

Minutes

Meeting: Payments Strategy Forum

Date / Time: 8th October 2015

Ai. 1 Welcomes and introductions

- The Chair welcomed Forum Members to the first meeting. Members introduced themselves and outlined their aspirations for the Forum strategy. A range of aspirations were presented, including a hope that industry could work in collaboration to bring about effective change in payments.
- The Chair set out her expectations on the contribution of Forum members, stressing:
 - They had been specifically chosen from almost 90 applications. Many of those who had not been selected expressed their disappointment but had demonstrated a willingness to support the work of the Forum
 - The Forum will only succeed with the full commitment from its Members
 - If this commitment is not sustained the option is there to replace Members with individuals who are willing and able to fully contribute to the work
- In setting out her expectations, the Chair outlined the following success criteria:
 - the Forum achieves general agreement on a draft strategy within 9 months,
 - strategy delivered in 12 months
 - consultation indicates general support to the strategy by the Payments Community
- Hannah Nixon, PSR Managing Director responded by welcoming the Members, acknowledged the challenges of the task ahead and thanked the Members for their ongoing support. She emphasized the importance of the Payments Community in the strategy setting process and requested the Forum to take careful consideration of the views put forward by the Community.

Ai. 2 Payments Strategy Forum Terms of Reference

- Members asked that service-users be defined to ensure that the Forum's strategy considerations are not restricted to just one group.
 - It was suggested that 4-6 meetings may not be sufficient. It was agreed an additional planning session would be arranged for November and that flexibility to call further meetings will be included in the Terms of Reference.
 - Members agreed that an appropriate cost benefit analysis must underpin the Forum's strategy. However, there should be an element of flexibility on its robustness to minimise the risk that this may become too onerous to agree. Members considered that the Forum should make use of pre-existing research and analysis where appropriate.
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- The Chair reassured Members that any relevant existing work could be taken into account to inform the Forums strategy setting.
- Clarification was sought on resourcing and funding of the detailed work of the Forum. Hannah Nixon emphasized that it would be for industry in its widest sense to provide the effort and resource to support the work of the Forum.
- Members proposed to allow the working group chairs, where appropriate, to utilise existing industry resources, such as the use of trade bodies. The Chair supported this approach but stressed that if an existing trade association is used, it should be made clear that it would be operating under the independent direction of the Forum and it would be the role of the working group chairs to ensure this.
- There were also questions regarding the influence the PSR would exercise over the Forum recommendations. Hannah Nixon stressed the Forum is an industry body but the PSR could step in if progress was slow or the strategy was not implemented. However this should be regarded as a poor outcome for the PSR and for the industry as whole.

ACTION: Forum secretariat to update the Terms of Reference to reflect member comments by 16th October 2015. NB: The updated and final Terms of Reference are attached as Annex 1, changes highlighted in yellow

Ai. 3 Strategy Setting Principles and Priorities

- The Forum secretariat presented the draft strategy setting principles and priorities paper, which summarised the input of the Payments Community collected by the PSR stakeholder engagement over the summer and subsequent Payments Community event on 17th September 2015. It was stressed that the views represented were that of the Payments Community and should not be seen as endorsed by the PSR.
- The Forum agreed with the high level strategy setting principles outlined in the paper and was confident these were covered by the Forum's terms of reference.
- There was general agreement that the priorities were representative of the views of the Payments Community and also reflective of research undertaken elsewhere. However, the Forum still needs the findings to be further validated.
- Members agreed that it would be helpful to create a map of the different parts of the value chain to see where detriments to system users currently exists and how any remedies could address these detriments.

ACTION: Carlos Sanchez, Sian Williams, Nick Davies and Russell Saunders, to undertake mapping exercise and present back to the Forum at its planning session in November.

