



ECN SUBGROUP Banking and Payments

INFORMATION PAPER ON COMPETITION ENFORCEMENT IN THE PAYMENTS SECTOR

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EDITORIAL

Dear Reader,

The European Central Bank estimates that retail payments account for up to 25% of total bank revenues. An efficient, secure and fully integrated EU payments market is therefore an important goal in its own right. But more importantly it is essential for the functioning of the EU internal market itself. At the same time, banks and other payment service providers need to work together to allow their payment systems to be inter-operable. This sort of co-operation between competitors, if it goes beyond what is strictly necessary, may raise real concerns for competition authorities. The payments markets have therefore been closely scrutinised by the European competition authorities as this Information Paper illustrates.

The adoption of the EU Regulation on euro credit transfers and direct debits on 28 February 2012 will have real benefits for consumers and payment providers when it enters into force in 2014. Consumers will be able to use these efficient means of payment throughout Europe as easily and cheaply as they can domestically. They will therefore not need to maintain accounts in different countries in the Eurozone. For payment service providers and payment processors, common standards and economies of scale will make payments more efficient and will make it easier to expand and compete throughout Europe. In the longer term, and probably more importantly, the roll-out of SEPA credit transfer and direct debit will allow for the development of innovative cross-border payment products, for example for internet or mobile payments.

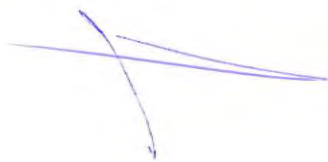
With this in mind, the Commission has decided to take a closer look at the European landscape of card, internet and mobile payments. The Green Paper that was adopted on 11 January 2012 launches a consultation on the obstacles to fully integrated, competitive markets in these areas and ways to address these barriers. The overall goal is to stimulate the development of secure and transparent European-wide payment services based on 21st century technologies. The widespread use of these new means of payment will enable consumers and companies to benefit fully from the internal market, including e-commerce.



The banking and payments subgroup of the European Competition Network has prepared this overview of the work done by EU competition authorities in the payment sector. It shows how much time and energy the national and EU authorities have devoted to payments. Many of the cases and inquiries address issues also raised in the Green Paper. For instance, in a number of Member States decisions concerning interchange fees were adopted. In other countries internet payments and withdrawals from ATMs are or have been subject to investigation. A variety of other tools such as sector inquiries and market studies have also been used by authorities all over Europe to foster competition.

This Information Paper aims to contribute to the reflection triggered by the Green Paper and its next steps by providing 'food for thought'.

On behalf of all ECN Members, I wish you interesting reading!



Alexander Italianer



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Competition Authority	Cases/ Studies
Commission	<ul style="list-style-type: none"> • Case (Decision 2007) on MIFs on cross-border and certain domestic transactions on MasterCard consumer debit and credit cards: the Commission adopted a prohibition decision. Appeal is pending. • Case (Decision 2001/2002) on MIFs on cross-border transactions on Visa consumer credit and debit cards & on certain scheme rules: regarding the scheme rules the Commission adopted a negative clearance decision. Concerning the MIFs, the Commission granted a temporary exemption. The exemption expired in 2007. • Case (Decision 2010) on MIFs on cross-border and certain domestic transactions on Visa consumer debit cards: the Commission adopted a commitment decision according to which the MIF was reduced to 0.2% of the actual transaction cost. Proceedings on MIFs for credit cards continue. • Case (Decision 2007) on Visa's refusal to admit Morgan Stanley as a member to the Visa scheme: the Commission adopted a prohibition decision; the decision was upheld by the General Court. • Case (Decision 2007) on certain pricing measures of Groupement des Bancaires: the Commission adopted a prohibition decision; appeal is pending. • Case (ongoing): antitrust investigation into the standardisation process for payments over the internet ('e-payments') undertaken by the European Payments Council (EPC). • Study (2005) on financial services in the European Union in retail market products and payment cards and payment systems. • Regulation (2011) of the European Parliament and of the Council on establishing technical requirements for credit transfers and direct debits (SEPA End-dates Regulation): soon to be ratified by the European Parliament and the Council. • Green Paper: 'Towards an integrated European market for cards, internet and mobile payment'
Austria	<ul style="list-style-type: none"> • Case (Decision 2007) on MIFs on debit card transactions: the NCA imposed a fine on the payment system provider. The Decision was upheld on appeal.

