union des consommateurs

Open banking: a panacea for consumers?

Executive summary
June 2021

Summary

Introduction

Financial and technological (fintech) companies and corporations continually innovate to offer consumers new services and applications. With the adoption of open banking systems, which involve new portability and interoperability rules, those offers can be expanded. From Europe — where the DSP2 Directive, in effect since January 2018, requires banks to give financial technology corporations access to their customer information — to the United States, and to Asia, open banking is spreading rapidly and opens the door to a wide variety of new financial applications. Canada has also begun to show interest in this development.

The new applications offered to consumers could certainly enrich and facilitate the management of their personal finances and add new payment system options. But those applications could also pose new challenges, notably for the protection of personal information and privacy.

Open banking is and will remain for many years a subject of major financial interest, and its diverse applications will inevitably become part of Canadians' lives in the coming years.

The purpose of our research was to understand the benefits and risks for consumers of the establishment of open banking in Canada, and to identify, based on foreign experiences, the best practices for regulating open banking.

Our research aimed at answering the following question: What issues does by open banking raise for Canadian consumers and how can it be regulated adequately to their advantage? Accordingly, we explored consumers' expectations and fears regarding open banking, what benefits, drawbacks and risks consumers face, what mechanisms have been put in place or planned in foreign jurisdictions to protect consumers, etc. To answer those questions, the methodology we adopted included a review of the literature on the situation in Canada, a survey of Canadian residents, a study of the regulatory frameworks in Canada and abroad (the United Kingdom, the United States, Australia, Japan and New Zealand), and a consultation of various stakeholders.

Our report presents the conclusions of our research, along with our resulting recommendations.

Open banking: benefits, fears and risks

Open banking potentially offers various benefits to consumers, not least full control of their banking data, thus enabling them to share their data held by financial institutions and use it securely to obtain new services.

Establishing open banking in Canada could improve banking services and lower barriers to consumers changing their financial institutions. It could thus stimulate greater competition within the Canadian banking system, currently dominated by a handful of major banks.

Open banking could give some consumers access to better credit rates, and even to loans previously refused on the sole basis of credit history. Ultimately, open banking could also offer under- or un-banked consumers a variety of banking services, for example by allowing financial institutions to access expense and payment data in order to determine solvency.

More generally, banking services could also be improved thanks to greater flexibility in personal financial management. For example, consumers could, in real time, monitor their credit, check out the various banking offers, and change banks easily and quickly to take advantage of those offers.

On the other hand, establishing open banking raises numerous concerns. Our survey of 2,000 adult Canadian residents in spring 2020 is unequivocal on this point: Canadians know little or nothing about open banking, they mistrust it enormously, and currently it appears that neither additional security measures nor applications offering new banking services would suffice to have them adopt any open banking service. That reluctance may be due to the current absence of open banking in Canada, so that Canadians don't have full access to the possibilities that might be open to them.

The situation in Canada

In Canada, open banking is still at the project stage; no specific regulatory framework directly covers open banking.

In spring 2018, the federal government announced in its budget an intention to examine the merits of establishing open banking in the country. To that end, the Minister of Finance announced the formation of an Advisory Committee on the subject. Set up in fall 2018, it was assigned to determine whether open banking could provide Canadians with significant benefits, and focused mainly on issues related to privacy protection and to the financial system's security and stability.

In winter 2019, the Committee launched a first consultation, which ended in February 2019, to which no consumer rights group participated. We examined five of the briefs submitted to the Committee, in order to identify the views and positions of major associations or organizations representing a variety of viewpoints: the Office of the Privacy Commissioner of Canada, Payments Canada, the Law Society of Ontario, the Canadian Bankers Association (CBA) and the Competition Bureau.

It was not until November 2020 that the Minister of Finance announced the second phase of the Committee's work, i.e. five virtual consultations with stakeholders. Those consultations, attended by Union des consommateurs, were held in November and December 2020. We also examined the comments that the Financial Consumer Agency of Canada (FCAC) submitted to the Advisory Committee in March 2021.

