RESPONSE TO THE EUROPEAN COMMISSION / CONSULTATION ON GREEN PAPER – TOWARDS AN INTEGRATED EUROPEAN MARKET FOR CARD, INTERNET AND MOBILE PAYMENTS

PayPal welcomes the opportunity to share its experience gained from 13 years of successful activity in the payments business. PayPal is firmly established in Europe and fully committed to the further integration of the European market for the benefit of consumers and businesses.

PayPal believes that the availability of secure and user-friendly payments options for online and offline transactions contributes to integrating markets. This in turn will bolster the economic strengths already present in Europe but also develop the economic potential that lies still untapped.

Cross-border trade is one of these areas with such vast potential, and PayPal is committed to supporting the European Commission in its efforts to increase the trust of consumers and merchants to engage in cross-border transactions. In this context, it is noteworthy that PayPal's cross-border trade accounted for approximately 25 percent of Total Payment Volume in 2011.

INDEX

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INTRODUCTION

About PayPal

PayPal was founded in 1998 in San Jose, CA (USA) and acquired by eBay Inc. in 2002.

PayPal is the global leader in online payment solutions with 106 million active accounts worldwide. Available in 190 markets around the world, users can transact and hold balances in 25 currencies. In Europe, PayPal has more than 40 million active accounts.

PayPal acquired a licence as an EU credit institution in 2007 in Luxembourg, with the Commission de Surveillance du Secteur Financier (CSSF) as home state competent authority, subsequently passported into EU member states on a freedom to provide services basis.

PayPal enables any individual or business with an email address to securely, easily and quickly send and receive payments online. PayPal's service builds on the existing financial infrastructure of bank accounts and credit cards and utilises a highly advanced proprietary fraud prevention systems to create a safe, global, real-time payment solution.

Key features of PayPal

Trust: PayPal signals trust to participants in online commerce and into payment transactions due to its unique closed-loop business model. This encourages individual customers and also helps small enterprises and start-ups, who might otherwise not enjoy sufficient trust from potential buyers, to grow their business.

Integration: PayPal operates cross-border and cross-currency, and builds on prevalent consumer preferences which typically differ from one country to another. PayPal hence is highly integrative, connecting consumers and businesses irrespective of their location, currency or payment preference.

Interoperability: PayPal is bank/card-neutral and based on the existing regulated banking and card networks, working in co-operation with all major bank and card schemes around the world. This enables PayPal to connect its users across a wide range of available funding sources. PayPal hence embodies a high degree of interoperability, having integrated the most prevalent payment types (direct debit, credit card, credit transfer, prepaid card, invoice, et al.). Interoperability follows commercially sound principles while a high degree of operational security and efficiency is sustained for the benefit of users.

Innovation: PayPal actively promotes innovation in a number of ways. PayPal has already launched several mobile payment products and solutions. PayPal supports the success of innovative start-ups, acting as a trust factor and thus opening wider markets. PayPal also operates x.commerce, an open platform for developers and innovators, which provides an effective launch pad for viable innovative business ideas.

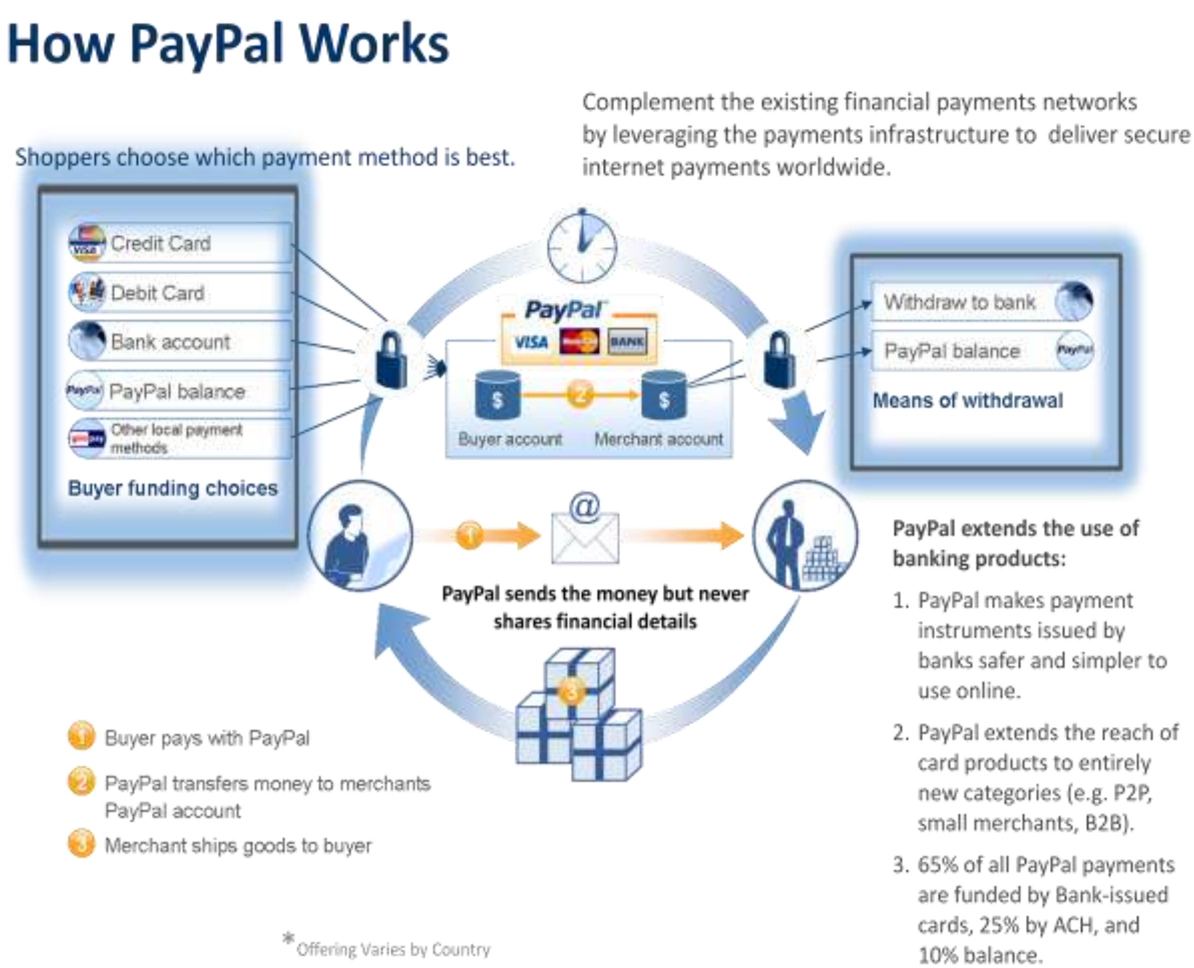
Business development: PayPal is an effective business enabler, especially for small businesses and start-ups. Safe payment options and trust are key features of successful online commerce, especially cross-border. PayPal connects entrepreneurs and customers in the market by lending trust to the transaction.

Closed-loop: As an account based, 3-party system, PayPal has control over both ends of a transaction, i.e. can trace both sender and recipient of a payment, and builds a quasi customer relationship with its users. Together with highly sophisticated risk management practices and effective anti-fraud technologies practices, this closed loop allows PayPal to identify suspicious behaviour (*see graphic below*).

Data protection: Consumer privacy and especially consumers' financial information must be protected. PayPal never discloses financial information between the payer and the payee. Only the payment and contact information is transmitted, while all financial information is safely held by PayPal only. This also relieves the merchants, as they do not have the extra burden of safeguarding that financial information.

