occur as a result of the conduct under investigation must outweigh the potential negative effects of the conduct on competition and consumer welfare in the affected markets, and the conduct must not eliminate effective competition by removing all or most of the actual or potential sources of competition.⁷⁰
- (78) Vertical agreements signed by the undertakings in financial markets comprise another point of note under Article 4 of the Law no 4054 in the context of fintech. Unlike horizontal cooperation agreements, vertical agreements set up a relationship between suppliers and buyers at different levels of production or distribution. Vertical agreements allow undertakings to establish their production and distribution system in the best way possible and thus increase inter-brand competition in the market, but sometimes they may prevent market entries, cause price rigidity or facilitate coordination between rivals, and may ultimately lead to the restriction of competition

⁶⁹ See the Board's *Joint ATM* decision, dated 22.05.2018 and numbered 18-15/284-142

⁷⁰ See Guidelines on the Assessment of Exclusionary Abusive Conduct by Dominant Undertakings, p. 32

in the market. In that context, setting aside cases of abuse of dominant position in vertical relationships, restriction of competition by means of vertical agreements falls under Article 4 of the Law no 4054.

- (79) Since the financial sector in general and the payment services in particular involve many different business models, various types of vertical relationships can exist in these fields. For instance, different products and services such as credit card sharing programs, POS services, swap systems and digital wallet applications may be marketed over various vertical relationships. In the financial sector where vertical agreements are widespread, market entry may be prevented or the operations of new players may be restricted by various provisions in these agreements, such as non-compete obligations, exclusivity conditions, selective distribution requirements. In this respect, it may be considered that vertical agreements signed by incumbents which include restrictive provisions such as non-compete, selective distribution and exclusivity make it harder for fintech companies to enter the market or operate in the market.
- (80) Lastly, exclusionary practices such as asking unreasonable prices for the input provided, unjustifiably disrupting the services provided to fintech companies, implementing boycotts etc., established by means of horizontal agreements or concerted practices between undertakings will be regarded as restriction of competition by object in any event, and incumbents may be held responsible for restricting competition by object.

2.2.2.3. Killer Acquisitions

- (81) Outcomes similar to the exclusionary effects likely to result from the types of conduct explained up to this point and subject to examination under Articles 6 and 4 of the Law no 4054 may also occur as a result of acquisitions as well, which may be examined under Article 7 of the Law no 4054. Due to the innovation focused structure of the fintech field, incumbent undertakings may form their strategies by observing fintech companies that are new in the market, which have the potential to develop disruptive innovations. In that framework, there are numerous examples of incumbents choosing to acquire the fintech companies instead of trying to compete with them directly. Incumbents in the market which have a strong position in terms of capital may acquire those fintech companies they perceive as a threat to their own operations at an early stage, which may result in the failure of the technologies developed by those companies. This type of acquisition can lead to a significant reduction in effective competition due to various consequences, such as restriction of innovation and exclusionary effects in the relevant market.

- (82) In that framework, the skeptical approach competition authorities began to adopt towards acquisitions in the fintech sector cannot be separated from the concerns related to the digital markets. With the increase in the number of academic studies observing that innovation is repressed in many digital markets due to acquisitions by large tech companies in particular, resulting in exclusionary effects, and that current concentration control regimes are unable to supervise these types of acquisitions effectively, the approach in question will be able to show its effect for those acquisitions in the fintech sector, as well.
- (83) In fact, currently some competition authorities have made statements emphasizing the exclusionary effects and restriction of innovation in fintech markets. The United Kingdom's Competition Authority (Competition and Markets Authority - CMA) is one of the authorities that noted the importance of the merger control for fintech. Since the start of 2019, CMA has launched detailed examinations on four different acquisitions in the fintech sector, in a period of nine months.⁷¹ CMA seems to support an interventionist approach to those acquisitions which are liable to result in the termination of the operations of the acquired undertaking or the prevention of potential innovation. In that context, CMA examined the application concerning Experian Limited's acquisition of Credit Laser Holdings, both of which operate in credit scoring in the fintech sector, and observed that one of the anti-competitive effects stemming from the merger of the two largest undertakings in the market would be the reduction of the pressure on the merged undertaking to make innovative offers and to make other improvements.⁷² The parties to the acquisition backed out of the transaction, stating that they did not believe the CMA would authorize the acquisition under the circumstances.⁷³
- (84) Another example where the parties retracted their application involved Visa's attempt to acquire Plaid, the former of which holds dominant position in online payment operations in the USA, and the latter of which develops platforms for online payments.⁷⁴ In the lawsuit filed against the relevant transaction, the US Department of Justice (DOJ) claimed that if the transaction were to be cleared, Visa would have eliminated the potential competitive pressure from Plaid concerning

⁷¹ <https://www.osborneclarke.com/insights/fintech-mergers-cmas-spotlight-lessons-can-learned/>, Accessed: 04.07.2021

⁷² <https://www.gov.uk/cma-cases/experian-limited-credit-laser-holdings-clearscore>, Accessed: 04.07.2021

⁷³ <https://www.gov.uk/government/news/abandonment-of-credit-score-checking-merger>, Accessed: 04.07.2021

⁷⁴ <https://www.justice.gov/opa/pr/visa-and-plaid-abandon-merger-after-antitrust-division-s-suit-block>, Accessed: 04.07.2021

online payments and continued its dominant position. After the parties backed out, the DOJ statement emphasized that the acquisition aimed to buy an “innovative and developing” competitor, and noted that the retraction of the transaction cleared the way for innovation in the fintech market and allowed fintech companies to develop operations that may serve as alternatives for Visa. The relevant lawsuit is important since it clearly showed that the acquisition of companies in the development stage within the fintech field could lead to the restriction of innovation and strengthening of dominant positions.

- (85) The abovementioned approaches to concentrations found their reflection in Turkey in 2020, with an amendment made to Article 7 of the Law no 4054 concerning the adoption of the “significant lessening of effective competition” test in merger and acquisition examinations. Following the relevant amendment, and similar to the examples given above, acquisitions concerning fintech companies are expected to be examined to see whether they would lead to a significant lessening of effective competition by restricting innovation.
- (86) As a result, conduct carried out by an incumbent which currently holds a strong position in the market may constitute an infringement under competition law and may face various sanctions. Under Article 6 of the Law no 4054, the pre-requisite for intervention in exclusionary conduct is the existence of unilateral or joint dominant position, with some additional conditions being required depending on the nature of the conduct concerned. For instance, the indispensability element should be involved in cases of refusals to deal, while predatory pricing practices require an examination to see whether below-cost prices were implemented. On the other hand, competition law instruments forbidding agreements or concerted practices that restrict competition between rivals may be used to intervene against some joint strategies adopted by undertakings that do not hold dominant positions. Such intervention falls under Article 4 of the Law no 4054, and the pre-requisite for it is proving the existence of an explicit or implicit mutual agreement between competitors. However, the common threat placed on incumbent undertakings by new players in the market makes it harder to separate the similar rational strategies incumbents adopt independent from each other from strategies based on agreements or concerted practices. On the other hand, in order to intervene to vertical agreements under Article 4 of the Law no 4054, it must be shown that the market shares of the parties to the agreement as well as the scope and duration of the non-compete, exclusivity, etc. conditions in the agreements are obstructing the operations of new players or preventing new entries into the market; in other

words, the relevant agreements must be shown to be conducive to create a significant exclusionary effect in the market. Lastly, the acquisition of fintech companies with the potential to have a disruptive innovation effect may lead to exclusionary effects and restriction of innovation and the Board has the power to intervene in these types of acquisitions under Article 7 of the Law no 4054, in order to maintain effective competition in the market.

2.2.3. Regulatory Intervention against Exclusionary Practices

- (87) Since intervention against the exclusionary practices by incumbent players towards new entrants through competition law tools is only possible under certain conditions and since it is not always easy to establish the existence of these conditions, the use of regulatory intervention in this area becomes unavoidable. Also, competition law instruments mostly create effects limited to specific cases, which requires the establishment of general and comprehensive regulatory rules in the sector to ensure predictability. Moreover, any intervention through the use of competition law instruments is ultimately an ex-post analysis, i.e. it comes into play only after the conduct has already been carried out, creating a need for regulatory rules that ensure the prevention of exclusionary conduct from the start.
- (88) In response to this need, many countries implement regulations to encourage and even mandate open banking. In its narrow sense, open banking may be defined as secure processes that allow third-party service providers to access the financial information of customers held by the banks and execute transactions with the consent of the customers, while in a wider sense, it refers to opening the customer data held by various types of banking infrastructure and banks to the players in the downstream, and thus provision of value added services in the downstream market.⁷⁵
- (89) As explained in the research company PWC's report,⁷⁶ the main goals of open banking are as follows:

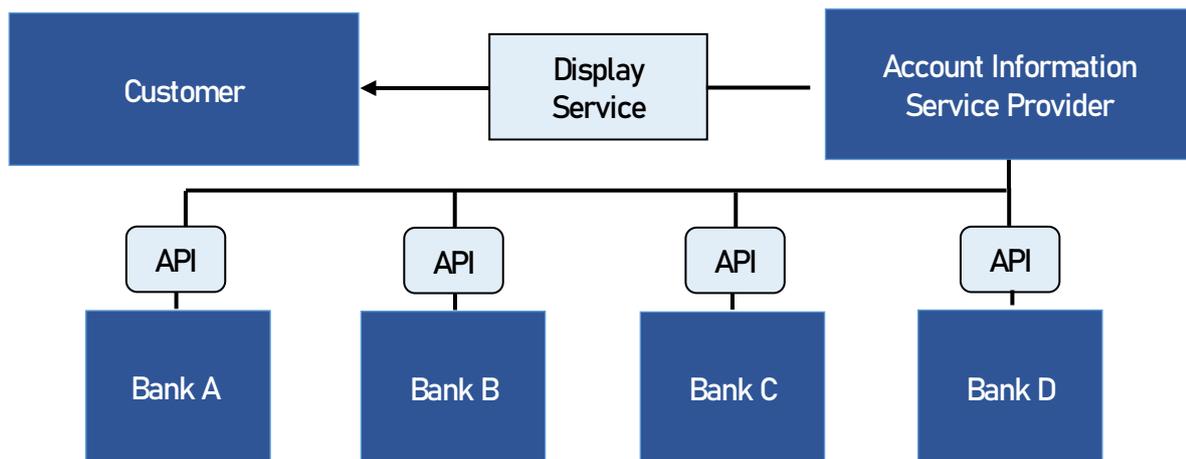
⁷⁵ Published in the Official Gazette dated 15.03.2020 and numbered 31069, BRSA's Regulation on Information Systems and Electronic Banking Services of Banks defines "open banking services" as follows in paragraph 1(a) of Article 3, titled "Definitions and Abbreviations": "...an electronic distribution channel through which customers or parties acting for and on behalf of customers may execute banking transactions or may instruct the bank for execution of banking transactions through remote access to financial services offered by bank via such methods as API, web service, file transfer protocol, etc.

⁷⁶ PWC (2020), "Açık Bankacılık: Dünya ve Türkiye", <https://www.pwc.com.tr/tr/sectorler/bankacilik/pdf/acik-bankacilik-dunya-ve-turkiye-v2.pdf>, p.3, Accessed: 19.01.2020

- Developing new financial products and services
- Increasing transparency and competition in the financial sector
- Facilitating financial life
- Increasing financial comprehensiveness
- Improving customer experience

(90) API technology is the most common method used in open banking⁷⁷ to ensure third party access to customer account information at the banks. Created to allow a software to use defined operations in another software, API technology makes it possible to share customer account information at the banks with third parties in a limited manner over a secure channel, upon consent of the customers. As an example, Figure 3 shows the API technology used to provide account information services:

Figure 3: API Technology in Account Information Provision



(91) In summary, open banking applications are intended to allow consumers to access their various financial information, including their payment account information, over any channel, in any way they choose. Consequently, consumers have wider opportunities to access existing financial services and make use of value added services, as a result of which financial products and services are extended further. In that sense, consumers can be said to have complete control over their financial accounts and, in a sense, increased freedom.

⁷⁷ In this report, the term “open banking” is generally used to refer to the banks’ activities aimed at providing infrastructure services and information to the third parties, specifically in the payment services field.