Belgium	<ul style="list-style-type: none"> • Case (Decision 2006) on MIFs on excessive prices in the market of electronic payment terminals: the NCA adopted a commitments decision.
Cyprus	<ul style="list-style-type: none"> • Case (ongoing) on domestic MIFs on credit and debit cards transactions: investigations against issuers/acquirers and banks have been initiated.
Czech Republic	<ul style="list-style-type: none"> • Study (2009) on payment card market
Denmark	<ul style="list-style-type: none"> • Study (2006) domestic MIFs on debit cards transactions: the NCA conducted the study in order to determine whether the domestic debit card scheme's MIFS were in compliance with the Act.
Estonia	<ul style="list-style-type: none"> • Case (closed February 2012): the Estonian Competition Authority has terminated the proceedings of the interchange fees for card payments in connection with the substantial reduction of the fees
Finland	<ul style="list-style-type: none"> • Study (2011) on MIFs on Visa and MasterCard consumer debit and credit cards transactions: national bank cards in Finland are currently replaced by the debit cards of Visa and MasterCard.
France	<ul style="list-style-type: none"> • Case (Decision 2010) on MIFs on cheques and connected financial services: the NCA adopted a prohibition decision and fined several banks with a total of € 300 Mio. • Case (Decision 2011) on MIFs on "CB" payment cards: the NCA adopted a commitments decision. • Opinion (2009) regarding surcharging.
Germany	<ul style="list-style-type: none"> • Case (Decision 2001) on notification of the introduction of MIFs for domestic debit transactions: a request for exemption was withdrawn. • Case (Decision 2011) on terms and conditions for ELV: the case concerned the amendment of inter-bank agreements and standard terms and conditions with regard to national direct debit and SEPA direct debit transactions. Closure of the case after a compromise with the NCA had been found. • Case (ongoing) on restriction of online banking users in their choice of payment services providers: amicus curiae intervention of NCA in civil law procedure. • Case (ongoing) on domestic MIFs on Visa and MasterCard credit cards transactions: investigations were initiated as response to complaints of retailers. • Case (ongoing) on merchant fee for three-party national debit card scheme: formal procedures have been opened and negotiations are ongoing.

Greece	<ul style="list-style-type: none"> • Case (Decision 2008) on MIFs on debit card transactions and additional financial services: a commitment decision was adopted; the decision expired in August 2010.
Hungary	<ul style="list-style-type: none"> • Case (Decision 2008) on the setting of uniform interchange fees for Visa and MasterCard card transactions: the NCA's decision was appealed and a judgement is pending. The judgement is suspended until the General Court's judgment in the MasterCard case. • Study on payment cards transactions under a wide selection of merchants
Italy	<ul style="list-style-type: none"> • Case (Decision 2010) on MIFs on domestic MasterCard transactions: the NCA imposed a fine on MasterCard as well as on 8 national banks, decision rejecting commitments was upheld in appeal, decision imposing a fine still subject to appeal. • Case (Decision 2010) on MIFs for domestic PagoBANCOMAT debit card transactions: the NCA adopted a commitments decision. • Case (Decision 2010) on MIFs for national direct debit services: the NCA adopted a commitment decision. • Case (Decision 2010) on MIFs for ATM cash withdrawal: the NCA adopted a commitment decision. • Case (Decision 2009/2010) on MIFs on other national payment services (checks, etc): the NCA adopted a commitment decision.
Latvia	<ul style="list-style-type: none"> • Case (Decision 2011) on MIFs on credit and debit card transactions and cash withdrawals: the NCA imposed a fine on Latvian banks. An appeal against the decision is currently pending.
The Netherlands	<ul style="list-style-type: none"> • Study (ongoing) on fees and tariff structures for payment services: monitoring of prices is expected to indicate possible effects of SEPA-migration to prices of payment services.
Poland	<ul style="list-style-type: none"> • Case (Decision 2006) on MIFs on domestic Visa and MasterCard cards transactions: the NCA's prohibition decision has been challenged in appeal, the case is pending.
Romania	<ul style="list-style-type: none"> • Study (ongoing) on MIFs credit, debit and commercial cards transactions.
Slovenia	<ul style="list-style-type: none"> • Case (Decision 2006) on cancellation of standing order as payment method: the NCA fined the banking association. Its decision was upheld in appeal. • Case (closed 2007) MIFs on ATM cash withdrawal: the NCA fined several banks. Its decision was upheld in appeal

