
Introduction

Her Majesty’s Government (HM Government) welcomes the Commission’s well-timed Green Paper on the market for card, internet and mobile payments.

The Commission is right to highlight that fundamental changes are taking place in the way goods and services are paid for across Europe. New business models are no longer being built on “payments” as a freestanding service, but as one element in a broader package of value-added services. These services are increasingly digitised, and they do not stop at national borders. Payment services have thus become central to the creation of the digital single market.

The regulatory structure for payments must not only respond to, but to some extent anticipate these developments.

Vision, aims and objectives

The Green Paper sets out a Vision of a fully integrated payments market. It proposes to drive market integration by promoting competition, innovation, consumer choice and security.

This Vision should be re-considered afresh with a view to identifying more clearly what is to be achieved by an integrated payments market. The answer to this primary strategic question will determine the approach to the secondary tactical questions raised by the Green Paper – how further integration should be achieved.

The Green Paper suggests that more integration will deliver lowers costs, through more competition, and efficiency gains through price transparency and innovation. HM Government agrees that these are desirable objectives. But the Green Paper goes on to propose interventions based on price regulation, market coordination and standardisation, which partly conflict with these objectives, exposing some internal inconsistencies in the ideas that are being put forward.
One reason for this is that the Green Paper is concerned with a number of current market imperfections. It does not adequately address the strategic challenge in front of the Community. The strategic challenge is not primarily how to integrate the market further but, as the Green Paper itself indicates, how to place Europe at the cutting edge of payments development in order to support a digital economy. This presents a different set of priorities.

For example, the Green Paper asserts that consumers will benefit from market integration by using a single payment account for all payment transactions. In fact, consumers benefit from holding several accounts for different types of transactions, such as a current account, credit card and on-line payment account. The trend for multiple accounts is likely to accelerate as more electronic payment services are created.

This example highlights that the analysis in the Green Paper is focused on payments as a free-standing service. It overlooks market developments that treat payments as a constituent element in a package of value-added services. For example, data services (downloads, invoices, accounting data, vouchers and the like) are now being wrapped around a payment, and the payment service itself is incidental to a transaction, and may be provided free. These are the type of services now being demanded by the digital economy. This puts the questions raised by the Green Paper into a wholly different perspective, because it raises a different set of issues to the issues addressed by the Green Paper. The issues are first, how to facilitate this type of add-on services while maintaining the right degree of protection for customers, and secondly, where to set the boundary between regulated and unregulated activities.

HM Government therefore proposes that the Vision, aims and objectives should be reframed:

I. **The Vision** is to place Europe at the cutting edge of payments development. In this vision, further market integration is achieved as a by-product, as it is needed.

   The Commission might wish to give this vision expression by setting a concrete target, for example an ambitious target for automated electronic payments to be processed in real time, 24 hours a day, 7 days a week, by a reasonable future date. This is what is needed by the next generation of payment services;

II. **The aim** is for the next generation of payment services to support the development of the digital European economy, and provide new value-added payment services that meet the evolving needs of end-users: business, individuals and public administrations;

III. **The objectives** are to create a simplified regulatory structure that is:

   - technologically neutral;
   - treats payment service providers and services the same;
   - maintains the integrity of payment systems and the security of payment services;
promotes competition and the development of new value-added services accessible to all.

This proposal prioritises the creation of a unified and simplified regulatory regime for all types of payment services including card, mobile and internet payments. This is because the current regulatory regime discriminates between technologies, and different types of service providers, applying different rules and exemptions to each, with results that are distorting the payments market, and will impede the attainment of the desired objectives in future. The reasons for this are explained in the following sections, and underline the importance of a holistic approach to the regulation of payment services. There is a danger that a piecemeal approach in which current market imperfections are addressed individually will add further layers of complexity and cost to the regulatory structure, with unintended consequences. That is why HM Government stresses that the Green Paper and the ongoing review of the Payment Services Directive and the Electronic Money Directive cannot be separated, but should be considered together.

Response to questions in the Green Paper

**Multilateral Interchange Fees (MIFs)**

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?

**Question 1**

The Office of Fair Trading (OFT) in the UK notes that the variety of national MIF rates across Europe might be explained by:

- Scheme rules, for example on cross-border acquiring, that lead to fragmentation.
- National differences in card usage, such as differences in the value and volume of transactions, the incidence of fraud, and technological factors. These may represent ‘objective structural differences’.
- The degree to which the international card schemes compete for the business of issuing banks in each territory by offering the highest MIF rates (competition thus has the perverse effect of pushing MIF rates up rather than down).
- The degree of competition law or regulatory scrutiny of MIFs in each Member State.
The co-ordination of merchant opposition to MIF rate increases.