Buyer and seller protection: Consumers must know that any problems with their transactions will be addressed quickly and fairly in a dispute resolution process. It is important to note here that most transaction issues are the result of honest mistakes or poor communication, not fraud. The provision of a protection scheme and dispute resolution procedures not only benefits individual buyers, but in particular also small businesses.

Fight against cybercrime: PayPal is strongly committed to fight cybercrime and to co-operate with national and international bodies, such as government agencies or Interpol. This is of particular importance with regard to financial information, in addition to wider concerns about identity theft and privacy. PayPal's effective collaboration with law enforcement agencies throughout the world, to investigate and prosecute financial crime or privacy-related crimes, contributes to successful crime prevention and hence to increasing confidence in e-commerce.



GENERAL REMARKS

Economic viability and commercial incentive for innovation

PayPal believes that the regulatory framework in the European Union overall provides an adequate environment for business and innovation in the area of e- and m-commerce, including payments. EU legislation on payments, e-money and consumer rights, among others, is among the most advanced globally, and has achieved remarkable progress towards market integration, innovation and prosperity.

PayPal does not agree with the Commission's critical observations about the state of the European payments market, claiming that the market is underdeveloped and progress slow. On the contrary, there is a large number of payment services providers across the EU, providing services domestically or also cross-border (see *Annex*). Competition and choice hence appear satisfactory for businesses and consumers alike.

PayPal agrees that a competitive environment is conducive to business development and beneficial for end-users and consumers. PayPal does not conclude, however, that competition is the only factor shaping the payments market, or e- and m-commerce. In particular innovation arises from factors and motivations which go beyond the regulatory framework for competition.

PayPal is convinced that the prospect of economic reward is the key driver for innovation. More competition therefore will not in itself lead to more innovation. Neither will regulatory efforts to enhance competition, or to achieve third objectives, automatically deliver innovation. Instead, it is of fundamental importance to follow a more general economic, commercial rationale, and approach competitive and other regulatory considerations from this angle.

Taking commercial rationale into account, it becomes obvious that it is market dynamics, driven by consumer preference, and not regulation, that determines economic reward, not regulation. Some examples may highlight the significance of this perspective: Interchange, as a principle, follows justified commercial considerations. The availability of different products may be smaller in a markets segment if consumers do not derive additional benefits from additional choice. While from an exclusive competition perspective, interchange issues or a smaller number of market players may seem to indicate competitive insufficiencies in the market, a commercial perspective denies this interpretation and provides sound economic explanations.

Based on similar economic considerations, PayPal is convinced that innovation leads to economic scale, rather than the other way round. Often innovation starts small, and if it proves successful grows bigger. However, when an innovative payment service or product grows, also cross-border, it may be seen increasingly as a quasi commodity, and ultimately be less driven by innovation than by preservation.

Another factor renders the assessment of the payments market more complex, namely the requirement to excel in a combination of services and expertise. Payments contain technical elements, such as systems and messages, it involves settlement solutions, and it involves the ability to identify and accommodate user preferences, while providing high levels of security and ubiquity. Hence, the success and prevalence of a payment system or service provider may depend primarily on the innate ability to excel in all the elements involved, rather than on competitive deficiencies, and only in a second step on the wider competitive environment. Payment therefore is not a commodity service, but a factor that enables commerce at large, which will become even more obvious as regards mobile payments.

PayPal supports the Commission's commitment to providing a competitive environment for market growth, and confirms the Commission's prime responsibility in preventing market abuse and anti-competitive tendencies. PayPal however strongly advises against adopting an exclusive focus on competition while neglecting economic rationale and commercial considerations.

Regulatory principles

The pace of development in payments innovation has increased significantly with the development and increasing prevalence of the internet and more recently multi-functional mobile phones. The evolution is still ongoing and it impossible at this stage to predict any final scenario. This creates obvious challenges for the EU legislators, as market growth and innovation need a conducive regulatory environment, but consumers and businesses also need to be protected from potential new risks.

The current stage of market development, and the huge economic potential the new business areas entail, bestow a very important role onto the European Commission, namely to provide the conditions for business development, market integration, and competition. Given the present immature stage in the process, and the fragile state of many innovative solutions in such an immature market, PayPal urges the European Commission to maintain regulatory and technological neutrality.

Regulatory neutrality must be respected as regards the various types of payment systems and methods. While some methods may be perceived as more prevalent than others, PayPal points out that payment preferences vary from country to country, or even from one transaction type to another. While, for example credit cards gained considerable share in many areas, credit transfers are prevalent in others, and even cheques are still used to a certain extent. These preferences cannot be changed by prescriptive regulatory attempts. If at all, long-term education and pragmatic use cases may shift users' payment preferences in an overall market-driven process.

Technological neutrality means that regulation or any other political and legislative guidance must not benefit nor disadvantage specific products. Regulation must not prescribe or single out any particular standard, product or system.

Premature regulation risks to be inadequate and inefficient, and to compromise the required and intended neutrality, as it is impossible to anticipate market development and final solutions at this stage. This holds true even more as the traditional distinction between e-payment and m-payment, between online and offline are blurring. Premature regulation would therefore risk stifling innovation, instead of promoting it. On a more conceptual point, premature regulation risks to focus on perceived issues of market deficiency or consumer protection, rather than address the eventually emerging concrete concerns.

PayPal reiterates that economic reward is a necessary and sufficient condition for innovation, and the most reliable driver in the current market evolution towards new dimensions for businesses and consumers. PayPal therefore insists that any regulatory interference deemed necessary must not disrespect regulatory neutrality, and must foster the conditions for innovation.

The European Commission plays an essential role in monitoring market conditions, deterring anti-competitive or other harmful behaviour and promoting market integration for the benefit of European businesses and consumers. The European Commission must preserve competition for the benefit of European consumers, but it must be the innovators in the market to set the standards to achieve the best outcome and choice for consumers and for market growth overall.

Innovation needs advocates

The economic potential of the development of e-payments and m-payments, or e- and m-commerce is evident. While the various concerns are valid and must be addressed, also this potential must be actively communicated.

PayPal therefore encourages the European Commission to not only act as a guardian, but as an advocate of market development and innovation. If political messages focus only on concerns and potential problems, it deters innovation and market evolution, discouraging rather than encouraging merchants and customers to embrace the new options. Political communication must therefore include the successes and opportunities of innovation at least as much as potential concerns.

The European Commission has a prime responsibility to assume a leading role in positively promoting integration and innovation. Demonstrating confidence in the ongoing evolution in the payments market will be an important factor contributing to the success of European commerce for the benefit of European consumers and businesses.

PayPal is integrative, innovative, reliable – across the EU and globally

Based on its own experiences in the European market, PayPal fully supports the European Commission in its quest to find the best mix of promoting measures for market integration, growth and innovation. This mix will entail regulatory and non-regulatory measures, enforcement methods, industry standards, all based on a combination of regulatory principles and empirical knowledge derived from the progress of European integration.

PayPal shares the European Commission’s commitment towards achieving an integrated market for the benefit of European businesses and consumers, and PayPal’s key features are all designed to achieve the same goals. PayPal would like to offer its co-operation and support to the European Commission, and to present itself as a well matched partner for integration and innovation in Europe.

RESPONSES TO QUESTIONS 1-31

1) Under the same card scheme, MIFs can differ from one country to another, and for cross-border payments. Can this create problems in an integrated market? Do you think that differing terms and conditions in the card markets in different Member States reflect objective structural differences in these markets? Do you think that the application of different fees for domestic and cross-border payments could be based on objective reasons?

2) Is there a need to increase legal clarity on interchange fees? If so, how and through which instrument do you think this could be achieved?

