

**Hogan Lovells Global Payments Newsletter**  
18 April 2013

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## Hogan Lovells Global Payments Newsletter

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### 1. REGULATORY DEVELOPMENTS

#### 1.1 **Worldwide:** Financial Action Task Force ("**FATF**") consults on digital payments guidance

- FATF, the inter-governmental body setting global standards for anti-money laundering and to combat the financing of terrorism, is consulting on draft guidance for new types of payment service, namely:
  - prepaid cards;
  - mobile payments (other than traditional financial services offered through a mobile channel); and
  - internet-based payment services (in particular those involving digital wallets, virtual currencies or electronic money).

Certain types of these services are excluded from the guidance, in particular services that can only be used to pay a single merchant or limited network of merchants.

- FATF Recommendation 15 specifically requires regulators to assess money laundering risks arising from new products and new technologies. The draft guidance accordingly identifies risk factors, and indeed includes a detailed risks matrix based on product features and other indicators. It also has specific proposals for an approach to regulation, and generally calls for proportionate and risk based regulation to avoid unnecessarily stifling the development of new products.
- The guidance emphasises that customer due diligence ("**CDD**") is still required for new payment types, albeit simplified or "tiered" CDD may be appropriate in some cases. At the same time, it recognises that meeting CDD requirements through new media can be challenging, and so is consulting on how the challenges can be addressed.
- The Annex to the guidance summarises current regulatory approaches in a number of jurisdictions.

The draft guidance does not appear to be published online, but a copy accompanies this newsletter.

#### 1.2 **Europe:** European Union ("**EU**") guidance on permitted purposes for data use

- An "article 29" working party of national data protection authorities has published an opinion giving guidance on requirements, under the EU Data Protection Directive, for personal data:
  - to be collected for specified, explicit and legitimate purposes; and
  - not to be used in other ways that are incompatible with those purposes.
- The guidance aims to aid consistent interpretation and application of the Directive across the EU and gives examples of, among other things, where purposes for processing data are too vaguely or too generally stated; how layered data consents can be used by presenting key information with links to underlying detail; and how to split general purposes into more specific sub-purposes.
- The guidance also gives a steer as to what steps need to be taken when purposes are not adequately specified; and includes recommended safeguards to ensure that use of "big data" is compatible with specified purposes.
- The working party also makes recommendations for changes to existing requirements, potentially by amending the draft EU Data Protection Regulation.

See our report [here](#) and the guidance [here](#)

### 1.3 **Europe:** European Commission launches MasterCard competition investigation

- The Commission has announced it is investigating whether the following MasterCard practices are anti-competitive:
  - interchange fees for payments from cardholders outside the European Economic Area ("EEA"), e.g. a US cardholder making a purchase from a German merchant;
  - rules that limit the ability for a merchant in one EEA country to benefit from better conditions offered by an acquiring bank in another EEA country; and
  - related rules or practices, such as the "honour all cards" rule (whereby a merchant must accept all types of MasterCard branded card, even those incurring higher merchant service charges).
- This investigation follows other European Commission investigations of Visa and MasterCard cross border interchange fees, and a decision of the EU's General Court on such fees (which MasterCard is currently appealing to the European Court of Justice).
- The Commission also plans to publish a proposed EU Regulation on card interchange fees in the near future, aimed at providing legal certainty and a level playing field at a time when more and more players are entering the payments market.

See the Commission's press release [here](#)

### 1.4 **United Kingdom:** Government guidance on payment surcharges by merchants

- The Consumer Protection (Payment Surcharge) Regulations 2012 came into force on 6 April.

