

November 20, 2017

VIA ELECTRONIC SUBMISSION

Competition Bureau
50 Victoria Street
Gatineau QC K1A 0C9

Re: Comments on draft report on technology-led innovation and emerging services in the Canadian financial services sector.

The Electronic Transactions Association (“ETA”) submits these comments in response to the Competition Bureau’s (“Bureau”) request for feedback on the draft report on technology-led innovation and emerging services in the Canadian financial services sector. Thank you for the opportunity to comment on this important issue.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include financial institutions, merchant processors, mobile payment service providers, mobile wallet providers and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient and rewarding payment solutions and lending alternatives.

GENERAL COMMENTS

Over the past decade, financial institutions and financial technology (“FinTech”) companies have transformed the financial landscape through the introduction of new technologies that expand financial offerings for borrowers, lower costs, improve financial and risk management, and increase transaction security. Considering the tangible benefits of such technological advancements, ETA urges policymakers to remain thoughtful and forward-thinking in how to best support industry’s on-going efforts to provide opportunities for all consumers and small businesses to access and benefit from innovative financial products and services without unnecessarily disrupting or burdening well-worn, efficient/reliably servicer models. Efforts by policymakers to regulate financial products and services should be done collaboratively with industry participants and with careful consideration.

ETA and its members support an inclusive financial system that provides high quality, secure, and affordable financial services for the broadest possible set of consumers and small businesses. ETA member companies touch, enrich, and improve the lives of underserved communities while making the global flow of commerce possible. ETA member companies strive to continually enhance the electronic payments and financial ecosystem so that it is accessible for all consumers, while ensuring their transactions can be completed securely, efficiently, and ubiquitously. A key driver to achieving such an ecosystem is the development of new technologies that allow the

underserved to access financial products and services. ETA encourages policymakers to support these goals through policies that support innovation and the use of technology in financial products and services.

Financial Inclusion

Fintech innovations hold potential benefits for all users of financial services, including expanding access to financial services, reaching under-served consumers, providing access to credit to consumers and small businesses, reducing transaction costs, simplifying products, providing greater convenience and efficiency.

ETA member FinTech companies, including member financial institutions, use technology to address the financial needs of underserved customers including the following efforts:¹

- *Financial Literacy & Readiness Programs* – Empower consumers to take control of their finances and prepare for the future.
- *Mobile Banking Services & Innovations in ADA Compliance* – Provide financial independence and security for those demographic groups that lack easy access to physical financial institution branches, such as consumers in rural areas, the elderly, or persons with disabilities.
- *Mobile Payments* – Provide an exciting alternative to cash and checks that allow consumers to pay for goods and services in an efficient, cost-effective, and secure manner.
- *Peer-2-Peer Payments* – Enable consumers to send money to each other via mobile applications.
- *Expanded Internet Access* – Expands affordable access to the internet in underserved communities domestically and abroad by improving infrastructure and reducing costs so that more people can connect to the web-based world.
- *Online Small Business Lending* – Expands access to credit for small businesses seeking capital to grow their businesses.
- *Prepaid Products* – Provide cost-effective, convenient, and innovative payment options for millions of consumers, including those that may not have access to traditional financial accounts.
- *Interactive, Automated Tellers* – Transform traditional financial institution branches by making them economically sustainable in previously underserved communities.

¹ See Electronic Transactions Association, *How FinTech is Addressing the Financial Needs of the Underserved, Vol II* (Sept. 2017).

Fintech is building an inclusive financial system that addresses the needs of “underserved” consumers by providing increased access to ATMs for persons with disabilities, helping the elderly or rural population deposit checks remotely, assisting parents in sending funds instantly to their children, or helping small businesses get loans. Products and services like prepaid cards, mobile banking, peer-2-peer payments, electronic payment systems, expanded access to the internet, and alternative lending sources for small businesses address the needs of underserved consumers by providing the following benefits:

- *Access* – Allowing consumers to access funds and financial services wherever and whenever needed.
- *Affordability* – Ensuring consumers have the ability to select from various affordable products and services. Technology is increasing competition and driving down the cost of goods and services, which makes products more affordable, and thus accessible to more consumers.
- *Convenience* – Providing consumers with multiple payment options that save time and money.
- *Security* – Protecting consumer funds from physical and electronic fraud or theft.
- *Control and Financial Management* – Helping consumers gain better control over their finances through financial literacy and various financial management tools.