3) If you think that action on interchange fees is necessary, which issues should be covered and in which form? For example, lowering MIF levels, providing fee transparency and facilitating market access? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards?

PayPal generally accepts the need for interchange to support the setting-up and development of 4-party payment scheme. In a 3-party scheme interchange is not relevant because issuer and acquirer are always the same. Without interchange it would be difficult for the multiple entities in a 4-party scheme to co-operate in providing payment services to the users. Removing interchange would also undoubtedly result in less competition and choice which would be bad for the internal market.

The current legal uncertainty on interchange however can act as a barrier to the development of new card payment networks in Europe, as any commercial entity would be unlikely to invest in a new system unless there was a return on the investment.

Interchange does however not seem to be open to true competition. For a merchant in Europe there is little to no differentiation between the two dominant international card scheme brands apart from the cost. Card issuers are attracted to the scheme that provides the highest level of reward which ceteris paribus results in more cards being issued at the highest rate and providing little incentive to reduce the rates. Merchants do not have the opportunity to get involved in the negotiation of the fees, as these are essentially determined by the card scheme. This may in fact distort competition.

Whilst the card schemes take no direct revenue from interchange, they do indirectly through assessment and processing fees paid by both issuers and acquirers which are generated every time the card is used. The cost of these fees together with the interchange is then passed onto the merchant. The assessment fees are used primarily to support brand development but they are also used to provide 'financial incentives' to issuers to choose the scheme brand and thus creating cyclical upward pressure.

In a properly functioning market, open to true market forces, the cost could be expected to naturally reduce over time through efficiencies and a reduced requirement for a return on investment. This however is not happening in the card industry.

Observation seems to indicate that issuers use interchange to support loyalty schemes. Customers are encouraged to use premium based products to derive the highest possible reward with the unintended consequence of increasing the cost on the merchant. Whilst interchange facilitates the sharing of costs between different constituents of a 4-party scheme, we would challenge the need for the cost of loyalty schemes to be shared by all users of the service. We would assert that if interchange was prohibited, loyalty schemes would be discounted or removed as a feature.

Nevertheless, PayPal would discourage any regulation of interchange levels at this stage, and rather let alternatives to card associations compete in the market. Consumer and merchant choice may be more effective to address current issues, as recent regulatory attempts in fact proved not successful. Action taken by the Reserve Bank of Australia (RBA), for instance, created a number of undesired effects in the market, resulting in further distortion rather than delivering positive results. The RBA essentially imposed a cap on interchange of 40 bpts which led to a reduction in the number of card offerings and provided a competitive advantage to American Express. The reduction of interchange was however not passed onto Australian consumers, which had however been one of the underlying assumptions for this action.

4) Are there currently any obstacles to cross-border or central acquiring? If so, what are the reasons? Would substantial benefits arise from facilitating cross-border or central acquiring?

5) How could cross-border acquiring be facilitated? If you think that action is necessary, which form should it take and what aspects should it cover? For instance, is mandatory prior authorisation by the payment card scheme for cross-border acquiring justifiable? Should MIFs be calculated on the basis of the retailer's country (at point of sale)? Or, should a cross-border MIF be applicable to cross-border acquiring?

There are some imbalances as regards cross-border acquiring which cause some unnecessary difficulties in the market. The currently existing inconsistencies in cross-border acquiring lead to market fragmentation instead of integration. PayPal therefore generally supports a pan-European approach, so as to remove the distortions created by domestic deviations.

Currently an acquirer is required to seek prior approval from and pay an application fee to the card schemes to be permitted as a central acquirer. Acquirers also face operational and commercial issues as there are domestic rules and interchange rates in some markets to reflect national market conditions. The national requirements are generally not known until the acquirer has permission to operate in that market. Whilst access to the domestic regimes provides an equal playing field to compete against domestic acquirers, it still creates issues to manage merchants across a number of countries.

6) What are the potential benefits and/or drawbacks of co-badging? Are there any potential restrictions to co-badging that are particularly problematic? If you can, please quantify the magnitude of the problem. Should restrictions on co-badging by schemes be addressed and, if so, in which form?

PayPal does not see any problematic issues in this area. On the contrary, the SEPA card framework has acted as a catalyst for European card issuers to co-brand national debit schemes with one of the international card schemes. This enabled customers to use their card for cross-border payments, and merchants, like PayPal, to provide services to more customers by reducing the reliance on merchants to accept multiple card brands.

7) When a co-badged payment instrument is used, who should take the decision on prioritisation of the instrument to be used first? How could this be implemented in practice?

PayPal believes it should be the right of the merchant to determine through which scheme to process the transaction where there is a choice of card brands. In fact, the EMV roll out in Europe enables merchants to determine the transaction routing by setting a hierarchy in the POS terminal. Whilst cost is one factor for the decision, the merchant will also consider other factors such as the settlement terms, payment guarantee, or fraud rates.

This possibility for merchants to determine the routing is however impaired, and in fact controlled by the card issuer. The issuers on their part are influenced by their desire to earn the highest possible interchange whereas the cost of the highest processing option is partly borne by the acquirer.

8) Do you think that bundling scheme and processing entities is problematic, and if so why? What is the magnitude of the problem?

There should be no requirement from the card schemes to mandate the use of their processing services for any transactions. Processing services should be open to competition.

Currently the rules of the international card schemes require cross-border transactions to be processed by the card scheme, while for domestic transactions issuers can choose the processing partner. In order to achieve a fully integrated payments market, the same choice should be available for cross-border transactions.

In addition, there are at present large differentials for cross-border transactions when comparing the processing costs between the two international card brands, which also indicates that they are not open to real competition.

9) Should any action be taken on this? Are you in favour of legal separation (i.e. operational separation, although ownership would remain with the same holding company) or 'full ownership unbundling'?

Unbundling scheme and processing entities for cross-border transaction may seem to be a logical step towards a fully integrated and competitive payments market, but it cannot be tackled in isolation from the questions around interchange and other charges.

Removing the requirement to process cross-border transactions by the card scheme's own services would not by itself prove sufficient to increase competition overall for the benefit of merchants and end-users. Instead, an issuer would continue to opt for a particular brand based on the corresponding incentive to maximise interchange, irrespective of whether or not processing costs were competitive.

At the Commission's last effort to unbundle the processing, for example, the card schemes introduced an 'assessment fee' to preserve their revenue. In fact, acquirers and issuers are currently paying assessment fees to the card schemes, even when the transaction was not processed through the card scheme.

So while policy measures resulted in an actual reduction of processing costs, the lack of competition elsewhere neutralised the effect through applying higher brand assessment charges.

It must be noted, however, that interchange is not in itself anti-competitive, and a delicate balance must be struck when assessing the conditions and practices. Card schemes do have the right to set the price for the service they provide, but there are inconsistencies in the current practice.

10) Is non-direct access to clearing and settlement systems problematic for payment institutions and e-money institutions and if so what is the magnitude of the problem?

PayPal does not perceive non-direct access to clearing and settlement systems as a problematic issue.

While e-money institutions and payment institutions can only participate in designated systems via a credit institution, this is a particular feature of the specific licences and does not constitute a competitive disadvantage. In many EU member state, competitive markets for non-direct participation in the payments system have developed so even many banks opt for non-direct participation. The reason lies in basic economic cost-benefit considerations rather than in any regulatory confines, as it requires extensive investment to set up and maintain the infrastructure for an own system. This would be neither viable nor necessary for many payment service providers.

