



HM Treasury

Financial Services (Banking Reform) Bill

Government Amendments: Payments Regulator

Briefing for Peers

October 2013

Government Amendment – Payments Regulator

Money transmission is central to the functioning of the economy. Money circulates continuously between individuals, businesses and government, for example when buying goods and services, receiving income or paying taxes. The mechanisms through which such transfers are made are known as payment systems, which are operated by payment scheme companies. The leading examples of these are the main inter-bank schemes (Bacs, CHAPS, Link, Faster Payments and Cheque & Credit) and the three- and four-party card schemes (most notably Visa, MasterCard and American Express).

In March 2013 the Government published a consultation, *Opening up UK payments*, setting out its proposal to bring payment systems under formal economic regulation, and establish a new competition-focused, utility-style regulator for retail payment systems. This followed a report published in July 2011 by the Treasury Select Committee (TSC), expressing serious concerns about the governance of payment systems, and recommending that the Payments Council be brought into regulation. The Final Report of the Parliamentary Commission on Banking Standards also welcomed the Government's commitment to bring payment systems into regulation.

The Government has considerable concerns about the market for UK payment systems. The combination of strong network effects, and the ownership of many of the key payment systems by overlapping groups of the big incumbent banks, gives rise to problems in three areas:

- 1. Competition:** the structure of the industry gives the incumbent big banks the opportunity to erect barriers to entry, so that challengers and smaller players cannot gain access to the payment systems on fair and transparent terms. These issues occur both at the level of direct and indirect access to the payment systems.
- 2. Innovation:** the network nature of payment systems (i.e. all major banks need to be connected for the system as a whole to be effective) means that innovations in the shared space do not give a competitive advantage to any of the banks. The banks also have the ability to slow the pace of development of new innovations. There is therefore a concern that new innovations are not being developed where they are in the wider social interest, but not in the narrower interests of individual banks.
- 3. Consumer responsiveness:** the network nature of payment systems means that failing to respond to customer needs does not give a competitive disadvantage to any of the banks. Therefore, there is scope for the banks to take decisions about the provision of services against the strong wishes of consumers.

The Government is therefore introducing amendments to create a competition-focused utility style regulator for payment systems, under the Financial Conduct Authority (FCA). This will not affect the existing role of the Bank of England under the Banking Act 2009, in overseeing recognised inter-bank payment systems for stability purposes. The Payment Systems Regulator will have objectives to promote competition, innovation, and the interests of end-users.

The Payment Systems Regulator will be able to oversee all domestic payment systems which are brought into the regulator's scope by being designated by HM Treasury. Initially, we expect to designate the main inter-bank schemes and international card schemes.

Once a system is designated, the Payment Systems Regulator will have a range of powers over its participants (operators, infrastructure providers, and payment service providers that provide payment services using the system), in order to meet its objectives. The Regulator will have the following generally stated powers:

- powers over requirements regarding system rules; and
- powers to give directions to participants in designated payment systems.

The content of these requirements and directions will be subject to whatever the regulator determines is required to meet its objectives.

The Payment Systems Regulator will have further specific powers to:

- require access to designated payment systems for a payment services provider;
- vary agreements relating to designated payment systems (including fees and charges); and,
- require owners of payment systems to dispose of their interests in them - subject to the satisfaction of certain pre-conditions and subject to HM Treasury approval.

In addition, the Payment Systems Regulator will have enforcement powers to:

- publish details of compliance failure;
- impose financial penalties in respect of a compliance failure;

The Payments Regulator will also have Competition Act powers open to it, which it will operate concurrently with the Competition and Markets Authority.

The amendment also sets out appeal rights of the regulator:

- Decisions taken by the regulator – excluding those regarding its specific regulatory powers (i.e. the power to order access be provided and the power to vary an agreement), decisions to order disposal of an interest and those relating to penalties – will be subject to appeal to the Competition Appeals Tribunal (CAT), to a judicial review standard.
- For decisions taken under the specific regulatory powers and under the power of ordering a disposal, appeals will be made to the Competition and Markets Authority (the successor to the Office of Fair Trading and the Competition Commission), and the level of scrutiny will be a full merits review.

- On actions and decisions relating to the Regulator’s concurrent competition function, appeals will be made to the CAT on the same basis as provided for in the Enterprise Act 2002 and Competition Act 1998 (to judicial review standard for decisions under Enterprise Act powers, and to a full merits level for decisions under Competition Act powers).
 - The level of any penalties will be subject to a full merits appeal to the CAT.
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Further Enquiries

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