MEMORANDUM

TO: Federal Financial Analytics Clients

FROM: Karen Petrou

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Under Rohit Chopra, consumer protection has taken an important, widely-overlooked turn with potent consequences for all retail financial-product providers. Media coverage of the CFPB's bigtech order, mortgage-discrimination action, and last week's anti-overdraft campaign highlighted traditional issues such as fair lending and predatory pricing. These are indeed in the CFPB's sights, but so also is a much bigger target: the extent to which a few large companies are said to be able to set consumer interest rates and otherwise dictate the shape of U.S. retail finance. This might cut big banks down to the puny size their critics seek, but it's more likely to accelerate the transformation of retail finance into a wild west of unregulated providers outside the reach of safety-and-soundness standards and, in many cases, even of the CFPB. If this pro-competition campaign is mis-calibrated, the CFPB will put consumers at still greater risk.

Mr. Chopra's interest in market competition doubtless derives from his stint as a lone, strong voice at the Federal Trade Commission who lost pretty much every battle he waged against giant corporate combos. It surely stems also from President Biden's executive order demanding that federal agencies take express pro-competitive action. And, indeed, there's a lot to do in sectors such as tech-platform companies that already seem to have skipped over just being monopolies to become potent oligopolies with powerful impact over each aspect of everyday life, not to mention pricing and economic inequality.

However, neither traditional nor neo-Brandeisian antitrust theory applies well to an industry as regulated as retail banking. As we noted in an assessment last week of recent Fed research, rules have powerfully correlated bank portfolios into like-kind configurations. Banks are also subject to rules that define pricing – as I noted in my book, just one example is the unintended impact of interchange-fee restrictions that curtailed banks willingness to offer the truly-free checking accounts Mr. Chopra quite reasonably wants to resurrect.

Without a clear understanding of what rules make banks do and not do, rules designed to spur competition will squeeze regulated banks – especially the biggest ones – into tighter and tighter corners in which affordable, sustainable, and indeed essential consumer-financial products will be still harder to find. Lots of seemingly-free products may surface outside regulated banking and Mr. Chopra may even be able to use his authority to curtail at least some of them. A CFPB rule banning predatory overdraft pricing is all to the good for each consumer it protects, but it's all to the structural bad if it also leads more banks simply to abandon low-balance transaction accounts, clearing the way for unregulated providers to offer seemingly-attractive products that lack FDIC insurance, conflict-of-interest restrictions, and even the basic safeguards needed to ensure that a consumer's money is safely stored and easily accessed.

Competition sometimes isn't all it's cracked up to be. The U.S. retail-mortgage market was super-competitive from 2000 to 2007, dreaming up all sorts of new mortgages that were said to "democratize" home ownership. That of course didn't end well. Cryptocurrency has proved very appealing to vulnerable consumers, the quickest to take advantage of new offerings without always understanding the formidable new risks they take. Fintechs have also promised a great deal only to have states and, increasingly, the CFPB sanction them for misleading or even deceptive products.

In his overdraft announcement, Mr. Chopra promised not only new pricing standards, but also a pro-competition push designed to bring "open banking" to the U.S. In the EU, this has worked well in terms of expanding consumer access to non-bank providers, but there's an important difference between the U.S. and the EU: EU regulators have safety-and-soundness authority over key nonbanks; U.S. regulators don't.

Without safety-and-soundness standards, open banking in the U.S. will prove only open season for vulnerable consumers. To make U.S. consumer finance not only competitive, but also sound, Congress -- not the CFPB -- has to intervene to prevent a renewed race outside the regulatory perimeter that puts still more households and small businesses at even greater risk.