

### Bankinter app is “another way” for NFC

Bankinter, the Spanish bank, unveiled on 4 March a contactless m-payments service which eliminates the need for a secure element inside the handset, marking the first time a service provider can offer an NFC service without needing a manufacturer or telco to produce the secure element.

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

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

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

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

### FTC issues privacy focussed mobile payments report

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

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

The report ‘Paper, Plastic...or Mobile? An FTC Workshop on Mobile Payments,’ compliments a workshop held by the Commission in 2012, and explores three areas of concern: “Disputes concerning fraudulent payments and unauthorised charges, data security, and privacy,” explains Cohen. “A

key take away is the FTC’s view that m-payment providers should deliver disclosures clearly and conspicuously, afford consumers a reasonable mechanism for disputing charges, and be mindful of establishing protocols to protect consumer privacy,” explains Ryan H. Rogers, Associate at Morrison & Foerster.

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

One particular concern highlighted by the report involves ‘cramming,’ whereby

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

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

### EC drops 18-month investigation into EPC standardisation process

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

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

EU Competition Commissioner Joaquín Almunia said the investigation

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

“The introduction of e-payment services ties in very closely with the EC’s aims of

ensuring that the EU single market is a world leader in e-commerce,” said Nathalie Moreno, Partner at Speechly Bircham. Moreno highlights the EC’s 2012 paper, ‘Towards an integrated European market for card, internet and mobile payments,’ “which discusses plans to promote and instigate standardisation in order to achieve interoperability. A policy of broad, integrated standardisation in paperless payment services might therefore have been a factor behind the EC dropping the EPC case.”

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## editorial board

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

### Michelle Cohen

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

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