

Unclassified

English - Or. English

14 November 2025

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Balancing Prudential Regulation and Competition Considerations in Banking – Note by  
BIAC**

5 December 2025

This document reproduces a written contribution from BIAC submitted for Item 10 of the 147<sup>th</sup> OECD Competition Committee meeting on 4-5 December 2025.

Antonio CAPOBIANCO  
Antonio.Capobianco@oecd.org, +(33-1) 45 24 98 08

**JT03576745**

## BIAC

### 1. Introduction

1. *Business at OECD* (BIAC) appreciates the opportunity to provide its views to the OECD Competition Committee in the roundtable discussion on Balancing Prudential Regulation and Competition Considerations in Banking. This follows and builds on the discussion in 2009 on financial stability and competition.<sup>1</sup> Following the financial crisis, prudential requirements in the banking sector have increased almost everywhere. With the development of new financial models and in particular fintech, it is the appropriate time to consider whether their requirements have an impact on competition and how, if needed, to balance the two.

2. The OECD call for contribution focuses on retail deposits and lending.<sup>2</sup> This paper will cover the same services.

### 2. The Peculiarities of the Banking Sector

3. In most areas of the economy, the exit of a company, through bankruptcy, will have consequences but will not have critical systemic impacts on other players, or across the broader economy. In most sectors, some competitors may stand to gain from the exit of insolvent firms as they may be able to acquire their assets (potentially at a significant discount) as well as their customers. The banking sector, on the other hand, is comparatively more interconnected and, if one bank were to fail, there is the possibility of a systemic risk affecting the entire sector.

4. The other peculiar aspect of the banking sector is that issues might arise also for healthy banks if there is a perception that it might not be able to fulfil its liabilities. In the retail sector, a bank run occurs when depositors rush to withdraw money from the bank when they think the bank to be at risk of insolvency. Even a prudently managed bank will likely face a lack of liquidity in such a scenario which can result in the bank having to liquidate assets at a loss and possibly fail if it is not able to cover its liabilities. Such a failure (even by “smaller” players) can infect the whole banking system and can easily expand to other banks, as was experienced during the most recent financial crisis. While even a small bank can have systemic effects, some banks are so large and interconnected that they become “too big to fail.” These are the banks that governments aim to save at all costs. Whether this has an impact on how they behave in the market and whether it leads to higher risk taking has been examined by various academics so that point will not be dealt with here.

---

1 OECD, Competition and Financial Markets, DAF/COMP(2009)11 (June 8, 2009), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2009/06/competition-and-financial-markets\\_da8a3ede/c32e99af-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2009/06/competition-and-financial-markets_da8a3ede/c32e99af-en.pdf).

2 Letter from Benoît Cœuré, Chairman, OECD Competition Comm., to Delegates (Aug. 21, 2025) (on file with author).

### 3. Financial Stability as the Preeminent Goal

5. During and following the 2008 financial crisis, two main events took place. The first was, through regulation, the increase of capital requirements on banks. If a bank is required to hold a higher level of capital, the risk of a bank run having an impact on that bank reduces. Hence, an increase of prudential requirements. Regulators wanted to control and diminish the probability of insolvency and illiquidity.

6. The second was that governments prioritized financial stability over competition. Vast sums of money were poured into the banking sector, and financial assistance (if not nationalization) was granted to various banks by most governments. That assistance distorted competition between banks, but this was not the immediate concern for governments. The effect that assistance had on competition was to be dealt with later. This was seen across Europe with the state aid rules for the financial sector being revised and how the European Commission addressed the distortion created by the aid later on. Similarly, in the UK, Lloyds TSB was allowed to acquire HBOS by the then-Secretary of State on financial stability grounds. That decision overrode the UK competition authority's view that such acquisition would have had on competition. Stability had to be ensured at all costs, competition could be addressed later. In 2013, Lloyds TSB had to divest 620 branches and create a new competitor, TSB. HBOS had had a similar number of branches.