- (92) The most widely known open banking regulation is the PSD2 adopted by the EU Commission, which regulates the relationships between the banks and nonbank organizations operating in the payment services sector. PSD1 was issued in 2007 to open the payment services field to new players and support innovation in this area, and it was updated with PSD2 in 2015 to bring it up-to-date with the changing market conditions. Fundamentally, PSD2 took open banking beyond an initiative of the organizations within the EU and gave it a mandatory status the framework of which is determined by regulations. Article 36 of the PSD2 charges member states with “*ensuring that payment institutions have access to credit institutions’ payment accounts services on an objective, non-discriminatory and proportionate basis.*” The same Article notes the requirement that such access “*be sufficiently extensive as to allow payment institutions to provide payment services in an unhindered and efficient manner.*” PSD2 also defines two types of service providers categorized as “account information service provider” (AISP) and “payment initiation service provider” (PISP), and makes it obligatory for the banks to allow the new service providers’ in question to access customers’ accounts under certain conditions.
- (93) Another significant example of open banking is the United Kingdom practice. The report⁷⁸ prepared by the CMA in 2016 as a result of the investigation conducted into the retail banking sector emphasized the importance of open banking for eliminating the failures in the sector and thus the “Open Banking Initiative” was launched by the CMA. According to the CMA directive which came into effect on 13.01.2018 in parallel with the PSD2, the largest nine banks holding 80% of the market in the UK were obligated to comply with the Open Banking Standards issued previously by the Open Banking Working Group, and, within that framework, to open the account data of their own customers to third parties.⁷⁹ The “Open Banking Initiative” includes more detailed and comprehensive regulations as compared to the PSD2, leading to an increase in open banking applications in the UK⁸⁰
- (94) Recently, open banking also began to find a place in the legislation of various other countries, thanks to new regulations as well as collaborative work of regulatory authorities and industry

⁷⁸ CMA (2016), “Retail banking market investigation”, <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>, Accessed: 26.01.2021

⁷⁹ DELOITTE (2017), “How to flourish in an uncertain future: Open banking”, <https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-open-banking-how-to-flourish-in-an-uncertain-future.pdf>, p.8, Accessed: 26.01.2021

⁸⁰ OECD (2020c), “Summary of Discussion of the Roundtable on Digital Disruption in Financial Markets”, [https://one.oecd.org/document/DAF/COMP/M\(2019\)1/ANN3/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2019)1/ANN3/FINAL/en/pdf), p.7, Accessed: 26.01.2021.

associations. Data sharing by banks aimed at extending the reach of open banking is mandatory in some other countries such as Japan and Mexico, where open banking infrastructure is regulated, similar to the case in the EU and UK⁸¹ However, currently, this type of sharing is encouraged but is not mandatory in some countries including the US, China, Argentina, Singapore, Hong Kong and South Korea. Concerning the standardization of the API and similar technologies to be used for sharing, it is observed that some EU countries such as France, Germany and Poland are following in UK's footsteps by creating their own standards.⁸² On the other hand, Australia, announced the Consumer Data Right (CDR) regulation in 2017, which grants wide-ranging rights to consumers over their own data, starting with the banking sector including open banking, and to be followed by the energy and telecommunications sectors.⁸³ CDR is intended to make it easier for consumers to have more extended access rights to their data and to facilitate comparing and switching between different services.

(95) In Turkey, the foundations of the open banking transition were laid with the 11th Development Plan prepared by the Presidency of Strategy and Budget.⁸⁴ The 11th Development Plan includes striking targets for fintech. The prominent ones may be listed as follows:

- Making use of international best practices to support the formation of a secure fintech ecosystem that provides equal opportunities to the firms
- Creating the roadmap for advancing the fintech ecosystem in Turkey
- Creating a regulation test field and an industry test field
- Ensuring legislative harmonization with the EU Payment Services Directive 2 in order to strengthen the legal infrastructure for open banking.

(96) In line with the vision of the 11th Development Plan, the legal infrastructure for open banking applications was created with the “Law no 7192 Amending the Law on Payment and Securities

⁸¹ PWC (2018), “The Imminent Arrival of the Age of Open Banking: A shift to the platform business model in banking”, <https://www.strategyand.pwc.com/jp/ja/publications/periodical/strategyand-foresight-16/sf16-02e.pdf>, p.6, Accessed: 23.01.2021

⁸² PWC (2020), p.29

⁸³ For additional information see: <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr0#:~:text=Project%20overview&text=On%2026%20November%202017%2C%20the,and%20control%20over%20their%20data.&text=Consumer%20data%20relating%20to%20mortgage,shared%20after%201%20November%202020,> Accessed: 03.05.2021

⁸⁴ See. <https://www.sbb.gov.tr/wp-content/uploads/2019/07/OnbirinciKalkinmaPlani.pdf>, Accessed: 27.03.2021

Settlement Systems, Payment Systems and Electronic Money Organizations and Other Laws” (Law no 7192). The process leading to the amendment in question can be summarized as follows: first, Act no 6493 patterned after the PSD1 in the EU was put into effect in 2013, and concepts such as payment systems, payment service providers, payment organizations and electronic money organizations were introduced into the legislation. The Law no 6493 empowered the Banking Regulatory and Supervisory Authority (BRSA) with relation to payment service providers, payment organizations and electronic money organizations, and the Central Bank of the Republic of Turkey (CBRT) with relation to payment systems and securities settlement systems.

- (97) However, it later became necessary to update the Law no 6493 to harmonize it with the PSD2 regulation adopted in the EU in line with the developments in the payments services field, and the Law no 7192 made radical amendments to the Law no 6493 in order to meet this need. The relevant amendments brought the dual regulation and control mechanism bringing the CBRT and BRSA under a single roof, with CBRT becoming the single competent authority in this field to a large extent. In addition, the same amendment set up the legal infrastructure for the establishment of the Association of Payment and Electronic Money Institutions of Turkey (PEMIAT). Adopting PSD2 as its source legislation, the amendment added the “provision of consolidated account information” and “payment order initiation” services to the law in the field of open banking.
- (98) While the Law no 7192 established the legal infrastructure of open banking, technical matters concerning the field were regulated with the “Regulation on Banks’ Information Systems and Electronic Banking Services,” which was published in the Official Gazette dated 15.03.2020 and numbered 31069. Similarly, technical and operational processes concerning those matters falling under the jurisdiction and competence of the CBRT in the field of open banking were addressed in detail with the “Regulation on Payment Services, Electronic Money Issuance and Payment Service Providers” and the “Communiqué on Data Sharing Services in the Field of Payment and Electronic Money Organizations’ Information Systems and Payment Services of Payment Service Providers,” which were both published in the Official Gazette dated 01.12.2021 and numbered 31676. Article 8.1 of the Regulation concerned stipulates that if one payment service provider wants to utilize the payment account services and the infrastructure services related to the payment services offered by a different payment services provider, then the latter is obliged to provide these services to the requesting payment services provider under similar conditions to those offered to its other commercial customers, business partners and other payment service providers it does business

with, with the obligations stemming from the legislation and the security, operational and technical requirements reserved. Article 59.5 of the same Regulation states that all payment service providers with payment accounts must provide the relevant infrastructure to all requesting authorized payment service providers to offer account information provision and payment order initiation services for its customers' accounts.

(99) In Turkey, another current strategy document on open banking that must be mentioned is the Economy Reforms Action Plan published by the Ministry of Treasury and Finance on 23.03.2021. The prominent points in the Action Plan concerning fintech may be listed as follows:

- Setting up an authorized structure to provide the necessary coordination and cooperation in order to lead the development of the fintech field, and preparing a Fintech Strategy Document which will determine a roadmap for the regulations supporting the development of the sector
- Providing fintech organizations operating in the payments field with access to the payment systems operated by the CBRT as well as to the public databases
- Ensuring that payment and electronic money organizations are represented at the ICC
- Setting up a “regulation test field” for payments in order to reinforce Istanbul Financial Center as a global center in fintech
- Building a Finance and Technology Base at the Istanbul Financial Center aimed at supporting fintech enterprises
- Enabling digital (branch-free) banking licensing
- Setting up the economic, technological and legal infrastructure for digital money
- Implementing equity- and lending-based crowdfunding applications to help innovative companies access funding

(100) Among the goals listed above, “providing fintech organizations operating in the payments field with access to the payment systems operated by the CBRT as well as to the public database” indicates that the scope and depth of the practices involving the access of nonbank financial institutions into payment systems will increase in the future. As a matter of fact, CBRT's press release of 09.07.2021 announced the implementation of the necessary technical preparations and regulations aimed at allowing the participation of payment and electronic money organizations

falling under the Law no 6493 in addition to the banks in the brand new 24/7 instantaneous payment system called Instantaneous and Continuous Transfer of Funds (FAST), which was developed by CBRT's internal resources and put into service on 08.01.2021, and that participation requests were being received. The same press release also stated that the integration of payment and electronic money organizations in the FAST system would clear the way for competition and innovation in financial technologies, making significant contributions towards digital economy goals.⁸⁵ In the future, it is expected that there will be a rise in the number of regulations concerning the formation of the open banking policy as a whole, due to new players gaining access to the various banking infrastructures such as the FAST system.

- (101) At this juncture, the creation of secondary regulations in Turkey on open banking and of the standards for data sharing will determine how the relationship between the incumbents in the market and new players will work. In the current situation, the technical and economic costs arising from the fact that fintech companies integrate separately with each bank under different standards in order to access their banking infrastructures in the unregulated areas, allowing these companies access to various infrastructures and data pools under standards which do not change between banks and which are determined by regulatory authorities will contribute to the development of competition in the market by reducing the operational costs of fintech companies significantly and by facilitating interoperability between different systems.
- (102) Additionally, secondary regulations to be issued will prevent conflicts between the parties by determining who will bear what portion of the costs involved, depending on the data flow realized under open banking and on the integrations established. Moreover, as another issue that must be taken into account in open banking regulations, it is important for maintaining competition in the market to set up rules that aim to prevent the sharing of commercially strategic information that could lead to anti-competitive coordination between rivals during data transfer.
- (103) As a result, regulatory authorities as well as competition authorities own various tools to prevent exclusionary conducts performed by incumbents towards new players in the market. Certainly the most effective of these tools involves establishing comprehensive rules that shape the activities of the sector players. In that sense, regulatory rules which apply to the whole sector and which

⁸⁵ For the text of the press release see: <https://www.tcmb.gov.tr/wps/wcm/connect/13ed79e7-635d-4473-9137-a471f8f3a932/DUY2021-28.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-13ed79e7-635d-4473-9137-a471f8f3a932-nGaX9Ut>, Accessed: 03.10.2021

regulate the access of nonbank third parties to fundamental banking infrastructures increase competition in the financial markets, including the payment services market, and thereby allow consumers to gain more benefits from innovative services. Though the “PSD2” and the “Open Banking Initiative” are model implementations in that respect, it is important for each country to create regulations in light of the specific features of its own payments ecosystem.

2.3. Regulatory Framework

2.3.1. Existing Regulatory Rules in the Sector and Innovative Transformation

- (104) The developments observed in the financial sector in general and payment services in particular make it necessary for the regulatory authorities to review their approach to date and implement new regulations that are in line with the dynamics of the market. In fact, since products and services originating in the fintech sector where technology has a significant impact do not always fit in with the existing regulatory framework, there are questions raised concerning conventional regulations in this field. Currently, regulatory rules which became more strict following the 2007–2008 global economic crises and which prioritize maintaining financial stability can complicate the operations of fintech companies that serve to form alternative channels in the market and assume different roles than banks.
- (105) Indeed, applying the same rules put into effect in consideration of “too big to fail” financial organizations which could cause macroeconomic problems due to the chain effects of their failure, to the activities of fintech companies which currently have a limited area of operation and which could pose only a small risk for the financial system, negatively impacts innovation and variety in the market. In addition, since the financial sector and the payment services sector are among the highly regulated sectors, problems in those sectors stemming from regulatory rules are felt a lot deeper than others.
- (106) Understanding that the current regulatory rules are insufficient to respond to the fintech-driven transformation in the markets have led the authorities in many countries to adopt new rules which take the developing technology into account and which are in compliance with the contemporary market dynamics. However fintech is a dynamic field with rapid changes in products and services, new types of players have begun to operate in the market, and the effects of the innovative products on the financial system have not yet been experienced; all of which complicate the work of the regulatory authorities in determining the ideal policies and rules in this field.

