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## SUMMARY OF QUESTIONS

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### RESPONSES TO THE CONSULTATION DOCUMENT

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**6.1** The Government would welcome responses to this consultation from all parties. It may in due course publish a summary of responses and therefore would ask that any confidential material could be clearly identified as such and confined to a separate Annex.

**6.2** Responses must be submitted by **20 March 2001** to:

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### KEY QUESTIONS FOR CONSULTATION

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#### Primary objective

*Q1. Should the primary objective of the OFT in relation to the new regime be aimed at protecting the interests of a broad range of consumers wherever appropriate by promoting effective competition in payments systems?*

#### Regulatory principles

*Q2. Should the OFT be subject to a regulatory principle in carrying out its payment systems functions aimed at avoiding any material adverse effects of its actions on financial stability?*

*Q3. Should the OFT be subject to regulatory principles in carrying out its payment systems functions aimed at facilitating innovation and promoting efficiency?*

*Q4. Should the OFT be subject to a regulatory principle in carrying out its payment systems functions aimed at ensuring its actions are consistent with the principle of proportionality?*

#### Regulator's powers and functions

*Q5. Should the OFT's information-gathering powers in relation to the new regime include powers to enter premises?*

*Q6. What safeguards or limits should be placed on the OFT's ability to impose financial penalties for breaches of rules?*

*Q7. With which bodies should the OFT be permitted to share information and for what purposes?*

## Appeals process

*Q8. Should the first line of appeals from the OFT's enforcement decisions be the Competition Commission Appeals Tribunal? If so, are any special provisions needed to take account of the specific nature of the regime relating to payment systems?*

## Role of the Bank of England

*Q9. In what circumstances should the Bank of England have a right to be consulted in relation to financial stability?*

*Q10. Should the Bank of England's advice and/or the OFT's response be published where publication would have no material adverse impact on financial stability?*

## Role of the Financial Services Authority

*Q11. In what circumstances should the FSA have a right to be consulted in relation to its regulatory functions?*

*Q12. Should the FSA's advice and/or the OFT's response be published?*

## Role of the Financial Ombudsman Service

*Q13. Would there be merits in the Financial Ombudsman Service introducing a voluntary regime for payment service providers?*

## Scope of the new regime

*Q14. Which participants in the provision of payment services should be subject to the new regime? In particular, is it appropriate to include those end users who control access to point of sale terminal equipment?*

*Q15. Should the aim in defining a payment service be to include those services which have a primary purpose of facilitating the circulation of money or the transfer of funds?*

*Q16. Should systems which are not used to provide retail payment services to end users be excluded from the scope of the new regime?*

*Q17. Is there a need to exclude explicitly payment systems which are used to pay a limited number of recipients?*

## Rules and their modification

*Q18. In what circumstances should the OFT able to proceed with rule modifications without the consent of those subject to those rules?*

*Q19. Should the threshold for the application of the rules, apart from price transparency, be one based on the concept of material effect on competition? If so, what should constitute materiality?*

## Price transparency

*Q20. Should the requirements for price transparency extend not just to charges for payment services themselves but to other charges that are directly associated with the provision of the payment service?*

*Q21. Should the rule on price transparency be aimed at requiring the promotion of price transparency by requiring the provision on a regular basis of the details of charges for all payment services and other charges that are directly associated with the provision of those services?*

*Q22. Should the OFT be given the power to approve an industry code which could set out detailed price publication requirements?*

*Q23. Should the OFT have a power, but not a duty, to collect and publish the terms and conditions, including prices, of retail payment services?*

*Q24. Should the OFT be required to publish information on wholesale prices and/or how those prices are set where that would promote effective competition for the benefit of consumers?*

### **Efficient wholesale pricing**

*Q25. Should the rule dealing with efficient wholesale pricing be aimed at requiring wholesale charges:*

- to be derived through a published methodology based on legitimate costs*
- to anticipate achievable cost reductions*

*where a failure to set prices on such a basis would have a material effect on competition?*

### **Non-discriminatory access**

*Q26. Should the rule dealing with non-discriminatory access be aimed at requiring participants to provide access on fair, reasonable and non-discriminatory terms where failure to provide access would have a material effect on competition?*

### **Good governance**

*Q27. Should the rule dealing with good governance be aimed at prohibiting the abuse of control, either individually or collectively, of a payment scheme where there was a material effect on competition rather than at preventing control altogether?*

### **Fair trading**

*Q28. Should the rule dealing with co-operation be aimed at requiring participants to cooperate in the development of payment services where:*

- (a) a failure to co-operate would have a material effect on competition; and*
- (b) it is reasonable to require such co-operation.*

*If so, in what circumstances would it be reasonable to require cooperation?*

### **Other rules**

*Q29. Are any other rules necessary to tackle the competition problems associated with payment systems?*