To further our research, we asked Canadian consumer rights and other groups as well as various experts for their comments about open banking and its regulation. We report the answers given by the Public Interest Advocacy Centre (PIAC) and Professor Karounga Diawara of Université Laval's Law Faculty, who responded to our invitation.

The briefs we examined and the consultations we held revealed that open banking does not generate the same enthusiasm among all stakeholders. The majority of them fall somewhere between Payments Canada's enthusiasm and the scepticism expressed by PIAC about potential benefits. Open banking will be acceptable only if consumer and personal information protection is firmly ensured, and if the security of operations and the system is guaranteed.

Several stakeholders emphasized that consumer confidence in open banking will be crucial for ensuring their indispensable participation. They will have to view open banking as secure in every way and to have recourses if problems arise. The entire spectrum of stakeholders — CBA, FCAC, PIAC and the Committee itself — insisted on the importance of available consumer recourses.

Consumer adoption of open banking requires particularly that issues of consent, data security, personal information and privacy protection be resolved. It will be essential to modernize general privacy and data protection frameworks.

Foreign jurisdictions

The adoption of open banking is not as advanced in Canada as elsewhere. Other regions, such as Europe, Asia and Australia, have already launched various initiatives and begun implementation. We examined the situation in eight foreign jurisdictions: Australia, New Zealand, Japan, Hong Kong, Singapore, the European Union, the United Kingdom and the United States.

In studying the development of open banking abroad, we observed that one of two approaches is adopted: one whereby governments regulate the system's implementation, and the other whereby the market is almost left to its own devices. The main differences fall into five categories:

1) **The impetus for the development of open banking**. Some jurisdictions, such as Europe, the United Kingdom and Australia, have required banking institutions to develop open APIs, whereas the United States and Singapore, notably, have relegated that to industry. The first approach generally involves a requirement that financial institutions give third-party companies access to their data, the creation of regulatory institutions with coercive power, the development of a timetable for progressive implementation, tighter regulation of third-party providers (TPPs), and greater standardization of APIs. In addition, a regulatory institution oversees the rates that

banks charge for access to their APIs. In Europe, the Second Payment Services Directive (DSP2) requires banks to give third parties registered as information service providers no-fee access to accounts. Jurisdictions that adopt the second approach rely instead on advisory panels involving banking institutions, and on the establishment of organizations facilitating innovation and partnerships.

2) **The level of third-party regulation**. The banks' objective in establishing open APIs is to give third parties access to them. Before accessing their users' sensitive data, fintechs must prove their own legitimacy. In certain cases, a central authority is responsible for the certification process. In jurisdictions where no central authority is responsible for certification, that responsibility for approving access to a third-party provider may belong to the banks themselves, which will apply their own selection criteria and reach, as the case may be, bilateral agreements.

3) **The scope of API features**. The financial products covered, and thus the scope of APIs, vary according to jurisdictions. For example, some jurisdictions limit their regulation — and consequently the obligation to give third-party providers API access — to operating and savings accounts, to the exclusion, for example, of personal and mortgage loans. Elsewhere, the intention is to broaden access and include other products, for example insurance policies, from other institutions, such as asset management firms, and even from other sectors of activity, such as communications and energy. As for API features, we observe that various types of third-party services require read or write access to banking data — Europe and the United Kingdom classify APIs as account information service providers (AISPs — read only access) and payment initiation service providers (PISPs — write access). Australia, notably, limits its regulation to read access only.

4) **API standardization**. The adoption of a technical standard for API development may result from a legal obligation or an industry consensus. But some jurisdictions don't impose standards. Accordingly, some banks have developed their own APIs before the introduction of open banking, while others have adopted a certain model due to development costs or technical constraints. For third-party providers, the absence of standards complicates the compatibility of products; closed ecosystems may thus be formed among specific banking institutions.

5) **Enhancing consumer rights**. The development of open banking lowers barriers to the rapid, high-volume flow of consumers' personal information. Some jurisdictions have chosen to enhance their personal information protection regime to reflect the risks facing consumers. The new provisions apply in some cases, as does the Australian Consumer Data Right (CDR), to data exchanged within an API's narrow framework, and in other cases to all holders of personal data, as does the European Union's General Data Protection Regulation.

