

BA Legal Report

July 2015

Banking & Payment Systems

[Death of Cash Greatly Exaggerated But Change Continues Apace](#)

The results of this year's annual BRC Payments Survey, released today, confirm that cash remains the preferred payment method in the majority of transactions. Despite a slight decline cash continued to account for over 52 per cent of all transactions. However, the average value of transactions across all payment methods has fallen again this year. This provides yet more evidence of the continuing structural change in the retail industry.

Censorship & Defamation

[EIBF Reaffirms Booksellers' Support for Freedom of Speech, of Publishing and of Bookselling](#)

The European & International Booksellers Federation reaffirms its absolute belief in and support for freedom of speech, of publishing and of bookselling.

Companies & Competition

[Antitrust - Commission opens formal investigation into Amazon's e-book distribution arrangements](#)

The European Commission has opened a formal antitrust investigation into certain business practices by Amazon in the distribution of electronic books ("e-books"). The Commission will in particular investigate certain clauses included in Amazon's contracts with publishers. These clauses require publishers to inform Amazon about more favourable or alternative terms offered to Amazon's competitors and/or offer Amazon similar terms and conditions than to its competitors, or through other means ensure that Amazon is offered terms at least as good as those for its competitors.

The Commission has concerns that such clauses may make it more difficult for other e-book distributors to compete with Amazon by developing new and innovative products and services. The Commission will investigate whether such clauses may limit competition between different e-book distributors and may reduce choice for consumers. If confirmed, such behaviour could violate EU antitrust rules that prohibit abuses of a dominant market position and restrictive business practices. The opening of proceedings does not prejudice in any way the outcome of the investigation.

[BA leads way in Amazon competition inquiry](#)

The UK Booksellers Association has taken a lead role in pressing for a regulatory investigation into Amazon, *The Bookseller* can reveal. The association submitted a dossier to the Competition and Markets Authority last November about Amazon's "domination" of the UK market, which it believes paved the way for the European Commission to begin its formal anti-trust investigation of the retailer. The BA described it as the "biggest lobbying job" it had undertaken, and expressed delight at the outcome.

[UK trade welcomes Amazon probe](#)

The trade has welcomed the European Commission's investigation into Amazon's e-book business, with publishers, agents and booksellers calling for a fairer digital marketplace for books. Richard Mollet, c.e.o of The Publishers Association, added: "For some time now we have been calling on competition authorities to look in to the imbalance in the book retail market. Today's announcement from the Commission is therefore a welcome development." Meanwhile, Sam Edenborough, president of the Association of Authors Agents, said its members would be "glad" the Commission was taking an interest in an area its had had previous concerns about, "because we're keen to see the best competitive conditions for British retailers in the UK market and in Europe".

[Why the EU-Amazon fight was inevitable](#)

Five key reasons that fuelled the long march against Amazon that ended in Thursday's announcement of an EU probe:

- The war against Amazon
- Daggers drawn with Hachette
- Germany: How to make friends and alienate people
- Audio-book makers are up in arms
- Undercutting rivals on VAT

[MFN clauses threaten validity of publishers' Amazon contracts](#)

Publishers' contracts with Amazon could become void if the European Commission (EC) finds that the online retailer has acted illegally in terms of its e-book distribution practices and its relationship with publishers. Lawyers have warned that if the EC investigation instigated this month finds that Amazon's Most Favoured Nation (MFN) clauses in contracts with publishers make it difficult for other e-book distributors to compete and are detrimental to customers, then publishers may have to renegotiate with the e-commerce giant.

Who's Your Most Favoured?

The phrase "Most Favoured Nation" is almost dashing. It enters a conversation with a frisson of international trade-mission largesse. [The European Commission wants to know](#) if MFN clauses are now present in all or a majority of Amazon's contracts with publishers. If they are, do they breach "rules that ban anti-competitive agreements (Article 101) and abuses of dominance (Article 102)"? As Robinson puts it, "Under a Most Favoured Nation clause, a publisher must tell the distributor if it gives a better price and/or distribution deal to any other party, and it must then offer the same, or sometimes better, terms to that distributor...The problem is that MFN clauses reduce competition between distributors because several (or all) of them will potentially receive exactly the same products, at the same prices, at the same time. This limits their ability and incentive to put forward a more competitive offer to consumers."

