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Consultation response

Which? response to HM Treasury's *'A Streamlined Approach to Payment Systems Regulation'* Consultation

We welcome the opportunity to respond to HM Treasury's consultation which takes forward the Government's intention to abolish the Payment Systems Regulator (PSR) and consolidate its functions within the Financial Conduct Authority (FCA).

HM Treasury suggests that *"integrating the PSR into the FCA will streamline the regulatory environment, helping to improve coherence and coordination in decision-making and reduce duplication across regulators"*. The move is intended to support growth, better manage burdens on businesses and minimise overlaps between regulators' responsibilities.

The consultation focuses on *how* to integrate the PSR into the FCA. We make the following observations to inform HM Treasury's activity:

- **The focus on consumer interests must be retained as a core objective of payments regulation**. We welcome the fact that HM Treasury has made clear that the interests of service-users (which includes, for example, merchants and consumers) are an important element of an effective regulatory framework for payment systems and that it is committed to retaining these going forward. We expect to see this commitment inform Government decisions on the scope and content of legislation which sets out the future framework of payments regulation.

- **The integration of the PSR into the FCA must deliver consumer benefits**. While we recognise that the main drive to abolish the PSR and move its functions to the PSR is to reduce duplication and minimise burdens on business, for it to be worthwhile it must also deliver tangible benefits to consumers. We expect to be able to see positive outcomes delivered through a more integrated regulatory approach, for example in relation to tackling fraud where the FCA should be better placed to undertake robust supervisory and enforcement action in relation to payments firms that fail to meet obligations placed upon them by the APP reimbursement scheme.

- **The PSR has expertise and a dedicated focus on payment regulation. This must be maintained / replicated within the FCA**. The PSR is focused exclusively on payments, whereas the FCA's scope covers a wide range of financial services areas. The integration of the PSR into the FCA therefore raises the risk that the focus on payments may be lost or diminished. This must not be the case. This is particularly important given significant reform is in train (e.g. via the National Payments Vision and the forthcoming publication of the Future Payments Strategy). It is imperative the topic of payments receives the attention it merits within the FCA.

- **To ensure adequate oversight of payments regulation, there is a need to establish clear lines of accountability to Parliament.** Currently the PSR's senior leadership team appears regularly before the Treasury Committee. Such appearances are important for public accountability, and to ensure payments regulation is conducted in an open and transparent manner. We are concerned that integrating the PSR into the FCA may diminish the ability of MPs to provide the same level of robust scrutiny on payments matters. While the FCA Chief Executive and Chair appear before the Committee, their appearances cover a wide range of topics, reflecting the FCA's broad remit. We think clear and distinct lines of accountability should be established from the FCA to the Treasury Committee on payments to ensure it receives adequate focus under the new regulatory framework. One option to achieve this would be for the new FCA Executive Director for Payments and Digital Finance (who is also currently Managing Director of the PSR) to appear before the Committee.

- **Application of the competitiveness and growth duty to payments must be only a secondary duty.** We have previously expressed reservations about the introduction of a competitiveness and growth objective to the FCA and the Prudential Regulation Authority (PRA), principally because we were concerned that giving regulators additional, potentially conflicting, objectives could have a negative impact on the protection and advancement of consumer interests. We continue to hold this view. However, if it is decided to apply the FCA's competitiveness and growth objective to payment systems then this must be clearly defined as a secondary objective, which - like the FCA's current secondary duty - only applies when advancing its existing objectives to ensure the strong focus remains on consumer protection, market integrity and effective competition.

- **HM Treasury should revisit the core arguments which led to the creation of the PSR to ensure that its proposed approach does not inadvertently reintroduce the problems that the PSR was designed to solve**. While we recognise that many aspects of the payments environment have changed considerably since the PSR was created, there are several issues which the PSR was established to address and which remain highly relevant, such as:
    - The need to retain a dedicated team with specialist knowledge and a focus on economic regulation of payments;
    - The desire to ensure that payment systems promote the interests of service users; and
    - to address the longstanding and deep-seated issues of a payments industry dominated by a small number of players.

  As it looks to integrate the PSR's functions into the FCA, we encourage HM Treasury to consider carefully whether its proposals will deliver against these objectives.

About Which?

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