11) Should a common cards-processing framework laying down the rules for SEPA card processing (i.e. authorisation, clearing and settlement) be set up? Should it lay out terms and fees for access to card processing infrastructures under transparent and non-discriminatory criteria? Should it tackle the participation of Payment Institutions and E-Money Institutions in designated settlement systems? Should the SFD and/or the PSD be amended accordingly?

PayPal does not believe the role of the SEPA Card Framework (SCF) should be to lay down the rules of card processing. Instead the SCF should outline the standards for a card payment network that would like to remain in or enter the European market. The SCF should maintain a minimum standard but remain open so as to promote innovation and competition.

If innovation is to be encouraged in the European payments market, then innovative new payment service providers must be welcomed at the negotiation tables where standards are set and developed. The evolution of mobile payments in particular can accelerate changes as regards processing and settlement procedures.

One argument often used here by banks against non-banks (ELMIs/PIs) is that because they are regulated to a lesser standard they introduce greater systemic risk. This argument however is fallacious, because ELMIs and PIs are regulated to a level commensurate with the risk inherent in their specific activities.

Another argument is that the infrastructure was built by the banks at great cost, so banks are unwilling to let the non-banks reap the benefits. While this is a fairer claim, this could be addressed by setting up an appropriate fee system.

12) What is your opinion on the content and market impact (products, prices, terms and conditions) of the SCF? Is the SCF sufficient to drive market integration at EU level? Are there any areas that should be reviewed? Should non-compliant schemes disappear after full SCF implementation, or is there a case for their survival?

The SCF has generally had a positive impact on the integration of the card market in Europe.

One particular aspect here is the option of co-branding national debit cards, enabling customers to use their card outside of their own country. This also provided PayPal's European customers, for example, with additional options to fund their PayPal payments, as it removed the former hurdle of having to negotiate terms with every national debit card scheme in a less integrated European market. PayPal thereby benefited from and contributed to more integration for its customers, both consumers and merchants, as such developments particularly facilitate cross-border payment transactions and cross-border commerce.

Overall it is important that further market integration is driven without neglecting relevant distinctions between various payment services. An adequate understanding of and differentiation between 3-party schemes and 4-party schemes, for instance, must be ensured. (*see also response to question 32*).

The SCF is currently is flawed as it does not make this essential differentiation. If innovation is to be encouraged, then more clarity is required in both conceptual considerations and in the practical application of the SCF.

13) Is there a need to give non-banks access to information on the availability of funds in bank accounts, with the agreement of the customer, and if so what limits would need to be placed on such information? Should action by public authorities be considered, and if so, what aspects should it cover and what form should it take?

Banks have much clearer and hence stricter obligations as regards the sharing and protection of sensitive information, commonly known as 'bank secrecy'. This matches the generally more extensive regulation of a bank, as opposed to the regulation of an ELMI or PI. Based on the same reasoning why non-banks require less strict regulation for their business and prudential risk involved, it follows that also their activities and also access and handling of certain information and data is restricted accordingly.

While keeping this principal restriction intact, there are aspects which could be improved or clarified.

Currently banks permit access to its information on the availability of funds in their bank accounts to some payment services, while denying it to others alleging breach of confidentiality. There seems to be no clear justification for this distinction which creates an unequal situation for businesses, but also for the customers of both the bank and the payment service, who may not be fully aware of how their information is being used or accessed.

A solution could be to treat access to certain information as a service available to a defined type of recipient. Recipients could be other banks, due to their equal level of regulation and bank secrecy obligations, but also specific types of non-banks, whose level of regulation and data usage obligations provide adequate standards for the handling of the information in question. As this service would provide an advantage for non-bank service providers, by levelling the playing field, banks of course should not be expected to provide this service free of charge, given that there is significant investment behind gathering and securing the information. If access to information becomes a service, it can be managed and restricted in a much clearer and objective way, and turns into a potential market benefit to all parties involved which comes at its fair price.[1]

[11] An example here is the US company Early Warning Services (EWS). This was formed by banks for the purpose of providing information about bank accounts to financial services companies and payment processors. Since the EWS has been in place, losses in bank-funded transactions have significantly reduced, and the participating financial institutions earn a fixed fee for each query of their system. http://www.earlywarning.com/index.asp

14) Given the increasing use of payment cards, do you think that there are companies whose activities depend on their ability to accept payments by card? Please give concrete examples of companies and/or sectors. If so, is there a need to set objective rules addressing the behaviour of payment service providers and payment card schemes vis-à-vis dependent users?

There are markets where alternatives to payments by card are limited, especially as regards cross-border (non-SEPA) transactions, and particularly evident in e-commerce. This also follows from the fact that payment preferences are national, following different developments of the banking and the payment infrastructure, different sensitivities as regards the exchange of financial information, and other habits that developed within the particular society. Not all of these particular national payment preferences are compatible or easily applicable in cross-border transactions.

PayPal effectively provides a bridge between these different payment preferences, including cards, connecting both ends of a transaction whether or not the parties choose the same payment method on their side. The sender can thus select their preferred funding instrument even if this particular instrument is not directly accepted by the receiver. In this way, PayPal gives consumers and merchants a choice where they would otherwise be dependent on card acceptance for the transaction.

PayPal has a number of agreements with banks throughout SEPA to enable access to the card and ACH networks in order to provide the customer with a full choice of payment networks.

The choice of available payment services can also be limited for small business and start-ups which are dependent on a trustworthy payment option for their customers. This holds especially true for e-commerce where trust plays a crucial role in order for small new businesses to succeed and grow. A secure payment method can provide the trust necessary to conclude the initial transactions with a customer and turn them into a returning customer.

While the investment in a card infrastructure may not be economically justified or an available option in the beginning, also banks often do not provide easily available access to payment system and the negotiations can be time-consuming. For a start-up, this first hurdle can already determine the success or failure of the business.

PayPal effectively provides an easy to install and easy to use, globally known and trusted payment service which enables also small business and start ups to accept payments, instantly contributing to the chances of success in a global market.

15) Should merchants inform consumers about the fees they pay for the use of various payment instruments? Should payment service providers be obliged to inform consumers of the Merchant Service Charge (MSC) charged / the MIF income received from customer transactions? Is this information relevant for consumers and does it influence their payment choices?

PayPal does not believe that merchants should provide consumers with this information. There is no evidence that consumers would either benefit from or have an interest in this kind of information. Based on PayPal's market experience, consumers want to have access to safe and efficient payment methods, and possibly to use the same payment method, namely their preferred payment method, everywhere; otherwise to use different payment methods but also according to their own deliberation and preference, rather than imposed by the merchant.

As regards charges imposed by the merchant on the consumer, these should be fully transparent to consumers at the outset of their transaction.

Consumers are sufficiently aware of the costs they have to bear directly in association with their different payment options (such as annual/monthly fees, financial thresholds for qualification, etc.) and these costs relate directly to their requirements and benefits. It is not evident that information about the cost to merchants would in any way influence the consumers' payment preference. Consumers generally expect the payment infrastructure to be provided by the merchant, and then rely on its safe and efficient functioning. The consumers' interest in payments lies in the result not in the process of the payment,

If a merchant was supposed to or obliged to reflect detailed cost implications of each payment method for each transaction and each product or service purchased, a transaction would become excessively complicated for consumers without adding any value for the consumer. If applied to other products or services, such a rule would mean that consumers should generally be informed of the cost of all elements and parts going into the final product or service, which clearly would be impracticable, unsustainable and disproportionate. Such information would furthermore confuse rather than help a consumer's informed choice especially when confronted with a selection of options and products/services.