(107) The main concern for competition law is related to the construction of a market structure that allows all players in the market to compete under fair conditions, while regulatory authorities are mainly concerned about ensuring financial stability. In that sense, it may be said that there is a delicate balance in sector regulation between pursuing innovation and ensuring financial stability. The current regulatory rules were created in response to the potential risks posed by the banks on the financial system, and applying them to nonbank new players in the market could distort this delicate balance and interrupt innovation in the market by preventing new entries. On the other hand, granting immunity to new players from all regulations could ultimately endanger financial stability, while distorting competition in the market to the disadvantage of incumbent players. At the same time, security vulnerabilities that might arise from that would increase regulatory authorities' concerns about payment security and consumer protection in the financial sector.

(108) The problems caused by the conventional regulatory framework of the financial sector for new players in the market and new types of business flows can be collected under three main categories. These are: new types of services and products falling out of the scope of the regulatory rules, regulatory rules being unsuitable for the characteristics of new types of services and products, and lastly regulatory rules being too extensive for new types of products and services.

2.3.2. Problems Stemming from the Lack of Regulatory Rules

(109) Many services provided by the fintech companies in the market that benefit from the opportunities provided by technology have features never experienced by consumers before. For instance, peer-to-peer (P2P) loan platforms that bypass bank mediation in loans, equity crowdfunding platforms that allow raising funds without making use of capital market instruments or electronic money accounts that reduce consumers' dependency on banks in the payment services field may remain outside the scope of the current regulations that were prepared in consideration of the loan, deposit and payment systems mostly operated by banks before.

(110) This situation makes it harder for incumbents to compete with new players operating via different business models and falling outside the scope of regulatory rules in the downstream market, since the former have to comply with the limitations arising from the regulatory rules and incur the costs of compliance. For instance, banks' activities are subject to strict requirements due to various regulations, including those that prevent the disclosure of consumer secrets acquired

during their operations,⁸⁶ qualification conditions concerning the IT infrastructure of the banks,⁸⁷ limitations concerning the fees and commissions determined by the banks⁸⁸ and minimum capital adequacy criteria.

- (111) Some fintech companies which compete with banks in the downstream market and provide value added products and services to the consumers through business models falling outside the scope of the existing regulatory framework affect the financial system by their operations in a limited manner. They can sometimes cause concerns, though not to the same extent as the banks, related to financial stability and consumer protection. In that sense, it is important to enrich the existing regulations with rules aimed specifically at the new types of business flows in order to ensure that the incumbent players can compete with the new players under fair conditions and to maintain the goals pursued in the regulation of the financial markets.
- (112) In addition, regulatory rules that take both the stability of the financial system and the preservable individual interests of the consumers increase consumer confidence in the financial system. Despite the fact that bank failures due to the banking system crises negatively affected the consumer perceptions regarding the banking system, deepening the regulatory rules of the field and accelerating the banks' institutionalization process allowed the banks to recover consumer confidence to a significant extent.
- (113) On the other hand, it appears that fintech companies have not yet sufficiently won consumer confidence. Though some fintech companies with millions of global users such as PayPal have managed to draw on their experience to overcome the feeling of insecurity on part of the consumers, especially those entrepreneur fintech companies trying to find a foothold in the market suffer from difficulties in gaining consumer trust. In this respect, new players in the market falling outside the scope of the regulatory rules cause another failure in the form of a perception of insecurity on part of the consumers. As a natural result of this perception of insecurity, there is limited switching to innovative products and services, with new business models failing to reach the scale and consumer mass needed for long-term market uptake.

⁸⁶ Eg. Article 73/3 provision of the Banking Law no 5411

⁸⁷ Eg. Article 27/A provision of the Regulation on Debit Cards and Credit Cards

⁸⁸ Eg. CBRT Communiqué no 2020/7 on the Rules and Procedures On the Fees to be Collected from Financial Consumers

- (114) In fact, the recent fraud cases observed in relation to various services marketed without supervision by nonbank players lacking licenses have caused consumers to approach nonconventional business models with extreme caution. In that sense, for example how to spread the risk of default by debtors in the P2P credit model, how to protect intermediating platforms from cyber attacks or how to recoup the losses in case of bankruptcy of these platforms are all issues waiting to be addressed by regulatory rules.⁸⁹ Similarly, for example in a digital wallet service, regulatory rules have become an increasingly obvious need in order to determine how the confidentiality of consumers' card and payment information will be ensured and how to allocate responsibility in case this information is misused.
- (115) Besides, similar to the consumer-protecting guarantees offered for some activities of incumbent undertakings, it is important to provide guarantees to protect the consumer for some activities conducted by fintech companies. For instance, under the "Regulation on Premiums to Be Collected by the Deposit and Participation Funds Subject to Insurance and by the Savings Deposit Insurance Fund," it is prescribed that losses up to 150 thousand TL suffered by deposit and participation fund beneficiaries shall be reimbursed in case the BRSA revokes the operation authorizations of deposit and participation banks authorized to collect deposit and participation funds; similarly consumers may be encouraged to switch to innovative financial services by providing reimbursements up to a set amount for losses consumers could incur in various innovative financial services provided over online platforms. Article 33.9 of the Regulation on Payment Services, Electronic Money Issuance and Payment Service Providers may be taken as an example on the subject. The provision in question obliges organizations providing certain payment services to take professional liability insurance at a minimum of 1 million TL or to have 1 million TL as collateral. Similarly, Article 34 of the same Regulation sets out the rules and procedures concerning the protection of payment funds⁹⁰, with Article 36 providing a series of measures aimed at compensating the fund holders' rights under the conditions specified in the legislation as well as the legal grounds for this compensation. In parallel and as a fundamental obligation, Article 48 of the same Regulation establishes that the payment service provider is obligated to notify the

⁸⁹ OECD (2015), p.29

⁹⁰ In accordance with Article 34.1 of the Regulation on Payment Services, Electronic Money Issuance and Payment Service Providers, payment funds consist of the total funds collected, for the execution of the transaction, from the customer or from another payment service provider acting on behalf of the consumer by the organization, its branches, agents or a third party service provider acting on behalf of the organization which it holds on behalf of the customer but which are not yet paid to the recipient or to the payment service provider of the recipient.

consumer of his/her rights. In that framework, the payment service provider must prepare an electronic or physical information form which lists the rights of the consumer, in a clear and concise language, designed to be read easily.

- (116) Execution of new generation payment methods and other fintech activities under specified standards via regulations to be issued could increase the trust of not only consumers but also banks and other incumbent financial players towards the new nonbank players in the market. Minimizing the concerns of third party risk could increase cooperation between the incumbents and fintech companies, thereby improving the access of fintech companies to the capital and financial infrastructures they need.
- (117) The Law no 6493 is an example of the regulations adopted in Turkey in order to eliminate the gap stemming from the absence of regulatory rules for new types of services in the payment services field. This Law regulates the activities of payment organizations and electronic money organizations as nonbank financial organizations, and establishes rules to protect the consumers and financial stability specifically for these activities. Similarly, thanks to the Regulation on Payment Services, Electronic Money Issuance and Payment Organizations and Electronic Money Organizations and the Communiqué on Data Sharing Services in the Field of Payment and Electronic Money Organizations' Information Systems and Payment Services Providers, activities of payment and electronic money organizations have been clearly regulated and the groundwork for consumer confidence in these organizations have been laid.
- (118) Another example for regulations on the subject is the “Draft Regulation on the Operating Principles of Digital Banks and on Service Model Banking,” on which the BRSA requested the opinions of all shareholders. The aforementioned regulation addressing the rules digital banks will be subject to as well as the fundamentals of the service model banking is expected to set out the rules for the new business models emerging in the banking and finance fields, thus establishing consumer confidence in internet-based banking products and services. On the other hand, Article 11 of the draft regulation includes a minimum capital requirement of 1 billion TL, which may constitute a barrier to entry. However, in light of the fact that digital banks will conduct activities that would pose a risk on the financial system, such as deposit collection and credit allocation, it is important that the minimum founding capital is set at a sufficient level. In that context, market entry may be facilitated if the final version of the regulation specifies a lower minimum capital requirement at the beginning and requires capital increase depending on the scale of the activity conducted.

(119) In order to ensure that the and new technologies are adapted to the market correctly, actors in the financial services industry must also be the shareholders of this effort. In other words, in addition to the regulations mentioned above which will be/are expected to be introduced by the government, industry shareholders must take the necessary steps to meet the needs of the sector. In case these steps are taken, actors in the financial services industry are forced to revise themselves due to the changing customer choices, service mentality and technologic innovations and so the change can be handled better. On the other hand, the existence of specific self-regulation in the sector will guide policy-makers and support regulations. Thus, the existence of organized associations and unions is important. This is because such associations/unions can contribute to the strategic development of financial sector, allowing the sector to take effective and coordinated steps in the fields of organizational structure, boundaries of the advertisement and marketing methods, industry ethics and adoption of new developments. In fact, as mentioned in the previous chapters, a positive step in this area are the activities of PEMIAT, which is an organization established in order to take various actions aimed at providing professional development in the field of payments and ensuring the development of activities in this field by increasing the accumulation of knowledge on the sector.

2.3.3. Problems Stemming from the Unsuitability of Regulatory Rules to New Technologies

(120) Another issue stemming from the regulatory framework which disrupts innovation in the market is the fact that the current regulatory rules are not suitable to the characteristics of new business models. Especially those rules which do not allow new technologies or limit the development of existing technologies end up imprisoning the sector within existing business flows. For instance, regulations requiring that a loan relationship must be established via contracts with wet signatures or specifying that certain financial services must be provided via face to face interviews at the branches complicate the activities of fintech companies which aim to offer financial services through various innovative business models, including those provided over online platforms.⁹¹

(121) In this sense, it is important to re-evaluate regulatory rules so as to encourage the development of new technologies. If regulatory rules allow methods to ensure that digital business models find a place in the market, this would facilitate offering innovative products and services to consumers.

⁹¹ CBC (2017a), p.20

For example, encouraging financial organizations to utilize digital identity verification methods in their customer acquisition processes would accelerate the provision of a larger number of innovative services to consumers. Similarly, since consumer consent is a pre-requisite of data sharing with third parties in open banking procedures, regulatory rules that allow digital technologies in which the relevant customer can grant this consent remotely will facilitate the provision of value added services through the open banking system, proliferating these services to a larger audience.

- (122) Specific to Turkey, the “Republic of Turkey ID Card Electronic Identity Authentication System Regulation,” put into effect on 22.10.2020, provides significant opportunities in this area. The establishment of the legal infrastructure for electronic identity authentication enables the provision of innovative services in the Turkish financial system through the use of digital identity authentication methods.⁹² On the other hand, the provision 6/A, published in the Official Gazette dated 24.02.2021 and numbered 31405, and appended to the Regulation on the Measures Concerning the Prevention of Laundering of Crime Revenues and Funding of Terror, specifies that under certain circumstances remote ID authentication can be made for transactions involving financial flow, such as electronic transfers, using methods that would allow identity authentication without being face to face. Based on the provisions of the relevant Regulations, Financial Crimes Investigation Board (FCIB) General Communiqué (Item No. 19) was issued by the Ministry of Treasury and Finance, which was published in the Official Gazette dated 30.04.2021 and numbered 21470 and became effective on 01.05.2021, specifying the rules and procedures concerning the remote identification methods to be used when authenticating the identities of the customers. In this respect, it may be said that the regulation has opened the door for a procedure that enables both face to face and remote ID authentication methods in the transactions with financial organizations over electronic channels.
- (123) In addition, “Law no 7247 Amending Certain Laws and Statutory Decrees,” issued on 26.06.2020, amended Article 76.2 of the Banking Law no 5411, providing that under certain circumstances, the relationship between the banks and their customers could be arranged through contracts which are signed via methods operating over an IT or electronic communications device, allowing the authentication of the customers’ ID. The BRSA issued the Regulation on the Remote Identification

⁹² For instance, the Board decision dated 29.07.2021 and numbered 21-36/515-BD examines a joint venture established to provide payment services through the use of the Republic of Turkey ID cards.

Methods to be Used by the Banks and the Online Establishment of a Contractual Relationship which became effective on 01.05.2021 and set out the rules and procedures concerning the remote identification methods that can be used by the banks in acquiring new customers and authenticating customer identities, as well as concerning the secure operation of these methods.

