

UK Payment Systems Regulator Announces Market Review into Card-Acquiring Services

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Antitrust/Competition and Financial Services

The UK Payment Systems Regulator (PSR) announced on 24 July 2018 its intention to carry out a market review into the supply of card-acquiring services. The PSR has released its [draft Terms of Reference \(“ToR”\)](#) and is seeking feedback on consultation questions.

Card payments are now more common than cash payments. To accept card payments merchants (i.e., retailers) need to buy card-acquiring services (the “Services”). The Services, provided by acquirers (typically high street banks), permit access to a card payment system and thereby enable merchants to accept and process card payments.

Who?

The PSR has the power to enforce competition law in the UK, in relation to participation in payments systems. Its competition law powers are therefore concurrent with those of the overarching competition regulator, the Competition and Markets Authority (CMA), and with the sectoral competition law powers of the Financial Conduct Authority (FCA). The PSR launched its first competition investigation earlier this year, with a series of dawn raids. This newly-announced market review follows earlier reviews into the “supply of indirect access to payment systems” and the “ownership and competitiveness of infrastructure provision”.

Why?

The PSR states that the market review has been prompted by concerns raised by various stakeholders, relating to the supply of the Services, which indicate that the Services may not be working effectively for merchants and therefore consumers. Concerns raised include:

1. a lack of transparency around fees paid to accept card payments;
2. difficulties comparing acquirers and switching between them and barriers to offering comparison tools;
3. acquirers not passing on savings resulting from interchange fee caps¹ to small merchants; and
4. complaints relating to card scheme fees and rules favouring larger acquirers.

¹Regulations have placed limits on the levels of fees that can be charged by acquirers (Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions)

What?

The review will focus on the supply of the Services as opposed to the cost of card payments for merchants. The review will look at competition in the supply of the Services and how this operates, including:

1. the nature and characteristics of the Services;
2. whether there are credible alternatives to the Services for merchants;
3. who provides the Services and how their market shares have developed historically;
4. how providers compete, and how this affects merchants;
5. how merchants buy the Services;
6. the regulatory and legal framework that applies to the Services; and
7. the scope for differentiation and innovation.

The review will also consider the outcome of the competitive process i.e., the quality of service merchants can expect and the fees which they pay.

In addition to these general themes, the PSR lists as its specific interests:

1. barriers to entry or expansion;
2. barriers to switching or searching faced by merchants; and
3. the provision of services to assist in merchant decision-making.

Possible outcome?

The PSR may take a number of actions following their review, should they consider that merchants (or other interested parties) are being harmed. These include:

1. making specific or general directions;
2. requiring an operator of a regulated payment system to establish or amend their operating rules;
3. recommending industry initiatives;
4. making proposals to the Financial Conduct Authority;
5. publishing guidance;
6. investigating a potential breach of the Competition Act 1998; and/or
7. making a market investigation reference to the Competition and Markets Authority.

Should the review find that merchants (and other interested parties) are not being harmed, no action will be taken.

Responses

The PSR invites feedback on the proposed ToR by 14 September 2018. The final ToR are intended to be published by the end of 2018 and will include a timetable for the market review.

Comment

The review follows on the heels of more active use by the FCA of its concurrent competition oversight role, as sectoral regulators with concurrent competition powers increasingly flex those muscles. It may also provide a taste of what is to come, as it is possible that, post-Brexit, the stretched resources of the CMA drive even more use of such powers by sectoral regulators.

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