Another aspect to consider here is the cost factor of cash. While consumers generally assume that 'cash comes for free', and retailer generally tend to think that cash is the payment method which costs them the least, there are significant costs involved in handling cash payments. Consequently for reasons of equality and full information, the cost should then not be ignored but similarly reflected to the consumer and merchant. This would be a very complex exercise to undertake, but required for a fair reflection of the costs of all payment options.

Hence in light of the limited utility for consumers of reflecting costs on the merchants' side, the effort of adequately reflecting the cost of various payment options in each particular transaction does not would not be justified by any expected benefit.

16) Is there a need to further harmonise rebates, surcharges and other steering practices across the EU for card, internet and m-payments? If so, in what direction should such harmonisation go? Should, for instance:

– certain methods (rebates, surcharging, etc.) be encouraged, and if so how?

– surcharging be generally authorised, provided that it is limited to the real cost of the payment instrument borne by the merchant?

– merchants be asked to accept one, widely used, cost-effective electronic payment instrument without surcharge?

– specific rules apply to micro-payments and, if applicable, to alternative digital currencies?

PayPal understands that the Directive 2011/83/EU on Consumer Rights (CRD), which is currently being implemented by the EU member states, addresses the issue of surcharging. PayPal supports the intention of the CRD, but points out that this now creates some conceptual inconsistency in relation to Directive 2007/64/EC on Payment Services (PSD).

The current provisions of the PSD in fact lead to fragmentation across the EU. The resulting differences in surcharging practices and regulation actually confuse consumers and damage trust. This is not conducive to cross-border e-commerce and instead leads to legal arbitrage.

PayPal therefore calls for a coherent alignment of the PSD and the CRD. In particular, the provision of the PSD that allows discretion for national regulators in their treatment of surcharging must be deleted in order to provide clarity and coherence for the benefit of European consumers.

Another relevant observation is that surcharging appears most prominently in the travel industry where it is not only typical to encounter surcharges, but where these surcharges are not disclosed upfront and/or are disproportionate to the actual costs inflicted. These surcharges (or rather overcharges) go beyond the original and justified purpose, and are instead used to generate indirect profit.

PayPal generally advocates that pricing must be transparent between the merchant and the payment service provider so that the full cost of the payment is understood by the user of the service. It would however be commercially unsustainable to impose different prices for different payment instruments on the consumer.

PayPal also believes that it is would be unsubstantiated to permit a merchant to surcharge based solely on the payment choice made by the customer because the cost of payments is only one of many costs borne by a merchant, and all these costs are factored into the final price.

PayPal opposes the idea to force merchants to accept one widely used, cost effective electronic payment instrument without surcharge as this does not have any economic or commercial rationale. The idea would also create more confusion and fragmentation, to the detriment of consumer and business, rather than more integration.

There remains a range of options for merchants to use steering practices, such as discounts on surcharges, to provide incentives for the customer to choose a cheaper payment alternative. This is a much more acute issue as these steering practices of merchants are not open to proper competition.

17) Could changes in the card scheme and acquirer rules improve the transparency and facilitate cost-effective pricing of payment services? Would such measures be effective on their own or would they require additional flanking measures? Would such changes require additional checks and balances or new measures in the merchant-consumer relations, so that consumer rights are not affected? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards? Are there specific requirements and implications for micropayments?

PayPal emphasises that there is a clear distinction between 3-party and 4-party schemes, and strongly argues against any equal treatment of the two as regards regulatory or commercial considerations.

A 4-party scheme entails a multitude of participants, which limits, or even negates, the space for individual commercial negotiations and agreements. Interchange, for instance, is necessary to support the functioning of a 4-party scheme. A 3-party scheme, in contrast, has to negotiate and set the price for both merchants and cardholders individually, to ensure that its products and services are widely accepted and used. While this creates some disadvantages with achieving scale it also creates advantages as it can adjust prices for commercial reasons. PayPal itself works with both 3- and 4-party schemes. Hence also practical experience leads us to the conclusion that it is easier to negotiate commercial terms with 3-party schemes than with 4-party schemes.

The common complaint that 3-party schemes should be equally treated as 4-party schemes so as to avoid a perceived uneven playing field is therefore not sound. The distinction as outlined above shows that differentiated treatment is justified as it follows from the fundamental difference between a 3-party and a 4-party scheme.

Hence, even if there might be any measures required or beneficial for 4-party schemes, it does not follow that the same holds for 3-party schemes. 3-party schemes therefore should not be covered by any measures that were based on a targeted at 4-party schemes.

PayPal has witnessed a current trend in some markets for issuers to move card portfolios to premium-based and commercial products to increase or preserve interchange revenue. PayPal would reiterate its support for interchange as a principle, providing it is a true reflection of costs. It is however not evident that an obligation to accept premium and commercial cards provides any additional benefits for the merchant.

The 'Honour All Cards' rule, used by both international card schemes, facilitates this phenomenon. While PayPal believes the rule is important to provide customers with confidence that their card can be used, there should be protection for merchants against increasing costs by decisions taken outside of their control.

In fact, PayPal anticipates that its interchange costs will increase in some of the domestic markets in SEPA as a result of this issuer action, which again suggests there are some structural problems in the market.

18) Do you agree that the use of common standards for card payments would be beneficial? What are the main gaps, if any? Are there other specific aspects of card payments, other than the three mentioned above (A2I, T2A, certification), which would benefit from more standardisation?

19) Are the current governance arrangements sufficient to coordinate, drive and ensure the adoption and implementation of common standards for card payments within a reasonable timeframe? Are all stakeholder groups properly represented? Are there specific ways by which conflict resolution could be improved and consensus finding accelerated?

20) Should European standardisation bodies, such as the European Committee for Standardisation (Comité européen de normalisation, CEN) or the European Telecommunications Standards Institute (ETSI), play a more active role in standardising card payments? In which area do you see the greatest potential for their involvement and what are the potential deliverables? Are there other new or existing bodies that could facilitate standardisation for card payments?

PayPal agrees with the general view endorsed in the European Commission Green Paper that common and open standards have the potential to enhance competition and efficiency. This potential materialises in particular where standards are international and have global reach. European, national or proprietary standards, on the other hand, always bear the risk of putting consumers and businesses at a competitive disadvantage.

PayPal does not see the need currently for any additional standard as regards legacy payment systems, and principally opposes the idea of mandating a single standard.

Firstly, it would be disproportionate to mandate a single standard. Standards must remain open to sustain a competitive environment where new participants can enter the market and innovation is encouraged. More concretely, standards must also be open so that a merchant can choose to accept a new payment brand and process its transactions through the existing merchant terminal

Secondly, mandating a single standard would bear the risk to favour some players over others. In order to avoid this at the outset, all bodies responsible for the governance of standardisation must ensure that all players are represented in the standard setting process.

More generally, the existing international standards already applicable to card payment processes do not seem to leave any gaps, and instead are effectively and sufficiently covering all elements of the payment transaction. Considerations about standardisation should always keep the international dimension of payments system in mind, not only the specific European context, as this could lead to isolation rather than integration.

21) On e- and m-payments, do you see specific areas in which more standardization would be crucial to support fundamental principles, such as open innovation, portability of applications and interoperability?

22) Should European standardisation bodies, such as CEN or ETSI, play a more active role in standardising e- or m-payments? In which area do you see the greatest potential for their involvement and what are the potential deliverables?

E- and m-payments do not require any standards at this stage. The market for e- and m-payments is still in a very early phase, so that any attempts at standardisation would be premature and risk harmful rather than beneficial effects for innovation and market development.

This point can be illustrated by the current debate around m-payments, which seems to be almost entirely focusing on near field communication (NFC) technology. However, the technological and commercial possibilities of m-payments, with ensuing implications for consumers and businesses – as well as regulators – are much more comprehensive.