- (124) On the subject of remote customer acquisition by nonbank payment service providers, a provision appended to Article 12.3 of the Law no 6493 with the Law no 7247 Amending Certain Laws and Statutory Decrees provides that, under certain circumstances, the framework contracts containing the rights and obligations between the parties in a payment service could be concluded via methods operating over an IT or electronic communications device, allowing the authentication of the customers' ID. On the other hand, technical issues on the subject are addressed via the Regulation on Payment Services, Electronic Money Issuance and Payment Service Providers and the Communiqué on Data Sharing Services in the Field of Payment and Electronic Money Organizations' Information Systems and Payment Services Providers.⁹³
- (125) Similar to the regulatory rules that set the ground for digital identification methods, another example for technology-friendly regulations is the recent "Regulation on the Generation and Use of the TR QR Code in Payment Services". The Regulation in question provides the rules and procedures for the use of QR codes in payment services and aims at providing depth to the contactless payment technologies which have recently entered an upwards trend.
- (126) Ultimately, similar to digital identification and QR payment methods, establishing rules suitable for different types of business models in the provision of financial services based on developing technologies will accelerate the development of fintech as well. In addition, regulations which allow the Turkish financial sector to benefit from the blockchain and cloud computing technologies, which are being increasingly used in the financial field globally, can significantly reduce the cost of providing financial services to consumers. At this juncture, it is important to ensure that all strategic measures are taken to eliminate any security concerns that may arise when integrating the aforementioned technologies into the financial system, including blockchain and cloud computing, which have the potential to radically change the existing business flows.

⁹³As mentioned above, in addition to the CBRT and BRSA regulations concerning methods of remote customer acquisition, there are also various FCIB regulations, including the Regulation on the Measures Concerning the Prevention of Laundering of Crime Revenues and Funding of Terror.

- (127) On the other hand, the rapid transformation of technology requires that regulatory rules be based on principles instead of focusing on certain technologies. To that end, rather than a casuistical approach defining exactly what technology to use for storing a customer's card information in a digital wallet or card information storage service, using an inclusive approach which draws the framework of which objective security standards should be met in storing this information would ensure that the regulatory rules established are longer lasting. As another example, regulations which allow biometric authentication methods in addition to electronic signature paired to specific devices for methods of remote customer acquisition would be the products of an inclusive approach. In fact, it is possible to say that the impact of the relevant approach in our legislation has been increasing. For instance, Article 41.4 of the Regulation on Payment Services, Electronic Money Issuance and Payment and Electronic Money Organizations, titled "Framework contract," states that payment service providers can collect the information and documents they need to receive from the customer in relation to the framework contract to be concluded via remote communication methods such as mail, fax, e-mail and online video chat or other innovative methods as provided by the technology of the day; thus, this provision observes the technological inclusivity principle by leaving the door open to contemporary technologies rather than focusing on certain ones.
- (128) One of the current technologies which ensure secure storage and management of data is the blockchain technology. Explanations concerning the blockchain technology are given in Box 3:

Box 3: Blockchain Technology

While not as familiar as the cryptocurrency concept to individuals, blockchain is the underlying technology of cryptocurrencies, and once it was understood that it could be used in many areas of the economy, it has managed to attract the attention of nearly all parts of the society, with financial markets leading the charge.*

Basically, blockchain is defined as a technology designed to securely store and manage data containing value (money, IDs, securities, etc.).** The operating mechanism of the technology in question is based on recording the transactions executed over a distributed network into blocks in accordance with a specified protocol, with new blocks being added when the transaction volume of the last block is full, thereby creating the blockchain. The most important factor separating the blockchain technology from other technological applications built in the form of a network system is its distributed nature. This means that instead of a single hub, a blockchain network consists of distributed data centers, and that all transactions executed on a blockchain network can be recorded on these data centers simultaneously and conjugately. Thus, this structure provides both transparency and security to the blockchain technology. At the same time, peer-to-peer/end-to-end transactions may be executed over the blockchain network without needing a third party or organization.

Thanks to its aforementioned features, blockchain technology has the potential to become one of the main driving engines of innovation in the financial sector. In addition, thanks to its structure suitable for executing end-to-end transactions, blockchain technology can cut out third-part financial organizations that serve as intermediaries in various fields such as money transfer, lending, crowdfunding, etc. Moreover, setting up blockchain-based financial services can contribute to the ecosystem in terms of efficiency and speed, as well. This is because unlike international money transfer transactions which have a high cost and can take a few days to complete, money transfers over the blockchain network can be made for a smaller cost and in a shorter time, even on official holidays.***

The important point of note here is how to add innovative products and services developed with the blockchain technology as a new element into the competition environment between the financial technology companies and the traditional intermediary organizations. As a result, many financial and technology companies today are trying to find solutions to the existing problems and improve the processes. It is expected that the R&D activities will lead to a diversification of the business models in the field, paving the way to innovative solutions in trade, payments and other financial transactions.

*SAĞLAM B. (2019), "Dijitalleşmede Yeni Aşama: Blokzincirler ve Rekabet", *Competition Journal*, 20(1), June 2019, p. 6

**DURBİLMEZ, S. E. (2018), "Blokzincir Teknolojisinin Finans Sektöründeki Yeri ve Uygulamaları", Marmara University Institute of Social Sciences, Master's Thesis, p. 28

***DURBİLMEZ, S. E. (2018), p. 64

2.3.4. Problems Stemming From Regulatory Rules Being Too Extensive

- (129) Stemming from the regulatory framework related to the activities of financial organizations, the last issue that restricts the development of fintech is the fact that some of the existing rules are excessively extensive for the new players in the market. Banks have very large spheres of activity and a significant impact on national economies, and regulations issued with these financial organizations in mind lead to a disproportionate burden on the nonbank new players in the market if they are applied directly to fintech companies which have a limited volume of activity in one or several types of services. In comparison to banks, fintech companies pose a much smaller systemic risk on the financial system and, under most circumstances, subjecting these companies to the same regulations with banks at the retail level leads to costs higher than fintech companies can cover.
- (130) Fintech companies do not hold banking licenses, they are not authorized to collect deposits, issue loans or directly access settlement systems, and they generally offer value added products and services thanks to their access to the existing infrastructures of the incumbent undertakings, thus they are deprived of the advantages of economies of scale and scope. On the contrary, banks are active in many groups of financial products and services at a large scale. This means that there is a significant difference between the ratio of the compliance costs of a bank to its total revenues and the ratio of the compliance costs of a fintech company to that company's total revenues.⁹⁴
- (131) Extensive and strict regulatory rules ultimately create barriers to entry in financial markets, especially in the field of payment services. On the other hand, costs incurred for compliance with regulatory rules may become sunk costs in case the undertaking decides to exit the market, which reduces the incentives of undertakings to enter the market in the first place.
- (132) Thus, adopting rules that prescribe obligations proportionate to the risk financial actors may pose on the system gains precedence. In that context, adopting rules differentiated according to the subcategories of financial activities rather than a uniform approach and creating an asymmetric regulatory framework based on the type and scope of the activity concerned will allow new players in the market to compete with incumbents under fair conditions. In fact, establishing

⁹⁴ DAL, C. (2020), *Rekabet Hukuku Perspektifinden Finans Sektöründeki Yıkıcı İnovasyon ve Finansal Teknolojiler*, Competition Authority Expert Thesis, Ankara, p.29

progressive obligations based on the risks of the specific activities to the financial system will ensure that the regulatory rules fall under equitable principles.⁹⁵

- (133) Article 12.5 of the Law no 6493 may be given as an example of the asymmetric regulatory approach, which involves determining the scope of the regulation according to the amount of risk that the activity conducted may pose to the financial system. In accordance with the relevant provision, if the total size and impact area of certain activities which are not considered under the category of payment services as per the Law no 6493 reach the level determined by the CBRT, these activities can be considered payment services under the relevant Act.
- (134) A specific version of the asymmetric regulatory approach is the gradual licensing regime. As mentioned before, it is necessary to hold a banking license to engage in certain activities such as deposit collection, loan issuance and direct access to the settlement systems, which increases the dependency of fintech companies on incumbents to access fundamental banking infrastructures. For instance, failing to get a banking license for falling short of meeting the relatively high minimum capital adequacy requirements under the provisions of the Banking Law no 5411 and BRSA practices mean that fintech companies can only access many infrastructures they need to offer value added services through the banks. This makes it easier for the banks to engage in exclusionary practices against new players. Even though competition law tools and regulatory interventions such as open banking try to prevent exclusionary conduct in the market, some structural remedies can prove more effective in increasing the competitiveness of new players in the market. In that framework, for instance, a scaled-down licensing system which allows fintech companies direct access to settlement systems within certain limitations can facilitate more efficient provision of innovative products and services in the market.
- (135) There are also consumers who cannot get loans from the banks due to various reasons including the lack of a positive credit history, lack of a mortgageable asset, desire to avoid high interest rates or documentation costs. So, establishing a licensing regime with looser requirements aimed at fintech companies that wish to offer services over online channels without incurring physical infrastructure costs such as a branch network and granting them limited deposit collection and

⁹⁵An example of the asymmetric regulatory approach is the legislation concerning capital markets. In that legislation, regulation on investment instruments are reduced to sub-categories such as real estate investment trusts and funds, infrastructure real estate investment trusts, securities investment associations, private pension funds and exchange traded funds, and the procedures and principles for the activities under the relevant sub-categories are addressed by separate communiqués.

loan issuance authorizations as compared to a banking license would enable those customers without financial access to integrate into the financial system.⁹⁶ However, it is known that regulatory authorities have concerns over deposit collection by nonbank financial organizations with regard to maintaining financial stability.

(136) At this juncture, one concrete step for Turkish legislation would be updating Articles 14 and 20 of the Law no 6493 as well as Articles 4 and 5 of the Regulation on Payment Services, Electronic Money Issuance and Payment Service Providers to bring them in line with current market conditions. These regulations state that electronic money organizations and payment organizations may not pay interests to the payment accounts and neither can they provide any benefits to the payment account holder based on duration or amount. However, as exemplified in many countries, based on the developing fintech ecosystem, nonbank organizations are allowed to implement business models which provide some return to their customers under certain conditions and on a limited scale, which could bring giving some leeway to nonbank organization into question in our country as well.⁹⁷ Allowing electronic money and payment companies to provide various benefits to their customers (installments, loyalty programs, reward points, etc.) subject to objective standards that would eliminate all regulatory concerns including financial stability and customer security can make it easier for new players in the payment services field to compete with incumbent players and increase the appeal of new players for the consumers.

(137) In the Turkish financial system, the most significant regulation ensuring that new players are subjected to a scaled-down licensing regime for certain activities is the Law no 6493 mentioned above. With this Law, payment and electronic money organizations in addition to the banks are accepted as payment service providers.⁹⁸ Within the framework of the relevant Law and its secondary regulations, operating as a payment and electronic money organization requires a license, and the CBRT is charged with granting these licenses. Another example for the diversified

⁹⁶ One step in that direction is the "Draft Regulation on the Operating Rules of Digital Banks and on Service Model Banking," on which the BRSA requested the opinions of the shareholders.

⁹⁷ South Asia countries are observed to have a globally large market share in the use of micro finance instruments under various licensing regulations. It must be noted that these tools are especially focused on certain consumer groups (e.g. female entrepreneurs, SMEs, etc.) and have been successful in terms of growth and return. See Citi GPS (2020), Banking The Next Billion Digital Financial Inclusion in Action, <https://ir.citi.com/pN%2B0lBahjzmpHvliXxcaHdn%2B1kONN7NB7l3YkZlQvpsbYl%2Bri10LJyscLIg8hM%2Fo0LI0CKhz8l0%3D>, p.94-100, Accessed: 13.08.2021

⁹⁸ According to Article 13.1 of the Law no 6493 payment service providers are as follows: Banks falling under the Law no 5411, electronic money organizations, payment organizations, Posta ve Telgraf Teşkilatı Anonim Şirketi (Post Service) Article 13.2 provides that persons other than CBRT and payment service providers cannot offer payment services.

licensing regime is the “Crowdfunding Communiqué (III-35/A.2)”⁹⁹ issued by the Capital Markets Board (CMB) and put into force after its publication in the Official Gazette dated 27.10.2021 and numbered 31641. The relevant regulations provide the principles to be applied in crowdfunding¹⁰⁰ activities, and set out the establishment and listing conditions for crowdfunding platform, investment limits and set the principles for fund raising, campaign process, where the funds may be used and the characteristics of the venture firms. The relevant regulations adopt different rules for the crowdfunding method which has a more flexible service model than public offering processes.

