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Fintech regulation: how to achieve a level playing field

The emergence of fintechs and big techs constitutes a major source of disruption in the market for financial services.

There is already some consensus that we need a comprehensive policy approach, particularly for big tech platforms that offer a large variety of financial and non-financial services – and that this comprehensive framework should aim at minimising competitive distortions.

A slogan which has gained much traction and has often been presented as the basis for the regulatory reform is "same activity, same regulation". This suggests moving from a framework of designing requirements for entities with a specific licence or charter – what we call entity-based (EB) regulation – to rules that address specific activities, ensuring that they apply homogenously to all types of entities performing each activity – what we call activity-based (AB) regulation.

However, achieving a level playing field in a particular market is not a highest-priority objective for policymakers, although it is a relevant one. In some policy areas, like consumer protection or anti-money laundering and combating the financing of terrorism (AML/CFT), there does not seem to be a rationale (based on primary policy objectives) to discriminate across providers of a particular financial service. By contrast, in other areas, like prudential policies or competition, specific EB rules are required. In general, this is the case when risks emerge not only from the performance of a particular activity, but also from the combination of activities that entities perform.

Therefore, regulatory discrepancies across entities performing a specific activity may sometimes, although not always, be justified on superior policy grounds. The current regulatory framework offers mixed signals on the extent to which unwarranted regulatory discrepancies remain.

In AB policy areas, like AML/CFT or consumer protection, it is hard to find discrepancies in the requirements imposed on commercial banks as opposed to other providers of financial services. However, in areas where an EB approach is adequate, there may not be sufficient rules that address the specific risks generated by big techs. This is the case in the area of operational resilience, where a comprehensive approach for big tech groups may be warranted, as is currently the case for banks. Moreover, there are strong arguments for imposing ex ante constraints on big techs' practices concerning data use and different sources of discrimination across actual or potential participants in the platform.

There are indeed some initiatives in different parts of the world (notably in the US, the EU and China) which seem consistent with the need to develop new EB rules for large big tech platforms. In particular, in the EU the European Commission proposals for a Digital Markets Act and a Digital Services Act contain far-reaching regulatory requirements for big techs.

Reference: F Restoy, "Fintech regulation: how to achieve a level playing field", FSI Occasional Papers, no 17, February 2021.