Consumer Protection

ADR Directive - delay to coming into force date for business information requirements

The final regulations to complete UK implementation of the Directive will now come into force on 1 October 2015. These provisions oblige all businesses which cannot resolve the complaint with the consumer and who have exhausted their own internal, complaints-handling process, to give the consumer details of a certified ADR provider and indicate whether or not they intend to use them to try and settle the dispute.

- Bringing them into force on 1 October will align with the common commencement date which is also the same day that comprehensive changes to consumer law are being introduced by the Consumer Rights Act: This will make it clearer for consumers and traders as all the main changes to consumer law will all come into force on the same day.
- Competent authorities will have more time to certify ADR providers: Whilst on track to certify most ADR providers seeking certification by 9th July, there may be some who are not certified on time so the delay will mean certified ADR providers will not have a competitive advantage over those still waiting.
- There will be more time for business to familiarise themselves with their obligations:

Comprehensive guidance on the regulations will be available for both business and consumers and will be published shortly on the Chartered Trading Standards Institute and Consumers Direct websites respectively. Contrary to the claims of some ADR bodies trying to win contracts, participation in an ADR arrangement is totally voluntary for retailers.

[CMA acts to maintain trust in online reviews and endorsements](#)

The CMA has found that online reviews and endorsements are proving useful to consumers, but it has concerns that some practices may be unlawful. The Competition and Markets Authority (CMA) opened a call for information on online reviews and endorsements in February this year. In a [report published today](#) it estimates that more than half of UK adults (54%) use online reviews, and that 6% use blogs or vlogs before making purchases. Most buyers who used reviews and endorsements found that the product or service they bought matched up to their expectations. However, the CMA has also heard about instances of potentially misleading practices:

- fake reviews being posted onto review sites
- negative reviews not being published
- businesses paying for endorsements in blogs and other online articles without this being made clear to consumers

[CMA probe 'should clean up fake book reviews'](#)

Fake reviews are still “rife” in the industry and most authors have been subjected to it, the author who exposed the sock puppetry scandal of 2012 has said. Jeremy Duns was speaking after the UK Competition and Markets Authority (CMA) revealed it has launched an investigation into fake online reviews. The body is using its consumer enforcement powers to investigate “a number of companies” in connection with the potential non-disclosure of paid endorsements after hearing about potentially misleading and illegal practices.

Copyright & Piracy

[EU copyright reform must balance rightholders' and users' interests, say MEPs](#)

Forthcoming proposals to reform EU copyright law for the digital era and EU digital single market must protect Europe's cultural diversity and citizens' access to it, whilst striking a fair balance between the rights and interests of rightholders and users, say Legal Affairs Committee MEPs in a non-legislative resolution.

[PA 'busts myths' on copyright](#)

The Publishers Association has released a paper ["Copyright and the Digital Single Market: Busting the Myths"](#) intended to expose “major myths and inaccuracies” around copyright and the digital single market. The paper will be promoted to key stakeholders, including politicians and officials both in the UK, where the government is starting to formulate its position on the European Commission's digital single market strategy, and in Brussels.

[Fair Contract Terms & Copyright](#)

The Society of Authors is campaigning vigorously at a national, European and worldwide level to guard authors against onerous contracts and to ensure copyright is protected as a means of ensuring that creators are remunerated.

[Australia Passes New Law to Stem the Tide of e-Book Piracy](#)

Australia has just passed a new law that would require internet service providers to block websites that show pirated material, such as e-books. The websites are not up to the internet companies, instead publishers and rights holders have to make a case to the Federal government and demand sites whose "primary purpose" is the illegal sharing of copyrighted material be blocked.

[French Magazine Fined €10,000 for Encouraging Piracy](#)

The music industry has won a landmark ruling in France where a local magazine was fined €10,000 for showing readers how and where pirated films and music can be downloaded. The ruling is the first of its kind and serves as a warning to other publications that write about online piracy.

