Regulating Big Tech – current state of financial services disruption

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In June of 2017, Amazon announced that it had originated more than $1.5 billion dollars to date in small business loans to its online seller community. More impressive is Amazon’s statement that in the 12 months preceding that announcement it originated $1 billion of those small business loans.¹

Amazon’s numbers are huge by any measure, but in context, Big Tech lending only generates roughly 11% of the total revenue for these large technology companies and there are massive incentives in place to push Big Tech into the financial services space.² Whether it’s new forms of consumer or business credit, additional online platform payment services, or even new crypto-currencies, the race for customer, monetary, and data capture is on. With this push, it’s important to understand the current regulatory state, competitive equality issues, and the public policy issues at play in order to understand how regulators might balance-out Big Tech’s role in the financial services industry.

Big Tech offerings in banking in the U.S. are relatively nascent and so is the regulatory presence. However, there are global examples of how this might evolve. One example is China, where the tech giant Alibaba began to offer a payments platform in 2004.³ The company slowly began building other financial services offerings resulting in spinning off those financial services into a company called Ant Financial offering services ranging from Payments to Financing, to insurance and wealth management. Given this and the parallel rise of payment giant Tencent, China’s central bank recently stepped in to require “tech giants to link certain internet bank accounts to traditional bank accounts and to keep 100% of their ‘float’ in reserve at the central bank”.⁴ However, before this occurred, these companies were able to leverage competitive and regulatory advantages to insert themselves into the financial services market in a significant way. Is the U.S. market headed down a similar path?

The regulatory response to Big Tech’s financial services efforts have been measured thus far. Up until and even after the Office of the Comptroller of the Currency’s (OCC) announcement of a FinTech Charter offering in 2016, these companies operate(d) largely like traditional non-bank mortgage companies in that they provide these services and might be licensed under the umbrella of various state laws. For example, if a large tech company wanted to provide small business loans in California, they would have to determine if that state’s regulatory framework regulated small business loans and if so, whether a license would be required and if applicable follow state laws in the provision of those services. At the federal level, the focus is mainly on data security where the FTC, CFPB and various state AGs have exercised enforcement authority at various times where consumer data was breached or at risk of

¹ https://www.reuters.com/article/us-amazon-com-loans-idUSKBN18Z0DY, June 7, 2010
³ https://digital.hbs.edu/platform-rctom/submission/alibaba-is-disrupting-a-traditional-financial-services-industry-in-china/.
breach. Where tech companies have partnered with banks or credit unions, indirect regulatory scrutiny via vendor contractual agreements and vendor due diligence rules.

Moving forward, there is a lot of “wait-and-see” in place. Companies like PayPal and Google are rumored to have had conversations with the OCC regarding the OCC’s fintech charter but reportedly backed off due to the possibility of harming relationships with state regulators and due to a court challenge regarding the validity of the fintech charter. Since being announced in 2016, the fintech charter has been the subject of much debate culminating in lawsuits challenging the OCC’s authority to issue the special purpose charter under the National Bank Act (NBA) by both the New York Department of Financial Services (NYDFS) and separately the Conference of State Bank Supervisors, both in 2018. Both of these are currently ongoing. Additionally, promptly following Facebook announcing the creation of a new crypto currency, the House Financial Services Committee proposed the “Keep Big Tech out of Finance Act” which would prohibit technology companies with at least $25 billion in annual revenues from functioning as Financial Institutions (F.I.’s) or issuing digital currencies. This would apply to only the largest technology companies and likely would not make it into law given the current state of politics generally. Finally, federal regulators are waiting to see how this evolves but are at least exploring how technology impacts the financial services world and how they might safely encourage innovation in banking.

While large technology providers may have some advantages in the financial services sector, traditional F.I.’s are still competing and in some cases partnering with technology providers to grow their customer and revenue base. In the meantime, all of the market participants and stakeholders will continue to further the policy debate around risk versus innovation in pursuit of a sensible regulatory framework.

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9 For context, Facebook hovers around $55 billion a year where as companies like Netflix and Uber are below the $25 billion threshold.