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Hogan Lovells Global Payments Newsletter
20 November 2013

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You can also click [here](#) to subscribe to our "Global Media and Communications Watch" blog, for topical commentary on TMT related issues from Hogan Lovells lawyers across the world.

1. REGULATORY DEVELOPMENTS

1.1 **Europe:** Committee of European Parliament adopts data protection compromises

- The European Parliament's Committee on Civil Liberties, Justice and Home Affairs has voted to adopt its report on the draft EU General Data Protection Regulation and separate draft Data Protection Directive in the law enforcement sector. This means that Parliament's negotiations with the European Council and Commission (the "trialogue" process) can now begin, with a view to having a Parliamentary vote on the reform package in March 2014 (before the Parliamentary elections).
- The report amends considerably the original draft of the legislation prepared by the Commission in January 2012, and also softens or omits a number of strict provisions contained in an earlier draft of the Committee's report. Some examples of the changes are:
 - increasing sanctions to a maximum €100,000,000 or 5% of annual global turnover (whichever is the greater);
 - tightening up the conditions for consent, including preventing consent being tied to a contract;
 - retaining "legitimate interest" as a valid basis for most kinds of processing (except sensitive data and profiling); and
 - requiring a data protection risk analysis to become obligatory for any processing involving more than 5,000 data subjects during any consecutive 12-month period, or any other kind of risky processing.

For details see our Chronicle of Data Protection blog [here](#)

1.2 **Australia:** Proposal for new Payments Council

- The Reserve Bank of Australia and the Australian Payments Clearing Association are consulting on the establishment of a new payment industry coordination body, the Australian Payments Council, to promote innovation within the industry.
- The Council would be drawn from a wider Payments Community, made up financial institutions, payment schemes and other payment and service providers. The Council will not have binding powers over industry participants, instead it would take a coordination role and achieve goals by generating industry consensus and buy-in.
- The Council would run in conjunction with a User Consultation Group representing the interests of end-users, such as consumers, merchants, businesses and public agencies.

- This approach is in contrast to the UK Government's Bill to set up a statutory Payment Systems Regulator with formal powers to promote innovation (among other objectives), as described in our last newsletter.

See the consultation paper [here](#)

2. PAYMENT MARKET DEVELOPMENTS

2.1 **Worldwide:** Google's contactless payments sidestep secure element

- Google has introduced support for Host Card Emulation ("**HCE**") in its Android 4.4 KitKat platform, allowing any Android near field communications ("**NFC**") enabled device to be used for mobile payments, loyalty programs and other secure transactions without needing access to a secure element.
- HCE, using payment protocols accepted by EMVCo (a global chip-based payments card body), means that any app on an Android device can emulate an NFC enabled smartcard, allowing the user to initiate NFC transactions. Importantly, it can be used with any mobile provider and avoids the question of who provides the secure element (for example, the mobile manufacturer or mobile network operator ("**MNO**")), which has led to difficulties for other NFC payment solutions.

See a report [here](#)

2.2 **Worldwide:** IBM provides two-factor security for mobile payments

- Researchers at IBM have developed new mobile authentication technology based NFC. Using two-factor authentication, the new technology provides an extra layer of security when using an NFC-enabled device and an NFC enabled smartcard to carry out mobile transactions.
- During the payment process the user of the smartcard enters their PIN as usual and holds the card next to the phone. The phone then generates a one-time code which is sent to the service provider's server. The entire process is encrypted so even if data was intercepted it would not be usable. The technology should be appealing as the process is already familiar to consumers and is more convenient and secure than using an additional device, such as a random password generator commonly used for online environments.
- The technology is already available for Android devices.

See a report [here](#)

2.3 **United Kingdom:** Zapp to work with leading payment providers

- Zapp, Vocalink's subsidiary, will work with Optimal Payments, Realex and SagePay to integrate the Zapp digital and mobile payment ecosystem into their existing payment methods. Following their strategic partnership with WorldPay, the deal means Zapp is a closer to being the new standard for mobile payments in the UK as the companies service over 60% of merchants in the market.
- The Zapp service will be rolled out during the course of 2014 and is expected to provide merchants with improved check-out conversion rates, lower cost and more secure check-outs.

See a report [here](#)

2.4 **United States:** Location analytics companies agree code of conduct

- Eight of the ten major companies that track shoppers using their smartphones as they move through a shop have agreed a code of conduct to protect consumers' privacy.
- The code covers signs to alert consumers to the tracking and how they can opt out. The companies must also get a consumer's consent if they will be contacted at a later date and contractually require third party data users to also follow the code. The code requires that data will not be used adversely for determining eligibility for employment, credit, health care treatment or insurance.

