Topics of this issue:

1. NETS to acquire Finnish payment giant Luottokunta (by Henning N. Jensen)[1]

On August 10, 2012 Nets, northern Europe's leading company for cards and non-cards payment solutions announced the acquisition of Finland's leading provider of payment solutions.[2] Luottokunta is a PSP active in card issuing services for banks, merchant acquiring services and, related fields such as lunch cards and business cards. In 2011 Luottokunta serviced 13 million payment and credit cards and processed almost 950 million card transactions for merchants. Luottokunta has 500 employees.

With the acquisition of Luottokunta, Nets will have a total of 2.700 employees in five countries and a turnover of EUR 850 million.

Comment

With the Nordic region as Nets' home market, Finland is a natural area of focus for Nets, and the acquisition of Luottokunta provides Nets with a solid base in the Finnish market and a gate to the Baltic - especially Estonia.

The acquisition of Luottokunta is in line with Nets' present strategy of being one of the leading five companies in Europe for payment solutions, information services and digital security solutions.

The acquisition will make Nets a stronger partner for its present customers in the difficult Finish market as well as giving the customers of Luottokunta a much stronger access to the rest of the Nordic market through Nets' connections and infrastructure.

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[1] Senior partner at PlusCON, a Copenhagen based payment consulting company and an EPCA-partner.

[2] Further information see www.nets.eu and www.luottokunta.fi/en/.

In the past, Luottokunta had a special ownership structure, since it was 50% owned by the Central Bank of Finland and 50% owned by the retail organizations in Finland. This ownership construction with over 20.000 owners had previously been an obstacle for developing the business according to traditional business models. Having changed the ownership structure in spring 2012, it has being agreed that an international sale of Luottokunta would be the best way forward.

For Nets - owned by the Danish and Norwegian banks - it is a natural way to expand the business and secure that none of the other large European payment institutions get a strong foothold in the Nordic region.

Conclusion: Nets has followed its strategy to become the important player in the Northern European market for payment solutions. Nordea, the largest shareholder in Nets and the owner of a major bank in Finland, has secured its future interest in the Nordic payment infrastructure.

2. The Basic Payment Application (BPA) requires a basic discussion

It seems that the European payment landscape will be enriched by a new concept, the Basic Payment Application (BPA). The idea of a BPA is mentioned five times in the Feedback Statement of the EU Commission on the Green Paper of 27 June 2012. According to the Feedback Statement the BPA is particularly supported by retailers and also by consumer associations.

The idea receives particular attention in the published statements of EuroCommerce and BEUC (European Consumer organisation)[3]. The labels used may differ, though. In addition to "BPA" the following terms are used:

- "core or basic card payment service" (besides additional services)
- "basic debit card with no MIF"
- "basic debit instrument as a universal service, available to all"
- "Electronic Euro, a basic payment functionality"

Unfortunately, it is far from clear what BPA is meant to be. It is described mostly as debit card related. But sometimes it is also interpreted as a stand-alone basic payment application on all SEPA (card) products.

[3] http://ec.europa.eu/internal_market/payments/cim/index_en.htm

The interpretations in the Feedback Statement of the EU Commission are relatively opaque. It is described as:

- an alternative to MIF ("no per-transaction MIF applying")
- a mandatory application (incorporated in EU regulation or in the SCF (self-regulation))
- an application with limited or no fees for merchants

Further views in the original stakeholder statements of EuroCommerce, BEUC and others are:

- mandatory acceptance like cash ("legislation is the only way")
- controlled (issued?) by the ECB
- free of charge for cardholders (consumer position)
- free of charge for merchants (retailer position)
- automatically linked to each bank account (which becomes a "basic" bank account)

Our Comment

BPA seems to be new wine in old skins. The quintessence of BPA is the struggle over MIF and over a proper distribution of the costs of payments between both market sides (consumers and retailers). Representatives of both sides prefer not to pay for it. A painless and therefore popular solution is the zero-fee solution (or maybe a fee far below costs). EuroCommerce states, "in our society, payments are seen as a service for the benefit of all, or a profit centre for some to the detriment of the whole economy". *A remarkable observation of an organisation which represents retailers!*

We will provide a more detailed analysis of the BPA-vision in our next newsletter because the BPA will is likely to be relevant for the coming "White Paper" of the European Commission. This idea fits exactly into the philosophy of the Commission that not only payment instruments like direct debit and credit transfer are "basic products", "commodities" or "public goods/infrastructures", but cards too. The only requirement of the EU for these public goods is being secure and "cost-effective", interpreted by the Commission as low cost/cheap for the users. But there is no free-lunch. The subsidized Panem et Circences, popular "basic needs" in decadent Rome, were paid by all taxpayers. Should the payment instrument "card" be a public utility or a heterogeneous product within a competitive market? An answer to this question requires a basic discussion. Such a discussion has been missing during the past 10 years of the SEPA-vision.