- They implement the Consumer Rights Directive into UK law by prohibiting many types of merchant (or "trader") from charging consumers fees for paying by credit card or using another means of payment, if those fees exceed the merchant's costs in accepting that means of payment.
- The aim is to increase pricing transparency by preventing merchants from adding a profit element to their ancillary surcharges so as to enable them to reduce their headline pricing.
- The Department of Business, Innovation and Skills has now provided guidance:
  - stating that the prohibition applies to a charge if it differs depending on the means of payment used, irrespective of how the charge is described (if the charge is the same irrespective of the means of payment, it is not caught);
  - defining what are "means of payment"; and
  - describing what sorts of costs can be taken into account in setting fee levels, the general principle being that only direct costs exclusively attributable to use of a particular means of payment can be included, and the surcharge can be based on an averaging of such costs. For card payments, direct costs might potentially include merchant service charges, point of sale equipment costs, risk management costs, and processing fees. General overheads are excluded.

See the guidance [here](#)

#### 1.5 **United States:** Workshop to develop a Cybersecurity Framework

- President Obama's Executive Order on Improving Critical Infrastructure Cybersecurity called for the National Institute of Standards and Technology ("**NIST**") to develop a comprehensive cybersecurity framework to align policy, business and technological approaches to address cyber risk. NIST has recently hosted a public workshop to kick off the process to develop the framework.
- A number of industry representatives present expressed the view that the framework should build on existing best practice, and that, for information sharing to be effective, Congress would need to address the antitrust, privacy, and liability protection concerns. Others also emphasised the importance of the framework supporting enterprise risk management rather than 'check-the-box' compliance.
- There are a number of requests for comments and workshops, covering 'Managing Risk', 'Cyber Hygiene' and 'Tools and Metrics', planned to assist NIST in producing a preliminary version of the framework by October 2013. Once finalised, the framework is expected to be an authoritative benchmark against which the cybersecurity efforts of business across sectors and industries will be measured.

See a fuller report [here](#)

#### 1.6 **Hong Kong:** planned standards for contactless payments

- The Hong Kong Monetary Authority plans to set up a banking industry working group to set general standards (by the end of 2013) for near field communications ("**NFC**") payments.

- The working group will draw on a recent consultancy study that produced draft standards on interoperability and security after considering how safe and effective infrastructure could be developed to achieve interoperability of NFC payment services. In particular, the study considered security, the ability to download payment services from multiple providers to a single phone, and how to ensure the continuity of a service when consumers switch networks or phones.

See a report [here](#)

## 2. PAYMENTS MARKET DEVELOPMENTS

### 2.1 **Europe:** Helixion launches NFC payments platform backed by 12 major European banks

- Helixion, an NFC payments specialist, has launched Lok-MPL, a new mobile payments platform. It supports both MasterCard and Visa, and enables the creation of mobile payment apps that can operate across a wide range of mobile phones and any secure element, digital wallet or payment scheme.
- The Lok-MPL is designed to help providers quickly and easily bring mobile payment and wallet offers to market and can also be used for loyalty and ticketing schemes.
- It has been adopted by Swiss mobile network operator, Swisscom, and is reportedly already backed by 12 of Europe's major banks.

See a report [here](#)

### 2.2 **United States:** eBay integrates PayPal m-payments with Magento e-commerce platform

- PayPal, provider of e-commerce and mobile payments technology, and Magento, originally the designer of an open-source e-commerce web platform used by merchants to create custom online stores, are working together to create two in-store services for Magento's 150,000 merchants: 'In-Aisle Selling' and 'Order Ahead'.
- 'In-Aisle Selling' involves a merchant using PayPal Here, a mobile point-of-sale service that allows the merchant to use a card reader attached to a smartphone to take card payments anywhere in store, in combination with the Magento inventory and ordering system, which accesses and uploads customer and purchase details.
- PayPal is also expanding 'Order Ahead' following a successful trial, allowing merchants to add a catalogue of products and store locations to a PayPal mobile app and ordering system. The app allows customers to order and pay in advance, with the merchant managing pre-orders through a console or by using Magento's application programming interface to integrate 'Order Ahead' into the merchant's existing point of sale systems. Customers can then collect their orders in store by presenting their name, order number or a QR code

See a report [here](#)

### 2.3 **France:** NFC changing how Parisians shop and browse

- Start-up company Think&Go is working with French supermarket chain Casino to offer a wide ranging NFC shopping service.
- It enables customers to use NFC enabled phones to scan NFC-tagged products on shelves, in order to receive product information (and offers) and add the product to

their shopping list. The customer can then download their shopping list by touching their phone to a contactless payment terminal at the check out, and potentially also pay for their purchases using a mobile wallet.