Spain	<ul style="list-style-type: none"> • Case (Decision 2010) on MIFs on credit and debit cards: a settlement agreement was reached; the monitoring of the adherence to the agreement was terminated in 2010. The decision to terminate the monitoring was appealed, a judgement is pending.
UK	<ul style="list-style-type: none"> • Case (Decision 2005) on domestic MIFs on MasterCard consumer credit and charge cards: the NCA adopted a prohibition decision which was set aside on appeal. • Case (ongoing) on domestic interchange fees for Mastercard, including Maestro, and Visa consumer credit, charge, deferred debit and immediate debit cards: the UK (with the NCA as lead Department) intervened in support of the Commission in the appeal proceedings brought by MasterCard, and is awaiting the judgment of the General Court in that case. • Other completed work: see links in the Newsletter
Norway	<ul style="list-style-type: none"> • Case (ongoing) on MIFs on all types of Visa and MasterCard card transactions: no statement of objections has been issued yet.
Switzerland	<ul style="list-style-type: none"> • Case (Decision 2005) on domestic MIFs on Visa and MasterCard credit card transactions: the NCA adopted a commitment decision which expired in February 2010. • Case (Decision 2005) on domestic MIFs on Visa and MasterCard credit card transactions: follow-up to the expiration of the settlement agreement. A new settlement was reached. • Case (Decision 2009) on introduction of MIFs on Visa debit cards: preliminary investigation only, the NCA concluded that no intervention was necessary. • Case (Decision 2003) on the Non-Discrimination Rule: the NCA adopted a prohibition decision which was appealed. The issue was solved after the rule had been abolished within the framework of the above-mentioned settlement from 2005. • Case (Decision 2010) on refusal to provide interface information needed for interoperability: payment terminal manufacturers were fined CHF 7 Mio. • Case (Decision 2006) on MIFs on ATM withdrawals: only preliminary investigations have been conducted, no further action was taken. • Case (ongoing) on acquiring fees on Maestro transactions: preliminary investigations into the abuse of a dominant position by Maestro have been initiated.

COMMISSION

I. Cases on interchange fees

A. MASTERCARD

Parties: MasterCard Europe SPRL (scheme)

Legal basis: Article 101(1) TFEU and Article 53 EEA agreement

Subject: MIFs for cross-border and certain domestic transactions within the EEA using MasterCard branded consumer credit cards and MasterCard or Maestro branded debit cards

Outcome: Prohibition decision (Decision 2007/C 264/04 on 19 December 2007) and unilateral undertakings from MasterCard (1 April 2009)

Date: 19 December 2007 (Prohibition decision)

The investigations leading to the MasterCard decision were initially based on a series of notifications that MasterCard's legal predecessor, Europay International S.A., had submitted between May 1992 and July 1995, as well as on complaints by British Retail Consortium (BRC) of March 1992 and, by EuroCommerce of May 1997. On 22 November 2002 the Commission opened an **ex officio investigation regarding MasterCard's** intra-EEA interchange fees for commercial cards. On 24 September 2003 and 21 June 2006 the Commission sent two Statements of Objections to MasterCard Europe SPRL, the legal successor of Europay, as well as to MasterCard International Inc. and MasterCard Incorporated addressing the organisation's network rules and decisions on intra-EEA interchange fees.

With regard to MIFs, MasterCard applied a business model in which a mechanism was in place that effectively determined a minimum price merchants had to pay for accepting MasterCard branded cards. This MIF was applied to virtually all cross-border card payments in the EEA and to domestic card payments in Belgium, Ireland, Italy, the Czech Republic, Latvia, Luxemburg, Malta and Greece. The Commission took the view that MasterCard's MIF restricted competition due to the fact that the fee inflates the base on which acquiring banks charge prices to merchants for accepting MasterCard payment cards. As the MIF accounts for a large part of the final price businesses pay for being able to accept payment cards, the creation of an artificial price floor by imposing a MIF is in principle liable to restrict price competition and constitutes an infringement of Article 101 TFEU.

