

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 service without needing a manufacturer or telco to produce the 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.”

Each time Bankinter customers use the service, a unique virtual version of the consumer’s card is downloaded via an app, enabling payment.

Commenting on Bankinter’s move, Richard Kemp, Senior Partner at Kemp Little, adds that banks “are majoring on avoiding fragmentation” but “who best answers the question ‘who owns the customer?’ could well emerge the winners.”

Jones, meanwhile, believes that “A software solution that overcomes a technical problem and presents a simple model for consumers: will lead to a game-changing approach to m-payments.”

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 emergent 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 Joaquín 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.”

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editorial board

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

Sidley Austin LLP

John M. Casanova is a partner in the London office of Sidley Austin LLP. Casanova advises clients on a wide variety of US and English financial services regulatory and transactional matters, including payments and consumer credit. Casanova is a regular contributor to legal journals including the *Review of Banking and Financial Services*, the *Journal of International Banking Law* and the *American Bar Association's Business Law Journal*. Casanova is a contributing editor on electronic money and payment systems to *Butterworths Financial Regulation Service*.

jcasanova@sidley.com

William R.M. Long Editor

Sidley Austin LLP

William R.M. Long is a partner in the London office of Sidley Austin LLP. Long advises international clients on a wide variety of regulatory and transactional matters relating to payments, e-money, data protection, outsourcing and IT. Long has been a member of a number of working groups in London and Europe looking at the EU regulation of on-line financial services and spent a year at the UK's Financial Law Panel, as assistant to the Chief Executive. Long is a regular contributor to legal journals including the *Journal of Electronic Business Law*, *E-Commerce Law and Policy* and the *Journal of International Banking and Finance Law*.

wlong@sidley.com

David Birch

Consult Hyperion

David Birch is a Director of Consult Hyperion, the IT management consultancy that specialises in electronic transactions, where he provides specialist consultancy support to clients around the world. Birch is a member of the advisory board for *European Business Review*, a columnist for *SPEED* and UK correspondent to the *Journal of Internet Banking and Commerce*.

He is well-known for his more than 100 *Second Sight* columns in *The Guardian*. He is a media commentator on electronic business issues and has appeared on BBC television and radio, Sky and other channels around the world. Visiting Tutor at the *Visa Business School* since 2001, and lecturer at the annual *Bank Card Business School*.

mail@dgwbirch.com

David Butterworth

Skanco Business Systems Ltd

David Butterworth is the Managing Director of Isle of Man based corporate IT service providers Skanco Business Systems. Skanco works with a variety of offshore concerns, including developing holistic solutions for major players in the eGaming and financial services sectors. David manages the deployment of innovative software and networking solutions within these areas. Formerly the CEO of a significant electronic funds transfer company, he has expertise across a wide range of technology based industries. David is also involved with public-private partnerships promoting education on cybercrime

prevention and other key areas of industry concern and policy.

John Chaplin

Ixaris Payments

John Chaplin has been at the forefront of European card payments in Europe for 25 years. He held a number of senior executive positions at Visa International including running their European processing business. He also was a key player at First Data for several years and an adviser to the European Commission on SEPA. He is currently Chairman of Ixaris Payments (the open platform provider), a director of Anthemis Edge (payments advisory) and a Board Director of Interswitch Nigeria (payment networks and card schemes). He is the organiser of the Global Payments Innovation Jury that convenes every 2 years.

Michelle Cohen

Ifrah Law PLLC

Michelle is a Member and Chairs the E-Commerce practice in the Washington, D.C. law firm Ifrah Law PLLC. She advises clients on a broad range of e-business, privacy and data security, consumer protection and communications-related matters. Cohen is a Certified Information Privacy Professional (CIPP-US), as credentialed by a rigorous examination conducted by the International Association of Privacy Professionals. An ALM 2012 Top Rated Lawyer – Technology Law, Michelle is a graduate of Brandeis University and Emory University School of Law, and is admitted to the District of Columbia and New York Bars. She frequently speaks and writes about online commerce, cybersecurity, and advertising and marketing.

michelle@ifrahlaw.com

Erin Fonté

Cox Smith

Erin Fonté is a shareholder and payments lawyer in the Austin, TX office of Cox Smith. She advises financial institutions (on both retail and commercial banking products), stored value/alternative payments providers, mobile banking and mobile payments providers, vendors and retailers regarding financial services issues, payments systems laws (including card network association rules), and all related legal, regulatory and licensing issues. She has specific experience with the development and roll-out of mobile wallet products, including associated mobile loyalty and advertising components, as well as 'x-commerce' or 'anywhere commerce' products that include e-commerce, mobile commerce, and television/set-top commerce. Erin chairs the firm's Privacy and Data Security Practice, is a Certified Information Privacy Professional (CIPP-US) as certified by the International Association of Privacy Professionals, and has experience with a broad range of matters related to privacy/data protection laws and cybersecurity issues. Erin is a graduate of the University of Texas at Austin and Stanford Law School, and is admitted to the California and Texas bars.

efonte@coxsmith.com

Darren Hodder

Fraud Consulting Ltd

Darren is the director of Fraud Consulting Ltd, which was incorporated in July 2009 to provide vendor neutral fraud consultancy services to clients covering financial services, banking, telecommunications, insurance industries and public sector bodies, both in the UK and internationally. A frequent speaker and contributor to forums such as The Fraud Advisory Panel, IAFCI and The Fraud Prevention Forum, Darren has established himself as a domain expert and specialist on technical, data, and software solutions for fraud risk issues with specific expertise in data sharing, identity management, originations and payments fraud, and fraud risk for online transactions & payments.

darren.hodder@fraudconsulting.co.uk

Chris Jones

PSE Consulting

Chris Jones 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

Speechly Bircham

Dr Nathalie 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 multinational Information and Communication Technology (ICT) Service Providers (including telecommunications operators) on transactions, ranging from commercial agreements to complex outsourcing deals. She also has in-depth expertise on telecommunications and satellite licensing and regulations. She heads a team of EU dual-qualified lawyers who have a unique expertise in managing multi-jurisdictional projects whether on cross border IT/BPO outsourcing and managed services, or on IT and telecommunications implementation and infrastructure in EMEA or on global data protection audit and compliance data protection. She is ranked among the top lawyers in IT and Telecoms in the *Europe Legal Expert* 2012.

nathalie.moreno@speechlys.com

Michael Robertson

HSBC

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.

CECILE PARK PUBLISHING

Managing Editor Lindsey Greig

lindsey.greig@e-comlaw.com

Associate Editor Sophie Cameron

sophie.cameron@e-comlaw.com

Editorial Assistant Simon Fuller

simon.fuller@e-comlaw.com

Subscriptions David Guati

david.guati@e-comlaw.com

telephone +44 (0)20 7012 1387

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