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**Hogan Lovells Global Payments Newsletter**  
8 July 2013

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## Hogan Lovells Global Payments Newsletter

8 July 2013

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### 1. REGULATORY DEVELOPMENTS

#### 1.1 **Worldwide:** Financial Action Task Force ("**FATF**") finalises new payments guidance

- In April 2013 we reported that FATF, the intergovernmental body setting global anti-money laundering ("**AML**") standards, was consulting on draft guidance for prepaid cards and mobile and online payments. It has now published the final guidance.
- The final version is broadly in line with the draft guidance, with some changes, such as:
  - increased recognition of the need to balance AML requirements with objectives addressing financial exclusion;
  - greater emphasis on the need to take a holistic view of product risk factors in assessing AML risk;
  - flagging that FATF and national policy makers should monitor developments in digital currencies (some of which may fall outside the scope of this guidance), with a view to formulating policies to appropriately address emerging risks in future; and
  - clarification that the guidance does not address "airtime" balances issued by mobile network operators ("**MNOs**") unless the balances can be transferred and are accepted as payments or as an alternative currency.

See the guidance [here](#)

#### 1.2 **Europe:** European Parliament resolution on organised crime, corruption and money laundering

- In March 2013 we reported that the European Parliament's special committee on organised crime, corruption and money laundering had published a draft interim report setting out a motion for a Parliamentary resolution. That interim report has now been finalised, and on 11 June 2013 the resolution was adopted by the Parliament.
- Notable changes from the draft include the following points:

- the need for a regulatory framework to address money laundering without lowering established data protection standards;
  - a call to increase penalties for financial institutions which are complicit in money laundering or receiving the proceeds of organised crime; and
  - the need to increase public awareness of Cybercrime (while also noting that an agreed and precise concept of the term "Cybercrime" needs to be developed and applied across the EU).
- The special committee is scheduled to adopt its final report in September 2013, and the European Parliament is expected to consider the final report in October 2013.

See the final interim report [here](#) and the resolution [here](#)

1.3 **Europe:** Commission to market test Visa Europe commitments on credit card multilateral interchange fees ("**MIFs**")

- Visa Europe recently offered commitments to address a supplementary statement of objections, issued by the European Commission in July 2012, alleging that Visa credit card MIFs for both cross-border transactions within the European Economic Area ("**EEA**") and domestic transactions in 10 EEA countries restricted competition. Visa Europe's proposals include capping the weighted average of its credit card MIFs at 0.3% of transaction value (representing a reduction of about 40-60%), and measures to address concerns about the effect of its cross-border acquiring rules and to increase transparency of its MIFs. The European Commission has now announced that it will conduct a full market test of these Visa commitments, and invites comments from market players by 14 July 2013.
- In December 2010, the Commission had accepted similar commitments offered by Visa Europe in relation to MIFs for immediate debit card payments, which included a cap to the weighted average MIF for those transactions at 0.2%. If the Commission accepts the new credit card MIF commitments following market testing, it will bring to an end its competition investigation against Visa Europe in relation to MIFs, without any finding that Visa Europe has infringed EU competition law. The commitments will also bring Visa's MIFs for cross-border credit card transactions in the EEA into line with MasterCard's, following undertakings given by the latter in April 2009.
- It remains to be seen what impact the Commission's forthcoming interchange fee regulation (expected to be published later this month) will have on the various commitments and undertakings given by Visa and MasterCard.

See the Commission's memo [here](#) and the Visa commitments [here](#)

1.4 **United Kingdom:** Updated payment services and e-money regulatory guidance

- The Financial Conduct Authority ("**FCA**") has published updated versions of its "approach documents" giving guidance on the Electronic Money Regulations 2011 ("**EMRs**") and Payment Services Regulations 2009.
- The e-money approach document changes are, among other things, to:
  - reflect an end to transitional arrangements under the EMRs;

- cover the change in regulator from the Financial Services Authority to the FCA;
  - clarify when the FCA may cancel an electronic money institution's ("**EMI's**") authorisation; and
  - clarify points in relation to the "passporting" process (whereby an EMI authorised in one country in the EEA, may seek to do business in another EEA country without applying for a local licence), including by equating both "distributors" and "agents" with an "establishment" of the EMI, and stating that where an EMI operates from an establishment abroad, it is subject to local AML requirements.
- The payment services approach document changes are more limited, and include the change of regulator to the FCA, and a more consistent use of "establishment" and "branch" terminology.