Overall, the OFT notes that national MIF differences among Member States are not being competed away, and MIF rates across Europe are not converging downwards as might be expected in a competitive market.

Question 2

There is current legal uncertainty on the legality of MIFs. This is likely to exercise a chilling effect on new market developments until the legality of collective fee arrangements in four-party payment schemes is settled.

The competition law scrutiny of MIFs, at European and UK level, has been in train for over a decade, and there is a potential for further delay. The General Court judgment should go a long way towards determining whether or not MIFs fall within competition law, but in the event of the General Court upholding the Commission’s decision, a further appeal to the European Court of Justice (ECJ) by MasterCard may lengthen final resolution of this issue to 2014 or 2015 at the earliest.

The proceedings before the General Court, and possibly the ECJ, are unlikely to provide certainty on what level of MIF is permissible or justified under competition law. In the absence of any satisfactory justification stemming from the parties, or of any agreed commitments on MIF rates between the parties, the determination of permissible future MIF levels seems likely to remain out of reach.

This is unsatisfactory for all parties. One solution may be for the Commission to negotiate an acceptable MIF-setting methodology with the international four-party card schemes. This would be a quicker, pragmatic route to achieving legal certainty across Europe. It is preferable and more effective to taking forward separate competition investigations in each Member State. If this route does not produce acceptable results, the Commission should consider the options for further intervention to impose a common methodology.

It would be necessary to consider carefully whether a MIF-setting methodology might set national MIFs or a common MIF in all Member States, subject to a full impact assessment.

Question 3

Action on MIFs is desirable, as set out in the response to Question 2.

No similar action is required in relation to three party schemes or to reduce the non-MIF element of merchant service charges, which are negotiated in a competitive environment.

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Cross-border acquiring

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?

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The UK Government has supported the Commission in the General Court appeal proceedings brought by MasterCard (Case T-111/08).
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?

Question 4

HM Government agrees with the Green Paper analysis of the obstacles to cross border acquiring.

The existence of domestic card schemes may also be a deterrent to cross border acquiring, because they oblige an acquirer to offer tailored services for each market.

There are a number of cross-border acquirers operating in the market, but merchants say that, while they are able to sign up with acquirers in other Member States, the card scheme rules apply the MIF applicable in the country in which a transaction takes place. This reduces the benefits of signing up with a cross border acquirer.

However, cross border acquires must observe the rules that apply to national transactions. For example, there are specific UK rules applicable to fraud prevention, and repayment of debt on credit cards. It would difficult to achieve a consistent cardholder experience if issuers or acquirers were able to dis-apply national rules on the basis of where they were incorporated rather than where a transaction took place. That is why the card schemes permit local rules for domestic transactions, provided that the rules are not anti-competitive, and that bodies established to set rules are open to all market participants and are representative of the market.

The Commission might wish to focus on two issues:

a) a review of the card scheme rules with a view to removing any conditions that may directly or indirectly restrict card issuing or acquiring based on geographic location;

b) supporting developments in the market for the provision of acquiring services to small businesses and voluntary organisations. New ways to accept card payments using mobile phones and tablet computers promise to make card acceptance feasible for this hitherto largely ignored sector.

This could be achieved without legislation.

Co-badging

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?

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?
Question 6

HM Government agrees with the Commission that co-badging can help new card schemes to enter the market. There appear to be no insuperable obstacles in the way of co-badging. There are co-badged cards on the market in some Member States. For example, a number of domestic card schemes, such as the Laser scheme in Ireland, also carry an international badge to enable their cards to be accepted elsewhere.

Co-badging is based on agreement between the participating schemes on terms and conditions. The terms may cover management procedures, technical interoperability, liability and security issues. These terms and conditions should not be regarded as restrictions on co-badging.

Mandatory co-badging may reduce competition and present some risks, such as security and liability risks, arising from constraints on a card scheme to contract freely with business partners of their choice.

Looking ahead, co-badged cards seem likely to be overtaken by technological developments that will broaden customer choices. For example, it will be possible to carry virtual cards on a mobile phone or digital wallet, so the significance of co-branded cards for promoting competition seems likely to decline. This is because the ability of a mobile phone to serve as a platform for different payments applications, going well beyond card payments, will restrict the ability of any market player to restrict access to the platform. There is evidence that this is already happening in some Member States like Denmark and Sweden where competing payment interfaces are available from different providers.