2.4. Market Dynamics

- (138) Historically, with respect to financial services markets which are considered to have high barriers to entry, developments in the field of fintech and the emergence of fintech companies may be seen as challenging these barriers. In the face of barriers to entry, characterized with incumbents owning concentrated distribution networks and high levels of customer data and with customers facing high switching costs, fintech companies are able to create new alternatives through digital payment platforms and mobile applications, attracting customers with certain activities which cannot be duplicated by the incumbents.¹⁰¹ For instance, in the face of incumbents’ unique advantage of consumer data, fintech companies try to compete by developing new data processing methods to process small amounts of data more efficiently. Another feature of the financial markets with disruptive behavior is that disruptive technologies have lower associated brokerage fees than older technologies. Consequently, consumers may prefer new lower-cost alternatives, as can be exemplified by P2P loaning.
- (139) In that sense, new technologies always make it possible to encounter situations where incumbents and existing markets change rapidly or are eliminated. Therefore, as observed in technology markets, a relatively small undertaking dominating the market thanks to an innovation is a possibility that is partially valid for fintech as well. Of course, even if such a situation does occur, it is hard to say that the market power in question would be long-term. This is because it is always

⁹⁹ The Crowdfunding Communiqué (III-35/A.2) repeals the Equity Crowdfunding Communiqué (III-35-A.1).

¹⁰⁰ Article 3/1(z) of the Capital Market Law no 6362 defines crowdfunding as *the collection of funds from the public through crowdfunding platforms in order to fulfil the financing needs for a project or venture capital firm, under principles determined by the Board, without being subject to the provisions of this Law with respect to investor compensation.*

¹⁰¹ VEZOSSO, S. (2018), “Fintech, Access to Data and the Role of Competition Policy”, V. Bagnoli (ed.), in *Competition and Innovation*, Scortecci, São Paulo, p.32-33

possible for a rival to become dominant via another innovative technology.¹⁰² But, the fact that technology markets are dynamic does not mean that these markets lack their own specific barriers to entry. In fact, despite all of the observations above, it may be said that significant entry barriers still exist within the fintech framework. Some of the challenges faced by fintech companies, and especially some of the barriers to entry can be attributed to the regulatory framework, as mentioned above, while some problems are caused by the market dynamics.

- (140) It is of course impossible to address the various barriers to entry listed below separate from the exclusionary conduct by incumbents. In fact, the existence of barriers to entry facilitates incumbents' exclusionary conduct. For example, it would be harder for fintech companies to re-enter a market with high barriers to entry after being excluded from, which makes exclusionary conduct more profitable for incumbents in the long-term. On the other hand, incumbents' strategies can affect to prevent the elimination of barriers to entry throughout the market.
- (141) Many issues stemming from the market dynamics may be observed, preventing the development of fintech company activities. In fact, among the examples for this are fintech companies' lack of a potential customer portfolio based on customer loyalty, lack of data they can use to reach potential customers, lack of brand awareness compared to incumbent players, and incurring relatively higher capital costs. It is also possible for fintech companies to implement strategies aimed at utilizing the advantages held by incumbent players as listed above. An example is where some fintech companies who do not wish to be subjected to the aggressive strategies of incumbents limit their activities and enter into various collaborations with the incumbents.¹⁰³ In this way, incumbents can benefit from the IT infrastructure owned by the fintech companies as well as from the regulatory arbitrage, while fintech companies can make use of the brand awareness, scale economies and distribution channels of incumbent players.
- (142) Conversely, the importance of fintech companies to have the opportunity to operate in the market as independent undertakings, especially from the perspective of the competition authorities, should be obvious. In that framework, barriers stemming from market dynamics can be addressed under two categories, namely those related to consumer behavior and those related to the market structure.

¹⁰² BEEK (2017), p.5

¹⁰³ OECD (2020b), p.21

2.4.1. Barriers Related to Consumer Behaviors

- (143) One of the biggest challenge in financial markets concerning the marketing of innovative products and services is how to gain customer confidence. In fact, consumers who want to ensure that their savings are secure, their investments are safe and their payments are made in time place trust in incumbent banks. This is because these banks have been operating for decades or even centuries, and are currently deemed to be highly-trusted institutions by the consumers, despite the crises occasionally experienced in the banking system.¹⁰⁴ In that framework, the fact that incumbent banks with strong bonds with the consumers have been offering services similar to those offered by the fintech companies wishing to enter the market create a significant barrier to entry.
- (144) In markets related to financial technologies, ensuring consumer confidence is directly connected to financial and digital literacy.¹⁰⁵ For example, in recent years when incumbent banks have started to offer many services over digital channels, new-generation banks or fintech companies that only offer their services online still face significant problems in gaining the trust of their depositors.¹⁰⁶ A study conducted in Canada to reveal why fintech was developing so slowly found that only 8% of the population was using financial services not offered by the incumbents.¹⁰⁷ One of the reasons for this was the fact that consumers lack sufficient information on the existence and advantages of alternative services. Moreover, the study noted that consumers were generally happy with the services offered by the incumbents and that there was a strong, confidence-based relationship between the incumbent banks and consumers. There are examples showing that the incumbent banks are content with the status quo and do not particularly wish to make big changes to their existing technological infrastructure. On the other hand, in some countries including Turkey, incumbent banks are in a rapid transformation towards digitalization and this somewhat reduces the need of consumers for different alternatives. In the contrary situation that is in

¹⁰⁴ CBC (2017a), p. 17

¹⁰⁵ PCA (2018), "Technological Innovation and Competition in the Financial Sector in Portugal", http://www.concorrenca.pt/vEN/Estudos_e_Publicacoes/Estudos_Economicos/Banking_and_Insurances/Documents/2018%20%20Issues%20Paper%20Technological%20Innovation%20and%20Competition%20in%20the%20Financial%20Sector%20in%20Portugal.pdf, p.24, Accessed: 29.01.2021

¹⁰⁶ OECD (2015), p.5

¹⁰⁷ CBC (2017b), "Highlights from the Competition Bureau's FinTech Workshop: Driving Competition and Innovation in the Financial Services Sector", [https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/FinTechReport-Workshop-Eng.pdf/\\$file/FinTech-Report-Workshop-Eng.pdf](https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/FinTechReport-Workshop-Eng.pdf/$file/FinTech-Report-Workshop-Eng.pdf), p.4, Accessed: 27.01.2021

countries where the banking system is not developed or innovative fintech is spreading more quickly.

- (145) Adopting certain regulations and setting quality standards concerning the activities of fintech companies, as well as establishment of industry organizations such as the PEMIAT in Turkey could contribute to raising customer confidence. Similarly, measures aimed at increasing digital literacy could also present a similar effect. Ultimately, as consumer information and awareness on fintech increase, demand for financial services offering more innovative solutions can increase as well and the aforementioned barriers to entry could be somewhat reduced. On the other hand, as consumers have more information on the strict security requirements introduced by the PSD2 and similar regulations, their confidence in fintech services is expected to increase.¹⁰⁸ Similarly, the secondary regulations to be issued by the CBRT in Turkey under the scope of the Law no 6493 should increase consumer confidence in new players by setting security standards for fintech companies' activities.
- (146) The above mentioned points on consumer behavior are valid for the payment services market as well. For instance, some studies show that the movement towards mobile payment solutions is slower than expected, and that many consumers do not yet prefer methods such as mobile wallets since they have more confidence in the payment solutions offered by the incumbents.¹⁰⁹ On the other hand, transition to mobile payment methods is observed to be faster in those countries where the younger population is higher, where cash is more frequently used and where there are more people without any relationship with the incumbent banks. These points are valid not only for consumers, but also for contracted merchants that are on the other side of the transaction. However, especially with the increase in e-commerce transactions, it is expected that the interest in new payment methods will go up, both for the consumers and for the contracted merchants.
- (147) Due to the bilateral nature of payment services, consumers must be convinced to use a new payment method on one hand, while on the other hand contracted merchants must accept payments via these new payment services. Basically, in light of the fact that the cost of credit card payments for merchants is higher than those of other payment methods, it may be said that contracted merchants would have sufficient incentive to accept alternative methods.¹¹⁰ On the

¹⁰⁸ PCA (2018), p.25

¹⁰⁹ CBC (2017b), p.28

¹¹⁰ CBC (2017b), p.30

other hand, consumers may be hesitant to give up some of the advantages of the current payment methods (such as the reward points systems for credit cards). This is because such campaigns do not have visible costs for the consumers. However, it may be said that the costs of these campaigns are reflected on the card accepting costs of contacted merchants and affect the final product price. In addition, organizations that issue high numbers of credit cards can be reluctant to switch to new low-cost payment methods that can serve as an alternative to credit cards, since they do not want to give up the turnover they acquire from items such as interchange fees.

- (148) One of the factors that ensure competition in the markets is the consumers' ability to switch between alternative products and services. This way consumers can access the option that is most suitable for them, while undertakings feel the need to raise the quality of their products and services since they face the risk of losing their customers to rivals. However, high switching costs that arise in the form of fees, fines, etc., may create consumer inertia in the market. Similarly, various risks stemming from experimenting with new financial services could also put off consumers from switching providers.¹¹¹ For smaller undertakings trying to enter the market, these conditions where consumers remain loyal to their existing providers would create significant disadvantages. In the fintech context, consumer inertia may occur where, for example, consumers suffer from confusion and are left unable to access sufficient information to make a choice due to the constant emergence of new services in the market, where incumbents start to offer their indispensable products bundled with their other products, and where the consumers are tied down with long-term contracts.¹¹² The concept of consumer inertia covers not only the final consumer, but also undertakings such as contracted merchants, which are particularly important for payments market.

2.4.2. Barriers Related to Market Structure

- (149) In Turkey, especially sector representatives draw attention to market dynamics operating against fintech companies. The main issues they mention include the following: banks with large IT teams tend to implement all projects within the company; there are insufficient resources and investment due to a lack of venture capital, angel investors and effective incentive mechanisms;

¹¹¹ CBC (2017b), p.17

¹¹² ACM (2016), "How to boost FinTech's contribution to effective competition in the financial sector ?", https://www.acm.nl/sites/default/files/old_publication/publicaties/15926_fintech-call-for-input-final-version-EN.pdf, p.5, Accessed: 29.01.2021

banks and fintech organizations lack an environment and platform for cooperation; there are deficiencies in the policies that supervise the competition between the banks and fintech companies. In Turkey, it can be said that market development is not at the level desired due to a lack of capital, in particular. A big part of this problem stems from the fact that investors are acting cautiously since there is no mechanism to provide them with independently and transparently collected industry data .¹¹³

(150) Another barrier fintech companies may encounter stems from network effects. These effects are created due to the fact that each consumer or product added to a network provides additional benefits to the existing consumers and products in the network, and they are especially relevant for payment systems.¹¹⁴ For example, network effects become important where, instead of using a settlement infrastructure, a payment system executes the payment directly through the bank account of the user (on-us transactions). This is because in order to provide that service the payer and the receiver must be registered with the relevant system. Every new payment receiving party included in the system in this way adds positive externalities for those users currently within the system. Such as system would increasingly attract customers and thus reach a level of market power that would threaten its rivals by creating an ecosystem that is hard to duplicate in the same market. Therefore, it must be noted that, in markets with network effects, there is a high likelihood of exclusion for fintech companies, which would face decreasing profitability even if they lost a small portion of their customers.¹¹⁵ Network effects can possibly lead to even more powerful barriers to entry in markets where consumers prefer to use the platform offered by a single provider (single homing).¹¹⁶

(151) It is also observed that there are barriers to entry against fintech companies in those markets with economies of scale and scope. Fintech companies reach economies of scale when they reach sufficient number of users on both sides of the market, so that they can sustain their operations. Thus, fintech companies that reach economies of scale can maintain in the long-term the profits they acquire as a result

¹¹³ EY (2018), "Türkiye FinTech Ekosisteminin Sürdürülebilir Gelişimi için 23 Öneri", https://bkm.com.tr/wp-content/uploads/2018/02/EY_T%C3%BCrkiye-Fintech-Ekosisteminin-S%C3%BCrd%C3%BCr%C3%BClebilir-Geli%C5%9Fimi-i%C3%A7in-23-%C3%96neri.pdf, p. 19, Accessed: 29.01.2021

¹¹⁴ OECD (2015), p.6

¹¹⁵ ACM (2017), p.28

¹¹⁶ EP (2018), "Competition Issues in the Area of Financial Technology (FinTech)", [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/619027/IPOL_STU\(2018\)619027_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/619027/IPOL_STU(2018)619027_EN.pdf), p.13, Accessed: 29.01.2021

of the cost advantages stemming from their lack of a branch network.¹¹⁷ However, already having a large customer portfolio, incumbents have advantages in reaching economies of scale. Where economies of scale only allow one or two large players to operate, it is clear that fintech companies would have trouble to remain in the market. A similar case can be made concerning incumbent banks reaching economies of scope, since they already provide many different services and have sufficient capital to offer new services without taking large risks. In fact, it can be said that banks have a strong hand in terms of providing new services, due to the fact that they incur common costs for the various services they provide.¹¹⁸ Another large advantage is brought by the fact that banks which reach economies of scope and which provide many different services can offer these services to consumers in bundles.