See the documents, including track change versions, [here](#) (e-money) and [here](#) (payment services)

#### 1.5 **United Kingdom:** Payments Council initial report on Payments Roadmap

- The UK Payments Council ("**UKPC**") is consulting on a roadmap setting out a strategy for the development of UK payments infrastructure. UKPC state that while current payments infrastructure performs well, payments technology is quickly developing and customer needs are changing. By seeking consensus from the payments industry and broader stakeholder groups now, UKPC hope to be well-placed to make suitable investment decisions in order to respond to future needs.
- The Roadmap looks at how payments infrastructure could be set-up five to ten years from now, with the aim of delivering infrastructure that is fast, secure, resilient and accessible 24 hours a day and serves as a platform for provision of competitive payment services. The initial report identifies six broad options for payments infrastructure and seeks comments by the end of October 2013. The first version of the full report is expected early in 2014.

See the initial report [here](#)

#### 1.6 **United States:** Treasury clarifies views on virtual currencies

- As we reported in our April 2013 update, the US Treasury's Financial Crimes Enforcement Network ("**FinCEN**") issued guidance in March 2013 to the effect that exchangers and administrators of convertible virtual currencies were regulated as money service businesses.
- FinCEN has since provided further comment in a Q&A session, with key messages including:
  - an indication that their enforcement action against Liberty Reserve is not necessarily indicative of a wider concern with the virtual currency industry; and
  - that while FinCEN welcomes innovation in financial services, such as virtual currencies, as a means of improving existing services and reaching the

financially excluded, this does not relieve financial institutions dealing in virtual currencies from having to comply with the AML regime.

See a report [here](#) and the original guidance notice [here](#)

#### 1.7 **Germany:** Regulator's opinion on payment services provided by online market places

- The German Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht) ("**BaFin**") has reportedly provided an opinion on internet platforms operating as market places, stating that they are providing payment services if they are involved in the cash flow between buyers and sellers contracting via the platform.
- In the past, to avoid being considered as providing payment services, such internet platforms in Germany have contracted with licensed payment service providers ("**PSPs**"). The PSPs have accepted the money from buyers and held it on trust, before paying it to sellers and the platform (by way of commission), with the platform *having the right to tell the PSP when to make the payments*.
- Under this arrangement, platforms were relying on an exemption to the Germany Payment Services Supervisory Law (Zahlungsdienststeaufsichtsgesetz) under which they were considered providers of mere technical services. As a prerequisite to this exemption, the platform was not able to come into possession of the money changing hands between the contracting parties.
- BaFin is now of the opinion that being in control of when the money is paid by a third party constitutes possession of the money. This means that, to avoid being considered a PSP, the platforms' business models and agreements with PSPs will need to change so that the platform is not able to control the money and only receives its commission on the completion of the buyer and seller's transaction.

The opinion is not publicly available: please contact us for further information

#### 1.8 **Australia:** Call for more coherent regulatory framework for mobile contactless payments

- The Australian Communications and Media Authority ("**ACMA**") has called for a "single coherent regulatory framework" for contactless payments based on near-field communications ("**NFC**"). At present, regulation is fragmented across the communications, financial services and data protection regimes.
- At the same time, ACMA recognises that the market is evolving, so that regulation needs to be flexible, and suggests that co- and self-regulation could help in this regard.

See a press release [here](#) and the paper [here](#)

## 2. **PAYMENTS MARKET DEVELOPMENTS**

### 2.1 **Worldwide:** Official standard for NFC enabled secure digital ("**SD**") cards

- The SD Association, a group of companies setting industry standards for SD card technology, has decided upon an official and interoperable standard for NFC-enabled SD cards. The Association has elected a scheme, called SmartSD, based on single wire protocol as the secure element for NFC transactions.

- While the SD card slot is less common in smart phones than it once was, it is still much more widespread than NFC capability in phones or SIMs. Usage of SmartSD cards will require authentication by the user in a smart phone or on a personal computer. The user will be able to add supported services such as mobile payments and banking and public transport apps.
- The SmartSD will be in competition with NFC-enabled SIM cards, which could eclipse SD card use as more phones have SIM cards than SD slots. However, the main stumbling block continues to be a single standard for NFC SIMs. It will be interesting to see if SD cards can gain an upper hand with this development.

See a report [here](#)

## 2.2 **United Kingdom:** VocaLink moves into mobile payments

- Payments infrastructure provider, VocaLink, the company whose infrastructure and technology is behind (among others) the direct credit (BACS), faster payment service and the LINK cash machine network schemes, is planning to launch a new mobile payments service called Zapp.
- The service, which is due to go fully live in 2014, will allow consumers to make payments directly from their bank account by scanning a quick response ("QR") code or tapping an NFC reader with their mobile phone. The payment process will operate by linking a mobile phone number to a bank account.
- It is reported that Zapp will work consistently across e-commerce, m-commerce and at the point-of-sale, and VocaLink's aim is that it becomes the standard platform for UK mobile payments.