Focusing only on payments enacted via NFC technology (Card emulation ISO 14443) unduly limits any technical or regulatory considerations to one very special case only, and not even the most innovative one. NFC technology remains geographically and conceptually limited, as it requires the simultaneous presence of two parties (or a kind of terminal of one party). There are other types of mobile payments (such as wallet or cloud-based solutions) which do not require the simultaneous presence of both parties and therefore provide a much wider sense of mobility in payments, leading not only to a quantitative change for commerce and customers, but to a qualitative improvement.

It is crucial to understand that mobile payments offer much more comprehensive possibilities for mobile commerce (mobile customer, mobile shopping, new commercial opportunities for retail business, et al.). The Commission must therefore preclude any tendencies to pursue only one of many possible innovative approaches in this early phase of market development. Instead of moving towards standardisation, the opposite is necessary at this stage: namely providing the market conditions for all types of m-payments. These market conditions are provided and secured adequately by existing legislation (incl. the Payment Services Directive, the E-Money Directive et al.) and by the existing regulatory and supervisory bodies.

The standardisation bodies can nevertheless play a useful role in promoting cross-industry efforts in the areas of security, privacy and interoperability. The payment industry in particular can here provide important input on the protection of user credentials and opt-in processes.[2]

[2] The FCC's and FTC's collaboration with the FED in the USA is a good example of pragmatic co-operation across multiple industries and areas of expertise.

23) Is there currently any segment in the payment chain (payer, payee, payee's PSP, processor, scheme, payer's PSP) where interoperability gaps are particularly prominent? How should they be addressed? What level of interoperability would be needed to avoid fragmentation of the market? Can minimum requirements for interoperability, in particular of e-payments, be identified?

PayPal does not perceive any particularly prominent interoperability gaps. PayPal itself is highly interoperable, working with all major bank and card schemes.

PayPal is strongly convinced that the fundamental minimum requirement for interoperability must follow from the underlying economic rationale and commercial sense. If it seems commercially beneficial for two operators to become interoperable, they may opt for such a solution following careful economic considerations. Without commercial justification however, there is no case for interoperability. While economic and commercial rationale can serve as minimum requirement, or as a necessary condition, they are nevertheless not sufficient conditions or should be treated as indicators for automatic or imminent interoperability enforcement.

Interoperability must not be seen as the only or best solution to remedy current market fragmentation. Payment preferences are deeply rooted in customers, often based on the national and local development of payment systems. Interoperability does not address this phenomenon. Market fragmentation due to heterogeneous preferences can only be overcome by increasing consumer trust. This again is a long-term process which can be assisted by industry and regulatory efforts, but not enforced.

24) How could the current stalemate on interoperability for m-payments and the slow progress on e-payments be resolved? Are the current governance arrangements sufficient to coordinate, drive and ensure interoperability within a reasonable timeframe? Are all stakeholder groups properly represented? Are there specific ways by which conflict resolution could be improved and consensus finding accelerated?

PayPal does not agree that there is any stalemate on interoperability for m-payments, nor that progress is slow. What is true is that the evolution of m-payments is still at a very early stage. It follows that any regulatory interference with this evolution would be immature and rather risk stifling innovation.

It is important to keep in mind the difference here between 3-party systems and 4-party systems. PayPal cautions against an indiscriminate approach towards 3-party systems as they are distinct from 4-party systems. This has significant implications also for any interoperability considerations.

PayPal strongly argues for adequate representation of all relevant stakeholder groups in any governance arrangements.

It remains of course a highly important role for the authorities, such as the European Commission, to ensure that there is no market abuse of anti-competitive behaviour as this could harm market development and innovation in e- and m-payments.

25) Do you think that physical transactions, including those with EMV-compliant cards and proximity m-payments, are sufficiently secure? If not, what are the security gaps and how could they be addressed?

PayPal strongly emphasises that the distinction between physical and non-physical transactions, between remote and proximity payments, is getting blurred. This development will generate a number of new and complex scenarios and combinations, e.g. a customer buying an item in a shop, but using a mobile payment.

Security considerations must therefore not be subjected to any generalisation. Instead, flexible and adaptive security measures will be required in order to reconcile the shared objective of payment services providers and regulators – namely to provide business-friendly conditions and smooth user experiences at the same time as effective protection of both merchants and buyers.

PayPal believes that the current methods for physical payments, chip and pin, are secure. New methods for physical payments will have to take into account the blurring of current distinctions as well as multiple mobile payment scenarios, including proximity and remote payment solutions. Hence while recognising that the security protocols for current physical transactions are effective and successful, PayPal avers that they must not be applied to the multiplicity of future physical payments.

PayPal instead calls for more differentiation in the discussion and regulatory considerations of security aspects. This is necessary as each specific technology has specific weaknesses and strengths (EMV, NFC, cloud-based technology, et al.). Moreover any progress made in domains such as processing power or cryptology can lead to a weakening of the existing security technologies. What remains as a lasting basis however is the security principle they enforce. Finally, the constant progress and increasing sophistication of internet criminals must also be taken into consideration because this generates in effect a rapidly evolving threat scenario which renders any static security strategy doomed to fail.

PayPal acknowledges the card schemes' commitment to combat fraud but their current approach to security for e-commerce is not entirely coherent and therefore creates some distortions in the market.

The international card schemes, for example, promote their own security protocols, particularly around authentication and verification. However, in order to support market adoption card schemes also incentivise merchants with discounted interchange and protection against cardholder fraud disputes. This has in some occasions led to flawed implementation of their security protocols, as some retailers reduced their required customer checks knowing they were protected from chargebacks. Hence, the fraud protection scheme is not always applied correctly due to incoherent incentivisation.

Overall, it is absolutely crucial to ensure that any considerations of security issues are contextual, and that any regulatory approaches respect this exigency.

26) Are additional security requirements (e.g. two-factor authentication or the use of secure payment protocols) required for remote payments (with cards, e-payments or m-payments)? If so, what specific approaches/technologies are most effective?

PayPal does not support the view that only one solution should be mandated. Instead, standards, where appropriate, should be open and technology neutral, to leave space for participants to demonstrate various security control models and fraud prevention mechanisms. This holds especially for mobile and remote payments in the current phase of market evolution.

Regulation must not prescribe any particular security procedure, but only provide a framework with the condition for market participants to deliver secure outcomes. Consequently, there is no need for any additional security requirements for remote payments, as the adequate regulatory framework conditions and market forces already apply.

Payment service providers themselves have a vested interest in security, and the most direct experience. Hence their ability to assess security requirement and to design the appropriate methods must not be underestimated or neglected. The payment service providers' own motivation to ensure security will be the most effective force to achieve results, even if the chosen methods and solutions may differ from one to another. Also merchants have a vested interest in secure payments and will make decisions on any co-operation with payment service providers also based on security considerations.

PayPal and other specialised e-commerce merchants have their own fraud prevention mechanisms. However, these schemes are generally excluded from the advantages of preferential pricing and liability shifts of the card schemes, as the schemes sustain the view that these bespoke solutions are not sufficiently robust. This discrimination is not justified and should be rectified.

In fact, diversity in security mechanisms is important in itself as one of the best ways to reduce the risk of a massive and successful attack against the e-commerce ecosystem. Resilience against the most significant criminal or non-intentional risks should be the primary objective. This goes beyond the promotion of any single security technology.

PayPal emphasises that mobile payments are still evolving and the market is at an early stage of development. Therefore, any regulatory considerations must maintain technological neutrality and not mandate particular solutions, which would be most likely only temporary and partially successful.