See a report [here](#)

#### 2.4 **Sweden:** Seamlessly incorporating NFC into mobile payments

- Seamless has announced plans to incorporate NFC technology in its mobile payment solution SEQR. Currently, the service uses QR codes attached to point of sale terminals which customers scan with their smartphones during the transaction. The customer's linked account is debited once the app links the transaction to the SEQR user and is approved by the customer entering their personal identification number.
- SEQR will now have an RFID chip supporting NFC embedded in its QR code stickers, which from May, will mean customers with NFC enabled smartphones will be able to pay by waving their phone over the sticker.
- The SEQR solution does not require additional point of sale hardware. In addition, the retailer saves on card fees as customers are required to open an account, provided by another company, for making payments. Customers get credit for 30-50 days at no additional cost provided they pay the outstanding amount off monthly.

See a report [here](#)

#### 2.5 **Taiwan:** Largest telco to launch QR code mobile payment service

- The largest mobile service provider in Taiwan, Chunghwa Telecom, has announced the launch of a mobile payment service allowing customers to pay for a range of goods and services by scanning QR codes at checkout.
- Chunghwa hope that customers will be able to pay using the QR codes in stores, restaurants, taxis and even on TV shopping channels (by scanning the TV screen to pay for items).
- It is not clear whether the company intends to roll out a NFC payment offer, which it trialled last year, or whether it has opted for QR code mobile payments instead of this.

See a report [here](#)

#### 2.6 **India:** Mobile NFC reader and sticker solution launched

- Indian mobile payment solutions provider, iKaaz, claims to have overcome the perceived cost barrier to wider roll out of NFC.
- iKaaz's solution has two elements aimed at different market segments:
  - a low-cost NFC reader which can be plugged into a merchant's mobile phone converting it into a mobile point of sale device; and
  - NFC stickers aimed at consumers, which can be associated with a mobile wallet.
- iKaaz reports that its platform, which launched three months ago, is already processing 800,000 transactions a month.

See a report [here](#)

## 2.7 **Nigeria:** Western Union partners with local mobile payment operator

- Money remittance provider, Western Union, and the Nigerian mobile payment operator, Virtual Terminal Network which provides the VTN VCASH service, have launched a service enabling consumers to direct Western Union money remittances into their VCASH account.
- Customers can then send the money to other VCASH users, deposit it into any commercial bank, or use it to pay bills and purchase goods and services.
- In a country where there is high mobile phone penetration, yet only 29.7% of the population over the age of 15 are banked, this offering should facilitate financial inclusion (as well as increasing the companies' market penetration).

See a report [here](#)

## 3. **SURVEYS AND REPORTS**

### 3.1 **Worldwide:** Report predicts huge mobile wallet market growth

- A report by Transparency Market Research predicts that the global mobile wallet market will be valued at US\$1,602.4 billion by 2018.
- By that point, the EMEA region is expected to be the largest market, although the Asia Pacific region is predicted to grow the fastest over this period.
- Lack of awareness and concern surrounding security and privacy remain key factors likely to hinder growth.
- Retail formed the largest application of mobile wallets (valued at USD 144.8 billion in 2011). This trend is expected to continue, with vending machines called out as a niche but significant ongoing application of the mobile wallet technology.

See a summary of the report [here](#)

### 3.2 **United Kingdom:** Survey suggests mobile banking offers brightest job prospects

- According to a survey of UK retail banks by Brightpool, 42% believe that mobile banking will create the most jobs in the sector in 2013.
- This includes jobs in areas such as app development, cyber security and marketing to promote mobile banking.
- Roughly one third of HR directors also believed that those working in mobile payments development would receive the greatest pay rises.

See a report [here](#)

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