



# Financial Services (Banking Reform) Act 2013

## 2013 CHAPTER 33

### PART 5

#### REGULATION OF PAYMENT SYSTEMS

##### *Regulatory and competition functions*

#### **54 Directions**

- (1) The Payment Systems Regulator may give directions in writing to participants in regulated payment systems.
- (2) A direction given to a participant in a regulated payment system may—
  - (a) require or prohibit the taking of specified action in relation to the system;
  - (b) set standards to be met in relation to the system.
- (3) A direction under this section may apply—
  - (a) generally,
  - (b) in relation to—
    - (i) all operators, or every operator of a regulated payment system of a specified description,
    - (ii) all infrastructure providers, or every person who is an infrastructure provider in relation to a regulated payment system of a specified description, or
    - (iii) all payment service providers, or every person who is a payment service provider in relation to a regulated payment system of a specified description, or
  - (c) in relation to specified persons or persons of a specified description.
- (4) The Payment Systems Regulator must publish any direction given under this section that applies as mentioned in subsection (3)(a) or (b).

- (5) A direction under this section that applies as mentioned in subsection (3)(a) or (b) is referred to in this Part as a “general direction”.

## **55 System rules**

- (1) The Payment Systems Regulator may require the operator of a regulated payment system—
- (a) to establish rules for the operation of the system;
  - (b) to change the rules in a specified way or so as to achieve a specified purpose;
  - (c) to notify the Payment Systems Regulator of any proposed change to the rules;
  - (d) not to change the rules without the approval of the Payment Systems Regulator.
- (2) A requirement under subsection (1)(c) or (d) may be general or specific.
- (3) A requirement under this section that is imposed on—
- (a) all operators of regulated payment systems, or
  - (b) every operator of a regulated payment system of a specified description,
- is referred to in this Part as a “generally-imposed requirement”.

## **56 Power to require granting of access to payment systems**

- (1) This section applies where a person (“the applicant”) applies for an order under this section.
- (2) The Payment Systems Regulator may by order require the operator of a regulated payment system to enable the applicant to become a payment service provider in relation to the system.
- (3) The Payment Systems Regulator may by order require any payment service provider with direct access to a regulated payment system to enter into an agreement with the applicant to enable the applicant to become a payment service provider in relation to the system.
- (4) An order under this section may provide for the applicant to become a payment service provider in relation to a payment system—
- (a) for a period specified in the order;
  - (b) on terms and conditions specified in the order.

## **57 Variation of agreements relating to payment systems**

- (1) This section applies to the following agreements—
- (a) any agreement made between the operator of a regulated payment system and a payment service provider;
  - (b) any agreement made between a payment service provider with direct access to a regulated payment system and another person for the purpose of enabling that other person to become a payment service provider in relation to the system;
  - (c) any agreement concerning fees or charges payable in connection with—
    - (i) participation in a regulated payment system, or
    - (ii) the use of services provided by a regulated payment system.

- (2) The Payment Systems Regulator may, on the application of a party to an agreement to which this section applies, vary the agreement by—
  - (a) varying any of the fees or charges payable under the agreement, or
  - (b) in the case of an agreement within subsection (1)(a) or (b), varying any other terms and conditions relating to the payment service provider’s participation in the payment system.
- (3) In the case of an agreement within subsection (1)(b), the reference in subsection (2)(b) to the payment service provider is to the payment service provider which does not have direct access to the payment system.
- (4) The power under this section to vary any fee or charge includes power to specify a maximum fee or charge.
- (5) If the Payment Systems Regulator varies an agreement under this section, the agreement has effect subject to the variation.

## **58 Power to require disposal of interest in payment system**

- (1) The Payment Systems Regulator may require a person who has an interest in the operator of a regulated payment system to dispose of all or part of that interest.
- (2) The power conferred by subsection (1) may be exercised only if the Payment Systems Regulator is satisfied that, if the power is not exercised, there is likely to be a restriction or distortion of competition in—
  - (a) the market for payment systems, or
  - (b) a market for services provided by payment systems.
- (3) The Payment Systems Regulator may not exercise the power conferred by subsection (1) without the consent of the Treasury.
- (4) If the Payment Systems Regulator decides to exercise the power conferred by subsection (1) in relation to a person who has an interest in the operator of a regulated payment system—
  - (a) the Payment Systems Regulator must notify the relevant competition authorities (see subsection (5)), and
  - (b) the relevant competition authorities may not take any action in relation to the person that would require the person to dispose of all or part of that interest.
- (5) The relevant competition authorities are—
  - (a) the Secretary of State,
  - (b) the Competition and Markets Authority, and
  - (c) the FCA.

