

UNITED KINGDOM OFFICE OF FAIR TRADING'S RESPONSE TO THE EUROPEAN CENTRAL BANK'S CONSULTATION ON THE DRAFT OVERSIGHT FRAMEWORK FOR CARD SCHEMES

The Office of Fair Trading (OFT) wishes to comment on two of the Requirements that form the draft oversight framework for card payment schemes. We also include a comment from the UK's Financial Services Authority (FSA) on the definition of e-money schemes.

Definition of e-money schemes

Paragraph 3 on page 4 of the ECB document states:

'The framework shall apply to all card payment schemes (see definition in box A) providing card payment services either by debit and/or credit cards. Cards debiting prepaid and dedicated accounts, such as "gift" cards, should in principle be covered by CPS oversight framework. E-money schemes are out of the scope of the CPS oversight framework.'

Colleagues from the FSA say that the words 'e-money schemes are out of the scope of the CPS oversight framework' should be deleted. E-money is increasingly taking the form of prepaid debit cards which may be held in plastic format or else stored in virtual format on a PC server or mobile phone. In the interests of technological neutrality, these should be included in any oversight standards for card payment schemes. E-money schemes which are not card based (eg PayPal, Moneybookers) will be automatically excluded anyway so there is no need to make specific reference to them.

Requirement 1

The OFT strongly supports the requirement that the Card Payment Scheme (CPS) should have a sound legal basis, with particular respect to competition law.

Requirement 4

The OFT also strongly supports the requirement that the CPS should have effective, accountable and transparent governance arrangements. OFT suggests that the Requirement could go further in specifying how these governance arrangements could be formed.

Due to their nature, card payment schemes are reliant on co-operation between competing businesses. While such co-operation is necessary for the efficient operation of schemes, competition problems may arise. One way of mitigating such competition problems is to ensure that schemes have strong governance arrangements in place which ensure that the scheme operates in not just the interest of scheme members, but also of other stakeholders.

As part of the UK's Payment Systems Task Force, the OFT has a considerable amount of recent experience in assessing the governance arrangements of payment schemes in the UK. This has led to improvements in the way a number of UK payment schemes are governed. Key changes made include:



- ensuring that stakeholders are adequately represented on governing bodies of payment schemes. For instance, the UK's ATM scheme, LINK, changed its governance arrangements to give independent ATM deployers greater voting rights than previously
- ensuring that governing bodies include representatives who are independent of member interests, and can act solely in the interests of the scheme. These are deemed to be 'independent' representatives or directors. There are independent voting directors on the Board of the UK's Payments Council, and there is also an independent Chairman.
- Making specific provision for consumers. LINK has introduced a Standing Committee on Consumer Issues, which includes four independent members and four representatives from the industry.
- Increasing transparency. Access policies should be openly available, and potential members should not have to divulge potentially market sensitive information to competitors (or potential competitors) to access it.

The Payment Systems Task Force consisted of representatives from government, the payments industry, consumer and business groups. All members of the Task Force supported the changes made.

We therefore suggest that Requirement 4 is made more specific, perhaps by saying that the CPS should have effective, accountable and transparent governance arrangements which could include the following provisions:

- Voting rights on the governing body of the CPS should ensure that no one sub-section of membership can dominate the decision making process
- The governing body includes representatives independent of CPS members
- Special provision is made for consumers, perhaps through a user Committee
- Access conditions should be openly available.

It would also seem appropriate to make scheme access consistent with the access provisions of the draft Payment Services Directive.

OFFICE OF FAIR TRADING