- (152) Another barrier to the proliferation of new payment methods is the failure to ensure interoperability between payment platforms and devices.¹¹⁹ In a market with many payment methods, consumers may suffer confusion concerning which businesses accept which payment methods. Similarly, business can also have difficulty in managing the infrastructure for accepting different payment methods. Thus, it would be more advantageous for fintech companies to enter the market in an environment where interoperability is ensured with the cooperation of the market players.¹²⁰
- (153) Similarly, the complementarity concept can be addressed within this framework.¹²¹ The complementarity of the products offered by fintech companies means that they can work in harmony with different products offered by the incumbents. For instance, one payment application offered for use in mobile devices by a fintech company becomes valuable for customers if it can be used together with the consumers' deposit accounts or debit/credit cards. Fintech companies do not offer the services concerning payment systems as a whole, but only provide services aimed at one particular stage of that system. That is why complementarity is important for new entrants to maintain their presence. On the other hand, when consumers receive complementary services from banks and fintech companies, these consumers become aware of the fact that various competitive services are offered by fintech companies in the market.¹²² It is exactly for this reason that, rather than the advantages of considering a service by a new company as

¹¹⁷ CBC (2017b), p.17

¹¹⁸ CNMC (2018), "Market Study on the Impact on Competition of Technological Innovation in the Financial Sector", https://www.cnmc.es/sites/default/files/2218346_1.pdf, p.48, Accessed: 29.01.2021

¹¹⁹ CBC (2017b), p. 31

¹²⁰ As can be seen in the "Regulation on TR QR-Code Generation and Usage in Payment Services," prepared by the CBRT, another method is for the regulatory authority to standardize the operation of a payment system and minimize the differences between the players concerning payment method.

¹²¹ ACM (2017), p. 25

¹²² PCA (2018), p. 20

complementary, incumbents may instead focus on the risk that they may face competitive pressure towards their other services in the future and therefore resort to exclusionary conduct.

- (154) One of the most important barriers to entry for fintech companies in the past was their lack of a conventional branch network.¹²³ However, with the spread of internet and mobile device access in recent years, consumers are preferring to instantly execute digital transactions instead of going to a physical branch. As a result, lacking a branch network is increasingly seen as less of a barrier to entry. On the contrary, the lack of a widespread physical branch network provides flexibility and cost advantages to the fintech companies in some ways, and thus sometimes serves as a commercial advantage instead of a barrier to entry.¹²⁴
- (155) The problems fintech companies face with regard to customer data should also be mentioned. For instance, nonbank financial organizations do not always have customers' credit and financial information. These are important for scoring and funding, and they are held by the banks currently working with the customers. Banks own the information created as a result of the account activities of the customers, which gives them significant opportunities to sell other products to their customers and ensure that these customers purchase other services from them as well.¹²⁵

¹²³ CBC (2017b), p. 16

¹²⁴ On the other hand, it is known that some fintech companies have managed to reach the portion of the population with no financial access through the agencies they opened in those regions where banks have fewer branches, gaining a competitive advantage.

¹²⁵ ACM (2017), p. 12

CHAPTER 3

A NEW ASPECT IN FINTECH:

ENTRY OF BIG TECHNOLOGY COMPANIES TO THE MARKET

3.1. General Overview

- (156) Until the past few years, the fintech debate in the context of competition law has been focused on the extent to which non-bank fintech companies with the potential to develop disruptive innovation could find a place in the market, the development of regulations and ex-post interventions against the exclusionary behavior of the incumbents. However, the regulations that aim to make the fintech markets competitive around the world, especially to enable non-bank financial institutions to operate in these markets (as in the EU example PSD1 and PSD2) have also paved the way for big technology companies to enter into the payment services market. For this reason, besides the above-mentioned discussions; there is an increasing debate on the claim that big technology companies will create the real destructive effect with a much greater potential. On the other hand, technology companies state that the main purpose of entering fintech markets is to strengthen their existing ecosystems and ensure that consumers stay in it.¹²⁶
- (157) It is possible to say that competition authorities mostly focus on the competitive structure that develops to the detriment of small companies that want to enter the market. On the contrary, big technology companies are the undertakings that are currently facing investigations due to their dominant positions in many different markets. Also, it is said that they should face tougher competition law sanctions in recent years, especially in terms of data ownership and economies of scale/scope. Therefore, it is clear that there may be different discussions regarding these undertakings of which market entry may lead to negative consequences due to the leverage effect.
- (158) It can be said that big technology companies are involved in financial services in many different countries. For example, technology companies are quite active in terms of virtual assets and

¹²⁶ ACM (2020), "Big Techs in the Payment System", <https://www.acm.nl/sites/default/files/documents/acm-report-on-big-techs-in-the-payment-system.pdf>, p.3, Accessed: 29.01.2021

digital payment methods. In fact, Alipay and WeChat Pay in China, projects carried out by M-Pesa in Kenya and Facebook's Diem project on a global scale are remarkable in this respect. In addition, there are big technology companies that are currently licensed as payment institutions or electronic money institutions, or provide various technical services for payment services in Europe. While eBay and Facebook can be cited as examples for undertakings licensed as payment institutions, undertakings holding electronic money licenses include Amazon, Alipay, Airbnb, Google and Uber.¹²⁷ In addition, it is known that Apple has a payment license in the USA and Tencent has various licenses in China. Although online payments are the first to come to mind about payment services when big technology companies are at issue, payments can be made directly in physical stores like payments made with Apple Pay via NFC (Near Field Communication) technology.

- (159) As it is understood, the entry methods of big technology companies into the payment services market vary. For example, while Apple develops new solutions (Apple Wallet and Apple Credit Card) in collaboration with the incumbents in the financial sector, Facebook develops its own virtual assets as an independent venture. In this sense, it is seen that technology companies aim to provide services at different levels of payment services. Indeed, some of them enable the realization of the payment transaction between the customer and the provider on their own platform through a kind of intermediary activity; moreover, the institutions that issue virtual assets provide a direct service to the customers.¹²⁸
- (160) It cannot be said that the services mentioned above have reached significant market shares yet. The exception is the Chinese market, which is one of the few examples where big technology companies in financial services have achieved an important market share. First of all, it should be noted that mobile payments are very popular in China, reaching 16% of China's gross domestic product.¹²⁹ However, previously, it is known that payment services market used to be very weak in China. Taking advantage of this gap, e-commerce giant Alibaba entered the market with Alipay, an online payment platform. It is stated that Alipay, which provides many services such as financing, insurance and credit scoring in addition to payment services, has more than 1 billion users

¹²⁷ SPEK, L.D. and S. PHIJFERR (2020), "Will BigTechs change the European payments market forever", <https://www.compact.nl/articles/will-bigtechs-change-the-european-payments-market-forever/>, p.15, Accessed: 29.01.2021

¹²⁸ SPEK and PHIJFERR (2020), p. 14

¹²⁹ OECD (2020b), p.14

globally,¹³⁰ mostly from China, and manages the same amount of money as China's four largest creditors.¹³¹ On the other hand, Alipay's biggest rival is Tencent, which is also a technology company and owns WeChat, the most popular messaging app in China. WeChat is used as a valid payment method in workplaces, both online and physically.

3.2. The Factors that Differentiate Big Technology Companies from Fintech Services

- (161) The barriers faced by fintech companies due to both regulations and the structure of the market are given above. Not owning a customer pool and customer data, high capital costs, low brand recognition are among those barriers. Big technology companies do not deal with many of such disadvantages.¹³² On the contrary, big technology companies have a loyal customer portfolio, collect these customers' data, do not have capital problems, and have economies of scope and scale, high level of brand recognition and lobbying power.¹³³ The issues discussed above, such as network effects and economies of scope, should be regarded as favorable variables when it comes to big technology companies because these companies will be able to provide financial services at low costs within economies of scope, through the data they hold (search history, information related to social media accounts, shopping history, etc.). It is possible for technology companies that collect data due to their own activities, independently of the strict regulations on customer data that incumbent financial institutions are bound by, to offer some services concerning fintech markets by making use of this data.¹³⁴ For example, a study shows that with the analysis of big data with machine learning and artificial intelligence methods, technology companies which provide financing can be more successful than institutions that use classical methods in detecting risky loans.¹³⁵ Indeed, it is seen that the data on the spending habits acquired in the field of e-

¹³⁰ See <https://news.lendit.com/2020/07/16/alipay-has-more-than-1-billion-annual-active-users/>, Accessed: 04.04.2021

¹³¹ OECD (2020b), p.14

¹³² The only common disadvantage of small fintech companies and big technology firms is that their experience in financial regulations and risk management is limited and they are deprived of certain rights because they do not have a banking license.

¹³³ OECD (2020b), p.15

¹³⁴ OECD (2020b), p.15

¹³⁵ FROST, J, L. GAMBACORTA, Y. HUANG, H. S. SHIN and P. ZIBINDEN (2019), "BigTech and the Changing Structure of Financial Intermediation", https://www.bis.org/events/confresearchnetwork1909/frost_pres.pdf, p.21, Accessed: 29.01.2021,

commerce is used in low amount loan services in the example of Ant Financial and JD.com in China.¹³⁶

- (162) In terms of the provision of fintech services, one of the biggest advantages of technology companies is being able to offer fintech services to their current customer portfolio, in addition to existing services. The boundaries of financial services and other services are lost and consumers are offered services in a package, as in the example of WeChat.¹³⁷ On the other hand, it can be said that the incumbent financial institutions are mostly lacking the opportunity to package non-financial services.
- (163) The recent embodiment of the strategy to commercially exploit the advantage of being able to offer fintech services to its current customer portfolio alongside existing services is Super-Apps. Super Apps was first defined in 2010 by Mike Lazaridis, the founder of the Blackberry brand, as the presentation of more than one application within the same ecosystem in a way to provide convenience to the user.¹³⁸ By means of this concept, which is spreading day by day, consumers can benefit from many services from food order to financial services, from online shopping to health services through a single application. In other words, transactions managed by more than one application on the mobile devices of consumers under normal conditions, can work in an integrated manner on a single application. This model allows users to perform different operations through the same application besides creating new benefits as the services offered by the application work in harmony and interaction with each other. The application called Gojek, which continues its activities in South East Asia can be given as an example.¹³⁹ Gojek started its activities as a taxi application but has added 20 different services into its structure, including payment services, in a short time. Gojek's business model has gained popularity by being taken as an example by different undertakings in the Asian market.
- (164) When it comes to Super Applications, China stands out with examples such as Tencent and Alibaba since Tencent and Alibaba have positioned their payment services alongside their other services with WeChat and AliPay applications, respectively. It is seen that undertakings such as Tencent

¹³⁶ OECD (2020b), p.22

¹³⁷ SPEK and PHIJFERR (2020), p.18

¹³⁸ CAPGEMINI (2020), "Payments Top Trends 2021", https://www.capgemini.com/wp-content/uploads/2020/11/Payments-Top-trends-2021_web.pdf, p.8, Accessed: 21.04.2021

¹³⁹ See <https://www.gojek.io/about>, Accessed: 10.05.2021

and Alibaba are much more successful in positioning payment services within Super Apps compared to their peers in the world. It is found that in China, where smartphone usage rate and unbanked population are high, most consumers do not have any reservations about sharing their data with technology companies.¹⁴⁰ In addition, technology companies have also collected information about consumers from different channels due to the structure that requires that the digital accounts of consumers be matched with their citizenship numbers in China. Thus, undertakings that have created a wide consumer-specific profile have the advantage of offering many different customized services to consumers within the scope of Super Apps.¹⁴¹ On the other hand, it is not possible to say that there are Super Apps, designed to include financial services as efficient as the examples given above, also in Europe and the USA.¹⁴² However, some examples are beginning to emerge. For example, WhatsApp has introduced the "Carts" feature, which is a method for shopping within the application.¹⁴³ Apple has also introduced a feature that makes it possible to send money within the messaging application via Apple Pay.¹⁴⁴ It is possible that such applications may be referred to as Super Apps in the future, as they start to include some other features.