## **59 The Regulator’s functions under Part 4 of the Enterprise Act 2002**

- (1) The functions to which this subsection applies are to be concurrent functions of the Payment Systems Regulator and the Competition and Markets Authority (“the CMA”).
- (2) Subsection (1) applies to the functions of the CMA under Part 4 of the Enterprise Act 2002 (market investigations), so far as those functions—

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*Status: This is the original version (as it was originally enacted).*

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- (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
  - (b) relate to participation in payment systems.
- (3) But subsection (1) does not apply to functions under the following sections of the Enterprise Act 2002—
- section 166 (duty to maintain register of undertakings and orders);
  - section 171 (duty to publish guidance).
- (4) So far as is necessary for the purposes of, or in connection with, subsections (1) and (2)—
- (a) references in Part 4 of the Enterprise Act 2002 to the CMA (including references in provisions of that Act applied by that Part) are to be read as including references to the Payment Systems Regulator,
  - (b) references in that Part to section 5 of that Act are to be read as including references to section 64 of this Act, and
  - (c) references in that Part to consumers are to be read as including references to any person who uses, or is likely to use, services provided by payment systems in the course of a business carried on by the person.
- (5) But subsection (4) does not apply—
- (a) in relation to section 166 or 171 of that Act, or
  - (b) where the context otherwise requires.
- (6) Section 130A of the Enterprise Act 2002 is to have effect in relation to the Payment Systems Regulator by virtue of subsections (1) and (2) as if—
- (a) in subsection (2)(a) of that section, the reference to the acquisition or supply of goods or services of one or more than one description in the United Kingdom were a reference to the participation in payment systems used to provide services in the United Kingdom, and
  - (b) in subsection (2)(b) of that section, the reference to the extent to which steps can and should be taken were a reference to the extent to which steps that might include steps under Part 4 of that Act can and should be taken.

## **60 Restrictions on exercise of functions under Part 4 of the Enterprise Act 2002**

- (1) Before the CMA or the Payment Systems Regulator first exercises any of the concurrent functions in relation to any matter, it must consult the other.
- (2) Neither the CMA nor the Payment Systems Regulator may exercise any of the concurrent functions in relation to any matter if any of those functions have been exercised in relation to that matter by the other.
- (3) In subsections (1) and (2) “the concurrent functions” means the functions which by virtue of section 59 are concurrent functions of the Payment Systems Regulator and the CMA.
- (4) Before the FCA or the Payment Systems Regulator first exercises any of the concurrent functions in relation to any matter, it must consult the other.
- (5) Neither the FCA nor the Payment Systems Regulator may exercise any of the concurrent functions in relation to any matter if any of those functions have been exercised in relation to that matter by the other.

- (6) In subsections (4) and (5) “the concurrent functions”—
- (a) in relation to the Payment Systems Regulator, means the functions which by virtue of section 59 are concurrent functions of the Payment Systems Regulator and the CMA, and
  - (b) in relation to the FCA, means the functions which by virtue of section 234I of FSMA 2000 are concurrent functions of the FCA and the CMA.
- (7) In this section “the CMA” means the Competition and Markets Authority.

## **61 The Regulator’s functions under the Competition Act 1998**

- (1) The functions to which this subsection applies are to be concurrent functions of the Payment Systems Regulator and the Competition and Markets Authority (“the CMA”).
- (2) Subsection (1) applies to the functions of the CMA under the provisions of Part 1 of the Competition Act 1998, so far as relating to any of the following that relate to participation in payment systems—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
  - (b) conduct of the kind mentioned in section 18(1) of that Act,
  - (c) agreements, decisions or concerted practices of the kind mentioned in Article 101(1) of the Treaty on the Functioning of the European Union, and
  - (d) conduct which amounts to abuse of the kind mentioned in Article 102 of the Treaty on the Functioning of the European Union.
- (3) But subsection (1) does not apply to functions under the following sections of that Act—
- section 31D(1) to (6) (duty to publish guidance);
  - section 38(1) to (6) (duty to publish guidance about penalties);
  - section 40B(1) to (4) (duty to publish statement of policy on penalties);
  - section 51 (rules).
- (4) So far as necessary for the purposes of, or in connection with, the provisions of subsections (1) and (2), references to the CMA in Part 1 of the Competition Act 1998 are to be read as including references to the Payment Systems Regulator.
- (5) But subsection (4) does not apply—
- (a) in relation to sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4), 51, 52(6) and (8) and 54 of that Act, or
  - (b) where the context otherwise requires.