[Alibaba and IPCC are committed to ensure that infringement of copyrights is dealt with properly to protect interests of authors](#)

Alibaba Group Holdings has joined hands with the International Publishers Copyright Protection Coalition of China to strengthen collaboration, in order to combat copyright infringement. For that purpose, both the bodies have signed a Memorandum of Understanding (MoU). The new pact will further broaden the scope of the previous alliance that was signed between the two companies in 2011.

Employment

Budget 2015 Key Points

Wages

- Introducing a new National Living Wage set to be £9 p/h by 2020, to begin next April and will be compulsory
- Low Pay Commission will recommend future rises and the NL Wage will be at least 60 per cent of median earnings by 2020
- For SMEs –employment allowance is rising to £3,000 which will allow small firms to employ four people on the NLW without paying any national insurance
- Effect on corporate profits is offset by announcement that corporation tax is going down to £18,000 by 2020

Education and Skills

- Apprenticeship levy introduced on all large firms. Firms that offer apprenticeships will get more back than they put in
- Tuition fees to rise in line with inflation if universities reach certain teaching standards
- From 2016/17 maintenance grants will be replaced with new loans for students that only get paid back when earning over £21,000. Increase of maintenance loans to £8,200
- Consult on freezing loan repayment threshold of £21,000 for five years

[Britain's fastest-growing companies to support apprenticeship recruitment](#)

Business Secretary Sajid Javid has announced a new scheme to place apprentices in small and medium companies quoted on AIM, London Stock Exchange's growth market for ambitious small and medium businesses.

Acas Guide on Pay

Acas has published new guidance to help employers get pay issues right and avoid costly mistakes. The new step-by-step guide 'Handling pay and wages' includes: understanding the basics, choosing a pay system, paying new staff, wage slips, deductions and overpayments, pay during absences from work and ending employment.

The new guidance is available at www.acas.org.uk/payguide.

Environment & CSR

Charges for single-use plastic carrier bags

All retailers with over 250 full-time equivalent employees will have to charge a minimum of 5p for the single-use plastic carrier bags that they provide, for shopping in store and for deliveries. This charge is not a tax and the money will not go to the government. Profits from the scheme are expected to be donated to good causes chosen by the retailers. They will have to report by 31 May each year on the number of bags they have given out, and on what they have done with the money generated by the scheme. The scheme aims to reduce the use of single-use plastic carrier bags, and the litter associated with them, by encouraging people to re-use bags or to use "bags for life".

Guidance for retailers: [Carrier bag charges: retailers' responsibilities](#)

Loss Prevention

Government Crime Prevention Strategy

Home Office officials have confirmed that they will be producing a new crime prevention strategy to address the key drivers of crime. This will include how to prevent crimes affecting businesses and whether there is a greater role for the private sector in achieving this. It is anticipated that informal consultation on the key strands of the strategy will commence within six months. The BRC will work with officials on relevant elements of this and engage with members as necessary via the Heads of Security Committee.

Police Response to Fraud

As the National Lead Force for fraud, the City of London Police has announced that it will be creating an Economic Crime Prevention Centre. This will act as a national hub to develop relationships with industry, academia and others to strengthen fraud prevention activity and awareness. The BRC already has established working relationships with City Police and will continue to work constructively with them to ensure that the interests of retailers are taken into account as this work progresses.

Pricing

[Apple loses e-book price fixing appeal](#)

Apple did conspire with publishers in the US to fix the prices of e-books, an appeal court has found. The company had appealed against an earlier decision that said Apple and publishers were guilty of conspiring to raise the prices of e-books. Apple appealed the decision and yesterday the Second Circuit Court of Appeals upheld Cote's decision.

Property & Rates

[More than 80,000 shops could close by 2017 without overhaul of business rates](#)

More than 80,000 shops face closure by 2017 unless the Government drastically overhauls the business rates tax system, the retail industry has warned in a comprehensive study of the controversial tax.

BRC Business Rates Structural Review Submission

The BRC has made its submission to the Government's business rates review. The submission makes the case for fundamental reform including a roadmap and vision for business taxation in addition to short-term measures such as the extension and expansion of retail relief.