Security concerns are valid, but mobile payments are not necessarily riskier than traditional payment methods. On the contrary, because of the capabilities and use patterns of mobile devices, mobile payments can play an important role in actually increasing the security of payments and financial data.

It is necessary to carefully differentiate between the various types of mobile payments, remote or proximity payments. The traditional approach to thinking about m-payments involves the use of NFC technology which includes storing sensitive financial information on a chip with additional security features, the Secure Element (SE). Here all relevant financial information is stored on the mobile device, which raises security concerns around access to the chip.

By contrast, a cloud-based approach using a 'digital wallet' stores only certain user credentials on the device itself. All sensitive financial information is stored remotely in the cloud. This presents a different set of security concerns, but it is fair to say that due to the remote storage of sensitive financial information in the cloud a digital wallet overall provides better protection of user credentials.

The funding sources which can be accessed from the mobile device via the cloud are actually located on servers controlled by banks, credit cards, e-money issuers, et al. These organisations are the owners of the funding sources and related data, and have clearly defined responsibilities as regards the security of the data. There are multiple layers of verification and access mechanisms, which are already and adequately regulated by the existing legislation applicable to payment service providers.

The digital wallet using cloud technology therefore provides a more comprehensive context for data storage and usage, and hence a more comprehensive security context.

While such an infrastructure offers vast potential for innovation, for PayPal a "wallet in the cloud" is in a sense simply an extension of the current user experience. In fact, also when using their wallet in the cloud for PayPal payments, the underlying IT infrastructure for user transactions remains the same, and is protected and regulated the same way, without any added risks or exposure to the IT infrastructure.

27) Should payment security be underpinned by a regulatory framework, potentially in connection with other digital authentication initiatives? Which categories of market actors should be subject to such a framework?

PayPal emphasises that the regulatory framework should focus on the result and determine the objective, but not prescribe any particular procedure or method to achieve the objective. It must be left to the payment schemes how to fill the regulatory framework to achieve the regulatory target.

PayPal therefore also argues that any regulatory framework should bind only the payment schemes, but not the individual members of the payment schemes. The members of a payment scheme instead are bound by the scheme's rules which are set to achieve the overall regulatory objective.

It follows that any regulatory framework must cover all payment systems and strictly maintain technological neutrality. It is essential that any regulation is principle-based, sufficiently flexible, and not prescriptive, so as to accommodate the continuous developments in business and technology innovation. The principle-based approach will also best be able to capture any ensuing developments of cybercrime.

Authentication is a highly complex issue and PayPal wants to highlight a number of crucial elements: Authentication methods must be strong, independently of the underlying payment technology. Authentication must be adapted to the specific type and level of risk, and type of user action. Finally, authentication is only one element of security.

Authentication therefore is a necessary, but not a sufficient condition for payment security.

Increasingly, users are looking for a more personalised and rich experience; they want to access services and goods from any device, anywhere. The development of embedded and mobile platforms, the extension of broadband, the availability of interactive services are all trends which will lead towards a much more complex infrastructure. It will therefore be increasingly difficult to design or define a technology that would offer a strong authentication system in any situation.

So in order to counter the complex security threats, while offering a seamless and rich user experience, the most suitable approach is the development and application of several layers of defence, including a sophisticated, multidimensional and context-aware authentication scheme.

PayPal furthermore awaits the recommendations of the European Central Bank's security working group with anticipation, as these may provide further guidance and decrease the need for regulatory efforts at this stage.

28) What are the most appropriate mechanisms to ensure the protection of personal data and compliance with the legal and technical requirements laid down by EU law?

PayPal believes that the existing regulatory framework achieves the right balance of adequate and robust data protection and of providing space for innovation in the development of payment products and related technology.

PayPal agrees that payment authentication methods must be compliant with data protection requirements. PayPal also endorses the access restriction to authentication data to directly and necessarily involved parties only as an effective requirement to ensure data protection.

Another measure to ensure adequate data protection and privacy is transparency about the mechanisms in place, as this increases service providers' accountability. This transparency must be clear to customers of the service on the one hand to increase trust in the payment transaction, and on the other hand securely anchored in corporate governance principles.

29) How do you assess the current SEPA governance arrangements at EU level? Can you identify any weaknesses, and if so, do you have any suggestions for improving SEPA governance? What overall balance would you consider appropriate between a regulatory and a self-regulatory approach? Do you agree that European regulators and supervisors should play a more active role in driving the SEPA project forward?

No answer.

30) How should current governance aspects of standardisation and interoperability be addressed? Is there a need to increase involvement of stakeholders other than banks and if so, how (e.g. public consultation, memorandum of understanding by stakeholders, giving the SEPA Council a role to issue guidance on certain technical standards, etc.)? Should it be left to market participants to drive market integration EU-wide and, in particular, decide whether and under which conditions payment schemes in non-euro currencies should align themselves with existing payment schemes in euro? If not, how could this be addressed?

PayPal operates cross-border and cross-currency and based on this experience sees no grounds to call for any additional regulatory action on governance or interoperability.

Standards have an important role to play in ensuring efficiency and consistency across the market. While fully committed to EU integration, PayPal points out however that the standard-setting approach must be based on a wider, global approach.

PayPal reiterates that all types of payment service providers must be involved in any decision-making and standard-setting bodies so as to sustain an open, flexible and integrative business environment. Otherwise there is a potential risk that banks might disadvantage non-banks through standardisation.

Governance arrangements are necessary and useful for 4-party schemes. However, no external governance is required for 3-party schemes as these allow for direct negotiations and arrangements of all participants.

It should be left to market participants to drive further integration, building on the progress already achieved. The question of cross-currency alignment will be addressed most adequately by economic and commercial considerations of the market participants.

31) Should there be a role for public authorities, and if so what? For instance, could a memorandum of understanding between the European public authorities and the EPC identifying a time-schedule/work plan with specific deliverables ('milestones') and specific target dates be considered?

Public authorities have an important role to play to promote market integration and to encourage innovation. Both will contribute to economic growth and provide benefits for consumers and businesses.

Public authorities must carefully monitor and intervene to prevent any anti-competitive tendencies, especially in the early stages of market evolution as currently in the area of mobile payments. They must set up a regulatory framework which provides legally clear conditions which enable and encourage business to find innovative solutions rather than prescribe any particular outcomes or solutions. Public authorities therefore must strictly adhere to regulatory neutrality, and also to technological neutrality so as to facilitate innovation and market growth.

The current regulatory framework in the EU provides largely adequate conditions to achieve these aims, which the ongoing market evolution serves to prove. PayPal therefore reiterates that there is no need for additional regulation at this stage, or for any specific targets.

However, PayPal also reiterates that the EPC represents only some players, but not the entire industry. This constitutes an imbalance in the standard-setting and governance in the area of payments. PayPal understands that this inadequate situation is being addressed, but emphasises that at present the EPC is not representative of the payments industry as such. Any memorandum of understanding would therefore be incomplete and inadequate.

32) This paper addresses specific aspects related to the functioning of the payments market for card, e- and m-payments. Do you think any important issues have been omitted or under-represented?

There are indeed a number of aspects which have not been given adequate attention in the Green Paper. Some of them have already been mentioned in answers above, but PayPal appreciates the opportunity to summarise these and additional points in a focused response here.

A. Distinction between 3-party schemes and 4-party schemes

PayPal would like to clarify the distinction between 3-party schemes and 4-party schemes, as the Green Paper fails to adequately recognise this aspect in various contexts.