3. eCommerce platforms and the PSD

eCommerce platforms offer a bundle of services to their clients. One of these services is payments. However, offering payment services may require the license as a payment institution (or an e-money license or a banking licence).

In Germany, the financial market regulator "BaFin" has announced that it is checking a number of business models of eCommerce platforms. As a consequence, eBay had to put the introduction of a new payment method on hold. Whether and to what extent Amazon Marketplace will be affected remains to be seen.

But the regulation of payment services is not only important for the big players. Smaller ones may be equally affected. Lieferheld, a German platform for the delivery of meals was sued by a competitor because it offered online payment for its (supply side) clients. A German court decided that Lieferheld unlawfully offered payment services. Subsequently, Lieferheld changed its contracts with restaurants in order to continue to offer its payment services without a payment institution licence.

Our Comment

Large eCommerce platforms such as eBay and Amazon Marketplace have been offering payment services for a long time already. eBay did so via its subsidiary PayPal which holds a banking licence in Luxembourg. Amazon Payments, in turn, has an e-money licence in Luxembourg. Thus, it comes a bit of a surprise that both Amazon Marketplace and eBay are affected by the current investigations of BaFin. In the case of eBay the problem may be that the new payment system would have implied customer funds flowing through eBay accounts. We do not know, however, why eBay did not use PayPal with its banking license as provider of the new payment service. In the case of Amazon Marketplace, the open question is to what extent current payment activities are covered by Amazon's e-money license. Amazon says that its regulator in Luxembourg thinks that its activities are covered but that maybe BaFin will have different requirements.

The whole issue raises the principle question how to deal with eCommerce platforms that offer payment services. The PSD says: "However, it is not appropriate for that legal framework to be fully comprehensive. Its application should be confined to payment service providers whose main activity consists in the provision of payment services to payment service users." (PSD, recital 6). *If national legislators were to apply this principle, there would be no level playing field. Specialized PSPs would be regulated and some, potentially large,* *players offering payment services would go unregulated. Therefore, it seems understandable that BaFin is taking a closer look.*

The troubling part of the "German approach", however, is that German lawmakers have not included a waiver for small players and BaFin, once again proceeds with its "case-by-case" approach that creates a lot of uncertainty in the market. Contrast this with the UK where the FSA has set clear rules for "Small payment institutions": "Firms that do not intend to provide payment services on a cross-border basis and which have an average monthly turnover of no more than €3 million can apply for registration as a small payment institution and be exempt from authorization and prudential requirements."[4]

In addition, the administrative practice of the different European regulators is inconsistent. Whilst some regulators follow a strict administrative practice and do not see much space for exemptions, others seem to be more liberal. Legal expert specialised on payments Mr. Christian Walz (law company Aderhold in Munich) said: "As long as the national regulators are interpreting the same legal provisions in a different way, we won't have an internal market for payment services. We therefore need a Pan-European interpretation guideline for payment services."

Meanwhile, in Germany, companies like Lieferheld try to get out of the scope of payment regulators by changing their contracts. Lieferheld now acts as commercial agent on behalf of restaurants using its platform. As such it is allowed to receive payments on behalf of its clients without a PI license. It remains to be seen, however, whether BaFin and the courts will accept this set-up. Another question is, if it works for Lieferheld would it also work for the companies likeAmazon Marketplace?

4. Yet another faltering m-payment co-operation

Yet another joint m-payment initiative unwinds. The partners engaged in the Dutch "sixpack" (three banks, Rabobank, ING and ABN Amro and three telcos, KPN, Vodafone and T-Mobile)[5] announced that they would not continue their m-payment partnership.[6]

[4] FAS: One-minute guide - Payment services regulations http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/eu_legislation/payment_services_reg.shtml
[5] T-Mobile dropped out in 2011 already.
[6] See also "M-payments: Head: you win; tail: I lose" in the March/April edition of our newsletter and "DUTCH NFC JOINT VENTURE INITIATIVE DISBANDS", Mobile Paypers, Vol. 3 Issue 12,9 August 2012.

Our Comment

The end of sixpack does not come as a surprise.[7] *Partnerships between banks and telcos have turned out difficult to manage in the past. On top, regulators immediately stepped in to scrutinize the new partnership. This did not help. So, another hopeful cooperation in the field of m-payments comes to an end – and this happens at a time when the authorities are greatly concerned that Europe may fall behind in the fields of e-/m-payments.*[8]

M-payments have been touted as the next big thing for many years. But there are many unresolved issues:

- *Is there really a sound business case?*
- *If so, more at the POS or on the internet?*
- *Who owns the customer, telcos or banks?*
- *Will co-operative approaches get regulatory approval?*

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[7] See „M-payments: Head: you win; tail: I lose " in the March/April edition of this newsletter.
[8] See European Commission, GREEN PAPER. Towards an integrated European market for card, internet and mobile payments, COM(2011) 941 final, Brussels, 11.1.2012 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0941:FIN:EN:PDF) and our comments in the January 2012 edition of this newsletter.