Question 7

HM Government believes that the cardholder should make the final decision on which payment instrument is to be used first when a payment transaction is initiated. This principle is already embodied in the SEPA Cards Framework (paragraph 3.6.1).

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<tr>
<th>Separating card schemes and card processing</th>
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<td>8)   Do you think that bundling scheme and processing entities is problematic, and if so why? What is the magnitude of the problem?</td>
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<td>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’?</td>
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Question 8

HM Government believes that card issuers and acquirers should be free to choose their processors and clearing and settlement service providers. However, it does not believe that the present ability of the international four party card schemes to offer card processing services is problematic.
This is because the card schemes do not have a monopoly on card processing. The card processing market is competitive. The card schemes have taken steps to separate scheme from infrastructure and a substantial proportion of processing volumes (perhaps two thirds) are undertaken by competing processors. This is evidence of a competitive market.

The question does not appear to be relevant to three party card schemes.

Question 9

HM Government believes that neither “legal separation” nor “full ownership unbundling” of the card schemes and processing entities is likely to reduce barriers to entry for processors or new card schemes further. In any event, the legal basis for imposing such a separation would need to be considered carefully, and must be in doubt given the weakness of the case for it.

The case for restructuring card schemes and infrastructure has not been made, and it is likely that the Commission’s objective has already been achieved in practice, as a result of the rules set out in the SEPA Cards Framework, which provides for separation of schemes and infrastructure without mandating separate ownership. If the Green Paper consultation uncovers evidence that the card schemes have not separated their infrastructure effectively, the Commission may wish to review the rules of the SEPA Cards Framework to secure an effective remedy.

### Access to settlement systems

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?

Questions 10

Some large payment institutions can handle significant volumes. Their inability to participate directly in payment systems designated under the Settlement Finality Directive may be problematic, but HM Government does not have any evidence for this. In the UK, electronic money institutions have been brought within the scope of Settlement Finality Regulations and so could participate directly in a designated payment system if they met the access criteria.

While the market for indirect participation in payment systems is competitive in some Member States, this may not apply to all. In some cases the lack of legal clarity regarding the extent to which payment system rules apply to those institutions with indirect access can result in a reduction in the ability of those institutions to compete with the larger institutions which do have direct access.

Payment and e-money institutions are regulated under Community rules and must comply with prudential requirements. However, the stability of payment systems is a paramount concern. Therefore payment system operators must always be able to lay down access criteria based on the need to protect the financial and operational stability of the payment system. These criteria should follow the core principles for systemically important payment systems.
systems published by the Bank for International Settlements. They should be objective, non-discriminatory and proportionate and should not impose any restrictions based on the institutional status of an applicant (as provided for non-designated payment systems under Article 28 of the Payment Services Directive).

**Cards processing**

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?

Question 11

This should be accorded a low priority. It is not clear what problem a common cards-processing framework is intended to address. Creating such a framework is likely to fail any cost-benefit test. It would also restrict competition and innovation.

**SEPA Cards Framework**

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?

Question 12

HM Government supports the principle of the SEPA cards framework, but regards it as a work in progress. For example, some domestic card schemes have described themselves as SEPA-compliant when they were not accepted in other Member States.

However, some card issuers and some security-conscious customers wish to have domestic-only cards. They should not be prevented from having them.

HM Government suggests that the governance of the SEPA cards framework should be looked at carefully during the review of SEPA governance generally, especially to ensure that all stakeholders can contribute to its development.

**Access to bank account information**

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?

**Question 13**

HM Government supports the removal of barriers to market entry. In this instance, however, mandatory access to account balance information suggests that some firms, including unregulated firms, would like to provide payment services or intermediary services without holding their clients’ funds and without being ready to bear the credit risk on transactions which they initiate. This idea runs counter to the concept of payment services. HM Government believes it is a bad principle to mitigate the credit risk of a service provider by imposing legal obligations on their competitors.

As a general principle, payment service providers can only provide payment services to a payer if they hold the payer’s funds (either in cash or on account) or if they are ready to grant the payer a credit. Granting a credit to the payer is necessarily related to some degree of credit risk.