Ai. 4 Forum work programme

- The Forum secretariat presented a possible work programme to progress the items identified by the Payments Community and develop a strategy in twelve months.
- It was agreed that the four proposed working groups – User needs; Simplifying access to markets; Financial crime and Horizon scanning, were the correct areas of focus and should be initiated as a matter of urgency.
- The work on developing an evaluation framework will be considered at a future point.
- Once nominations have been received, the Forum secretariat will work with the Forum Chair to agree the working group chairs and their initial members.
- Calls for interest will be made to the Payments Community to participate in these working groups and the first task of the groups will be to finalise their Terms of Reference.

**ACTION: Forum Members to let secretariat know by COB 12th October 2015 which working groups they would like to either Chair and / or be a member of.
NB: Chairs have now been selected and will be advised on 20th October 2015.**

Ai. 5 Forum Membership

- The Chair provided an update on the future engagement model for the Payment System Operators via a consultative group that will meet in advance of future Forum meetings. This group will be chaired by the Forum Chair and secretariat will be provided by the PSR. Members did not raise any objections to this approach.

Ai. 6 Payments Community Engagement

- Members were asked to consider a proposal for engaging with the Payments Community and provide feedback by cob 15th October 2015.

NB: the engagement approach has been agreed and published alongside these meeting minutes.

Ai. 7 Any other business

- No AOB was raised.
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ANNEX 1 FINAL – Payments Strategy Forum Terms of Reference

Preamble

1. The Payment Systems Regulator (PSR) has a duty to promote the development of, and innovation in payment systems in the interests of those who use, or are likely to use, the services provided by those payment systems (service-users).¹
2. Due to the network effects inherent in payment systems, we recognise that the development and innovation of payment systems can require participants to work together, or invest collectively.
3. The PSR has established the Payments Strategy Forum (the Forum) to provide coordination where collective action can promote innovation or downstream competition in the interests of service-users.
4. This is distinct from unilateral innovation, which is an important source of competitive advantage, market dynamics and competition generally. In order to preserve incentives for participants to keep innovating for the benefit of service-users, the Forum will avoid activities in those innovation spaces which are best left to individual firms.
5. These Terms of Reference will be reviewed, and may be altered, in consultation between the PSR and the Chair, within six months of the first Forum meeting.

Objectives

6. The Forum will lead an ongoing process to identify, prioritise and develop strategic initiatives where industry can work together to deliver innovation for the benefit of those who use services provided by payment systems.
7. The Forum will proactively engage with a broad and diverse range of consumer representatives and service-users, and put their views at the beginning of the strategy setting process.

¹ Service Users are defined under Financial Services (Banking Reform) Act 2013 as those who use, or are likely to use, services provided by payment systems and is not limited to a specific group of users. Service users will include - banks who use payment services provided by other institutions; businesses ; retailers; charities; government and consumers

Scope

8. The Forum will consider both payment systems and payment services in so far as the development of payment systems can be an enabler of new or improved payment services.
 9. In line with competition law, where the work of the Forum and its working groups involves cooperation between firms who would otherwise compete, stringent measures should be applied to ensure that such cooperation delivers substantial progress and real benefits for service-users. The Forum will also work to ensure that such cooperation is the only way those benefits can be realistically achieved.
 10. To determine areas where co-operation is necessary and/or which require strategic coordination, the Forum's working groups are expected to make use of an appropriate level of evidence and cost benefit analysis. **This could include an assessment of existing research and analysis.**
 11. The PSR will develop a draft evaluation framework for the Forum's consideration. The framework will be designed to assist the Forum and its working groups in considering how to examine proposals in an objective manner and take steps to abide by competition law. It should ensure that the Forum only pursues initiatives that require collaborative work by industry and have a substantial net benefit to users of payment systems.
 12. The Forum will be concerned with the identification, prioritisation and development of initiatives to deliver innovation. However, delivery itself will take place outside the Forum's scope. The Forum will monitor the industry's progress in delivering against its initiatives.
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A. Constitution of the Forum

The Forum Chair

13. The Forum will have a Chair who is independent of payments industry interests. They will be appointed and accountable to the PSR.
14. The Chair is responsible for leadership of the Forum and ensuring its effectiveness in all aspects of its role.
15. The Chair is responsible for preparing and publishing each year an assessment of the Forum's delivery against its objectives and any areas for improvement. In the first year, this will form part of the joint review which the PSR will undertake with the Chair.

