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**Hogan Lovells Global Payments Newsletter**  
21 August 2013

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# Hogan Lovells Global Payments Newsletter

21 August 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 United States: Federal Court interchange fee decision

- On July 31 2013, Federal Court District Judge Richard J. Leon struck down portions of the regulations of the Board of Governors of the Federal Reserve System (the Regulations), labelling them “fundamentally deficient.” The Regulations implement the Durbin Amendment of the Dodd Frank Wall Street Reform and Consumer Protection Act, and primarily limit interchange fees on debit card transactions and prohibit network exclusivity.
- Interchange fees: the Durbin Amendment only permits incremental, variable authorization, clearing and settlement (ACS) costs to be taken into account in relation to interchange. The Regulations allowed for other specific costs associated with electronic debit transactions in addition to variable ACS costs, such as transaction monitoring costs and fraud losses. The Court determined that the Regulations “run completely afoul of the text, design and purpose” of the Amendment.
- Network exclusivity: the Durbin Amendment requires multiple unaffiliated networks for each debit card transaction. The Regulations require that two unaffiliated networks be available for each debit card (so it would for example be sufficient for cards to be enabled with one PIN network and one signature network) rather than having multiple networks for each authorization method. The Court deemed this inconsistent with the Durbin Amendment.
- The Court vacated the interchange fee and network non-exclusivity regulation (“vacatur”) but stayed vacation until further order of the Court, to limit the disruptive effect of vacatur while the Federal Reserve “develop[s] entirely new rules to correct these errors.”

See a report [here](#).

## 2. PAYMENTS MARKET DEVELOPMENTS

### 2.1 United Kingdom: PayPal tests face verification system

- PayPal is testing a new app allowing customers to make mobile purchases from their PayPal accounts using their own faces as verification in a dozen cafes, restaurants and shops in Richmond upon Thames, London.
- The customer checks into the app by clicking on the retailer's name and sliding an animated pin down the screen. The customer's name and photograph then appear on

the retailer's payment system and the cashier can confirm payment by clicking on the photograph. The customer receives an alert on their phone with the amount and an email receipt from PayPal.

- PayPal intends to roll out the technology across the UK with more than 2,000 merchants expected to be on board by the end of this year. Retailers involved in the pilot are positive about the service, and have already reported faster payment times.

See a report [here](#).

## 2.2 **United States:** Facebook trials auto-fill payments feature

- Facebook is trialling a feature which populates a person's payment details when they make a purchase through a third party app.
- The small scale trial will allow customers who have saved their payment details to their Facebook account to populate their payment information on a third party app using just their Facebook login. Facebook will not be involved in processing the payments; this will continue to be done by an app's existing service provider.
- Simplifying the checkout process could help prove the effectiveness of advertising through Facebook as it would allow Facebook to track how often clicks lead to purchases.

See a report [here](#)

## 2.3 **France:** Rail operator introduces mobile payments system

- SNCF, the French national rail operator, is using a VeriFone payments system to allow train conductors equipped with mobile handheld devices to sell tickets, process card payments and provide information. Deployment of the devices started in April 2013, and is expected to expand to 12,000 within the next three months.
- Similar solutions have been adopted elsewhere in Europe of late. In Turkey, for example, mobile network operator ("**MNO**") Turkcell has teamed up with Gemalto to integrate the country's public transport card into Turkcell's mobile wallet to enable customers to make contactless payments for local transport services.

See reports [here](#) and [here](#).

## 2.4 **Australia and Singapore:** SingTel and Visa deal to offer customers NFC payments

- MNO SingTel has partnered with Visa to offer SingTel's mCash customers in Singapore and Australia the ability to make mobile contactless payments at Visa payWave acceptance points. It will also be possible to use the mCash stored value account to pay for transport and make purchases online.

See a report [here](#).

## 2.5 **Botswana:** Orange to introduce mobile payments with Visa

- Orange (the French division of the MNO) and Visa are planning to launch mobile payment services in Botswana. Orange already offers Orange Money, which allows customers to use their mobile phones to transfer funds to any mobile phone user in or outside Botswana, buy airtime and pay bills.
- Orange Money customers will now be able to apply for a prepaid Visa card, which is linked to their existing Orange Money account. Customers will also receive a virtual

card so will be able to make purchases online, as well as use their physical card at POS and automatic teller machines.

- With an estimated one million Orange customers in Botswana and a significant proportion of the population unbanked, the new services could prove popular. The Orange Money prepaid Visa card is also expected to be rolled-out to other countries in Africa and the Middle East as part of the wider collaboration between Orange and Visa announced last year.

See a report [here](#).

### 3. DATA AND SECURITY

#### 3.1 **United Kingdom:** London 'smartbins' track smartphone movements

- 'Smartbins', provided by Renew London, are pod-like recycling bins equipped with wi-fi and LCD screens. The bins are distributed throughout the City of London, and are primarily used for advertising, news and travel updates.
- Renew had been trialling technology in 12 bins which searched for Wi-Fi enabled smartphones and logged the media access control ("**MAC**") address of the phone. The technology could then calculate the "proximity, speed, duration and manufacturer" of the smartphone, allowing the company to calculate footfall and track information such as how often a 'phone passes the bin.
- Although Renew claims the information gathered is aggregated and anonymised, the City of London Corporation has asked it to stop the trial following concerns that it could be breaching privacy or 'cookies' laws (the latter requires a user's consent to the use of code to monitor their online behaviour).
- Renew is now reportedly working with the UK Information Commissioner's Office to determine the legal position.

See a report [here](#)

### 4. SURVEYS AND REPORTS

#### 4.1 **United States:** Small business embracing mobile payments

- According to a report from advertising consultants BIA/Kelsey, 40% of small businesses are now using some sort of mobile payment platform to complete transactions at POS. A further 16% plan to invest in this type of solution over the next 12 months.

See a report [here](#).

#### 4.2 **United States:** Survey shows how mobile is affecting consumer bill payments

- Western Union's latest Bill Payments Money Mindset Index has revealed that mobile devices are changing American consumers' bill payment behaviour. 15% of people surveyed indicated they plan to pay more bills via a mobile phone or tablet and 13% via a mobile app or text message over the next six months.
- The survey also shows choice, flexibility and convenience remains important to consumers.

See a report [here](#).

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