These difficulties arise before considering the practical issues related to safety, security, contractual terms or liability. Payment Service Providers have legal and contractual obligations to protect customers’ privacy and security. It is difficult to see how they could provide sensitive information to a firm with which they have no formal relationship, or a firm that may not be subject to payment services legislation. Nor is it likely that securing the customer’s “agreement” to disclose account balance information would solve this problem. It is unlikely to meet existing legal and regulatory requirements, nor would the customer necessarily be aware of the legal implications of granting such consent during the course of a purchase transaction.

The increasing use of the internet for commerce means that sensitive customer data which is used by payment service providers to authenticate transactions becomes increasingly important. Making such data available to other, often competing, entities, with whom the PSP in question has no contractual relationship, and over whom they have no control as to the level of security exercised over the data, poses significant issues.

HM Government believes that unregulated firms should not be allowed to continue to operate in this area. If the Commission wishes to pursue the idea of making account balance information available to regulated service providers, it should define the kind of information that could be made available, under tightly prescribed conditions, and possibly on commercial terms.

**Merchant’s reliance on payment cards**

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?
HM Government does not have any evidence of merchants’ dependence on card payments. Cards are the preferred form of payment for on-line transactions in the UK, so it is likely that some merchants rely on them, particularly for high value transactions. Those who trade solely online are likely to be dependent on card payments as it is unusual for other forms of payment to be accepted for online purchases in the UK. The ability of some merchants, predominantly in transport sectors, to impose surcharges on card payments suggests that there is inelastic demand by consumers to pay by card.

The UK Payments Council is taking forward work to evaluate an alternative Online Banking e-Payment Service for on-line merchants. HM Government believes such a service is likely to provide an attractive, efficient and secure alternative to online card payments.

Fee transparency

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?

Question 15

HM Government attaches a great deal of importance to the transparency of fees payable by customers. Transparency of payment costs – at the outset of a transaction - would help to steer customers towards the most efficient payment instrument. However, direct charges for payment services to end-users are relatively rare in the UK and it is fairly clear that customers prefer to be quoted an all inclusive price, rather than a cost breakdown which would also include taxes, packaging, delivery etc.

The benefits of singling out payment costs, above other costs, are therefore unclear. It is extremely difficult for a merchant to calculate the specific payment cost of an individual transaction, which is not confined to fees such as the merchant service charge, but also includes further costs such as fraud checks and data security and other internal costs. In any event, the fees payable by merchants depend on payments volume which cannot be known in advance and would have to be forecast. The best that could be hoped for would be an aggregate or average cost per transaction which would undermine the desired benefits of signalling which is the most efficient form of payment.

HM Government believes that making the fees payable by merchants transparent to customers is unlikely to influence customers’ choice of a payment method. Merchants that pass their costs on to customers in the form of payment surcharges must already make this clear to them, as provided for by Article 50(1) of the Payment Services Directive, and this seems sufficient. Businesses must also comply with the requirements of the Unfair Commercial Practices Directive and, from 2014, the Consumer Rights Directive for business-to-consumer transactions.
### Surcharge

16) Is there a need to further harmonise rebates, surcharges and other steering practices across the European Union 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?

### Question 16

HM Government announced on 23 December 2011 that it would consult on banning excessive surcharges on all forms of payment across most retail sectors by implementing Article 19 of the Consumer Rights Directive ahead of the transposition deadline. Surcharging will then be limited to the direct cost of using a payment instrument for those sectors within scope of the Consumer Rights Directive. The Government will consult on how to implement the proposal soon.

There are practical and difficulties and market distortions in imposing a ‘free’ payment method (particularly around price regulation and the dynamics of the relationship between merchants and card acquirers in the card market). It would also be highly distorting in terms of directing customers to a specific form of payment and preventing firms from selecting the form of payment methods that suit them best.

Business models for taking new forms of micro-payments are only just being developed. Introducing specific rules for them now is likely to deter innovation and distort the market before it has developed.

### Merchant – payment service provider relationship

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 micro-payments?

### Question 17
a) Blending: HM Government has been advised by the principal international card schemes that the practice by acquirers of charging a ‘blended’ rate has been resolved by ensuring that European merchants can request unblended rates. The Commission may wish to take further action if the Green Paper consultation uncovers evidence that some acquirers are not compliant;

b) Honour all cards: This practice gives customers the assurance that a properly presented card will be accepted at all merchants which display the card’s brand. Its removal would create uncertainty and confusion. However, the HACR depends on acquirers offering and pricing cards on fair terms. One international card scheme has increasingly begun to undermine this principle by offering premium rate cards (such as reward cards and cash-back cards) that impose relatively high costs on merchants, without the ability of the merchant to decline those cards (nor do many merchants have the ability to identify or surcharge those cards). The HACR principle must therefore be in doubt, if this is the direction the market is taking. The Commission should look at this issue carefully, and consider it in the context of the review of the Payment Services Directive.

