



Hogan Lovells Global Payments Newsletter

April 2016



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Welcome to the Hogan Lovells Global Payments Newsletter. In this monthly publication we provide an overview of the most recent payments, regulatory and market developments from major jurisdictions around the world as well as sharing interesting reports and surveys on issues affecting the market.

For our latest news and commentary on payments innovation, follow us on Twitter [@HLPayments](#).

For more information on our Payment Services team please click the link [here](#).

For more Financial Institutions resources please click the link [here](#).

Key Developments

Key developments of interest over the last month include:

- **Contactless usage soars:** the UK Cards Association announced that total contactless spending reached £7.75bn in 2015, with Barclaycard reporting a 164% rise in contactless payments in 2015.
- **E-payments revolution:** Studies suggest the rise of electronic payments has given a huge boost to worldwide GDP and employment.
- **"I'll pay with Google":** Google is trialling Hands Free, a new app which enables customers to make purchases using voice commands.

Hogan Lovells celebrates Women in FinTech

- We marked International Women's Day on 8 March by co-hosting the Women in FinTech 2016 event with **Innovate Finance**.
- The event brought together nearly 200 attendees from the FinTech community to discuss and debate how we can close the gender gap. As well as acknowledging the trailblazers in the industry, we addressed the lack of women in the sector.
- Take a look at Hogan Lovells partner Rachel Kent's [blog](#) celebrating women in FinTech.

Regulatory Developments

Europe

United Kingdom: FCA consults on Payments Accounts Regulations requirements

- On 2 March 2016, the FCA published a consultation paper (CP16/7) on changes to its Handbook relating to requirements introduced by the Payment Accounts Regulations (PARs). The PARs implemented the Payments Account Directive in the UK and comes into force for most purposes on 18 September 2016.
- Under the PARs the FCA is required to gather and submit data to HM Treasury on payment accounts with basic features and the switching of payment accounts. The FCA intends to amend its rules to introduce these requirements and to provide guidance for payment service providers on its expectation in relation to certain aspects of the PARs.
- New proposals set out in CP16/7 include:
 - regulatory reporting requirements set out in the Supervision manual (SUP) relating to switching accounts and payment accounts with basic features;
 - changes to the Decision Procedures and Penalties manual (DEPP) and the Enforcement Guide (EG) to reflect the FCA's powers of enforcement under the PAR;
 - non-Handbook guidance on the definition of a "payment account" under the PARs; and
 - non-Handbook guidance on regulation 13 of the PARs, relating to disclosure requirements that apply when a payment account is offered to a consumer as part of a package with a product and a service that is not linked with the payment account.

See the consultation paper [here](#).

United Kingdom: PSR consults on draft guidance setting out approach to role under PARs

- On 15 March 2016, the PSR published a consultation paper on the application of the PARs in respect of alternative arrangements for switching accounts (CP16/1).
- The PSR is consulting on draft guidance (published separately) and explains its proposed approaches to designating alternative switching schemes, the monitoring process and use of enforcement powers.
- The consultation sets out the PSR's proposals on regulatory fees relating to the PARs. Fees relating to the funding of the PSR's activities under the PARs will be recovered from operators on alternative switching schemes. The PSR proposes a one-off application fee of £5,000 and an annual fee of £12,000.
- The PSR also stated that the draft guidance represents its intended practice as at the date of publication, but it may be revised from time to time to reflect changes to best practice.
- The deadline for responses is 12 April 2016. The PSR will issue its final approach in Summer 2016.

See the PSR's consultation paper [here](#).

United Kingdom: FCA publishes feedback statement on call for input on regulatory barriers to innovation in digital and mobile solutions

- On 9 March 2016, the FCA published a feedback statement on its call for input on regulatory barriers to innovation in digital and mobile solutions (FS16/2).
- A large number of respondents identified that regulatory requirements can prevent firms from using innovative approaches to communicating information to consumers (e.g. durable medium requirements). The FCA will address issues

raised in its feedback statement on smarter communication later this Spring.

- Respondents also queried the FCA's approach to the implementation of PSD2. The FCA has outlined a number of strategies to address these concerns, including hosting a payments event to engage with stakeholders on key sector issues.

Other issues identified by stakeholders centred on data storage, privacy and data protection, how the definitions of services may impact innovation and the FCA's approach to technology and innovation.

See the FCA's feedback statement [here](#).