See a report [here](#) and press release [here](#)

## 2.3 **United Kingdom:** Mobile operators' contactless payments JV to launch in 2014

- Weve, the payments and mobile advertising joint venture formed in 2012 between UK mobile network operators Vodafone, EE and O2 (Telefonica), has announced that it aims to launch its mass market NFC payments service in 2014.
- Reportedly the system will allow consumers to tap their smart mobile phone at the point of sale ("POS") terminal a first time to use a discount offer stored on the phone, a second time to collect loyalty points, and a third time to pay the bill.
- A full launch is likely to have an immediate impact given the three operators' market base in the UK, although actual take-up is likely to depend on the level of penetration of compatible handsets and terminals with customers and retailers.

See a report [here](#)

## 2.4 **United Kingdom:** Lloyds brings card acceptance to micro merchants

- Monitise, the provider of mobile point-of-sale ("mPOS") solutions, has announced a partnership with Lloyds enabling Lloyds to offer its small business customers the ability to accept card payments through a Chip & PIN card reader connected to a mobile device.

- The desire is for the mPOS service to be available from this autumn, targeting the estimated 3.5 million sole traders in the UK. Lloyds is not the only UK bank pursuing such a strategy: Santander recently announced a UK partnership with another mPOS provider, iZettle.

See a report [here](#) and press release [here](#)

## 2.5 **France:** Quick and simple bank account to launch

- "Compte-Nickel" – a new basic bank account which can be opened "within 5 minutes" at tobacconists and news agents without the typical income or capital verification of the customer – is to launch in November 2013.
- The product is being offered by Financière des Paiements Electroniques ("**FPE**"), a payment institution recently authorised by the French regulatory authority, the Autorité de Contrôle Prudentiel.
- On opening, FPE will only require the customer to provide an identification document. The consumer will then receive an information sheet setting out the account details and a MasterCard bank card.
- As FPE is not authorised as a credit institution, it is prevented from conducting credit operations and so will only be able to offer a basic account without an overdraft facility.

See reports [here](#) and [here](#) (French language)

## 2.6 **France:** Parisians to pay taxi fares by mobile

- Customers in Paris are now able to use their mobile phone to pay for taxi journeys with the "Les Taxis Bleus" fleet. To use the "PayByPhone" app, customers need to create an account with their mobile number and a linked credit card; they can then make payment over the internet using the app.
- PayByPhone also allows customers to book a taxi, follow its progress on screen until it arrives for pick-up and also comment on the performance and behaviour of the driver.

See a report [here](#) (French language)

## 2.7 **Italy:** Contactless ticketing system to be launched

- Italy's largest telecoms provider, Telecom Italia, and a major payments technology provider, SIA, are testing a NFC-enabled smart phone based ticketing service across three Italian public transport companies, Trasporto Passeggeri Emilia-Romagna, ANM Napoli and Start Romagna.
- The SIM-based mobile ticketing service will allow customers to purchase and then validate tickets by tapping their smart phone against bus or metro ticket machines. The service will be interoperable and will be open to other MNOs and transport companies.
- The announcement of the service follows a call by the Italian Ministry of Transport in the "Digital Agenda" paper to promote electronic ticketing at a national level.

See a report [here](#)

## 2.8 **Italy:** New bank app enables bill payment using the camera of a mobile device

- Italian Bank, Banca Mediolanum, has launched a mobile banking app enabling customers to pay bills received in the post by taking a photo of the bill with their smart phone or tablet device. The app digitises the image of the bill and allows the customer to confirm the details and pay the bill.

See a report and video [here](#) (Italian language)

## 2.9 **Romania and the United Kingdom:** NFC and QR code payments launch

- In partnership with Turkish bank, Garanti Bank, Swedish mobile payment specialist Seamless is launching its "Seqr" NFC and QR code mobile payments platform in Romania in the next few weeks, followed by a roll-out in the UK later this year. Launched as a QR code based service, Seqr was expanded to support NFC tag-based payments in April 2013.
- Merchants will need to upgrade the software at their POS terminals and place their merchant identification sticker (a combined printed QR code and NFC tag) at the checkout. To pay via SEQR, the customer scans the QR code with their smart phone or taps it against the NFC tag with the merchant concurrently selecting the Seqr button at the POS terminal. The transaction amount is then sent to the customer's mobile, which they authorise by entering their PIN.
- In an interview, the CEO of Seamless explained that banks are keen to launch the service in Romania to drive a change toward cashless mobile payments from the currently low card usage rates of around 20%.