The Forum and the Payments Community

16. The Forum, a focused group of senior individuals, will facilitate discussions, agree priorities and formulate strategic recommendations. It will have around 20 members in senior positions, with the ability to shape and make decisions on strategy and/ or policy, within their organisations and/ or their sector more broadly.
 17. Each member will demonstrate a track record of performance in similar strategy setting roles and commitment to delivering good outcomes for the benefit of service-users. Forum members will not represent specific constituencies of stakeholders or organisations but they should be aware of the general viewpoint of their sector where such a consensus can be identified.
 18. The Forum will work with the payments 'community', which is open to all interested stakeholders. The payments community will be an integral part of the strategy setting process. It will allow the Forum to continuously engage and consult with a broader range of interested stakeholders as the Forum develops its strategic recommendations.
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Membership and appointments

19. The PSR will appoint the Chair for an initial term of three years.
20. The Chair and the PSR will jointly manage the selection process for Forum members. The Chair and the PSR may introduce succession planning for the Forum membership at an appropriate time.
21. Members will be appointed for an initial two year term. The PSR will review the Forum's membership as part of the joint review of the operation of the Forum, which the PSR will undertake with the Forum's chair, after a year.
22. Members who are no longer able to participate in the Forum's discussions may be replaced for the remainder of their term at the discretion of the Chair, with the agreement of the PSR.
23. The Chair, in consultation with the PSR, may also consider and decide on applications for membership received on an ad hoc basis and may admit an additional member where the views of a relevant category of participant or stakeholder are not properly reflected in discussions of the existing membership.

B. Forum activities and deliverables

24. To achieve its objectives, the Forum will:
 - a) Put the interest of service-users at the center of its deliberations.
 - b) Seek, and demonstrate that it has properly considered, the wider views of relevant stakeholders at all key stages of its discussions, in particular through engaging with the payments community.
 - c) Seek to reach consensus on what desirable outcomes look like for service-users, based on available evidence.
 - d) Seek to identify and prioritise areas with a positive net benefit, where joint work is needed to deliver these outcomes. Define and agree strategic recommendations to coordinate activity in line with these priorities. The Forum recommendations will include high-level timelines and deliverables.
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- e) Publish an annual report which tracks progress of relevant stakeholders against the Forum's strategic recommendations and assesses where these have been adopted.

C. Functioning of the Forum

- 25. It is expected that appointed members will be present at all meetings of the Forum.
- 26. The Chair will endeavor to achieve consensus between Forum members on priorities and recommendations under discussion. Dissenting opinions will be reflected in the minutes of the meeting.
- 27. Progress towards reaching consensus will be supported by evaluating options using robust evidence and cost benefit analysis.
- 28. The Forum has no powers to direct its members, or the wider sector to undertake any action.

The role of the PSR and other authorities

- 29. The PSR will attend all Forum meetings and actively support the Chair where guidance is required in relation to its objectives. The Chair will be appointed by and accountable to the PSR.
 - 30. The Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority may observe meetings and provide guidance to the Chair in relation to their objectives, in consultation with the PSR.
 - 31. Other Authorities may attend Forum meetings where appropriate to provide relevant input into discussions.
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Meetings

32. It is expected that the Forum will have between four and six meetings a year and there will be a number of additional stakeholder engagements or events.

Additional Forum meetings may take place if members believe these are required in order to achieve their objectives.

33. Minutes and a summary of meeting outputs suitable for publication through relevant channels will be approved by Forum members after each meeting.

Secretariat

34. The Chair will be supported by a secretariat provided by the PSR.

35. The secretariat will be responsible for supporting the Forum, its meetings and related events. All Forum-related communications between Members outside of meetings will be exchanged through the Secretariat.

36. Staff providing secretariat support will remain solely accountable to the PSR in the performance of their duties.

Agenda

37. The agenda will be circulated in advance of Forum meetings. Forum members, the PSR and relevant authorities may suggest forward agenda items to the Chair via the secretariat.