7. The philosophy of financial stability first, competition issues later has become a recurrent theme. Perceived concerns over financial stability also took priority over competition law considerations in Switzerland when UBS was allowed to – or rather when Swiss authorities (notably, the Swiss National Bank, the Financial Market Supervisory Authority, FINMA, and the Swiss government) arranged – UBS' takeover of its long-term rival, Credit Suisse in 2023. The Swiss Competition Commission (COMCO) raised concerns about resulting dominance in the Swiss banking market, especially the loan and debt markets, corporate banking and asset management.<sup>3</sup> However, FINMA, in line with the statutory process defined for such cases, subordinated COMCO's principal review on the grounds that the takeover was necessary for creditor protection and summarily concluded that the merger would not eliminate effective competition in the market and decided no competition remedies were needed.<sup>4</sup> This is a clear example of concerns over financial stability taking precedence over principles grounded in competition law as the potential harm flowing from the risk of failure of Credit Swiss was deemed worse than the potential harm flowing from a reduction in competition.<sup>5</sup>

---

3 Zusammenschlussvorhaben UBS / CS: Stellungnahme der WEKO an die FINMA vom 25. September 2023, [https://www.weko.admin.ch/dam/weko/de/dokumente/2024/zusammenschlussvorhaben\\_ubs\\_cs\\_stellungnahme\\_vom\\_25\\_september\\_2023.pdf.download.pdf/Zusammenschlussvorhaben%20UBS\\_CS\\_Stellungnahme%20vom%2025.%20September%202023.pdf](https://www.weko.admin.ch/dam/weko/de/dokumente/2024/zusammenschlussvorhaben_ubs_cs_stellungnahme_vom_25_september_2023.pdf.download.pdf/Zusammenschlussvorhaben%20UBS_CS_Stellungnahme%20vom%2025.%20September%202023.pdf).

4 Press Release, FINMA, Merger of UBS and CS: FINMA Concludes Control Procedure (June 19, 2024), [www.finma.ch/en/news/2024/06/20240619-mm-zusammenschluss-ubs-cs/](http://www.finma.ch/en/news/2024/06/20240619-mm-zusammenschluss-ubs-cs/). In general, it cannot be excluded that structural remedies may also protect financial stability, once a suitable and robust purchaser is selected.

5 The Swiss Federal Administrative Court has very recently ruled that FINMA's directive to order the full write-down of all the Credit Suisse AT1 bonds was unlawful. The decision is still subject to appeal to the Swiss Supreme Court, and the Swiss Federal Administrative Court has not yet ruled on the plaintiffs' request that the write-off order be reversed. Press Release, Swiss Fed. Admin. Ct., Unlawful Write-Off of AT1 Capital Instruments (Oct. 14, 2025), <https://www.bvger.ch/en/newsroom/media-releases/unlawful-write-off-of-at1-capital-instruments-2385>.

## 4. Need For Prudential Regulation

8. It is worth noting that prudential regulators often use discretionary powers (e.g., to prevent systemic risk), while competition law requires clear, non-discriminatory application of rules.

9. Prudential regulation in banking involves a set of rules and supervision to ensure banks operate safely and soundly, maintaining financial stability and protecting depositors. Pursuant to these so-called “capital requirements,” banks must maintain adequate capital to absorb unexpected losses, with requirements based on the riskiness of their assets (risk-weighted assets or RWAs) and sufficient liquid assets to meet their short-term obligations and withstand liquidity shocks. The other aspect of prudential regulation are entry requirements, which include rules on how a new entity can start operating as a financial institution with the aim to protect customers. These capital and entry requirements can be perceived to lead to tension between competition law and prudential regulation as they conflict with fundamental principles underpinning competition law.

### 4.1. Entry Requirements

10. Aspiring banks must gain approval from financial regulators, must hold minimum levels of capital and liquid assets to ensure financial stability, and must establish robust governance policies and procedures to comply with local and international regulations. While these requirements aim to protect depositors and the financial systems itself, they represent high barriers to entry for new and smaller entrants.

11. In recent years, a large number of non-bank entrants (especially fintech players) have begun offering services without maintaining a physical, customer-facing presence. For these new entrants, approval processes have tended to be lengthy and onerous, so much so that a few players have gained access to a market by acquiring a bank that already had a license rather than applying for a license themselves. In some countries, regulators have expressed concerns about granting licenses to a large number of banks, as the greater the competition the lower the margins and the higher the risks that a bank might fail.

