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## Minutes

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### Minutes of the meeting of the MERCHANT ACQUIRING WORKSHOP

Held on 22 August 2012 - 9.30

At FSA, 25 The North Colonnade, London

Present:	Andrew McClelland, IMRG Howard Lewis, MasterCard Scott McInnes, MasterCard Mary Pothos, Visa Peter Moller Jensen, Visa Jonathan Capon, Visa Nina Soteri, Amex Craig Jones, UK Cards Paul Rodford, UK Cards Natasha Artym, Lloyds BG	Charles Latham, Lloyds BG Steven Bisoffi, Lloyds BG Alan Ainsworth, Barclays Freddie Grive, Barclaycard Eva Asch, Elavon Catherine Wrightam, HSBC Merchant Services Brian Garcia, HM Treasury Vyv Bronk, FSA (Chair) John Burns, FSA Alison Donnelly, FSA (minutes)
Apologies :	Anne Walters, BRC Richard Braham, BRC	Robert Jarrett, BIRA Richard Koch, UK Cards

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1.	<b>Introduction</b>	
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The Chair welcomed attendees and said that the purpose of this workshop is to discuss what a future regulatory regime for merchant acquiring might look like. The FSA is working closely with the Treasury on the issues likely to be considered by the European Commission for the review of the Payment Services Directive.

The FSA said that the Commission is required by the Payment Services Directive to report by 1 November 2012 on the operation of the directive and include any suggestions for its improvement. The Commission's green paper on card, internet and mobile payments is also relevant and the

Commission has indicated they will feedback 'by the end of the summer'. It was noted that the Parliament has only two years left to run so this consideration is likely to have a bearing on the depth of the review. It is clear from the drafting of the Payment Services Directive that merchant acquiring was not properly understood at the time of the drafting but that the Commission intended to bring it into regulation. The review affords the opportunity to consider how it should be regulated in future and it is not the FSA's intention to discuss *whether* merchant acquiring should be regulated at this meeting.

The Chair said that the FSA had been asked to make the following points clear.

- All of the discussions taking place in this meeting will be minuted and short minutes will be published on the website.
- All parties participating in this meeting, shall at all times comply with and be mindful of their responsibilities under competition law.
- Specifically, all parties acknowledge and agree that they must not discuss or disclose any commercially sensitive information (including details of sales volumes, strategy, internal business policies and processes, clients lists and details, information on input or supply costs or any other matter) in violation of the competition rules.
- The information exchanged at this meeting will only be used for the aforementioned purpose. The information exchanged at this meeting must only be sufficient for, and not superfluous to, this purpose.
- It is the responsibility of each attendee at this meeting to ensure that at all times they understand and comply fully with their legal responsibilities.

Attendees indicated their acceptance of the points.

2. **The definition of merchant acquiring**

The Chair invited attendees to consider the FSA's initial proposal to define merchant acquiring as: *the provision of services enabling a merchant to accept and receive payment from the issuer through a card scheme.*

The following comments were made.

- The word 'accept' should be deleted because the decision to accept this type of payment will have already been made before the merchant

contracts with the merchant acquirer.

- Payments are received from the customer/cardholder, not the card issuer.
- It was questioned whether the definition should be limited to payments through card schemes or be wider, especially in light of technological developments.
- It might be useful to clarify that merchant acquiring services do not entail issuing payment instruments. It was noted that the term 'payment instrument' is defined to include both personalised devices and a set of procedures used to initiate a payment order and therefore includes both instructions to transfer money online and payment by card.

3. **The areas of risk for users of merchant acquiring services**

The Chair invited attendees to consider the risks involved in merchant acquiring:

- Failure of acquirer before funds are transferred to merchant
- Levels of retention of funds/speed of settlement - how to balance risk to acquirers with fairness to merchants
- Responsibilities of acquirers in terms of the merchants they sponsor into the system

The FSA noted the concern that the failure of an acquirer, or an acquiring aggregator, can have a knock on effect on the merchant and its customers. It is important to define merchant acquiring as a distinct service in order to identify the risks involved and to establish appropriate prudential and conduct requirements. The Treasury clarified that the UK has already indicated to the Commission its support that merchant acquiring should be regulated, and suggested there is no realistic possibility of merchant acquiring being exempted.

The following comments were made.

- It was noted that the acquirer is liable to the merchant in the event of failure of the card issuer or the cardholder not paying (for example if there is an unauthorised transaction or a chargeback).
- It was suggested that safeguarding has not been clearly defined by the directives and it has not been applied consistently across the EU but it was observed that safeguarding is considered to be the solution to the risk of the acquirer failing.

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- It was questioned whether there should be a distinction between cards issued to commercial and non-commercial users but it was noted that acquirers treat both types of cards in the same manner.
- Contracting with merchants with poor fraud prevention measures in place is a risk for acquirers because of Section 75 of the Consumer Credit Act 1974 and chargeback obligations. MasterCard offers a settlement guarantee but it was noted that issuers have complained to the FSA and HMT that they are held liable. In the event that a merchant fails the acquirer will hold the risk of deposits paid or extended warranties. Attendees from card schemes commented that these processes depend on the circumstances of each transaction, and there is no succinct guide summarising this.
- In response to the FSA's suggestion that the directive could oblige acquirers to take responsibility for the merchants with which they contract, attendees said that this is already the case in practice and necessitated by anti-money laundering legislation.
- There was some support for the FSA's suggestion that aggregators could be prohibited from providing payment services as agents without first meeting some appropriate criteria but, instead, could be required to be either authorised or registered by the relevant competent authority as a prerequisite to being able to act as an agent. Authorisation or registration could be used to indicate that the aggregator had met minimum gateway standards including adequate initial capital.
- Alternative models of payment where the consumer pushes the money to an intermediary who then pays the merchant were discussed. In these cases the merchant does not have an acquiring agreement with the intermediary but sends the goods on the intermediary's request and the consumer does not benefit from Section 75 rights. Attendees felt that there should be a level playing field to benefit consumers. It was suggested that the definition of the payment service should be centred on receiving payment, with the merchant acquiring model as a subset of this category.
- Other models for receiving payments are overlay payment services and ACH (Automated Clearing House).
- It was noted that the risk profile of merchants is likely to be impacted by the Consumer Rights Directive changes which will increase consumers' right to cancel from seven days to 14 days and reduce the retailers' refund period from 30 days to 14 days. The two 14 day periods may overlap but do not run simultaneously. The risk to the retailer is reduced because even though the cancellation period has

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been extended the retailer is allowed to withhold the refund until the goods have been returned.

- The different settlement periods were discussed and it was noted that this is often a contractual and competition issue and not necessarily something that should be addressed in the directive because merchant acquiring is generally a business-to-business service.

4.

**Conclusion and next steps**

In conclusion, the Treasury stated that it is the Minister's preference that the Commission undertake a proper review of the directive to produce a coherent outcome that is technologically neutral.

The Chair thanked everyone for their contribution and noted that the draft minutes will be circulated shortly.