



Competition Law Association

British Group of the
Ligue Internationale du Droit de la Concurrence
(International League for Competition Law)

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PAYMENT SYSTEMS REGULATOR ("PSR") - WHAT EVERY LAWYER NEEDS TO KNOW

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**MONDAY 23 NOVEMBER 2015 - COMPETITION LAW ASSOCIATION
(HELD AT ASHURST LLP)**

Aim and Remit of the PSR

The PSR, fully operational since April 2015, is the first dedicated payment system regulator in the world. It is an independent subsidiary of the Financial Conduct Authority and is headed by Hannah Nixon (previously a senior partner at Ofgem).

The PSR's aim and vision is to make payment systems that provide value for money, are accessible, easy to use, reliable and secure; and facilitate the recognition of payment systems as an organ for economic growth.

There are three dimensions to the PSR namely:

1. **The PSR as an economic regulator** (see slides 7 - 14).

Unlike the FCA, the PSR does not operate under an application regime; rather regulates the *systems* that the Treasury designates for PSR representation (for example, CHAPS, LINK, cheque and credit). The PSR does not regulate elements of payment services, rather the full 'system, including, for instance, the infrastructure provider, system operator and payment service provider.

See slide 13 for details on specific Directions. Mr Rawling's noted that there are a number of rules relating to access to payment systems and the importance of reporting compliance with these rules.

2. **The PSR as the newest competition authority** (see slides 15 - 22).

The PSR's powers in the competition sphere are available on the PSR's website in guidance.

Note the PSR's statutory objectives, as specified in the Financial Services (Banking Reform) Act 2013 ("**FSBRA**"), sections 50-52 include: (i) promoting effective competition in the interests of service-users; and (ii) promoting innovation in the interests of service users. The interaction in practice between competition and innovation will be interesting to observe.

FSBRA provides the PSR with a suite of tools that can be used to address any competition concerns and aims to provide the PSR with the means to advance its statutory objectives.



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3. **The PSR as the competent authority for the Interchange Fee Regulation** (see slides 23 - 36).

Applicable Legal Regimes

The PSR must currently navigate a number of legal regimes:

- | <u>EU</u> | <u>UK</u> |
|--|--|
| <ul style="list-style-type: none">• EU Competition law | <ul style="list-style-type: none">• Competition Act 1998 |
| <ul style="list-style-type: none">• EU Payment Services Directive 2007/2015 (and implementing Regulations) | <ul style="list-style-type: none">• Enterprise Act 2002 |
| <ul style="list-style-type: none">• EU Payment Accounts Directive 2014 (and implementing Regulations) | <ul style="list-style-type: none">• FSBRA |
| <ul style="list-style-type: none">• EU Interchange Fee Regulation 2015 (and UK SI) | |

The legal framework in this area is likely to be further developed by the EU.

The PSR has a number of regulatory tools and appeal routes available to it (please see slide 12 of the presentation for further detail). Note that the Competition and Markets Authority will put itself in the shoes of the PSR. Every decision is subject to judicial review, including those decisions which result in no action being taken.

The PSR's Work Programme

See slide 14 for further information.

The importance of engagement with the EC and similar entities to the PSR in different Member States was noted.

Mr Rawling's hoped that there will be further visibility as to what is required to be a direct/indirect participant in payment systems.

How does the PSR fit in with private damages actions litigation? The PSR would be keen to know more about the status of various relevant litigation. Although it could benefit with further engagement in the litigation to increase its understanding, the engagement was unlikely to be in the form of an amicus curiae.

Upcoming meetings and publications:

- A second payments strategy forum meeting is due to take place in December 2015.



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- The PSR is currently reviewing the sponsor bank market and establishing principles for indirect access to services. An interim report into the market is due at the beginning of 2016, with a final report scheduled to be published in summer 2016.