**Card standards**

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?

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

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?
It goes without saying that card standardisation is not only beneficial but essential. The difficulty is that card standardisation is a global, not a European matter. European card users need to use their cards all over the world, and non-European card holders need to use their cards in Europe. Developing European standards (such as aligning card payment messaging standards with the SEPA messaging standards for credit transfers and direct debits - ISO 20022 XML) may threaten card interoperability and would be counterproductive.

There is a trade-off between common standards and the ability of firms to develop competitive, value-added products. The aim should be to secure a minimum level of common functional requirements rather than the maximum level. HM Government does not therefore see any gaps in the current suite of core international standards such as the ISO 78000 series (EMV card formats); ISO 14443 (contactless); ISO 8583 (interchange messaging); or ISO 20022 (interoperability of clearing and settlement).

The Commission has identified an issue relating to the need to secure national certification of ATMs and POS terminals. This is an area where European-wide certification may generate efficiencies. Similarly there may be benefits in standardising user preferences for ATMs (such as assistance for blind users or setting font size). The Commission will wish to consult the Open Standards for Security and Certification Steering Committee (OSeC) of domestic and international card schemes on whether a common industry position can be achieved voluntarily soon, or whether some form of intervention is needed to secure a common approval scheme.

**Question 19**

The EPC work on the SEPA cards framework should be reviewed as a core part of the SEPA governance review, with a view to ensuring adequate representation of the views of all stakeholders. This must include adequate representation of non-euro Member States’ representatives.

**Question 20**

CEN or ETSI are not currently specialised in the payment market. However, the Vienna Agreement on technical cooperation between ISO and CEN exists to promote convergence between different standards organisations.

**Questions 21 - 22**

Standardising mobile payments cannot be considered at this level of generality. It is necessary to define what is meant by making, processing and receiving payments of all kinds via a mobile phone.

This is because ‘mobile’ is merely a platform for payment messages. Money is not held on nor flows through mobile phones. Money is almost always held on secure central servers. ‘Mobile payments’ may take the form of payment transactions from:

- A prepaid wallet (such as a prepaid card linked to a phone app, sim or memory card);
- A bank current account (using a bank’s on-line banking app);
A debit or credit card (existing cards can be linked virtually to a phone app);

The account of the payer held by the mobile telephone service operator.

There is nothing new here. All these are established payment methods. What is new is that new business models offering additional services are wrapped around the payment. Many such models generate alternative revenue streams. They can afford to offer a ‘free’ payment service. These models have brought handset manufacturers, software vendors, mobile network operators, merchants and payment service providers together in a large number of differing configurations to develop competing solutions. The first commercial offerings are already on the market.

Payment processing, clearing and settlement services are largely unchanged by these models (the main challenges are in initiating and authenticating transactions). However, accepting payments via mobile is not discussed in the Green Paper, and there are significant differences between person-to-person, person-to-business, and business-to-business payments. It is here where interoperability standards are still evolving to facilitate different categories of payment.

The key issue that is holding back development is not the development of common standards (many of which already exist), the reason is that the market is too immature. It will be necessary to allow the most effective and widely accepted solution to emerge from a competitive process. Premature enforcement of common standards is likely to deter innovation and growth of the market.

HM Government suggests that the Commission should play a constructive role by ensuring that:

- reform proposals arising out of the PSD review facilitate collaboration by the different actors, for example by establishing a cross-industry stakeholder forum under the SEPA umbrella;

- the regulatory structure is simplified so that it promotes the development of new, hybrid business models and the new value-added services For example, it is desirable to facilitate the development of new ticketing, invoicing and bill payment, micropayments, shopping, and other services via a mobile phone;

- the desire to promote further long-term market integration does not deter the development of new e-payment systems at a national level in the short-term. In this context, the review of the PSD should consider how the regulatory framework can accommodate the requirements for a competitive, efficient and secure online e-payments market.

- clarifying the present exemption from the scope of the PSD of payment transactions executed by digital, telecommunications and IT devices;

- the EPC work on mobile payments takes full account of the views of all stakeholders;

- consumer protection is not overlooked
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?

