

Regulatory Policy Institute



PAYMENT SYSTEMS REGULATOR

Stakeholder Workshop

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Agenda

Timing	Session
2:15 – 2:30	Introduction and overview of the project
2:30 – 2:50	Session I: General choices in regulatory strategy
2:50– 3:30	Session II: Governance and the regulation or supervision of 'rule-books'
3:30 – 3:45	Afternoon tea
3:45 – 4:25	Session III: Access and entry
4:25 – 4:50	Session IV: Other aspects of regulatory approach
4:50 – 5:00	Wrap-up and close of workshop

Introduction and overview of the project

- RPI: devoted to the study of regulation for the public benefit.
- Project aim is to assist the PSR in understanding / evaluating:
 - Broad options for approaches that might be taken, drawing on experiences in other regulated sectors that are of potential relevance in payment systems regulation, and
 - How insights from these experiences might inform the PSR in the pursuit of its own objectives.
- The approach is high-level and selective, not comprehensive, and it is intended to be preliminary / informative in nature.

Issues for today

- Broad trade-offs in economic regulation and issues arising.
- Examples of how these have been addressed in other sectors and contexts.
- Questions in relation to matters to be covered:
 - How relevant, if at all, is the particular issue / trade-off / experience to payments system regulation? Is it informative?
 - Are there other regulatory issues / trade-offs / experiences not covered today that might be relevant for the work of the PSR?

What is economic regulation?

- There is no general, settled definition of the term.
- For current purposes, we take it to mean regulation that is directed chiefly at factors with *market-wide* influences.
 - This distinguishes it from those types of regulation that are directed chiefly at the conduct of individual market participants.
- This doesn't imply a complete lack of interest in the conduct of individual firms, but does tend to restrict the focus to firms or groups of firms that have substantial market power (itself defined in terms of market-wide influence).

Session I: General choices in regulatory strategy

- When should a regulator intervene?
 - Ex ante or ex post: standards and rules
- Relevant considerations in making a choice
 - Frequency of occurrence, expected harm, information available to the regulator, time taken to address harm etc.
- Combination of approaches observed across other sectors
 - Shift for some activities in energy and telecoms
 - EU regulatory framework for telecommunications
- Potential relevance to Payment Systems
 - Different activities and associated harm, information conditions etc.

Session I: General choices in regulatory strategy

- Balance between individual and collective approaches to regulation
 - Sometimes framed in terms of how reactive or proactive a regulator should be in identifying and addressing issues
- Relevant considerations in making a choice
 - Efficiency/duplication, consistency, prescriptiveness, responsiveness to issues, 'future proofing' etc.
- Potential relevance to Payment Systems
 - Amenability of specific issues to each approach; how does diversity and pace of change impact on this choice?

Session II: Governance and the regulation or supervision of 'rule-books'

- Payments systems as “systems of rules” (OFT).
- Most regulation is about supervision or governance of rule-books, so nothing particularly distinctive about that.
- What matter are the specifics, for example:
 - The nature and purposes of the relevant rules.
 - The scope of regulation: is it limited to formal rules, or does it seek to influence more informal aspects (e.g. commercial ‘cultures’)?
 - The governance of rule-changes or modifications.

Session II: Governance and the regulation or supervision of 'rule-books'

- Who is responsible for development and operation of the 'rule-books'?
 - Can have short-term (entry) and long-term impacts (innovation)
- Trade-off between self-regulatory forms of governance and public governance
 - Self-regulation to address quality/systemic risk issues
 - But could use rules to satisfy private interests, to the detriment of consumers
- Co-regulation approaches: combination of self-regulation and public oversight

Session II: Governance and the regulation or supervision of 'rule-books'

- Experience
 - Not an intractable problem: various co-regulation arrangements exist
 - One successful example (energy codes) and two more challenging examples (legal services and Australian payments systems)
- Potential relevance to Payment Systems
 - Striking the right balance between self-regulatory autonomy and public oversight; developing an appropriate co-regulatory arrangement
 - What are the quality/systemic issues which might require some form of control by members?

Session III: Access and entry

- Access issues are strongly related to issues of market power.
- Classic example: access to a monopolistic transportation network (wires, pipes, rail), required to compete in related (non-monopolistic) service markets.
- But the relevant facilities / services may not be fully or nearly fully monopolised: there may be some inter-network or inter-system competition. What then?
- Access issues intimately entangled with competition issues.