United Kingdom: PSR publishes interim report on market review into supply of indirect access to payment systems

- On 10 March 2016, the Payment Systems Regulator (PSR) published an interim report on its market review into the supply of indirect access to payment systems (MR 15/1.2). The aim of the review is to gather further evidence on the supply of indirect access and whether competition is working well for service-users.
- The interim report found that competition in the supply of indirect access is producing some good outcomes. However, the PSR expressed concern about choice, service quality and the ability of users to switch providers. In particular, the PSR found that financial crime regulation is limiting the provision of indirect access for some providers, and market conditions are less favourable for non-agency and smaller providers.
- The PSR expects that the on-going development of new entry by indirect access providers, new forms of access arrangement and its current and anticipated regulatory work on access will improve choice, quality and price for service users.
- The PSR will continue to monitor these developments, and take further action if its

concerns are not sufficiently addressed over the next 12 months.

See the PSR interim report [here](#).

United Kingdom: PSR publishes policy statement on application of Interchange Fee Regulation and final guidance on approach as competent authority

- On 24 March 2016, the PSR published a policy statement on the application of the Interchange Fee Regulation ((EU) 2015/751) (IFR) in the UK.
- The PSR also published final guidance setting out its approach as a competent authority to monitoring compliance with the IFR provisions –in particular, those relating to the capping of interchange fees, equivalent issuer compensation and business rules provisions that were brought into force on 9 December 2015. The guidance also covers the PSR's powers and procedures under the IFR, as well as guidance on penalties for non-compliance with the IFR.
- The PSR's policy statement provides that respondents to the consultation on the previously published draft guidance were generally supportive of its content, although additional clarity was sought on certain points. A number of respondents argued that the PSR had misapplied the IFR or misstated its provisions in the draft guidance, and therefore its proposed approach was, in certain aspects, wrong in law. The policy statement also sets out the PSR's feedback on responses to the consultation and explains whether the guidance has been altered pursuant to these comments.
- During the consultation process, the PSR was contacted by merchants questioning why there had been no reduction in their merchant service charge (MSC) despite the new cap. In response, the PSR updated its FAQs which now includes a new question and answer clarifying that interchange fees are only one part of an MSC and other factors need to be considered when attempting to understand the level of the charge.

The PSR recommends merchants contact their acquirer to discuss their MSC and shop around to determine what other rates are available.

- The PSR expects to consult later in 2016 on its approach to the remaining IFR provisions, which come into effect on 9 June 2016.

See the policy statement [here](#).

See the final guidance [here](#).

United Kingdom: PSR makes final determination on card schemes subject to interchange fee caps

- On 24 March 2016, the PSR published a statement on card schemes subject to domestic interchange fee caps in the UK.
- Last December, the PSR published a provisional determination on whether certain UK three-party card schemes qualified for an exemption from part of the regulation on interchange fees for card-based payment transactions.
- Specifically, at the time, the PSR considered whether American Express, the only scheme operating in the UK that could qualify for an exemption, was actually exempted. The PSR's provisional view was that it could not be exempted as American Express' market share was above the 3% threshold. Therefore, any payment service providers (PSPs), including American Express, had to comply with the interchange fee caps on UK domestic transactions until 31 March 2016.
- However, the PSR indicated that it would revisit this decision once it had received further transactional information and made greater headway on its IFR guidance. That process is now complete, and the PSR's final conclusion is that American Express was above the 3% market share threshold between 9 September 2014 and 8 September 2015. Therefore, American Express and the PSPs participating in its scheme were subject to the interchange fee caps on UK domestic transactions between 9 December 2015 and 31 March 2016.

- The PSR's final determination also confirms that American Express' market share was above 3% during 2015. Therefore, it must comply with the domestic interchange fee caps from 1 April 2016 to 31 March 2017.

See the final determination [here](#).

Europe: EBA publishes responses to discussion paper on regulatory technical standards for strong customer authentication and secure communication under PSD2

- On 10 March 2016, the European Banking Authority (EBA) published the responses to its discussion paper on developing regulatory technical standards (RTS) on strong customer authentication and secure communication under PSD2.
- Responses included those from the European Banking Federation, European Payments Council, European Savings Bank Group and the joint response of Payments UK, FFA UK and The UK Cards Association.
- The EBA will assess the responses received, and use them as input for the development of the draft RTS which it will publish this Summer.

See the published responses [here](#).

Payment Market Developments

Global

United Kingdom: Barclaycard reports 164% increase in UK contactless payments

- Contactless spending by Barclaycard's UK customers in pubs and bars, pharmacies, supermarkets and on commuter transport increased 164% in 2015.
- This follows news from The UK Cards Association that total contactless spending reached £7.75bn in 2015 - three times the amount spent in 2014.
- The commuter transport sector saw the biggest rise in contactless spending last year of 532%.
- More than a quarter of active Barclaycard customers now use contactless technology to pay for goods and services every month, and customers now make more contactless transactions in a single calendar month than were made in 2013.

