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Your ref

Our ref
12/144 JCW

Date
.04.2012

Consultation reply - Green Paper on card, internet and mobile payments

Reference is made to the Green Paper "Towards an integrated European Market for cards, internet and mobile payments" (COM (2011) 941) published by the European Commission 11 January 2012.

The Ministry of Finance welcomes the initiative taken by the European Commission to integrate the euro market for card, internet and mobile payments. We understand that the intention with the public consultation is to validate the analyses in the Green Paper and ensure that no critical issues have been omitted.

We understand that the European Commission in connection with preparing the Green Paper, has done a considerable amount of analyses. We will therefore limit our contribution to matters where qualified analyses has been done in the Norwegian market, and / or matters where we have a qualified opinion.

The Ministry of Finance received a project report regarding assessments of possible measures in the market for international payment cards in Norway on the 31.01.12. The report is public (in Norwegian only) and was produced by a project group consisting of members from the Financial Supervisory Authority of Norway, the Norwegian Competition Authority and the Central Bank of Norway.

We refer to the following from the report:

- One should consider measures that facilitate surcharging, in example by instructing the terminal owners or providers of terminals to install such

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technology.

- The project group recommends that the developments in merchant fees and Multilateral Interchange Fees are monitored closely. The project group recommends that new assessment of possible regulation should be made within 4 years. Acquiring payment service providers should be instructed to keep historical data for minimum 10 years.
- The project group suggests that if the Ministry of Finance is of the opinion that the Multilateral Interchange Fees in Norway should be directly regulated now, the Multilateral Interchange Fees in Norway should be set by the “Merchant Indifference Test”.

The Ministry of Finance has so far not concluded with respect to the recommendations in the report.

In addition to this, the Ministry of Finance would like to remark the following:

Q10 on access to settlement systems

The Norwegian domestic market for clearing and settlement is in our opinion functioning satisfactorily, and existing e-money institutions have adapted to the settlement solutions that are in use. There might, however, arise competitive issues as these institutions do not have direct participation in the settlement system. On the other hand, if e-money institutions are granted direct access to settlement systems, this would involve increased credit risk and legal risk since e-money institutions – unlike banks – do not have access to credit from the central bank.

Q 11 on common card processing framework

Certain national (debit) card schemes have had rules for authorization, reservations, clearing and settlement in place for a long time, and certain lessons can be drawn from these schemes. There are arguments both for and against rules in this area. Predefined rules allow for economies of scale in infrastructures, processing and control, which will potentially reduce costs. However, experience shows that rules are a barrier to entry, possibly reducing competition and keeping the costs up. It may also hinder new and viable initiatives. From the lessons learnt, we would therefore suggest:

- No new processing rules should be defined. Requirements that aim at controlling settlement risk, providing consumer protection or achieving other high level goals may be defined.
- Terms and fees are part of a dynamic market and subject to change and negotiation as part of market dynamics.
- The implications of national debit card schemes may be subject to further analysis, including consequences for competition and innovation.

Q 13 on non-banks access to information on the availability of funds in bank accounts

The issue of giving non-banks access to information in a consumer’s bank account is an issue that reaches beyond the question of how to increase competition and innovation

in payment services. It also raises difficult questions with regards to security, liability and consumer protection. The banks are responsible for ensuring payment security and to prevent misuse of consumer's bank accounts. The banks are also to a large extent liable to cover losses that occur from security breaches or from fraud.

Liability issues and security issues must be solved before other service providers can be provided with access to information on bank accounts. If these issues are solved, and other service providers should be allowed to be granted access to information on bank accounts, this should only be granted after the customer has given his or her consent.

Q 15 Information to the consumer on MSC/MIF

It could be a good idea to let the consumer receive or be able to obtain information from the payment service providers and the merchant on the MSC/MIF. The consumer would thus be empowered with the relevant knowledge to ensure that the merchant does not charge more for the use of a given payment instrument than what is allowed according to the Consumer Rights Directive 2011/83/EU art. 19.

If the merchant offers various payment instrument options, the consumer would be enabled to make an informed choice to use the most cost-effective payment instrument.