ETA RESPONSES TO SPECIFIC RECOMMENDATIONS

Recommendation 1:

Regulation should be technology-neutral and device-agnostic. Prescriptive rules regarding how a firm must comply with a regulation are often written with the technology of the day in mind. These rules and policies may have made sense when transactions occurred in person at a branch, but the Internet and mobile computing have changed how consumers wish to consume services—and how providers provide them. Rules that can accommodate and encourage new (and yet-to-be developed) technologies open the door to more innovative offers down the road.

ETA Comments:

ETA agrees that rather than issue prescriptive requirements, regulators should consider principle-based technology-neutral and device-agnostic solutions. Specifically, ETA believes that principle based solutions that take into account the unique circumstances of the parties and the functionalities being contemplated will be more effective in addressing the risks and opportunities being presented. It is important to recognize that this is a highly dynamic space, where players, technologies, and services offered may differ widely and present different or evolving risks. A one-size fits-all regulatory solution will not keep pace with the dynamic nature of this space and will stifle innovation.

More generally, as technology and innovation continue to shape how information is created, accessed, stored, and disposed of, regulation must remain technology agnostic. Only then can regulations be adaptable and not impose rigid rules that have the effect of unnecessarily restraining innovation or imposing unnecessary costs or burdens on industry. If policymakers, for example, were to mandate a requirement specific to a particular technology, rather than focus on the underlying risks of any technology, there would be a significant risk that any such requirement would quickly become outdated, all while imposing significant costs on industry to conform their existing practices to the mandated approach. For these reasons, any efforts by policymakers to move forward in this area should be done collaboratively with industry and consumers and with careful consideration.

Recommendation 2:

To the extent possible, regulation should be principles-based. Policymakers should aim to create regulation based on expected outcomes rather than on strict rules of how to achieve those outcomes. Principles-based regulation has the added benefit of allowing regulators the flexibility to issue guidance and be more flexible in their approach to enforcement as technology changes.

ETA Comments:

ETA supports principle-based solutions that consider the unique circumstances of the parties including size, type, risk, and products offered. While principles-based solutions are preferable because of the flexibility they offer, the key is providing understandable principles with guidance from regulators that conveys a clear vision for what regulators expect. This also applies to enforcement. Enforcement should not be used as a substitute for comprehensible guidance by regulators.

Recommendation 3:

Regulation should be based on the function an entity carries out. Current regulations at the federal level apply only to certain entities defined within legislation. There are varying levels of regulation for the same activity or function performed by different entities. This contributes to the potential imbalance created as entities have different standards to which they must adhere. Function-based regulation ensures that all entities have the same regulatory burden and consumers have the same protections when dealing with competing service providers.

ETA Comments:

ETA supports a positive regulatory environment for innovation. Regulators should work together to ensure that duplicative and imbalanced regulations are removed with a goal towards streamlining regulatory harmony and removing regulatory burden. However, in attempting to create balance within the regulatory framework for specific activities, ETA would encourage policy makers to examine those activities that already operate within an existing framework of rules and controls and which are already subject to oversight by regulated entities. New regulatory burdens in these instances, may not necessarily achieve any new level of protection for consumers

or business; but rather unnecessarily add burden and costs to an already efficient and reliable services.

Recommendation 4:

Regulators and policymakers should ensure regulation is proportional to the risks that the regulation aims to mitigate. Together with function-based, principles-based and technology-neutral regulations, proportional regulation ensures that FinTech entrants will compete on a level playing field. At the same time, it will reduce the risk of regulatory arbitrage.

ETA Comments:

ETA agrees that regulation and guidance should be proportional to the risks the regulation aims to mitigate. Specifically, that regulations and guidance take into account the risk, size of the institution, type of the institution, and products offered.

Recommendation 5:

Regulators should continue their efforts to harmonize regulation. Regulators and policymakers should make best efforts to harmonize regulation across geographic boundaries.

ETA Comments:

ETA supports regulators cooperating with each other to minimize redundant or conflicting regulations and guidance. Regulators should strive for regulatory harmony, which lead to policies that support innovation and the use of technology in financial products and services.

Global cooperation and coordination is especially important where products or entities are specifically built to ease cross-border friction. For example, the payments market is a place where financial institutions and other FinTech companies are helping to make it easier for consumers and business to send money, receive money, or accept payment quickly, safely, and cheaply.

