Bankinter app is "another way" for NFC

Bankinter, the Spanish bank, unveiled on 4 March a contactless m-payments service which eliminates the need for a secure element inside the handset, marking the first time a service provider can offer an NFC marking the first time a service element inside the handset, eliminating the need for a secure element.

"The Bankinter solution is not necessarily the complete answer but it proves there's another way of doing it," said Chris Jones, Principal Consultant at PSE Consulting. "The fact this is workable as a proof of concept is interesting."

"The Bankinter solution is another way" for NFC, comments Dax Hansen, Attorney-At-Law at Perkins Coie LLP. Hansen, "we should be cautious not to burden with regulation a convenient, low cost, consumer payment solution." Rogers agrees: "Regulatory prescriptions are unnecessary at this time and especially so in the absence of any evidence that mobile payments are not secure."

FTC issues privacy focussed mobile payments report

The Federal Trade Commission issued a staff report on 8 March as part of its efforts to increase consumer protection in the emerging mobile payments marketplace, highlighting key consumer protection issues.

"The FTC has determined that providers can do more to advance m-payments," said Michelle Cohen, Member of Ifrah Law. "In other words, the FTC actually thinks m-payments are a solid option for consumers, but wants to ensure consumers feel secure and are protected from fraud and unfair practices."

The report 'Paper, Plastic...or Mobile? An FTC Workshop on Mobile Payments,' compliments a workshop held by the Commission in 2012, and explores three areas of concern: "Disputes concerning fraudulent payments and unauthorised charges, data security, and privacy," explains Cohen. "A key take away is the FTC's view that m-payment providers should deliver disclosures clearly and conspicuously, afford consumers a reasonable mechanism for disputing charges, and be mindful of establishing protocols to protect consumer privacy," explains Ryan H. Rogers, Associate at Morrison & Foerster.

"When the FTC convened a workshop on m-payments last year, more than anything else – it was to put concerns about customer privacy, front and centre of the m-payments narrative," said Cherian Abraham, Mobile Commerce Lead at Experian Global Consulting. The FTC recommends that m-payment providers practise ‘privacy by design’ when developing products.

One particular concern highlighted by the report involves ‘cramming,’ whereby third parties place unauthorised charges on mobile phone bills (an issue that will be discussed at an additional FTC roundtable in May). However, Dax Hansen, Attorney-At-Law at Perkins Coie LLP, questions whether cramming is really a big issue. "Reports from direct carrier billing aggregators suggest a low level of complaints in regards to wireless cramming," explains Hansen.

"While all players in the ecosystem need to remain focused on providing good consumer protections," continues Hansen, "we should be cautious not to burden with regulation a convenient, low cost, consumer payment solution." Rogers agrees: "Regulatory prescriptions are unnecessary at this time and especially so in the absence of any evidence that mobile payments are not secure."

EC drops 18-month investigation into EPC standardisation process

The European Commission (EC) closed on 22 February its 18-month investigation into the European Payments Council's (EPC) proposed standardisation process for e-payments.

"The EC was concerned that the standardisation process would have excluded non-bank players from the sector, because only banks would have been able to meet the relevant criteria," explains Paul Stone, Partner at Charles Russell.

EU Competition Commissioner Joaquin Almunia said the investigation ended as the “EPC decided to abandon its work in [the standardisation] area.” The EC has advised that legislative proposals due in summer will, inter alia, address market entry barriers. “The EC has flagged that it will keep standardisation under review as it sees the area as an important part of creating and maintaining an effective open market,” said John Worthy, Partner at Field Fisher Waterhouse.

"The introduction of e-payment services ties in very closely with the EC’s aims of ensuring that the EU single market is a world leader in e-commerce,” said Nathalie Moreno, Partner at Speechly Bircham. Moreno highlights the EC’s 2012 paper, “Towards an integrated European market for card, internet and mobile payments,” which discusses plans to promote and instigate standardisation in order to achieve interoperability. A policy of broad, integrated standardisation in paperless payment services might therefore have been a factor behind the EC dropping the EPC case.”
We are delighted to welcome Erin Fonté, shareholder and payments lawyer at Cox, Smith, to the E-Finance & Payments Law & Policy Editorial Board.

John M. Casanova Editor
Snedley Austin LLP

John David Casanova is a partner in the London office of Sinden Austin LLP. Casanova advises clients on a wide variety of US and English transactional, regulatory and litigation matters, including securities, fraud, bankruptcy, antitrust, intellectual property and capital markets issues.

John Chaplin

John Chaplin qualified as a solicitor in 1975. He is a member of the Government Procurement Service’s European Directive Standing Committee and is a partner in the Lloyds Banking Group’s corporate law department. He is also a member of the British Bankers Association’s Risk Regulation and Compliance Committee.

Michelle Cohen

Michelle is a member of the firm’s Technology, Intellectual Property and Data Protection Group. She has extensive experience in technology, media and communications matters, and has been particularly involved in the development of new business models and new forms of intellectual property. Michelle specialises in complex multi-jurisdictional transactions involving multiple asset classes and multiple jurisdictions. She is consistently ranked as a leading practitioner in the World Trademark Review.

Erin Fonté

Erin represents a shareholder and payments lawyer at the Austin, TX office of Cox Smith. She advises financial institutions, including both retail and commercial banking products, on their operations with respect to data protection, data privacy and security.

Michelle Cohen

Michelle is a member of the firm’s Technology, Intellectual Property and Data Protection Group. She has extensive experience in technology, media and communications matters, and has been particularly involved in the development of new business models and new forms of intellectual property. Michelle specialises in complex multi-jurisdictional transactions involving multiple asset classes and multiple jurisdictions. She is consistently ranked as a leading practitioner in the World Trademark Review.

Chris Jones

Chris is a Principal Consultant with over 11 years experience working for PSE Consulting and Accenture. He has worked for many of the major mobile telecommunication companies, assisting in developing their business strategies and implementing change programmes and the use of mobile technology for micro, internet and physical world payments.

Dr Nathalie Moreno

Dr Moreno is a highly qualified international technology partner, with over twenty years experience in advising clients operating in the communications, information technology and e-commerce sectors across EMEA and globally. Nathalie advises multijurisdictional IT and data protection issues. She is ranked among the top lawyers in the world.

Michael Robertson

Michael Robertson is a Managing Director and global head of Transactional Foreign Exchange for HSBC. Based in London, he is responsible for the strategic direction and management of all payments-related FX that runs through the bank’s internal business units as well as that which they manage on behalf of clients across the bank’s 94 country footprint. With over 20 years of banking, marketing and technology experience, Michael is deeply interested in payment flows and instruments, traditional as well as emerging.