Working groups

38. The Forum may establish and commission working groups for a limited period of time to engage in more detail or undertake more analysis on a particular issue, or to develop recommendations in further detail. It is expected that industry will provide resources and where necessary fund these working groups.

39. The Forum should agree terms of reference for each working group. This should include clear scope, objectives and a timetable in advance of the working group starting to meet.

40. The Forum Chair will agree the working group chair(s). Members could include individuals who are not current Forum members. The PSR, and other regulators, may choose to attend as observers.

41. It will be the role of the working group(s) Chairs:

- To appoint, with support from the Forum secretariat, the members of their working group, some of whom are expected to be selected from the wider Payments Community.
- To ensure the working groups are meeting their agreed scope, objectives and timeframes.
- To report back to the Forum.

Research and analysis

42. In order to support Forum discussions, develop positions or support recommendations, the Forum may commission research or analysis. It is expected that industry will provide resources and where necessary fund this research and analysis.

43. The funding arrangements for this research or analysis will be agreed by discussion of the Forum, and will depend on the scope of the task at hand.

44. The Forum will make use of the resources of its members while seeking to ensure that research or analysis commissioned meets high standards of objectivity and independence

Transparency

45. Summaries of meetings, reports and working papers developed by the Forum or its working groups will be published through relevant channels, including websites.

46. Stakeholders with an interest in the Forum's work and who do not participate in the Forum itself will be encouraged to engage through the Forum working groups or the payments community.

Evaluation

47. The PSR will review the effectiveness of the Forum annually taking industry and regulatory developments into account and considering the views of other regulators / the Bank of England. This will include a joint review in the first year, which the PSR will undertake with the Chair.
48. The review will assess the extent to which the Forum is able to achieve its objectives as set out above and whether changes are needed to its remit, composition or approach.

Information sharing

49. The Forum may need to share sensitive information from time to time and the PSR or the Forum may issue guidance to working groups on such exchanges for competition law purposes.
50. Guidance on information sharing taking place between Forum members can be found in annex 1 below.

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ANNEX 1 - Guidance on Information sharing and

The Payment Systems Forum

Introduction

The purpose of this note is to provide guidance to the Payments Strategy Forum (“the Forum”) in respect of competition law and in the sharing of sensitive information between competitors and potential competitors.

The objective of the Forum is to identify, prioritise and deliver strategies to coordinate and drive collaboration where this is necessary to promote innovation in payment systems for the benefit of users. Such coordination necessarily involves sharing of information, sometimes between competitors in various parts of the payments industry.

The PSR is duty-bound to promote competition and is charged with enforcing competition law in relation to payment systems. The responsibility for ensuring the lawfulness of any exchange of such sensitive information between competitors rests solely with the undertakings concerned and their representatives.

Information sharing and competition law

The sharing of certain information can be damaging to the process of competition by enabling competitors to substitute coordination for competition. In certain circumstances, such information exchanges may infringe either UK or EU competition law². Such infringements can lead to financial penalties³.

Information exchange is unlawful if it establishes a concerted practice between competitors. A concerted practice refers to a form of coordination where practical cooperation between undertakings is knowingly substituted for the risks of competition.

Information exchanges may distort competition in at least three ways.

² The Chapter I prohibition under the UK Competition Act 1998, prohibits:-

“Agreements between undertakings, decisions by associations of undertakings or concerted practices which may affect trade within the United Kingdom and have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom.”

Article 101 also prohibits similar arrangements where they affect trade between EU member states.

³ Of up to 10% of annual turnover under the UK Competition Act 1998 and European competition law

They may allow companies to reach a common understanding as to future commercial behavior, they may provide the basis for monitoring any departure from a collusive arrangement or they may support market foreclosure activity against new entrants.

Under competition law it is for competing undertakings to ensure that any cooperation or information exchange is lawful.

Where it is likely that an information exchange may pose a problem but is nevertheless necessary for the effective working of the Forum, members will need to identify compliance risk, take legal advice and ensure that sufficient safeguards are in place *prior to sharing the information*.