See more [here](#).

United Kingdom: Mitek launches its mobile deposit solution in the UK

- Mitek has launched its mobile deposit solution in the UK, with other countries expected to follow.
- Mitek is a global provider of mobile capture and identity verification software solutions. Its mobile deposit allows financial institutions to use photographic verification, saving customers a trip to the bank.

See more about the launch [here](#).

France: La Banque Postale launches voice-recognition payment platform

- The National Commission for Computers and Liberty (*Commission nationale de l'informatique et des libertés*) ("CNIL") authorised La Banque Postale to use voice

biometric technology to confirm payment orders.

- The technology will be used to secure online payments, ensuring that the person who places the order is the actual card owner.
- The customer will receive a call from the bank to confirm their identity by voice.

For further information see [here](#).

France: Edenred to transfer Ticket Restaurant online

- Edenred, a world leader in prepaid corporate services and the creator of Ticket Restaurant, is set to launch a new pilot in co-operation with MasterCard to scrap their physical meal vouchers.
- Edenred wants all Ticket Restaurant meal vouchers to be available to customers on their mobile devices.
- Ticket Restaurant's information will be stored in the cloud and will utilise MasterCard's host card emulation technology.

See the press release [here](#).

USA: Google launches hands free, voice-activated mobile payments system

- Google has unveiled Hands Free, a new app which allows users to make purchases using voice commands.
- The system is currently being trialled at certain San Francisco stores, including some branches of McDonald's and Papa John's and other local retailers.
- The system has a number of safety features, for example, when a customer says "I'll pay with Google", the merchant can confirm the user's identity by matching the user's face with that of his/her Hands Free profile.

See more about the trial [here](#).

USA: OCC moves to create a new FinTech framework

- On 31 March 2016, the Office of Comptroller of the Currency (OCC), which oversees the national bank chartering system, issued a white paper calling for increased discussion between regulators and the financial services and technology sector.
- The OCC, by calling for regulatory innovation, is attempting to address complaints that a 20th century regulatory system has failed to keep up with a 21st century financial system.

See more about the potential new framework [here](#).

USA: US Bank and Bank of America go live on real-time mobile P2P money transfer platform

- US Bank and Bank of America have become the first banks to offer real-time P2P transactions through Early Warning's clearXchange network.
- ClearXchange acts as a clearing house for P2P online payments transfer, enabling customers to send funds directly from their bank accounts to the recipients' using only an email address or mobile phone number.
- This service is now open to nearly 22 million mobile banking customers in the USA.

See the ClearXchange press release [here](#).

USA: Consumers and mobile financial services

- The Federal Reserve Board reported that mobile banking increased 4% last year, with up to 43% of adults with mobile phones and bank accounts participating in mobile banking.
- However, the use of mobile payments remains less common with only 24% of mobile phone users and 28% of smartphone users reporting making mobile payments in the previous 12 months. Users cite preferences for alternate

methods of banking and security concerns for hesitancy to adopt mobile financial services.

See the report [here](#).

USA: Samsung Pay now supports eligible Wells Fargo credit and debit cards

- With the addition of Wells Fargo, Samsung Pay now supports eligible credit and debit cards from 70 banks and credit unions, covering over 70% of the US credit and debit card market.
- Samsung Pay has some five million registered users who have used the system to make more than US\$500m in purchases since the mobile wallet debuted six months ago.

See more [here](#).

USA: MIT digital currency initiative

- Massachusetts Institute of Technology (MIT) has built the digital currency initiative (DCI) to bring together researchers and scientists from all over the world to collaborate on the development of digital currency and distributed ledger technologies.
- The DCI announced a US\$900,000 bitcoin developer fund to pay the salaries of developers who work on the open source codebase at the core of the bitcoin protocol.

See more on the initiative [here](#).

USA: Microsoft adds five new blockchain partners to Azure

- Microsoft has added five new services to its Azure blockchain-as-a-service (BaaS) solution. This includes decentralized prediction market Augur and ethereum startup Slock.it. Other partners include blockchain development platform Lisk; digital asset platform BitShares; and alternative blockchain platform Syscoin.

See more on the 5 additions to Azure [here](#).

Australia: Square launches Square Reader in Australia

- Square has announced the availability of its payment processing and hardware solutions in Australia.
- Square is already established in the USA, Canada and Japan.
- Square is partnering with Cuscal, an Australian transactional banking services company, to distribute the device to merchants.

See more about Square [here](#).

China: Huawei plans to launch its own mobile payments service in China

- Huawei is partnering with Bank of China to launch its mobile payment service in China.
- Bank of China is the only bank currently partnering with Huawei, it is unclear whether other banks will follow.

