
From: [REDACTED]
Sent: 21 October 2016 11:41
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 2016/101/LEGCO First WP (extended) - Questionnaire on assigning powers to the NCB to assess competition and issue directions to lenders with regard to interest rates (LS/16/1114) [BC]

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[REDACTED]

My reaction to the below ('whether the Bank of England or another UK authority has been conferred with similar tasks, e.g. in the area of the protection of competition and setting of the maximum interest rate that can be charged by commercial lenders. ') is No for the Bank [REDACTED]

[REDACTED]

That said, the PRA, responsible for the prudential regulation of banks, does have a *secondary competition objective* (SCO). However, it only applies when the PRA is advancing its *primary objectives* of safety and soundness and policyholder protection (the PRA also supervises insurance undertakings).

In particular, the SCO does not have a "life of its own", but is relevant to how the PRA discharges its general functions in the advancement of its other statutory objectives. Therefore, the PRA could not pursue a competition policy as an end in itself, but it could choose an option of promoting the safety and soundness of firms through the advancement of competition. Thus, it would need to identify a safety and soundness reason for say, tackling an allegedly extortionate rate, which might be the risk of mis-selling claims coming back to haunt the firms in question.

I think this is a long way from the powers for NCBs possibly raised in the Questionnaire.

But I am aware that the FCA has recently capped pay-day lenders loan rates [REDACTED] (see <https://www.fca.org.uk/firms/price-cap-high-cost-short-term-credit>).

In this regard however, the FCA has a competition objective in s1E FSMA whereby the FCA (like the Competition and Markets Authority (CMA)) is tasked with "promoting effective competition", which suggests that the FCA should actively seek to strengthen competition in relevant markets and check that competition is effective. Furthermore, I believe that the FCA can act solely on the basis of its competition objective whereas the PRA's prime motivation should be the advancement of its general and insurance objectives.


The FCA's competition objective is more strongly worded than the PRA's SCO and is one of the FCA's three operational objectives (i.e. it is not "secondary").

In addition to its competition objective, the FCA also has competition powers:

- to enforce the prohibitions on anti-competitive behaviour in the Competition Act 1998 and Articles 101 (the prohibition on restrictive agreements) and 102 (the prohibition on abuse of a dominant position) of the Treaty on the Functioning of the European Union in relation to the provision of financial services; and
- to carry out market studies, and make market investigation references to the CMA under the Enterprise Act 2002, in relation to the provision of financial services in the UK.

These competition powers may also be exercised by the CMA with regard to financial services and other sectors of the economy. This means that, in respect of financial services, the CMA and the FCA have

concurrent powers and the FCA is a concurrent regulator. These powers are additional to the FCA’s ability to use FSMA powers in pursuit of its competition objective.


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