- (165) Another remarkable factor about Super Apps is that undertakings primarily reach a sufficient number of users through their main activities and then include other services such as payment services into the application. In a sense, this means that regardless of the commercial product/service it offers, all undertakings that reach a sufficient number of users and have an advanced informatics infrastructure can integrate other services such as payment services into their applications. It can be suggested that the more various commercial products/services a Super App offers, the more widespread the use of the payment service integrated into the application will be. Accordingly, it is considered that the increasing influence of technology companies on financial services, especially payment services, will not only be limited to technology giants such as Google and Apple through Super Apps, but also undertakings from various sectors, which have achieved economies of scale and some of which operate only in

¹⁴⁰ OLIVER WYMAN (2020), "Big Banks, Bigger Techs?", <https://www.oliverwyman.com/content/dam/oliver-wyman/v2/publications/2020/jul/Big%20Banks%20Bigger%20Techs%20Final%20Version.pdf>, p.38, Accessed: 21.04.2021

¹⁴¹ OLIVER WYMAN (2020), p.39

¹⁴² CITI (2019), "Bank X The New New Banks", <https://hollandfintech.com/wp-content/uploads/2019/05/ANZTP.pdf>, p.24, Accessed: 21.04.2021

¹⁴³ <https://faq.whatsapp.com/general/account-and-profile/about-cart/?lang=en> Accessed: 21.04.2021

¹⁴⁴ <https://support.apple.com/tr-tr/guide/iphone/iph6d80edff1/ios>, Accessed: 21.04.2021

Turkey. E-commerce companies, banks, order providers and telecommunication operators can be shown as the most suitable undertakings to create a Super App in our country.¹⁴⁵

- (166) It is obvious that Super Apps access a very valuable data pool by collecting consumer data for more than one service. The advantages explained above that technology companies will gain in providing financial services due to the data arising from their other activities may be much more for Super Apps that can offer dozens of services. The advantages created by Super Apps for consumers are high user experience, data-driven recommendations and personalized offers.¹⁴⁶
- (167) Which strategy the incumbent banks will follow against Super Apps is still unclear. However, there are instances where incumbent banks try to reach end users by cooperating with Super Apps.¹⁴⁷
- (168) The issue of how the financial services provided/to be provided by technology giants will be charged is likely to differ from the traditional financial system. Undertakings that offer various payment services to customers obtain various information about these customers, such as their financial status or spending habits. Since such valuable information can have a financial value even on its own, it is suggested that undertakings can base their economic models on obtaining this information by providing the main service free of charge.¹⁴⁸ Even if it is clear that this type of economic model is unusual for financial institutions, it is known that tech giants such as Facebook and Google are already making profits by means of this system. It is thought that although incumbent banks are seen as more advantageous in terms of data ownership, their capacity to process this data with techniques such as artificial intelligence and machine learning is limited compared to technology companies.¹⁴⁹ It is argued that for this reason, the entry of technology companies into the market will be more disruptive than small fintech companies. Moreover, it will not be surprising that if technology companies¹⁵⁰ that seem to be willing to offer much easier and faster solutions to customers (with their large customer pool, superior technological opportunities, data processing capacity, high capital and brand recognition), will impose a

¹⁴⁵ <https://www.strategyand.pwc.com/tr/tr/pdf/super-uygulamalar-pdf.pdf>, Accessed: 13.10.2021

¹⁴⁶ CAPGEMINI (2020), p.9

¹⁴⁷ <https://www.reuters.com/article/us-gojek-siam-commercial-bank-idUSKCNIU50I9>, Accessed: 13.10.2021

¹⁴⁸ SPEK and PHIJFERR (2020), p.18

¹⁴⁹ OECD (2019), "Summary of Discussion of the Roundtable on Digital Disruption in Financial Markets", [https://one.oecd.org/document/DAF/COMP/M\(2019\)1/ANN3/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2019)1/ANN3/FINAL/en/pdf), p.3, Accessed: 29.01.2021

¹⁵⁰ SPEK and PHIJFERR (2020), p.13

devastating effect vis à vis the incumbent in the existing payment service market, which is known to be lacking a dynamic infrastructure.

- (169) On the other hand, it would not be true to say that technology companies do not have any disadvantages in terms of fintech services. A study about financial institutions has revealed that the most untrusted undertakings in terms of providing a virtual asset unit are technology companies due to privacy concerns.¹⁵¹ Despite this, some authors, giving China as an example, state that low trust in technology companies is not valid for all countries, and technology companies are more likely to be preferred for financial services, especially in developing countries.¹⁵² In addition, it cannot be said that large technology companies, similar to fintech companies, have sufficient experience in financial risk management.¹⁵³

3.3. The Impact of Big Technology Companies on the Market and Possible Strategies

- (170) It can be suggested that the entry of big technology companies into fintech markets, especially payment services, will have many positive effects on the competitive structure and consumer experience. One of these benefits is the improvement in the reflexes of traditional financial institutions, which will be under competitive pressure to offer more innovative, consumer-friendly and efficient solutions.¹⁵⁴ In addition, the benefits of services that will be offered directly by big technology companies and that better meet the demand of consumers in an innovative and comprehensive way are obvious.
- (171) On the other hand, possible exclusionary conducts of big technology companies, which may arise in the form of abusing their dominant position in one market, by acting in an anticompetitive way in another market where they are not dominant, cannot be ignored. In order to understand this type of behavior, first of all, it is necessary to understand in which business model the technology companies will operate. These companies can operate as direct providers of fintech services, taking advantage of their economies of scope and offering package services. However, examples where big technology companies offer a technical service that enables the payment are more common than the ones where they operate as a direct payment institution.¹⁵⁵ Currently, unlike

¹⁵¹ SPEK and PHIJFERR (2020), p.18

¹⁵² OECD (2019), p.4

¹⁵³ OECD (2020b), p.15

¹⁵⁴ ACM (2020), p.42

¹⁵⁵ ACM (2020), p.48

banks, big technology companies that operate only as a technical service provider or as an intermediary do not have an obligation to provide access to other payment service providers under PSD2. Likewise, it is also stated that these undertakings may not prefer to accept deposits in order not to be subject to the same regulations as banks.¹⁵⁶

- (172) Another possibility is that technology companies may offer a multilateral platform for fintech services by operating as a marketplace rather than providing a fintech service (for example, a payment service) directly.¹⁵⁷ A platform operating as a marketplace will be able to offer financial services belonging to more than one undertaking to its customers in this way. A technology company which has such a platform may identify the most profitable services of the incumbent and attempt to offer these services itself, and thus pursue exclusionary strategies against incumbents.¹⁵⁸ The scenario where a technology company controls a platform that brings consumers and banks together reminds investigations conducted on big technology companies regarding the cases where these undertakings feature their own products and services on platforms or abuse the dominant position they hold in one market by anticompetitive behavior in another related market. However, it is shown in the investigations and cases conducted in many jurisdictions that technology companies that have started to operate in vertically related markets have the potential to take advantage of a dominant position at one level and to become dominant at other levels, and behaviors that exclude competitors at other levels can be seen.
- (173) The possibility of seeing such exclusionary behaviors in the payment services market can also be discussed. Exclusionary behaviors may be directed specifically at sellers operating on a platform or e-wallet or payment application providers.¹⁵⁹ In this case, it can be said that big technology companies are in the position of a gatekeeper in terms of payment services to be realized on the platforms they are dominant.
- (174) It is stated in the comments made by banks in the Netherlands about the entry of technology companies into the payment services market that they think they are at risk of losing their

¹⁵⁶ OECD (2020b), p.22

¹⁵⁷ OECD (2020b), p.23-24

¹⁵⁸ EISANMANN, T, G. PARKER and M. V. ALSTYNE (2011), "Platform Envelopment", *Strategic Management Journal*, Strat. Mgmt. J, 32: 1270-1285, p.1270; OECD (2020b), p.22

¹⁵⁹ ACM (2020), p.43

autonomy for their services, since data sharing is mandatory in certain cases due to PSD2.¹⁶⁰ It is also stated that banks are dependent on big technology companies for some services, for example, since Apple does not open the NFC feature to banks, it is not possible to pay with the e-wallet application of banks on these devices. In a new investigation initiated by the EU Commission, the claim that Apple opens the NFC feature on its phones only to Apple Pay will be examined.¹⁶¹ Regarding this issue, the regulation made by Germany in the field of payment services, effective from 2020, is notable. Operators with a technical infrastructure that contribute to mobile and internet-based payment services are obliged to provide access to the relevant infrastructure for a reasonable fee upon the request of payment or electronic money institutions pursuant to this regulation. Since the primary purpose of the regulation is interpreted as ensuring that Apple's NFC feature is opened to incumbent players, the said regulation is known as "Lex Apple Pay (Apple Pay Law)".¹⁶²

- (175) The strategy embodied in the example of Apple Pay as the refusal to deal can take different forms. As it is seen in the *Google Android* decision of the Board¹⁶³, it is possible for big technology companies to cause competition infringement with their tying practices. Anti-competitive risks may arise in case payment services are also included in such tying practices. In addition, it is likely that the owner of a dominant e-commerce platform may grant privileges to sellers who use its payment service.¹⁶⁴ In another example, in a case which the Switzerland Competition Authority examined, Apple users who want to pay with the application called Twint are automatically directed to Apple Pay. In this respect, the point that technology companies may grant a privilege to their products and services in the payment services market in a way that excludes competing undertakings is at issue.¹⁶⁵ Finally, it is possible to talk about the abuse of dominant position that will arise on the basis of the collection and use of consumer data in payment services, as it is

¹⁶⁰ ACM (2020), p.37

¹⁶¹ For additional information see https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1075, Accessed:13.10.2021

¹⁶² FRANCK J, LINARDATOS D. (2021), "Germany's 'Lex Apple Pay': Payment Services Regulation Overtakes Competition Enforcement", *Journal of European Competition Law & Practice*, Vol:12, No:2, <https://academic.oup.com/jeclap/article/12/2/68/5905712>, s. 68, Accessed: 02.11.2021

¹⁶³ *Google Android* decision of the Board dated 19.09.2018 and numbered 18-33/555-273

¹⁶⁴ ACM (2020), p.45

¹⁶⁵ For additional information see <https://www.weko.admin.ch/weko/en/home/latest-news/press-releases/nsb-news.msg-id-73448.html>, Accessed: 13.10.2021

seen in the investigations currently conducted on data collection and data ownership by big technology companies.

- (176) In addition, it is known for a long time that some big technology companies are mediating payment transactions between users and sellers through application stores where millions of users are already making transactions. The fact that technology companies that receive commissions from the aforementioned transactions oblige the use of their own payment ecosystem for the payment process leads to discussions. The disputes between Epic Games, a game producer, with Apple and Google, and the cases opened against these undertakings in the USA are the results of the aforementioned discussions. The discussion, which started with Epic Games wishing to make in-app purchases for its games through its own payment system, resulted in Apple and Google removing Epic Games' best-selling game from their app stores. In this case, Epic Games claims that the said undertakings restrict competition in application distribution and in the payment systems market, and the commission applied for in-app purchases is a monopolistic price. The results of the cases in different jurisdictions, are important in terms of showing how the strong position of big technology companies due to their main activities can bring consequences in terms of payment services.
- (177) How the possible strategies of technology companies can be met within the framework of existing regulations is discussed. Indeed, in China, EU and the USA, the increasing activities of big technology companies in the field of financial services lead the relevant regulatory and competition authorities to develop new policies and work on measures to maintain the competitiveness of the market. It can be said that the analyses made by the relevant authorities have evolved from traditional ex-post methods to specific ex-ante methods that can be applied specifically to big technology companies.
- (178) In this context, Article 35 of PSD2 states that access by payment service providers to payment systems should be provided with objective, non-discriminatory and reasonable conditions. One suggestion is to adapt this article.¹⁶⁶ In this way, similar to enabling access to payment systems at credit institutions, payment service providers will also be able to access platforms of technology companies that will act as gatekeepers in terms of payment services through their own platforms.