## **62 Duty to consider exercise of powers under Competition Act 1998**

- (1) Before exercising any power within subsection (2), the Payment Systems Regulator must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (2) The powers referred to in subsection (1) are—
- (a) its power to give a direction under section 54 (apart from the power to give a general direction);

- (b) its power to impose a requirement under section 55 (apart from the power to impose a generally-imposed requirement);
  - (c) its powers under sections 56, 57 and 58.
- (3) The Payment Systems Regulator must not exercise the power if it considers that it would be more appropriate to proceed under the Competition Act 1998.

### **63 Provision of information and assistance to a CMA group**

- (1) For the purpose of assisting a CMA group in carrying out a relevant investigation, the Payment Systems Regulator must give the CMA group—
- (a) any relevant information which it has in its possession, and
  - (b) any other assistance which the CMA group may reasonably require in relation to any matters falling within the scope of the investigation.
- (2) A “relevant investigation” is an investigation carried out on a reference made by the Payment Systems Regulator under section 131 of the Enterprise Act 2002 by virtue of section 59.
- (3) “Relevant information”, in relation to a relevant investigation, is information—
- (a) which relates to matters falling within the scope of the investigation, and
  - (b) which—
    - (i) is requested by the CMA group for the purpose of the investigation, or
    - (ii) in the opinion of the Payment Systems Regulator, it would be appropriate to give to the CMA group for that purpose.
- (4) A CMA group, in carrying out a relevant investigation, must take into account any information given to it under this section.
- (5) In this section “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

### **64 Function of keeping markets under review**

- (1) For the purpose of the functions conferred on it by sections 58 to 63 the Payment Systems Regulator is to have the function of keeping under review—
- (a) the market for payment systems, and
  - (b) the markets for services provided by payment systems.
- (2) The function conferred by subsection (1) is to be carried out with a view to (among other things) ensuring that the Payment Systems Regulator has sufficient information to take informed decisions and to carry out its other functions effectively.

### **65 Exclusion of general duties**

- (1) Section 49 (the Payment Systems Regulator’s general duties) does not apply in relation to anything done by the Payment Systems Regulator in the carrying out of its functions by virtue of sections 59 to 63.
- (2) But in the carrying out of any functions by virtue of sections 59 to 63, the Payment Systems Regulator may have regard to any of the matters in respect of which a duty is imposed by section 49 if it is a matter to which the Competition and Markets Authority is entitled to have regard in the carrying out of those functions.

## **66 Concurrent competition powers: supplementary provision**

- (1) If any question arises as to whether, by virtue of section 59 or 61, any functions fall to be, or are capable of being, carried out by the Payment Systems Regulator in relation to any particular case, that question is to be referred to, and determined by, the Treasury.
- (2) No objection is to be taken to anything done under the Competition Act 1998 or Part 4 of the Enterprise Act 2002 by or in relation to the Payment Systems Regulator on the ground that it should have been done by or in relation to the Competition and Markets Authority.

## **67 Amendments relating to Regulator's competition powers**

- (1) In section 9E of the Company Directors Disqualification Act 1986 (interpretation of sections 9A to 9D), in subsection (2), after paragraph (f) insert—
  - “(g) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.”
- (2) In section 54 of the Competition Act 1998 (regulators), in subsection (1), omit the “and” at the end of paragraph (g) and after paragraph (h) insert—
  - “(i) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.”
- (3) In section 136 of the Enterprise Act 2002 (investigations and reports on market investigation references)—
  - (a) in subsection (7), at the end insert—
    - “(j) in relation to the Payment Systems Regulator, section 59 of the Financial Services (Banking Reform) Act 2013.”;
  - (b) in subsection (8), for “or Monitor” substitute “, Monitor or the Payment Systems Regulator.”;
  - (c) at the end insert—
    - “(10) In this section “the Payment Systems Regulator” means the body established under section 40 of the Financial Services (Banking Reform) Act 2013.”
- (4) In section 52(4) of the Enterprise and Regulatory Reform Act 2013 (power to remove concurrent competition functions of sectoral regulators), after paragraph (f) insert—
  - “(g) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.”
- (5) In Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (the Competition and Markets Authority), in paragraph 16 (concurrency report), at the end of subparagraph (7) insert—
  - “(h) the Payment Systems Regulator established under section 40 of the Financial Services (Banking Reform) Act 2013.”