



# Financial Services & UK Competition Law: Evolving Business Models & The Competition Law Landscape

Dr Saskia King, Legal Director, Bird & Bird

Monday, 21 February 2022, 15:00 GMT



## A Word From Today's Chairman

**Robert Pay**  
Business Adviser  
Z/Yen Group





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# Today's Agenda

- 15:00 – 15:05 Chairman's Introduction
- 15:05 – 15:25 Keynote Presentation – Dr Saskia King
- 15:25 – 15:45 Question & Answer



## Today's Speaker

**Dr Saskia King**  
Legal Director  
Bird & Bird



# Bird & Bird & Financial Services and UK competition law

*Evolving business models and the competition law landscape*

Dr. Saskia King  
Legal Director



**FS Club**



# POLL



## Question 1

“Do you think the competition authorities understand the Financial Services sector”?

YES /NO



## Question 2

“Do you think competition law is relevant to what you do”?

YES /NO

## Question 3

“Are you currently thinking about competition law issues”?

YES /NO

# Agenda

- Who's watching you?
  - Why you need to care about competition law
- Developments in tech innovation and the FS sector
  - The legal landscape
  - Data, digitalisation, and open banking
- Data access issues
- Partnering and the pitfalls: collaboration, partnerships, fora/networks, mergers

# Who's watching you?

## *The CMA and concurrent competition law regulators*



- Significant international cooperation between national competition authorities and the EU Commission
- In the UK 3 concurrent competition authorities: FCA, PSR, CMA
  - Close collaboration between authorities and joining of forces between disciplines involving tech, data and FS
  - Digital Regulation Cooperation Forum
- Keen awareness of digital tech being central to FS (e.g. access to data, infrastructure)
  - 2021 report by Ron Kalifa on FinTech in the UK: wants one regulatory body/taskforce focusing on FinTech companies, a comprehensive strategy for the sector and a policy framework that 'protects consumers yet nurtures FinTech activity and encourages competition' in order for the UK to have a post-Brexit leadership role in the FinTech sector
  - More flexibility needed in how the CMA assesses mergers for fast-growing markets such as FinTech
- Serious consequences of falling foul of the competition rules, including:
  - Fines
  - Void and unenforceable contracts
  - UK: focus on '*individual liability*'
  - Damages actions

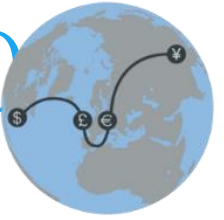
# Developments in tech innovation and the FS sector (1)

## *The legal landscape*



- The impact of **digitalisation** on FS is high on the competition agenda
  - Digitalisation has brought disruption into old FS business models for the delivery of financial services
- Important to note that the Tech sector, particularly 'Big Tech' at the heart of recent developments in antitrust policy/ regulation and on the priority list of every competition authority
  - New regimes/powers coming into force designed to specifically capture 'gatekeeper' platforms and invoke ex ante regulation
  - Significant investigations currently underway into tech companies and their commercial relationships and practices
  - Strong link between tech companies and FS/payments (e.g. investigations into Apple Pay/ Apple's IAP)
- PSR recently issued its decision following its cartel investigation into the prepaid cards market: fined the parties a total of £33 million
- Due to the fast-pace of development in the tech sector, competition authorities have reviewed their merger control rules and processes so they can assess mergers in fast-growing markets

## Developments in tech innovation and the FS sector (2)



- New entrants into the FS space (particularly in payments), brought about by Open Banking
- Many businesses looking to benefit – including Big Tech and incumbent players in FS
- Competition law issues arise in these areas and the competition authorities are on the alert



# Data access issues

## *Lessons from Big Tech*



- The **importance** of data: "*an essential input*"
- **Information asymmetry** between Big Tech, FinTechs and banks
- How regulate **access** to data? The DMA and DMU
- Leveraging ecosystems, large data sets, data protection, infrastructure, interoperability, inadvertent information exchange

# Partnering and the pitfalls

*Partnering, collaborating, colluding?*



- Collaborations, partnerships, fora
  - information exchange
  - standard setting
- Mergers/ killer acquisitions
- Lessons from tech companies
  - Internal documents
  - Forward-looking analysis
- **Top tips:** robust compliance procedures, 'know your business' and 'red-flags'

# Questions



# Thank you & Bird & Bird



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**Legal Director**

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# Comments, Questions & Answers





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# Thank You For Listening

## Forthcoming Events

- Tue, 22 Feb (16:00-18:00) Security Forward Risk & Intelligence Forum
- Wed, 23 Feb (16:00-16:45) The New Political Capitalism
- Thu, 24 Feb (08:00-09:15) BizTech Huìhuà Chat: Realising The Renewable Energy Internet -  
The Financial Interconnectors

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