Regulatory harmony is a key component to innovation whether domestically or internationally. ETA supports open dialogue and coordination between supervisors in the FinTech space to promote a positive regulatory framework for innovation. Coordination can help to encourage global growth and remove duplicative or contradictory requirements between regulators.

Recommendation 6:

Policymakers should encourage collaboration throughout the sector. More collaboration among regulators at all levels would enable a clear and unified approach to risk, innovation and competition. Greater collaboration between the public and private sector more broadly would foster greater understanding among regulators of the latest services—and of the regulatory framework among FinTech firms. Finally, pro-competitive collaboration between industry

participants would help bring more products and services to market, while recognizing the potential for anti-competitive collaborations.

ETA Comments:

ETA supports open dialogue and learning between regulators as an opportunity to learn and adopt new practice to streamline supervision and examination. Regulatory harmony is a key component to innovation whether domestically or internationally. ETA supports open dialogue and coordination between supervisors to promote a positive regulatory framework for innovation. Coordination can help to encourage global growth and remove duplicative or contradictory requirements between regulators.

Recommendation 7:

Policymakers should identify a clear and unified FinTech policy lead for Canada with federal, provincial and territorial expertise to facilitate FinTech development. Some jurisdictions have created new offices to facilitate FinTech, while others have clearly identified policy leads. In Canada, such a body could serve as a gateway to other agencies, giving FinTech firms a one-stop resource for information and encouraging public and private investment in innovative businesses and technologies in the financial services sector.

ETA Comments:

ETA supports policymakers identifying a clear and unified FinTech policy lead with requisite experience with an eye towards facilitating FinTech development. In other jurisdictions, these offices have been used successfully to help both new entrants and established players to cut through bureaucratic red tape in an effort to bring innovative new products to market.

Recommendation 8:

Regulators should promote greater access to core infrastructure and services to facilitate the development of innovative FinTech services under the appropriate risk-management framework. Access to core infrastructure, such as the payments system, would enable more market participants to deliver new overlay services to payments customers (e.g. bill payment applications, international remittances, foreign exchange services).

ETA Comments:

ETA supports access to core infrastructure and services to facilitate development in innovative FinTech services so long as it is done safely and under proper risk-management framework. Among the issues that would need to be addressed are security of consumer data and funds, liability rules, privacy, prudential concerns (collateral and capital requirements), dispute resolution and recourse for consumers or other end users of the system.

Recommendation 9:

Policymakers should embrace broader "open" access to systems and data through application programming interfaces. With more open access to consumers' data (obtained through informed consent and under an appropriate risk-management framework), FinTech can help consumers overcome their inability or unwillingness to shop around by paving the way for the development of bespoke price-comparison tools, and other applications that facilitate competitive switching. Clarifying the conditions under which access is granted would support greater clarity of liability for consumer redress. And, by enabling more financial processes to be conducted without the need for a bricks-and-mortar branch network, customers in regions with little competition may see their options improve.

ETA Comments:

ETA and its members understand that access to financial data is an important issue that concerns consumers, traditional financial institutions, and FinTech companies, including data aggregators and 3rd party application providers.

Any efforts by policymakers to regulate access to a consumer data for their use in financial products and services should be done collaboratively with industry and consumers and with careful consideration. Financial institutions and FinTech companies have leveraged consumer-permissioned financial data for nearly two decades in a manner that has protected consumer data while ensuring industry has had the flexibility to develop new products and services. ETA believes that the industry is best-positioned to continue the evolution in this market. As such, ETA strongly encourages regulators to be sensitive to the risk that applying a uniform regulatory framework to all financial products and services, without any appreciation of differences in products and services and consumer needs, will likely stifle creativity and innovation in the market.

With respect to the specific issue of data access, ETA believes that the best way to address these challenges is for financial institutions and the FinTech industry to continue to work together to develop solutions and standards to ensure that consumers are able to permission their financial data safely and securely rather than having the regulators mandate requirements through rulemaking or other regulatory means. ETA is concerned that any government attempt to implement regulations governing account access information will negatively affect the incentive and ability of institutions to continue to develop new and innovative products and services that benefit consumers.