Q 16 Surcharges and steering practices

While the Payment Services Directive art. 52 (3) gives Member States the option of prohibiting or limiting surcharges, the Consumer Rights Directive art. 19 prohibits the seller from applying surcharges that exceed the actual cost for the transaction. Based on this, one should see how markets develop before additional regulation is considered. However, Member States could be given the discretion to decide if merchants should be asked to accept one, widely used, cost-effective electronic payment instrument without surcharge.

Q 24 on interoperability or m-payments

The slow progress of m-payment and e-payment is in our opinion not due to lack of governance, standards, or technical solutions, but a question of economic incentives. Suppliers fear that margins would shrink. Consumers do not have economic incentives nor an organization to help promote this.

General remark to chapter 4.5 on payments security

M-payment is likely to grow in the forth-coming years, both as an addition to, and a replacement of, other types of payments. It is important that consumers using such services can rely on their security. In principal, m-payment should offer the same security and consumer protection as other payment instruments.

Norway is of the opinion that security requirements should be established in such a way that payment service providers are encouraged to follow developments in the market closely and to swiftly respond to new security threats. Security requirements

should adequately protect the funds and personal data of the customer as may reasonably be expected. The payments service provider should bear the risk for security weaknesses which are due to the fact that the payments system is not as securely designed as may reasonably be expected. Furthermore, this requirement should be shouldered with a liability on part of the payment service provider to pay damages to the customers for breaches to the reasonably expected security level. Such a rule may also include minimum security standards, which should not affect the liability of the payment service provider.

Q 25 on security gaps

Under certain conditions EMV allows for PIN to go unencrypted between the terminal and the chip. This should be addressed. Static Data Authentication (SDA) must also be addressed.

Proximity card applications that we know of seem sufficiently secure.

Q 26 on security for remote payments

Communication between issuer and the chip should be symmetrically encrypted. Communication between terminal and chip should be RSA encrypted. All except proximity applications should require two factor authentications. Proximity applications have a “stop loss” mechanism.

Q28 on personal data protection

The suppliers of card, m-payment and e-payment solutions, i.e. the financial institutions (FI), are responsible to ensure that their solutions comply with national and EU law. There are well known standard mechanisms for data protection which are widely applied. PCI-DSS defines protection policy and mechanisms as well as control mechanisms within the payment card area. In addition to this, national regulatory bodies oversee that the FI's comply with the law.

Q 29 on assessing the current SEPA governance arrangements at EU level

Norway has through self-regulation achieved one of the most efficient and e-oriented payments systems globally. However, we acknowledge the much higher complexity of achieving an integrated payments market in Europe due to its size, existing legacy solutions and local differences. Having this in mind, a co-regulatory approach is probably necessary. However, we would recommend cautiousness as to go too far in the regulatory direction due to the risk of failing to meet real customer needs and also demotivate contributions both from the demand and supply side.

Q 31 on a possible role for public authorities

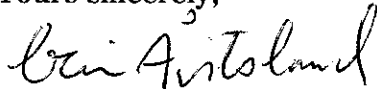
The public authorities must be involved in the governance work in the field of cards, m-payments and e-payments. We agree that a memorandum of understanding between the European (both EU and EEA-EFTA countries) public authorities and the EPC identifying some time schedule/work plan with specific deliverables (‘milestones’) and

specific target dates should be considered. However, it must be the financial industry itself which sits in the driver's seat in this process.

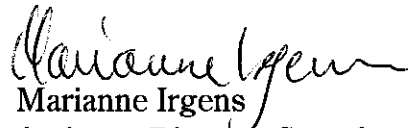
Finally, Norway will emphasise that e-payment and m-payment solutions should be designed so that they may be used by all users, including persons with disabilities, in line with the UN Convention on the Rights of Persons with Disabilities.

We hope that the above may give inputs of value in relation to the European Commission's process towards an integrated European market for cards, internet and mobile payments.

Yours sincerely,



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Copy: FAD, BLD, JD, SD, NHD, Finanstilsynet, Norges Bank