12. For BIAC, while these prudential requirements are necessary to safeguard the banking sector, their impact on competition must also be considered, especially as the banking landscape evolves away from traditional models. Banking prudential requirements are generally not the same for all banks. Many jurisdictions, including the UK and EU, use a layered approach, applying simpler, more proportionate rules to smaller, less complex, and domestic-focused banks and more complex and stringent requirements to larger, international, or systemically important banks.<sup>6</sup> These adjustments aim to reduce compliance burdens for smaller firms or firms pursuing less risk activity without compromising overall financial stability, reflecting a global trend towards tailoring regulations to a bank’s size and complexity. BIAC welcomes and encourages a tailored and proportionate approach to regulation, taking into account the relative risk profile of the various players involved. In BIAC’s view, avoiding a blanket approach to regulation will benefit competition, and BIAC supports an approach that results in banks that offer the same activity and carry the same risk being subject to the same regulation. This avoids an overly rigid approach that shackles all providers with the same burden, irrespective of their relative risk profile.

---

<sup>6</sup> This applies also to banks that emerged during the last ten years, initially as fintech operators and now as global institutions that have reached more than 50 million retail customers.

13. Applying the same complex rules to all banks can create disproportionately high compliance costs for smaller firms, hindering competition and potentially impeding market entry, but, notwithstanding efforts, entry requirements are still onerous. A further calibration depending on risk might be needed to foster more competition for new services.

## 4.2. Capital Requirements

14. Recent experience shows that it might time to reconsider and calibrate the current approach to capital requirements. Both under the Basel Framework<sup>7</sup> and in the U.S. implementation of the Basel Framework, firms can use their own models and data based on their actual products and services: this should generate a risk-based capital requirement more closely aligned to the actual risk of a particular asset rather than having a standardized approach. While in theory this approach should be preferred, in practice it has proven to be extremely costly and complex to implement and maintain.

15. In the United States, such approach has steadily declined in relevance culminating most recently with the proposal to eliminate the use of internal models for credit risk and operational risk as part of the July 2023 interagency proposal to implement the final Basel III capital standards (Basel III Endgame).<sup>8</sup>

16. Another interesting example can be found in the EU, where the Payment Services Directive – adopted in 2007 and updated in 2015 via the Payment Services Directive II (PSD II) – was intended in part to enable non-bank payment providers to offer defined payment services across Europe in competition with banks on the basis of a “payment institution” (PI) license.<sup>9</sup> To obtain such a license, providers must meet governance, supervisory, and capital requirements, reflective of the lower level of risk involved in offering the permitted payment services. Nonetheless, under PSD II, PI are restricted from offering credit products on a passported pan-European basis if the product involves a repayment period beyond 12 months.<sup>10</sup> This places them at a competitive disadvantage vis-

---

7 The Basel framework is a set of international banking regulations developed by the Basel Committee on Banking Supervision (BCBS) to set minimum capital requirements, standards for supervision, and market discipline for banks. See The Basel Framework, BIS, [https://www.bis.org/basel\\_framework/](https://www.bis.org/basel_framework/). The latest version, Basel III, was developed in response to the 2007-2008 financial crisis and aims to enhance bank resilience by focusing on capital, leverage, and liquidity. Its core components include risk-based capital ratios, liquidity ratios, and a leverage ratio to ensure banks hold enough capital to absorb unexpected losses. See Basel III: International Regulatory Framework for Banks, BIS, <https://www.bis.org/bcbs/basel3.htm?m=76>.

8 Press Release, Bd. of Governors Fed. Rsrv. Sys., Agencies request comment on proposed rules to strengthen capital requirements for large banks (July 27, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm>. The “Basel III Endgame” refers to the final package of global banking regulations, agreed upon in 2017 by the BCBS to complete Basel III after the 2008 financial crisis, requiring major banks to hold more capital against potential losses from credit, operational, and market risks. The plan faced a significant delay in the U.S. due to concerns about its negative impact on economic growth and market liquidity, leading to a shift towards a less capital-intensive, capital-neutral approach. The key changes involve stricter risk-weighting of assets and reduced reliance on banks’ internal models for capital calculations, particularly for credit and operational risks.

9 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, 2015 O.J. (L 337) 35.