BRC Business Improvement District Review Submission

The BRC has submitted its response which focusses on accountability and transparency of BIDs. The submission recommends a minimum turnout of 30-35 per cent during the balloting process and incentives for BIDs if they achieve 50-55 per cent turnout and a 65-70 per cent yes vote.

Sales Promotion

[George Osborne to shake up Sunday trading laws](#)

George Osborne will hand responsibility for Sunday trading laws in England and Wales to towns and cities, allowing them to decide how long shops can stay open, in a move that will put an end to the ban on large stores staying open for more than six hours. Osborne has decided that verdicts on similar relaxations of the law should in future be taken at a local level, so that areas that think longer opening hours would boost economic activity would be free to do so. There will be a consultation on two proposals: devolving power over Sunday trading law to elected mayors, and also to local authorities.

Taxation & VAT

Budget 2015 Key Points

- Rise in Insurance Premium Tax to 9.5 per cent effective from November 2015
- Reducing corporation tax rate to 19 per cent in 2017 and 18 per cent in 2020
- Personal allowance will rise to £11,000 next year, from £10,600 at the moment
- Once the £12,500 goal is met, the threshold will be tied to the minimum wage
- The 40p threshold will be £43,000 from next year, up from £42,385 - set to reach £50,000 by 2020
- Stop corporates artificially increasing the value of stock for tax purposes
- Annual Investment Allowance set at £200,000 to the end of the parliament (it was due to move back to £10,000)
- Simplify the taxation of dividends, replace dividend tax credit with a tax-free allowance of £5,000 of dividend income for all taxpayers
- The rates of dividend tax will be set at 7.5 per cent, 32.5 per cent and 38.1 per cent
- Corporation tax will fall to 19 per cent in 2017, then 18 per cent in 2020
- Up to £1m can be passed on without inheritance tax
- Fuel duty will remain frozen this year

[Commission launches public consultation on corporate tax transparency](#)

The European Commission has launched a public consultation on corporate tax transparency in the EU. This consultation aims to find out whether requiring companies to disclose more information about the taxes they pay could help tackle tax avoidance and aggressive tax practices in the EU. For instance, companies could be required to disclose the taxes they pay, in every country where they operate. The fight against corporate tax avoidance is a top priority of this Commission. The consultation is part of the broader Action Plan for Fair and Efficient Corporate Taxation. The closing date is 9 September 2015 and text of the public consultation can be found [here](#).

Commission Action Plan for Fair and Efficient Corporate Taxation in the EU

Today the Commission presented an Action Plan to fundamentally reform corporate taxation in the EU. The [Action Plan](#) sets out a series of initiatives to tackle tax avoidance; secure sustainable revenues and strengthen the Single Market for businesses. Collectively, these measures will significantly improve the corporate tax environment in the EU, making it fairer, more efficient and more growth-friendly. [Key actions](#) include a strategy to re-launch the Common Consolidated Corporate Tax Base (CCCTB) and a framework to ensure effective taxation where profits are generated. The Commission is also publishing a first pan-EU list of third-country non-cooperative tax jurisdictions and launching a public consultation. For more information, see:

[Q&A on Action Plan](#)

[Q&A on CCCTB Re-launch](#)

[Website on non-cooperative tax jurisdictions](#)

ec.europa.eu/fair-taxation

http://europa.eu/rapid/press-release_IP-15-5188_en.htm

[MEPs call for reform of microbusiness VAT](#)

European parliamentarians have called on the European Commission to propose reforms to the European Union's (EU) VAT Mini One-Stop Shop (MOSS) system, claiming it is forcing small publishers out of the intra-EU export market.

Scottish Commission on Local Tax Reform

The SRC gave oral evidence to the Scottish Commission on Local Tax Reform, which is examining the possible replacement or reform of the council tax in Scotland. Council tax generates £1.9 billion in tax revenues each year and any replacement or reformed tax might have implications for consumer spending, for business rates or other local charges affecting retailers. The SRC rejected suggestions that control over the business rate poundage be repatriated to councils and urged fundamental reform.