See a report [here](#)

2.5 **United States:** Red Bottle Design introduces GlassPay for bitcoin payments on Google Glass

- Red Bottle Design, a Californian company, has developed an app that allows Google Glass users to make in-store payments using bitcoins. Google Glass and Android users will be able to scan the barcodes of physical items. Items are then added to a virtual cart, and paid for using bitcoins. This is intended to speed up the check-out process and, reportedly, merchants will be able to avoid card processing fees for its use.
- The GlassPay app is expected to be available in the second quarter of 2014, after the launch of Google Glass.

See a report [here](#)

2.6 **United States:** DigitalPersona buys authentication software provider Identity Stream

- DigitalPersona, a fingerprint authentication firm, has acquired Identity Stream, a software provider which offers banks a one-touch authentication system for transactions.
- Identity Stream's software identifies customers and employees by scanning their fingerprints and matching them with profiles stored on a secure server. DigitalPersona thinks that such technology may help provide access to basic financial services to those who currently lack the necessary identity documents to access such services in the more traditional ways.

See a report [here](#)

2.7 **United States:** Bitcoin at risk of network attack, say researchers

- Cornell University scientists have developed a theoretical attack which they claim exposes a weakness in the way that bitcoins are mined. They claim that a "selfish" mining group could carry out the mining process, successfully being rewarded with bitcoins, without informing other mining groups.
- The researchers have proposed updating the protocol to limit the size of mining groups in order to make the whole system less susceptible to a selfish attack. However, other commentators have said that such an attack is "highly theoretical" as software does not currently exist to allow an honest mining group to act selfishly in this way.

See a report [here](#)

2.8 **Australia:** Coles tests NFC Stickers

- Coles, an Australian supermarket chain, is piloting contactless payment stickers. MasterCard customers can attach the stickers to their mobile phones, enabling them to make purchases and collect loyalty points. Contactless payments in Coles stores have increased by more than 70% over the last twelve months, following a previous NFC payments and rewards pilot.

See a report [here](#)

2.9 **Canada:** Vancouver home of first bitcoin automatic teller machine ("ATM")

- A bitcoin ATM has opened in a coffee shop in Canada. While it looks like an average ATM, it works rather differently; users scan their hand to confirm their identity then transfer funds to or from a virtual wallet on their smartphone. Although bitcoin is not currently recognised as a currency and so is not regulated in Canada, transfers are limited to \$1,000 per day in an attempt to minimise money laundering and fraud.
- Robocoin, the Las Vegas-based company which builds the ATMs, noted that using the ATM is a two-minute process whereas any online exchange takes at least two days. There are plans to install more ATMs across Canada by December, and then move into other countries next year.

See a report [here](#)

2.10 **Japan:** NTT Docomo to launch global mobile payments service

- From February 2014, Japanese mobile network operator ("**MNO**"), NTT Docomo will be expanding its Osaifu-Keitai mobile payments service, in conjunction with MasterCard, to allow its users to make payments with MasterCard PayPass merchants around the world.
- Users will need smartphones that support Osaifu-Keitai, which uses proprietary Sony Felica embedded chips for domestic payments, and NFC.

See a report [here](#)

2.11 **Hong Kong:** 3 Hong Kong and Citibank launch NFC wallet in Hong Kong

- MNO, 3 Hong Kong and Citibank Hong Kong have launched the 3 Citi Wallet, an NFC mobile wallet for 3 Hong Kong customers who also have a Citibank Visa credit card. Users will be able to make mobile payments at Visa Paywave terminals in Hong Kong and across the world, as well as check their transaction history and receive location based offers.
- To make a purchase, customers need to sign into the 3 Citi Wallet app using a password and then tap their phone on a Paywave reader at checkout. There is a spend limit of HK\$1,000 per transaction. The service is compatible with NFC-enabled smartphones, and Citibank is providing a NFC sticker for certain other handsets.

See a report [here](#)

2.12 **Singapore:** New institutional bitcoin exchange startup, itBit, raises \$3.25 million

- Financial startup, itBit, announced that it has raised an additional \$3.25 million in capital from venture capitalist funds and angel investors in order to open an institutional level global bitcoin exchange in Singapore. It aims to attract institutional

investors to invest in bitcoin by offering higher standards of reliability, liquidity and regulatory compliance in trading the virtual currency.

- itBit claims that its KYC and anti-money laundering procedures exceed current standards, and that it ensures that its operations are in full regulatory compliance with the laws of Singapore and the laws of its users' home countries.

See a report [here](#)

3. **REPORTS AND SURVEYS**

3.1 **Worldwide:** Retail banks focus on mobile innovation

- Retail banks worldwide are recognising the strategic importance of mobile innovation according to the fifth 'Innovation in Retail Banking' report commissioned by consulting, technology and outsourcing firm, Infosys.
- 168 banks in 66 countries were surveyed with 60% now reporting having an innovation strategy, up from 37% five years ago. In addition, 77% of banks have deployed or will deploy a mobile wallet solution, with mobile location based offerings another focus.
- According to the report, the major barriers to innovation identified by medium to large banks were legacy systems, culture and organisational silos.

See a report [here](#)

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