See more on Huawei's plans [here](#).

India: Barclays expands its Rise FinTech network to Mumbai

- Barclays will launch Rise in downtown Mumbai in the second quarter of 2016, expanding the programme to its sixth city after London, Manchester, New York, Cape Town and Tel Aviv.
- This will provide facilities for local entrepreneurs seeking to shape the future of financial services.
- In each location Rise provides a working environment, event spaces, and meeting rooms for innovative companies. Members of the new Mumbai centre will get access to Barclays mentors and will be linked to all of the Rise global sites. The project aims to act as a global digital network, promoting online collaboration and participation in innovation challenges.

See the press report [here](#).

Ivory Coast: Visa looks to accelerate its digital payments expansion agenda with the potential opening of an office in the Ivory Coast

- Visa is in the process of finalising plans to open an office in the Ivory Coast. This will facilitate engagement with key stakeholders in the ECOWAS region; government, financial institutions, consumers and merchants.
- This development will help drive the company's strategy in Africa, where two billion people live without access to financial services, according to the Global Financial Inclusion Index 2014.
- This expansion reflects Visa's continued efforts, alongside the World Bank Group, to achieve universal financial access and provide electronic payment accounts to 500 million underserved people by end of 2020.

See more [here](#).

South Africa: Bidorbuy adds bitcoin as a payment option

- South African online marketplace Bidorbuy has added bitcoin as a payment option.
- Bidorbuy which launched in 1999, is one of the largest South African e-commerce websites which attracts 1.1 million unique monthly viewers and facilitates 80,000 sales monthly.

See the press report [here](#).

Global: Ethereum, a virtual currency, enables transactions that rival bitcoin's

- Bitcoin's rival currency, ethereum, has increased in value 1,000% over the past three months.
- The Ethereum system is built on a blockchain in which every transaction is recorded publicly. Unlike bitcoin, the ethereum software allows for

online markets and programmable transactions known as smart contracts.

- Many bitcoin enthusiasts caution that ethereum is young, untested and may face even greater security issues than bitcoin. However, finance and technology companies such as JP Morgan Chase, Microsoft and IBM are calling it bitcoin 2.0 and have begun to develop projects that utilise the ethereum platform.

See more about ethereum [here](#).

Surveys and Reports

Global: Deloitte predicts a fundamental shake-up for payments industry due to blockchain technology

- Deloitte has published a report on how disruptive forces will transform the industry over the next ten years.
- The report states that payment systems will look vastly different in the next decade as a result of continuing technological advances.
- According to Deloitte blockchain could be the most transformative innovation, and we could see a number of real-life applications of blockchain applied to payments, beyond digital currencies, in the next five years.

See the report [here](#).

Global: Moody's Analytics study suggests the rise of e-payments has given a huge boost to GDP and jobs

- A report by Moody's, commissioned by Visa, examined the economic impact of electronic payments in 70 countries between 2011 and 2015.
- The report found that the increased use of electronic payment products added US\$296bn to GDP, while raising household consumption of goods and services by an average of 0.18% per year, with developing countries seeing the biggest boost.
- Moody's economists estimate that between 2011 and 2015, the rise in e-payments resulted in the equivalent to 2.6 million new jobs created on average per year.

- Across the 70 countries, Moody's found that a 1% increase in the use of electronic payments could produce an annual increase of around US\$104bn in the consumption of goods and services.

Read the article [here](#).



Our Global Payments Team

Hogan Lovells' global payments practice is made up of financial services and technology lawyers working closely together as a single team from our network of offices, including offices in all the major financial centres.

The practice covers traditional payment services as well as technology driven innovations that affect products, business structures, services and markets.

Our Clients

The team provides strategic advice to all market participants including:

- lenders
- card issuers (including banks and e-money institutions)
- acquirers
- money remitters
- payment schemes
- mobile operators
- retailers
- payment platforms or technology providers
- payment processors
- networks and settlement services

How we can help

In addition to advising on payment specific regulation, the team:

- advises on all related regulation such as money laundering, data and privacy, technology law and IP, e-commerce and consumer protection
- negotiates commercial contracts
- leads or supports on mergers and acquisitions in the payments sector
- engages with Government on new regulation and implementing new legislation
- advises on multi-party arrangements to develop new payment services or networks and on related loyalty and incentive programmes
- negotiates outsourcing of payments processing and settlement
- drafts related customer and commercial documentation

The global payments practice is part of Hogan Lovells market leading Financial Institutions Group, one of the largest practices of its kind with approximately 200 lawyers worldwide.

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