Session III: Access and entry

- Perhaps the most difficult issue in regulation
- Developing an effective access framework raises a number of trade-offs for a regulator
 - Entry and the development of competition
 - Innovation and different business models
 - Investment incentives for access provider and those seeking access
- In some contexts (such as payment systems and professions) certain characteristics of those seeking access can also be an important consideration

Session III: Access and entry

- ‘Unbundling’ a key policy element in most utility sectors
 - Electricity, gas, rail – only notable exception water/wastewater.
- Most radical example is telecommunications
 - Rapid changes in technology, but also regulators pursuing particular ‘visions’ of competition
 - Shift from being seen as natural monopoly to all activities being seen as competitive – led to many ‘access products’
 - Rationale: to allow for different forms of competition (full infrastructure; quasi-infrastructure; resale competition)
 - But pricing of access products is critical – incentives for investment of access provider and users

Session III: Access and entry

- Potential relevance for payment systems
 - Link between access and different potential forms of competition (between systems/networks; retail only; somewhere in-between)
 - Unbundling as much as possible to allow for gradual investments by entrants. But defining ‘access products’ has proven difficult
 - Consequences of asymmetric regulation where different systems are subject to different requirements (some have to provide access, others do not)
 - Impact on incentives to innovate for both access provider and users
 - Role for network codes and other industry-wide contracts

Session III: Dispute resolution

- What roles, if any, do regulators play in dispute resolution?
- Example:
 - Telecoms disputes resolution under the 2002 EU Regulatory Framework, Article 20 of the Framework Directive
 - National Regulatory Authorities (NRA) should generally resolve inter-operator disputes within four months of the dispute being referred to them.
 - NRAs should have the option to refer the dispute to alternative means of dispute resolution such as mediation
 - Article 20 procedure should not preclude a party from taking action before a court

Session III: Dispute resolution

- Considerations for payment systems
 - Outcomes may shape market structure
 - Ofcom's evolving experience under the Communications Act 2003 generally considered effective
 - Role of discretion in hearing disputes
 - Availability of ADR

Session IV: Predictability, proportionality and avoiding stranded regulation

- The ‘time-inconsistency’ problem in public policy and regulation
- Importance of stable and predictable frameworks
 - Allows participants to make decisions and investments with reasonable degree of certainty that regulatory framework will not (arbitrarily) change at some later date
 - US gas regulation is highly predictable affair: ‘can take it to the bank’
- But does not mean that should not be flexible and adaptive to new circumstances
 - Dangers of ‘stranded regulation’

Session IV: Predictability, proportionality and avoiding stranded regulation

- Proportionality of regulation also important
 - Being wary of ‘regulatory creep’: doing more than necessary
 - Can be particularly important in fast-moving and innovative sectors such as telecommunications (forbearance policies)
- ‘Style’ of regulation can also have important consequences in terms of how those subject to regulation respond
 - Avoiding the temptation to micro-manage
 - Some concerns about this in other sectors (energy, legal services)
 - Change focus away from serving consumers to satisfying regulatory requirements

Session IV: Dealing with multiple regulators and objectives

- PSR will engage with other regulators. (e.g. HM Treasury, BoE, FCA, CMA), which raises issues of conflict and duplication.
- Examples:
 - Concurrent application and enforcement of competition law by the CMA and sector regulators
 - Competition law v public interest regulation of mergers under the Enterprise Act 2002
 - 2007 Report of HL Select Committee on Economic Regulators: importance of clarity of remit

Session IV: Dealing with multiple regulators and objectives

- Considerations for payment systems
 - Interaction between the PSR's statutory objectives (competition objective, innovation objective and service-user objective) and other matters to which it must have regard (stability and confidence)
 - Reconciling outcomes v process

Session IV: Competition law and regulation

- *Ex ante v ex post* approaches: When is it appropriate to control for potential undesirable market effects or intervene only when there is observable harm?
- Examples:
 - Joint ventures and network sharing, e.g. *Opodo* (online travel agency)
 - Standard setting and access on Fair, Reasonable and Non-Discriminatory terms. e.g. Horizontal Cooperation Guidelines
 - MasterCard and Visa competition law investigations under Article 101 TFEU/ Chapter I Competition Act 1998
 - Market studies and market investigations

Session IV: Competition and regulation

Balance between regulation and competition outside a natural monopoly

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Regulation	Certainty Addresses practices which may be irreversible	Potential for error Effect on incentives
Competition law	Quality of information on effects of the conduct Remedies can be 'market oriented'	Uncertainty Timing of implementation