



**Tim Ehinger**  
Chief Counsel, EMEA  
tim.j.ehinger@aexp.com

Justisdepartementet, Lovavdelingen  
Att: Kaja Veel  
Postboks 8005 Dep  
0030 Oslo  
Norway  
BY EMAIL: kaja.veel.midtbo@jd.dep.no

JUSTISDEPARTEMENTET

25 MAR 2009  
SAKNR. 200900998  
ADM/INT/EP/LV  
DOKTIL. 29  
LVR/EP/ACH/RVM

**Private and Confidential**

20<sup>th</sup> March 2009

Dear Madam

Thank you for publishing for consultation your proposals for implementing legislation in Norway for the Payment Services Directive (PSD). We outline below our key comments on the proposal. These comments are in addition to the position papers previously sent to you on 19<sup>th</sup> June 2008 outlining our views on some of the key transposition issues covered by the PSD.

It is unclear to us whether the Government might be considering applying the "conduct of business" rules in Titles III and IV of the PSD to "two leg" transactions, where both the payee and payer's payment service provider are located in the EU/EEA region. To apply these rules to "one leg" transactions, in which only one payment service provider is located in the EU/EEA region, would go beyond the scope of the PSD (which is intended as a maximum harmonization directive) and result in significant and disproportionate operational burdens on a global basis, as outlined in our position paper from June last year (which we enclose herewith).

We are also pleased with the position taken with respect to the provision of payment transaction information, and in particular, that the provision of information may be provided electronically. This will help meet the objectives of both the PSD and the Lisbon Agenda to promote electronic payments and communications. We believe however that the draft legislation could be clearer in providing that charges may be levied (in line with actual costs) where consumers request paper statements.

We welcome the Government's proposal not to extend consumer protection rights to micro-enterprises. As you are probably aware, treating micro-enterprises as consumers would have placed a huge burden on payment service providers, as they would have had to screen all their commercial customers in order to identify and verify those that are micro-enterprises. This would have required access to information that is not readily available to the payment service provider through public channels because only the commercial customer itself would know if it qualifies as a micro-enterprise, which is determined by its number of employees and annual turnover. It would have also required payment service providers to establish special processes and systems for dealing with micro-enterprises, which would have increased costs for these customers. The burden on payment service providers would have been disproportionate to the benefits, if any, derived by micro-enterprises.

With respect to Article 52(3) PSD, the Government should prohibit surcharging, as this practice is detrimental to both consumer choice and protection, as well as to the efficient functioning of the payments sector. Guaranteeing the right to surcharge for the use of electronic payment instruments is (a) unfavourable to consumers (b) bolsters the power of large merchants vis-à-vis smaller merchants (c) ignores or undercuts the value that card acceptance brings to merchants and to society at large (d) inhibits the ability of new, electronic-based payment methods to emerge and gain popular acceptance and (e) undermines public policy aims to move away from paper-based payment methods. As the PSD recognises, banning surcharging can "encourage competition and promote the use of efficient payment instruments." We would, therefore, strongly urge the government to exercise its policy discretion to ban surcharging in accordance with Article 52(3). We have enclosed with this letter our full position paper on surcharging from June last year.

Under Article 45(3) PSD, payment service providers are permitted to terminate framework agreements subject to two months' notice. There is no restriction on the reasons needed for termination with such advance notice, and this should be reflected in the implementing legislation. We would add, however, that payment service providers should be given the right to terminate immediately in the event that a payment service user has materially breached the framework agreement.

We understand that Article 69 PSD (and related Articles), which provide for D+1 and D+3 payment periods, was not intended to apply to card payments. Any such application would be nonsensical in the context of card payments. The pay period for merchants submitting charges and receiving payment from their acquirers is a matter for negotiation on a case-by-case basis and in part a function of the price merchants pay for acquiring services. Obligations of payment between an acquirer and a merchant arise independently of those between a cardholder and issuer, or between an issuer and an acquirer. Often, the merchant is paid before funds are received from the cardholder. As the requirements on execution times and D+1/D+3 cannot be applied to credit and charge card transactions, we believe this should be explicitly stated in the implementing legislation.

Thank you for the opportunity to provide you with this further feedback. If you would find it helpful, my colleagues and I would be very happy to meet with you to discuss these important issues in more detail.

With kind regards



Tim Ehinger