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?

Questions 23 and 24

HM Government does not believe that there are current interoperability gaps, nor a stalemate in M or E-payments development, for the reasons explained in the replies to questions 18-22. However, interoperability gaps may need to be addressed in future, for example as a result of the development of national e-payment schemes.

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- the regulatory structure is simplified so that it promotes the development of new, hybrid business models and the new value-added services. For example, it is desirable to facilitate the development of new ticketing, invoicing and bill payment, micropayments, shopping, and other services via a mobile phone;
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Security

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?
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?

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?

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?

Questions 25-28

There is never enough security. Security is a process undergoing continuous development.

The Commission will wish to review and act on the forthcoming report of the SecuRe Pay Forum on the security of internet payment services using payments cards and credit transfers. HM Government reserves its position until that report has been published, notably on the question of whether the security of retail payments should be underpinned by the regulatory framework.

There is nevertheless one area where it is already clear that action is required. There are concerns over the use and protection of sensitive customer data, and direct access to bank accounts, by overlay service providers. The Commission should consider bringing providers of overlay payment services into regulation as part of the PSD review.

SEPA Governance

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?

Question 29

The UK and other non-euro Member States request a seat for a non-euro central bank in the SEPA Council.

SEPA governance is fragmented. It could be rationalised and better coordinated. A number of groups meet under the SEPA umbrella, without a clear idea of how their remits and timetables fit together (for example, HLM, COGEPS, EU Forum, PC, PSMEG). Some of these bodies involve public authorities, but there is a clear lack of representation of non-euro Member States central banks. Non-euro Member States undertake a high volume of payments traffic with euro Member States and are also subject to SEPA legislation, so they should be represented on the SEPA Council and groups.

There continue to be difficulties over the representation of the views of stakeholders in the EPC, and they have no appeal mechanism once the EPC has taken a decision. The SEPA
Council could have an oversight role over the EPC to ensure that it follows due process, transparent decision-making and genuine end-user consultation. This could extend to a complaints process to resolve disputes between EPC members or the EPC and external stakeholders.

HM Government believes that the SEPA Council should take an enhanced, strategic role on the key decisions about the future development of SEPA. It could appoint temporary, issue-specific sub-groups to advise it as required, and it should have stronger links to national SEPA committees. It should publish its papers and record of discussions.

### Governance of technical standards

#### Non-euro currencies

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?

**Question 30**

Open governance of the international standardisation bodies seems to work well and attracts the participation of many stakeholders.

HM Government believes there will be clear interoperability benefits of aligning non-euro retail payment systems with SEPA standards, but is mindful that the costs of migration to SEPA standards in other Member States are measured in billions of euro. The case for aligning non-euro currency payment scheme messaging standards with SEPA standards should therefore be evaluated on a case by case basis after careful cost-benefit analysis. The UK Payments Council has adopted a long term strategic aim of doing so and work is under way.

#### EPC

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?

**Question 31**

There is clearly a need for the SEPA Council to coordinate its programme with the EPC’s programme, and for the SEPA Council to provide strategic direction to the EPC.
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?

Question 32

A number of issues arising from the review of the Payment Services Directive and the Electronic Money Directive overlap with the issues raised by the Green Paper.

For example:

i) different categories of regulated entities (credit institutions, payment institutions, e-money institutions and unregulated institutions) are increasingly competing in the same space – notably to provide m-payments and e-payments. Yet they are all subject to different rules;

ii) the legal definition of electronic money touches all areas, yet the definition of e-money is out of date and may be distorting the market. This is because the definition treats e-money as if it were digital cash. It is not. Electronic money is (with the exception of some unregulated virtual currencies) always held in a secure central server and is for all practical purposes the same for any form of payment service;

iii) There are questions around the regulatory treatment of payment transactions executed by electronic devices and technical service providers.

The conclusions from these examples are that reforms are needed to create a simplified regulatory structure that is technologically neutral, and treats firms and different payment methods as equally as possible.

Finally, the Green Paper does not appear to include any consideration of the safeguards which may be required to combat tax fraud. This is of particular concern to tax authorities (HM Revenue & Customs in the UK), as advances in technology and the increase in electronic payments widen the scope for fraudulent activity and their ability to counter that fraud. It is essential that tax authorities are in a strong position to utilise domestic legislation to combat tax fraud and retain the ability to access data from off shore companies.

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