¹⁶⁶ ACM (2020), p.5

- (179) At this point, another suggestion is to make use of the experience gained within the scope of “open banking” while handling the payment transactions realized on the platforms of big technology companies. By means of such arrangement, which can be called "open platform", a method similar to the method that enables third party service providers to access financial information of users and perform transactions within the scope of open banking will be implemented in terms of platforms. Thus, it will be possible to open payment transactions to be made within the ecosystems of technology companies to other payment service providers under objective conditions. Of course, it is a known fact that it is beneficial for the authorities to increase their experience on the issue in order to implement such a regulation.
- (180) On the other hand, it is notable that the authorities in Europe attempt to regulate the activities of big technology companies. In particular, the Digital Services Act¹⁶⁷ and the Digital Markets Act¹⁶⁸, which the Commission shared with the public, have the potential to affect other jurisdictions. Although its content may change because it is in the process of enactment, some provisions of the draft have already started to be discussed due to their possible effects. In particular, the Digital Markets Act provides for that undertakings that have the power to direct and influence digital markets should be defined as gatekeepers and various liabilities should be imposed on these undertakings. It will not be surprising if many technology companies, whose impact on the payment services market is discussed above, falls under the scope of the definition of gatekeeper.
- (181) As it is understood from the draft, technically limiting the ability of end users using the gatekeeper's operating system to switch between different software, applications and services or to use this software, applications and services should be avoided. It is also provided for that in the ancillary services offered under the supervision of the gatekeeper, access to software and hardware features by commercial users and ancillary service providers and interoperability with those will be allowed. Such regulations are also likely to have impacts on the payment services offered by big technology companies. Especially when the ongoing investigation on Apple's NFC applications is considered, it is possible that the Commission will build a better functioning structure to open payment ecosystems to third-party service providers with the Digital Markets

¹⁶⁷ See https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en, Accessed: 12.05.2021

¹⁶⁸ See https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en, Accessed: 12.05.2021

Act. Following detailed studies on the impact of these regulations on payment services during the enactment process is important in terms of guiding the regulations to be made regarding both payment services and digital markets in our country in the coming years.

- (182) Consequently, entry of technology companies into the payment services market is important for incumbent banks, because banks have the opportunity to offer different products to the consumer with the information they have obtained through payment accounts, measure the creditworthiness of the consumer, strengthen the bond with the consumer through the transactions arising from these accounts, and in some cases, earn direct income through payments¹⁶⁹. Consumers' preference for payment services by technology companies will mean that banks will be deprived of all these direct and indirect returns.
- (183) For this reason, incumbent banks may follow various strategies in response to big technology companies increasing their activities in the said way¹⁷⁰. Incumbent banks, which do not have the chance to offer financial products with non-financial products as a package, may choose to cooperate with technology companies (It is known that there are such cooperation between Amazon and JPMorgan and Apple and Goldman Sachs). In addition, incumbent financial institutions may cooperate and establish platforms where each other's products are available in order to prevent the competitive pressure arising from the technology companies operating as platforms. In addition, one of the possible strategies is to protect the customer portfolio by offering products that technology companies cannot offer and developing customized financial products and services. Of course, it is also possible for incumbent banks to prefer cutthroat competition with technology companies relying on their high customer trust, perception of data security and experience in financial regulations. However, in any case, incumbent banks will also be a part of inevitable technological change.¹⁷¹ It is expected that the incumbent will increase their investments as a result of the competition emerged depending on the intensity of big technology companies' entry to the market.¹⁷² In this respect, the regulations on fintech activities of especially big technology companies and the practices of competition authorities will be determinant in terms of the effects that will arise in the market.

¹⁶⁹ ACM (2020), p.37

¹⁷⁰ OECD (2020b), p.24

¹⁷¹ OECD (2020b), p.25

¹⁷² OECD (2019), p.3

(184) In terms of our country, it is possible to say that it is a strong probability that big technology companies will make disruptive initiatives in financial services. Moreover, it is seen in the current cases that big technology companies' entry to the market is faster in countries where there are gaps in financial services, the share of unbanked population is high, financial regulations are not strict, and financial markets are not competitive.¹⁷³ Although it is seen that the share of unbanked population is relatively high in our country,¹⁷⁴ it can be said that our country differs in terms of other variables mentioned from developing countries where technology companies enter the financial markets rapidly. Many technology companies active in the US and EU financial markets and also in some developing countries do not have a significant financial activity in Turkey yet. However, the factors in our country such as the increase in the use of smartphones¹⁷⁵, the growth of e-trade volume¹⁷⁶ and the high number of social media users¹⁷⁷ strengthen the estimation that fintech services of these companies will become widespread in Turkey.

¹⁷³ FROST et al. (2019), s.1-2

¹⁷⁴ <https://www.jpmorgan.com/merchant-services/insights/reports/turkey>, Accessed: 12.05.2021

¹⁷⁵ <https://www.statista.com/statistics/568281>, Accessed: 12.05.2021

¹⁷⁶ <https://www2.deloitte.com/tr/tr/pages/technology-media-and-telecommunications/articles/turkiyede-e-ticaret-2019-pazar-buyuklugu.html>, Accessed: 12.05.2021

¹⁷⁷ <https://datareportal.com/reports/digital-2020-turkey>, Accessed: 12.05.2021

CONCLUSION AND RECOMMENDATIONS

- (185) Fintech, which is an opportunity for financial markets to have a more competitive outlook, has increased its influence in financial services in the past few years and has created an ecosystem that includes many stakeholders. Accordingly, it is seen that the outlines of the policies of both the regulatory authorities and the competition authorities for fintech have been formed, and decisions that can build the case law in this area have been taken in recent years. It is possible to suggest that the approach embodied in the Board's decisions on fintech is consistent and the common notable concern in the decisions is the anti-competitive effects related to the exclusion of new players in our country.
- (186) At this point, the concept of "data ownership" is the cornerstone of competition analysis as a result of the digitalization experienced not only in financial markets but in economies in general. Modern approaches in competition law argue that it is not possible for traditional competition law instruments to produce satisfactory solutions to the new competition problems that arise due to digitalization today, and they state that new interpretations are needed in this area. There are lively discussions on what kind of interventions can be developed against atypical competition problems in the digitalized markets and the increasing importance of data ownership.
- (187) Having more and more critical importance in the financial sector, data ownership becomes a determining indicator for the future of the markets. Accordingly, the most functional modern interpretation that can be adopted in the context of competition law is accepting that each data set is unique and non-substitutable and that undertakings can be in a dominant position in terms

of owning certain data sets. It is concluded that the data belonging to the customer of an undertaking cannot be obtained from another undertaking and that the undertaking may come to a dominant position in terms of the relevant customer data. In other words, the relevant customer data can be considered as a key input in order to provide value-added services to a customer and if this data can be obtained from only one undertaking, it can be concluded that this undertaking is in a dominant position.

- (188) The need for new approaches in the regulation of fintech as well as in competition law is undisputed. In particular, when regulatory interventions' ability to produce more inclusive, rapid and predictable solutions is taken into account, the importance of implementing ideal regulations becomes obvious in this area. At this point, the regulatory rules to be prepared should take into account the sustainability of competition and innovation in the markets as well as traditional regulatory concerns, primarily the protection of financial stability. Accordingly, establishing regulatory rules that encourage market entry and prevent the exclusion of new players in the market will be an appropriate approach in the process of building an effective financial market structure. In addition, it is clear that the regulatory rules that stipulate differentiated and multi-staged obligations for players with different qualifications in the market will contribute to the development of fintech. This approach, which can be described as an asymmetric regulation approach, will pave the way for innovation in financial markets and increase the dynamism in these markets.
- (189) In addition, if the regulatory rules to be created are flexible enough to leave the door open to new technologies rather than being focused only on today's technologies, this will accelerate the technological transformation in financial markets. Regulatory sandboxes give various opportunities for the creation of regulatory rules. Allowing innovative fintech products and services in a limited way by excluding them from certain regulatory rules, regulatory sandboxes enable undertakings, consumers and regulatory authorities to experience new products and services, and thus, it is possible to create an optimal regulatory framework for different fintech products and services. To sum up, it is expected that the regulatory steps to be taken in this area will meet the needs of the day, adapt to the future, and encourage new players to enter the market without disturbing the market conditions.
- (190) It is also important for the establishment of a competitive structure that regulations and government policies are designed to eliminate market dynamics that complicate entry into the

market. In this respect, it would be appropriate to adopt various financing methods for small and medium-sized undertakings, especially by clarifying the programs for public-sourced capital support. On the other hand, care must be taken so that such state aids should not result in one or more undertakings gaining an advantage over their competitors in a way that distorts competition in the market. Rather, supporting undertakings that develop innovative solutions but face financial difficulties at the first stage of market entry will comply with the approach of ensuring a competitive structure. In addition, it would be beneficial to provide tax relief to such undertakings with a program created under objective conditions.

- (191) In addition, considering that the effect of state aids on the market will be limited in any case, it is clear that the main progress is hidden in the direct investments to be made by fintech companies. At this point, creating a public data pool that will help the decision-making processes of investors may be at issue. Also creating collective market data in the field of fintech may be considered in order to develop the most suitable services for consumer preferences by following the market trends. There are examples where aggregated data on financial markets are presented in our country. For example, the CBRT shares many financial data with the public through the "Electronic Data Distribution System". Similarly, ICC provides access to various data pools under different categories such as general reports, credit card transactions, and debit card transactions. Similar to the aforementioned examples, sharing the data to be collected with the public may be considered, especially taking account into the needs put forward by the sector stakeholders. If there is a suspicion that such data may have anti-competitive effects, a solution can be reached with the contribution of the Competition Authority.
- (192) The access by new players to the data sets that are currently accessible to incumbent players will serve to eliminate the asymmetric situation between competitors in terms of data access in the market. In this context, fintech companies' access, to the extent that their activities are relevant, to the Risk Center data within the BAT, Credit Registration Bureau data, data shared in the ICC Data Sharing system and Central Population Management System records, which are accessible to incumbent financial players will allow new players in the market to compete on equal terms with incumbent players.
- (193) Regulations that allow fintech companies to access not only certain data pools but also essential banking infrastructures will increase the diversity of products and services in financial markets. Indeed, allowing fintech companies to have direct access to the EFT and FAST systems within the

CBRT is an exemplary regulation in that it will reduce the dependency of these companies on incumbent financial players and bring a healthy functioning to the competition in the sector.

- (194) The importance of taking steps that will make Turkey a center of attraction for fintech investments, especially in the long run, such as the establishment of innovation hubs, the opening of fintech programs at universities, and the training of qualified human resources for the development of the fintech ecosystem in our country is obvious. Besides the said steps, solutions that will remove the obstacles arising from consumer perception should also be applied. In this context, it is thought that all approaches that establish consumer awareness, especially increasing digital and financial literacy, will ultimately have a positive impact on competition in the market.
- (195) Moreover, the importance of healthy dialogue mechanisms among sector players and public authorities for the development of our country's fintech ecosystem is clear. In this respect, the exchange of views between the relevant public authorities and the relevant sector organizations, especially BAT, PBAT, PEMIAT and IAT, will enable the rapid adoption of inclusive and convenient policies.
- (196) Likewise, the establishment of a holistic and coherent country policy towards fintech is directly related to the establishment of close cooperation among public authorities. Indeed, it is noteworthy that the cooperation among public authorities is at an advanced level in the exemplary practices of countries regarding fintech. The fact that fintech deals with many disciplines such as banking law, informatics law, consumer law, competition law and personal data protection law requires that the rules and standards in regulations to be made by different institutions in this field be compatible. It is certain that the consultation mechanisms to be established between the Competition Authority, CBRT and BSRA in our country will lead to great gains. Similarly, it is important to adapt policies in coordination with the other stakeholders of the fintech ecosystem, CMB, the Ministry of Treasury and Finance (DRA, FCIB), ITCA and the Personal Data Protection Authority. In this context, coordination activities to be carried out by the Office of Finance of the Presidency will serve for the formation of a holistic fintech policy in our country.

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