See a report [here](#)

## 2.10 **Egypt:** 'First ever' Arabic mobile money service

- MasterCard, Etisalat and the National Bank of Egypt ("**NBE**") are to launch "Flous" – meaning 'money' in Arabic – which is claimed to be the first Arabic mobile money service. It is also the first to use a mobile money gateway developed by e-payments firm, Egyptian Banks Company, and MasterCard.
- Etisalat customers will be able to use Flous on any mobile phone (basic or smart) to transfer money to other Etisalat subscribers participating in the service. They will also be able to load cash onto their phones and take it out through Etisalat and NBE branches.
- As the service moves into its next phase, users will be able to pay bills through their mobile phone, purchase top-ups, and pay for goods online and in-store. The service looks set to target Egypt's unbanked population with MasterCard reporting that 65% of Egyptians lack formal banking.

See a report [here](#)

## 2.11 **China:** China Mobile and China UnionPay launch NFC mobile payments

- China Mobile, China's largest MNO with a considerable 700 million customers, and China UnionPay, China's only domestic bank card issuer, have launched a new



mobile payments system available in several major cities including Guangzhou, Shenzhen, Shanghai, Beijing and Nanjing.

- The system specifications are not yet clear. However, it appears that the system uses NFC to communicate payment information from a NFC-enabled mobile phone at a POS terminal. Several Chinese banks will also be participating in the system including Bank of China, CITIC, Everbright, China Minsheng, GF, Pudong, Shanghai bank and Beijing Bank.
- Given the customer base and dominance which China Mobile and UnionPay have in their respective areas, the service has the potential to reach vast numbers of users.

See a report [here](#)

#### 2.12 **India:** Train ticket bookings and payment by text message

- From July, passengers in India will be able to use basic mobile phones to book and pay for train tickets through either a simple text-messaging based service or menu-based dialling service developed by the Indian Railway Catering and Tourism Corporation.
- Customers using the Unstructured Supplementary Data ("**USSD**") menu-based dialling service dial the designated number, and then choose tickets and search for trains by dialling the numbers on the menu offered. Payment is made through a mobile wallet accessed by entering a PIN.
- Customers using the SMS-based service register with their banks to generate a Mobile Money Identifier, a seven digit number. Booking and payment is made by sending a series of SMS messages. Confirmation is sent to the phone by a further SMS.
- Importantly, neither option requires customers to have an internet connection which will make the service more widely accessible.

See a report [here](#)

#### 2.13 **Japan:** SoftBank Mobile tie up with Gemalto

- SoftBank Mobile has announced it will use Gemalto's Trusted Service Management ("**TSM**") technology to provide NFC services. This will provide real time management and access to accounts through a mobile device, connecting SoftBank to PSPs. SoftBank is the third Japanese bank to choose Gemalto's TSM technology to provide mobile payment services.

See a report [here](#)

#### 2.14 **Taiwan:** mobile operators announce contactless payments plans

- The third largest MNO in Taiwan, Far EasTone Telecommunications Co. has announced plans to test an NFC mobile payment service later this year in conjunction with Far Eastern International Bank and MasterCard (with a roll out to other local banks and Visa at a later stage). This follows the announcement last month by Chunghwa Telecom Co, the largest MNO in Taiwan, that it will be trialling a similar mobile NFC and bill payment services with MasterCard and four local banks.

See a report [here](#)

### 3. OTHER STORIES

#### 3.1 **Worldwide:** Security firm unearths Android phone 'Master key'

- Security research firm BlueBox has allegedly discovered a "master key" which could be capable of providing cyber-thieves with access to most mobile phones running the Android operating system. An attacker could use the loophole to steal data, eavesdrop or send junk messages with unfettered access to the phone.
- As yet there is no evidence that the loophole is being exploited, and further, in order to be able to gain access to Android phones, cyber-thieves would need to first get their booby-trapped version of an existing legitimate application on to the Google Play store.

See a report [here](#)

#### 3.2 **Europe and the United States:** Rapid mobile wallet growth expected in next five years

- A research report by Berg Insight has predicted that in-store mobile wallet payments across Europe are expected to grow to £38 billion by 2017 from the 2012 level of less than £85 million. While this is a significant growth rate, such levels of in-store mobile wallet spend would still only represent 1.6 per cent of all European card payments in 2017.
- In comparison, in North America mobile wallet spend last year totalled £320 million (primarily due to the Starbucks smart phone app), and is set to reach £28 billion by 2017. This growth is likely to be driven by the increased adoption of 'universal wallets', allowing consumers to use existing bank cards stored virtually.

See a report [here](#)

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