3-party schemes differ significantly from 4-party schemes, and require a differentiated regulatory approach – all with the view to achieve a level playing field between all players in the market. Equal regulatory treatment, on the other hand, would result in an uneven playing field to the disadvantage of 3-party schemes. The comparative table below lists some of the key differences between the schemes:

4-party scheme	**3-party scheme**
· Membership rules for joining.	· No members, hence no code of rules.
	· Individual negotiations with service provider.
· Interchange costs to balance the cost between users.	· Costs recovered through individual merchant/customer pricing.
· Board and committee meetings to discuss and implement changes.	· No board and committee structure.
· System releases to manage those changes.	
· Risk management rules for systemic risk (merchant failure) and brand risk	· Merchant and customer risk managed by a single entity.
· Customer protection rules.	· Customer protection managed by a single entity.
· Processing costs to run the system paid by users.	
· Assessment costs to promote brand and acceptance.	

Because of the multitude of participants and the membership structure in a 4-party scheme, space for individual commercial negotiations is very limited, or not possible at all. In a 3-party scheme, in contrast, participants have a more direct relationship with the payment service provider which facilitates individual commercial negotiations. The implications are obvious with regard to price-setting and costs for participants. For this reason, there are very different governance requirements from a regulatory perspective, following the different positions of the participants themselves within the scheme.

The argument for equal treatment is therefore not sound, if the objective is to provide fair conditions for competition. On the contrary, because of the fundamental difference between a 3-party scheme and a 4-party scheme, an adequately differentiated treatment will result in fair conditions for both. Any considerations or measures taken with a view to 4-party schemes must therefore not be applied indiscriminately to 3-party schemes, or vice-versa.

B. Regulatory neutrality towards innovative as well as traditional payments

PayPal reiterates the fundamental importance for the European Commission to sustain regulatory as well as technological neutrality. It is therefore surprising that overall the Green Paper focuses chiefly on issues related to card payments, and omits any further discussion of innovation in the area of e-payments and m-payments. The Green Paper also omits any discussion of cash and the role cash payments should play in the mix of other traditional and innovative payment options. Finally, the other traditional payment types within the banking system are not discussed in detail. These omissions give rise to a number of questions, and may have unintended implications for ensuing regulatory considerations including consumer protection, security, innovation and market integration.

Cash

PayPal emphasises that the belief commonly held by consumers and merchants that ‚cash is free‘ is erroneous and must not find its way into any regulatory deliberations. Cash payments give rise to acute issues related to cost as well as security, and should not be omitted in a balanced and neutral discussion of the integration of the European payments market.

Credit Transfer

Also as regards other traditional payment systems and methods, the European Commission must sustain regulatory neutrality, for example when considering certain prevalent options such as credit transfers. PayPal repeats that payment preferences vary across Europe, from country to country and even from one transaction type to another. It would therefore by false to assume that there could be one preferred or best payment option for all European consumers or merchants.

PayPal therefore strongly opposes any tendencies towards a preferential treatment of credit transfer, which may be prevalent in certain areas, but not at all in others. A further specific reason against preferential treatment of payment by credit transfer is that credit transfers are ‘push’ payments, which in the context of e-commerce is not always the best option for consumers. Push payments cannot be withdrawn in case of an unsuccessful transaction and the level of protection varies from one national system to another. Hence while such a system can work very efficiently and securely, it would be a false assumption that therefore it should become a blueprint for European payments at large.

Authentication

PayPal agrees with the European Commission that security and trust play a major role in the evolution of the payments market, with acute consequences for the growth of European e-commerce. Given the intention of the European Commission to foster innovation, PayPal points out that the regulatory framework must also allow for different types of transaction-appropriate authentication, and not prescribe specific methods. Security is a key interest of consumers and of regulators, but equally of payment services providers and of innovators as a necessary feature to grow their business in the competitive European market. As innovation in the payments market is ongoing and cannot be predicted, the same holds for authentication methods for payment innovation. PayPal emphasises that premature and prescriptive regulation could only be inadequate and risk stifling innovation.

C. Mobile Payments

PayPal notes that the Green Paper's treatment of m-payments seems to emanate from a rudimental understanding of the spectrum of opportunities in this area.

The Green Paper seems to take into account only such mobile payments which are based on existing SEPA payment instruments (SCT, SDD and SEPA for Card Payments) and involve those payment options offered by traditional 4 party systems, enabled via a mobile device. However, there are other types of m-payments, such as those enabled by PayPal, a 3-party scheme, which also include payments that are not based on SEPA instruments.

Furthermore the Green Paper seems to focus too narrowly on NFC technology for m-payments, and neglecting cloud technology. As regards m-payments using NFC technology, the combined use of NFC in Card Emulation mode and the Secure Element (SE) is the only mode accepted for payments as it supports EMV (chip&PIN). In this case the payment instrument, and hence the personal financial information, is stored on the device or on the SIM card. All this can be stored though in the cloud instead, which may provide more security and in any case give rise to a completely different set of considerations.

The Green Paper also fails to take into account the blurring of the lines between e-payments and m-payments, online and offline transactions, and hence the wider implications for the evolution of commerce altogether. It is important to recognise that the real significance of the development of m-payments is less the fact that a mobile device can now be used to initiate a payment, but the effects this will have for consumer choice, commercial channels, and hence for business development and market growth at large. A lack of awareness of the full dimension here will lead to a too narrow perspective also on the relevant regulatory aspects which feature in the Green Paper, including security, standardisation, interoperability, competition, interchange, et al..

The following scenario helps to epitomise the complexity: A customer is physically in a shop buying an item, and at the till pays for the item in the shop via a mobile device, not using NFC technology but a payment function via a cloud-based digital wallet application. It is not evident easy whether this resembles more an offline or an online transaction, an e-payment or an m-payment, or whether interchange should be set as 'card present' or 'card not present', if a credit card is used as funding source. This scenario can be extended to transactions outside of the shop, by taking into account returns or exchanges of items, or by considering discounts and special offers enabled via a mobile device. While the answers to these questions are not easily found, PayPal urges the European Commission to start considering the ways in which m-payments will transform commerce with and provide benefits for consumers and business alike.

PayPal also points out that the development mobile payments market will be a rare opportunity to see how existing EU regulation serves innovation and business evolution. The economic conditions are favourable, the payments market generally is competitive, and different players have already signalled interest to try and claim market share. It is now time to let the current regulatory environment prove its merits and only at a later, more mature phase of market development, assess any actual rather than prematurely conceived need for additional regulatory intervention.

PayPal encourages the European Commission to take a leading role and equip EU markets with the best conditions for the development of m-payments and m-commerce. At the same time it is evident that this opportunity entails a truly global dimension and must not be confined by restrictive regulation.

D. E-Payments and Anti-Money Laundering

The Green Paper states innovation as one of its main objectives, with a particular emphasis here on the growth of e-commerce. PayPal points out that the various types of e-money products have been playing an increasingly important role, within the framework of current EU legislation.

In the ongoing review of 3rd Anti-Money Laundering Directive the European Commission is now also reacting to concerns raised with regard to Simplified Due Diligence (SDD) in particular in the context of e-money. PayPal strongly advises against lowering the activity thresholds triggering customer verification for e-money or removing the SDD exemption, as this would have a significant and unwarranted negative impact on the e-payments market and e-commerce at large.

PayPal strongly urges the European Commission to acknowledge that not all e-money products present the same level of risk in terms of money laundering and terrorist financing. For the majority of e-money products, including PayPal, the SDD is still justified and essential.

PayPal emphasises that the existing legal framework provides an adequate balance between the commitment to fighting money laundering and terrorist financing and the commitment to promoting an innovative and integrated payments market for European e-commerce.