10 Id. art. 18(4).

a-vis banks which also offer equivalent credit solutions, but without such a passporting limitation. If a PI is allowed to offer credit products locally in the home Member State of the PI, restricting the passporting of such activity goes against the freedom to provide services and therefore against the Internal Market principles which seek to promote competition within the EU. Policymakers are encouraged to avoid such asymmetric and disproportionate regulatory outcomes, which serve only to limit competition from alternative non-bank providers and ultimately also limit the competition options for end-consumers.

17. In July 2025, the UK Chancellor announced a series of UK financial services reforms to boost investment and growth.<sup>11</sup> In particular, there are plans to free capital for banks to invest in the UK by adjusting capital requirements. These measures are intended to support lending and investment while maintaining financial stability.

## 5. Competition Law

18. In the face of increasing consolidation in the banking sector, competition authorities have sought to foster competition wherever possible. Two initiatives are noteworthy: switching services and open banking.

19. Banks are largely perceived as offering the same services, and customers tend not to switch unless they are dissatisfied with their current provider or the costs are too high. In addition, customers are concerned that, in switching, something can go wrong, for example a direct debit not being paid. Responding to these concerns, the UK competition authority has worked with the sector to introduce a seven-day switching service. This is the Current Account Switch Service, a free service that moves a current account from one participating bank to another in seven working days.<sup>12</sup> It automatically transfers all your direct debits, standing orders, and salary payments, closes your old account, and redirects any misdirected payments to the new account for at least three years. While beneficial to customers in principle, the service has been received with mixed reviews as it foisted significant costs on banks to create and resulted in relatively little switching.

20. Another initiative is Open Banking. Open Banking is a system that allows customers in the UK to securely share financial data with authorized third-party providers, with the customer's explicit permission.<sup>13</sup> This initiative was launched by the UK's Competition and Markets Authority to promote competition, innovation, and choice in the financial services sector by enabling new apps and services for budgeting, payments, and financial management.<sup>14</sup> A similar framework has also been established in parallel in the EU under PSDII.

21. There is also a tendency to provide customers with more and more information so that they can make informed choices. While welcome in principle, some of these remedies have proven costly for business and less effective than envisaged; there has been no marked

---

11 Press Release, HM Treasury, Leeds Reforms to rewire financial system, boost investment and create skilled jobs across UK (July 15, 2025), <https://www.gov.uk/government/news/leeds-reforms-to-rewire-financial-system-boost-investment-and-create-skilled-jobs-across-uk>.

12 See Current Account Switch Service, <https://www.currentaccountswitch.co.uk/>.

13 See Open Banking, <https://www.openbanking.org.uk/>.

14 Press Release, CMA Paves the Way for Open Banking Revolution (Aug. 9, 2016), <https://www.gov.uk/government/news/cma-paves-the-way-for-open-banking-revolution>.

increase in customer switching and greater access to information has led to information overload for some.

22. The Financial Conduct Authority also observed that some errors made by consumers are “persistent and predictable,” and this can disincentivize firms from designing business models that focus competing on price and quality.<sup>15</sup> Understanding behavioral economics “enables regulators to intervene in markets more effectively, and in new ways, to counter such business models and secure better outcomes for consumers.”<sup>16</sup> The FCA takes the approach that using insights from behavioral economics, together with a more traditional analysis of competition and market failures, can help the FCA assess problems in financial markets better, choose more appropriate remedies, and be a more effective regulator as a result.

## 6. Conclusions

23. The protection of the banking system has sometimes taken precedence over competition law considerations. This is understandable in some settings. However, prudential rules should be tailored in a way that can promote competition while protecting the sector and avoiding exits that present a systemic risk. It is therefore important for prudential regulators to consider the impact of prudential measures on competition and to calibrate those to achieve a balance that promotes competition while safeguarding the system. The calibration should take into account that different forms of banking activity present different levels of risk. This means that regulatory requirements and burdens should be crafted proportionately to avoid unwarranted barriers to entry.

---

15 Kristine Erta, Stefan Hunt, Zanna Iscenko & Will Brambley, *Applying Behavioural Economics at the Financial Conduct Authority 3* (Fin. Conduct Auth., Occasional Paper No. 1, 2013), <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf>.

16 Id.