Questions and answers on OFT's role in enforcing Part 8 of the Payment Services Regulations

19 October 2009

1. **What are the Payment Services Regulations (PSRs)?**

The PSRs have three main components:

- a prudential authorisation regime for payment institutions
- conduct of business rules covering information requirements, rights and obligations for payment providers and end-users, and
- a provision stipulating that rules governing access to payment systems should be non-discriminatory. This provision is contained in Part 8 of the PSRs.

The Payment Services Regulations derive from the Payment Services Directive. The Directive had the aim of achieving a Single Market in retail payment services which would provide fair and open access to payments markets, and increasing protection for consumers.

2. **What is OFT's role in enforcement?**

The OFT is responsible for enforcing Part 8 of the PSRs. Part 8 concerns access to payment systems in the UK. OFT does not have a role in either the authorisation regime or the conduct of business rules.

3. **What exactly does Part 8 require, or prohibit?**

Part 8 requires that rules or conditions governing access to payment systems must be objective, proportionate and non-discriminatory, and must not prevent, restrict or inhibit access to payment systems more than is necessary to ensure the safety and stability of the system. Part 8 also prohibits certain types of rules or conditions that could:

- restrict effective participation in other payment systems
• discriminate between different authorised payment institutions, or
different small payment institutions, in relation to the rights, obligations
or entitlements of participants in the payment system, or
• impose any restrictions on the basis that a person is not of a particular
institutional status.

4. **Which payment systems are subject to Part 8?**

Part 8 does not apply to payment systems that are designated as systemically
important under the Financial Markets and Insolvency (Settlement Finality)
Regulations 1999 – which includes CHAPS and BACS. Part 8 also does not
apply to so-called proprietary three party payment systems, which are not
membership-based systems or to payment systems that serve one group of
companies where one company enjoys control over others in the group (such as
a bank group). There are currently a number of payment systems in the UK that
will have to comply with Part 8 when it comes into force in November including
the UK’s ATM system, LINK, the electronic payment system called Faster
Payments,\(^1\) and the Visa and MasterCard credit and debit card systems.

5. **Which bodies should be granted fair and open access to payment
schemes under the PSRs?**

Part 8 only applies to rules and conditions on access to a payment system by
authorised Payment Institutions and small Payment Institutions.

6. **Are all rules which restrict access prohibited?**

No. Rules that prevent, restrict or inhibit access are allowed if they are necessary to
protect the system against specific risks, or to protect the financial and operational
stability of the system and can be applied in a way that is objective, proportionate and
non-discriminatory.

7. **How will the OFT enforce this legislation?**

If the OFT has reasonable grounds for suspecting that a rule breaches the Part 8
access requirements, it can carry out an investigation, including requiring
documents and information to be provided to it. If the OFT finds that a rule
breaches the Part 8 access requirements, it can impose a fine of an amount it

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\(^1\) The Faster Payments Service is currently seeking designation as 'systemically important' under
the Settlement Finality Directive. From 1 November the Faster Payments Service will need to
comply with Part 8 until it achieves that status.
considers appropriate on such person (or persons, including companies) as it
considers appropriate. It may also give such directions as it considers
appropriate to such person or persons as it considers appropriate. The directions
can:

- require the person to change any rule or condition so that it no
  longer contravenes the law, and
- relate to the conduct of a person in implementing any rule or
  condition.

8. **Is there an appeal process?**

Appeals against directions made by the OFT, or the levels of fines will be heard
by the Competition Appeals Tribunal.

9. **What will OFT’s approach to enforcement be?**

We will pay close attention to the context of any potentially restrictive rules on
access. Before making a decision that a rule falls foul of the access
requirements in Part 8, we will conduct an investigation and if the rule could
have an effect on the financial and operational stability of the system, we will
consult with the Bank of England and the Financial Services Authority. The OFT
will normally also consider liaising with the Payments Council, the body with
responsibility for setting the strategy for the UK payments industry in respect of
schemes that come under its umbrella.

10. **How will this affect consumers?**

There is no direct effect on consumers. However, Part 8 will ensure that barriers
to entry to payment schemes are not introduced, which in turn will mean that
consumers will have a greater choice of payment institution provider. This in
turn should lead to lower prices and more product choice.