Key Factors in assessing information exchanges⁴

The effect on competition resulting from information exchange depends on the characteristics of the market in which it takes place, the nature of the firms involved as well as on the type of information that is exchanged, which may modify the relevant market environment towards one liable to coordination. It is not therefore possible to be categorical about which information exchanges are unlawful. However, it is possible to identify aspects of information exchange and the context in which they occur as problematic and likely to infringe competition law.

For an information exchange to have restrictive effects on competition within the meaning of competition law, it must be likely to have an appreciable adverse impact on one (or more) of the parameters of competition such as price, output, product quality, product variety or innovation⁵. Firms can exchange information if that information is genuinely in the public domain⁶. Information is genuinely in the public domain, however, only if it has been published widely and the information is equally accessible to all competitors and customers. Similarly information which is historical, aggregated or anonymised will be generally acceptable.

⁴ This is a summary only and undertakings should make themselves aware of the relevant information and circumstances when an exchange becomes unlawful.

⁵ Generally therefore only information exchanges between competitors will be prohibited; however, in certain situations where third party intermediaries are used as a conduit for information exchange, other information exchanges can also be unlawful

⁶ However, Forum members should not assume that sharing information in the Forum, which has been previously published in some way, is automatically acceptable.

The types of information which would be inappropriate to share include prices and pricing policies, discounts and rebates and quotas or caps on production. The exchange of information may also lead to restrictions of competition where it is liable to enable undertakings to be aware of market strategies of their competitors.

The Work of the Forum and Information Sharing

In relation to the Forum, a particular issue that may arise might be the possible sharing of information which has a strategic quality. This need could arise in relation to the Forum assessing various innovative options and making recommendations. Given the risks that such information could be used to facilitate collusive activity, particular care will need to be taken by the undertakings concerned both in identifying the problem beforehand and effecting any exchange in a compliant manner.

The PSR expects and the law demands that undertakings will ensure that such exchanges are conducted lawfully by, for example, organising the aggregation or anonymisation of information.

If members have any doubts about their legal position in sharing the information proposed, then they should avoid sharing the relevant information until they have sought independent legal advice and they have taken steps to ensure that the exchange would be lawful.

ANNEX 2 – Attendance List

First Meeting of the Payment Systems Forum

8 October 2015

Apologies:

Faith Reynolds – Member, Financial Services Consumer Panel
Katherine Horrell – Group Treasurer, Centrica
Thaer Sabri – Chief Executive, Electronic Money Association

Attending

Members

Ruth Evans (Chair)
Adam Marshall – Executive Director, Policy and External Affairs, British Chambers of Commerce
Alan Smith – Head of Payments and Banking Services, Post Office
Becky Clements – Head of Payment Operations, Metro Bank
Carl Pheasey – Head of Policy, Money Advice Service
Carlos Sanchez – CEO, Orwell Group
John Hackett – Chief Operating Officer, HSBC
Lisa Felton – Head of Consumer Policy, Vodafone
Marion King – Group Director of Payments, RBS
Mark Lyonette – Chief Executive, Cornerstone Mutual Services
Michael Maier – Chief Operating Officer, Fidor Bank
Mike Smith – Commercial Director, Raphaels Bank
Neil Lover – Head of Payments and Financial Crime, Coventry Building Society
Nick Davies – Richer Data Strategy Lead, DWP
Otto Benz – Director, Strategic Payments, Virgin Money
Philip McHugh – Chief Executive, Barclaycard Business Solutions
Russell Saunders – Managing Director, Global Payments, Lloyds Banking Group
Ruth Milligan – Retail Finance Policy Adviser, British Retail Consortium Retailers
Ruth Wandhofer – Global Head for Regulatory and Market Strategy, Citi Bank
Sian Williams – Head of Financial Inclusion, Toynbee Hall

Observers

Andrew Hauser, Bank of England
David Bailey, Bank of England
Andrew Laidlaw, Financial Conduct Authority
Hannah Nixon, Payment Systems Regulator
(Present for agenda items Ai.1-3)