Conclusion

APIs raise certain concerns, particularly about issues regarding consent to the collection, sharing and use of sensitive data, personal information security, and complaint handling. All those aspects will have to be strictly regulated.

Not all foreign jurisdictions that have already established open banking systems have opted for similar governance systems. Most foreign jurisdictions have a defined strategic framework — the

United States is the notable exception. Several jurisdictions, such as the United Kingdom and Australia, have also chosen to set up an organization responsible for the API's implementation. Several jurisdictions also require that API participants be certified and adopt a certain number of common industry standards. In many cases, those implementation and certification organizations are government regulated, such as the Open Banking Implementation Entity in the United Kingdom, or are governmental, such as the Australian Competition and Consumer Commission in Australia.

The technical standards have generally been developed under the coordination of an implementation organization, to ensure that all participants have equal access to the new market. Here again, the United States is going alone: Its standards have been developed by industry, and no regulation has imposed interoperability, thus resulting in the creation of collaborations in silo and the emergence of additional intermediaries interconnecting the various APIs.

Fortunately, the Open Banking Advisory Committee appears to favour the establishment in Canada of an API governance model modelled after the one chosen by the United Kingdom and Australia.

Establishing an API in Canada will require careful study, in view of adopting adequate regulation, of such varied issues as: consent to access and use of personal data, including limits and withdrawals of consent; adequate definition and protection of sensitive personal data and privacy; data mobility; interconnectivity; the constitution and governance of implementation and certification organizations; complaint handling; the responsibilities of the various open banking participants; etc.

The tabling of Bill C-11 in fall 2020 indicates that the government intends to proceed. The bill takes the first steps by granting consumers a right to portability of their data. However, the bill is silent about a variety of aspects, such as implementation and certification processes and the organizations that will be responsible for them, the certification requirement and regulations, and applicable security standards. According to the bill, all those aspects should be regulated, but the details remain unknown, so at this point it's difficult to know, and thus to report, what regulations are being considered. Moreover, Bill C-11 only proposes a modest reinforcement of consent regulations, which are crucial regarding sensitive data such as financial data. We also observe that the issue of complaint handling, which we find very important, is totally absent from the bill; this aspect may — or may not — be included in the regulations…

We think it will be important that organizations wanting to participate in the API in Canada be certified beforehand by an independent organization, responsible for applying rigorous standards that would have been defined in collaboration with industry. Similarly, the system's implementation organization, whether different or not from the certification organization, will have to give a role to industry for all technical issues, but also to representatives of government and consumer rights organizations for all consumer protection and complaint handling issues.

The report of the Open Banking Advisory Committee is expected in the coming weeks. The documents handed by the Committee to participants in the second round of consultation suggest that the Committee will opt for recommendations essentially in line with our own. The federal government will then define the type of governance chosen to regulate open banking in Canada.

Recommendations

In the light of the above, Union des consommateurs recommends, notably:

- The adoption of a strict regulatory framework ensuring the creation of an API in Canada and imposing data portability that would be regulated by precise and complete rules and standards developed, established and overseen by government organizations;
- That special attention be paid to consumer and personal data protection, in terms of control as well as security, and that consumer groups be called to participate in the development of standards and rules, to ensure that consumer interests be the priority;
- That work continue to modernize general privacy and data protection frameworks as well as specific rules that may be necessary for sensitive data and for the new ways of sharing and using those data;
- That all organizations participating in the API be required to make available to consumers a standardized internal complaint handling system;
- That a single independent external organization, with the power to settle disputes with binding decisions, be designated for handling consumer complaints;
- That the external complaint-handling organization also be mandated to identify any systemic problem that might result from an API and affect consumers, to report it to competent authorities, and to issue recommendations;
- That the federal government ensure adequate participation by community consumer rights organizations in work leading to the establishment of open banking regulation and monitoring, and provide adequate funding for such participation.