Specifically, ETA believes that industry solutions that take into account the unique circumstances of the parties and the functionalities being contemplated will be more effective in addressing the risks and opportunities being presented. It is important to recognize that this is a highly dynamic space, where players, technologies, and services offered may differ widely and present different or evolving risks. A one-size fits-all regulatory solution will not keep pace with the dynamic nature of this space and will stifle innovation.

To date, support for industry standards has centered on the following core principles:

- **Proper Disclosure on Data Access and Use** – Consumers should be informed of the use and potential sharing of their financial information. Financial institutions and others that collect information should only collect information needed to provide the specific product or service the consumer desires. In addition, there should be complete transparency on how the consumer’s information will be used, including any sharing of that information.
- **Customer Choice** - Consumers must provide explicit consent for providing access to and use of data. This consent should be easy to revoke or modify.
- **Availability and Reliability** –Consumers should be able to access their account information with ease, and have access to convenient, efficient, and reliable products and services. Consumers need confidence that the information is accurate and up-to-date.
- **Data Security** – Consumers should have safe and secure access to their financial information. Any industry-developed solution that allows for access and storing of consumer financial information through safe and secure means should include industry best practices, allow for a tailored approach for different types of uses and companies, and be developed for all of the industry. Consumers must have confidence that their data is adequately protected by all applications, systems, and providers that have access to it. This includes use of technology such as APIs and tokenization; however, they are not the only secure options available today. Technology will continue to evolve over time, so standards must not stipulate specific types of technologies, but rather provide that entities follow applicable laws and industry best practices with regard to data security. In order to fully achieve security, a shared set of standards is needed that can be applied and updated on an ongoing basis.

Recommendation 10:

Industry participants and regulators should explore the potential of digital identification to facilitate client identification processes. Many services currently rely on verification of one’s identity based on passwords and personal identifying information presented without a physical presence. Digital identification could help reduce the cost of customer acquisition for new entrants and incumbent service providers alike, while reducing the costs of switching for consumers and facilitating regulatory compliance where identity verification is needed.

ETA Comments:

ETA supports a market driven strategy that supports a secure and safe financial services infrastructure. Rather than issue prescriptive requirements, regulators should consider principled-based technology-neutral and device-agnostic solutions. Specifically, ETA believes that principle based solutions that take into account the unique circumstances of the parties and the functionalities being contemplated will be more effective in addressing the risks and opportunities being presented. It is important to recognize that this is a highly dynamic space, where players, technologies, and services offered may differ widely and present different or evolving risks. A

one-size fits-all regulatory solution will not keep pace with the dynamic nature of this space and will stifle innovation.

Recommendation 11:

Policymakers should continue to review their regulatory frameworks frequently and adapt regulation to changing market dynamics (e.g. consumer demand and advances in technology). Reviewing regulatory frameworks ensures they remain relevant in the context of future innovation and can achieve their objectives in a way that does not unnecessarily inhibit competition. When consumers are faced with new products and services that they may not fully understand, they may be left exposed to harmful outcomes. Updating regulations to reflect new market dynamics can better ensure consumers are protected when using new or innovative financial products or services and technologies to access those services. Extending consumer protection principles to services enabled by FinTech can help reduce barriers to entry and at the same time ensure that all consumers, regardless of technology, enjoy the same level of protections. Indeed, FinTech products can help promote greater financial literacy among consumers. Policymakers should explore ways to leverage technology to achieve these objectives.

ETA Comments:

ETA agrees that regulators should review the current regulatory, supervisory and licensing frameworks in light of new and evolving risks arising from innovative products and business models. There is a challenge when applying old rules or regulations to new players or new products contemplated by existing financial institutions and other FinTech companies. Many regulators are eyeing the deployment of new products and services and are examining ways to regulate them. Many times, the tools in their toolbox are existing laws, which can create new challenges as many of the existing laws were written before the new products and services existed.

To ensure that rules and regulations keep up with technological changes, ETA endorses a review of current regulatory, supervisory, and licensing frameworks considering new and innovative products and business models. To ensure that the regulatory framework keeps up with existing products, a 5-year lookback on regulations by regulators should be done. This will help with modernization of regulations on a regular basis.

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We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any issues, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

Respectfully submitted,



PJ Hoffman, Director of Regulatory Affairs
Electronic Transactions Association
1620 L Street NW, Suite 1020
Washington, DC 20036
(202) 677-7417
PJHoffman@electran.org