MasterCard argued that its MIF contributes to a maximisation of the system's output and should therefore be eligible for an exemption under Article 101(3) TFEU. During four years of investigation, however, MasterCard failed to submit the required empirical evidence to demonstrate any positive effects on innovation and efficiency which would allow passing on a fair share of the MIF benefits to consumers.

On 19 December 2007, the Commission issued a prohibition decision ordering MasterCard to cease and desist from determining in effect a minimum price merchants must pay for accepting payment cards by way of setting Intra-EEA interchange fees within 6 months of notification of the decision to the parties.

On 1 April 2009, MasterCard submitted to the Commission unilateral undertakings with respect to its intra-regional MIFs for consumer credit and debit cards and certain other network rules in particular i) unblending of MSCs, ii) publication of all MasterCard-set

MIFs, iii) maintenance of separate HACR for MasterCard and Maestro cards, iv) possibility of having multiple acquirers for merchants, v) commercial cards identifiable by merchants, vi) information of merchants on permissibility of surcharging, and vii) reversal of the scheme fee increases. Most importantly, MasterCard undertook to ensure that the weighted average level of the credit card MIFs does not exceed 0.30% and that the weighted average level of the debit card MIFs does not exceed 0.20%. The basis for determining the maximum weighted average levels was the Merchant Indifference Test.

MasterCard appealed the decision. The hearing in the court case took place before the General Court on 8 July 2011.

See also:

[Press release on the Decision](#)

[Press release on the undertakings](#)

B. VISA: COMMITMENTS DECISION

Parties: VISA Europe Limited, Visa Inc. and Visa International Services Association (Visa scheme)

Legal basis: Article 101(1) and (3) TFEU and Article 53 EEA agreement

Subject: MIFs for cross-border and certain domestic¹ transactions within the EEA using Visa branded consumer debit cards

Outcome: Decision accepting commitments (Decision 2011/C 79/05 on 8 December 2010)

Date: 8 December 2010

In March 2008, the European Commission opened formal anti-trust proceedings against Visa Europe Limited in relation to its multilateral interchange fees for cross-border and certain domestic point of sale transactions with VISA, VISA Electron and V PAY consumer immediate debit payment cards within the EEA and to the 'Honour-All-Cards-Rule', as it applies to these transactions. On 3 April 2009, the Commission adopted a Statement of Objections against Visa Europe Limited, Visa Inc. and Visa International Services Association, the concern of which was that the MIFs have as their object and effect an appreciable restriction of competition in the acquiring markets to the detriment of merchants and, indirectly, their customers. The MIFs appeared to inflate the base on which acquirers set merchant service charges by creating an important cost element common to all acquirers. The restrictive effect in the acquiring markets is further reinforced by the effect of the MIFs on the network and issuing markets as well as by other network rules and practices such as the Honour All Cards Rule, the No Discrimination Rule as well as blending and application of different MIFs to cross-border as opposed to domestic acquirers.²

In order to meet the Commission's competition concerns and for settling the procedure with regard to the segment of immediate debit cards, Visa offered to commit to a reduction of MIFs imposed on certain transactions initiated by using a direct debit card. Within this context Visa Europe committed to cap its yearly weighted average cross-border MIFs applicable to transactions with its consumer immediate debit cards at 20 basis points (0,2 %). The cap will also apply separately in each of those EEA countries for which Visa Europe directly sets specific domestic consumer immediate debit MIF rates

¹ The countries where the immediate debit MIFs are set by Visa Europe and Visa Europe immediate debit cards are issued are Greece, Hungary, Iceland, Ireland, Italy, Luxembourg (pre-paid cards only), Malta, the Netherlands (pre-paid cards only), and Sweden.

² Summary of Commission Decision of 8 December 2010 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement. 2011/C 79/05. & 5.

and in those EEA countries where the cross-border MIF rates apply in the absence of other MIFs. In addition, Visa Europe committed to continue to implement and to further improve its transparency measures. In particular, the commitments provide for the unbending of merchant service charges, the registration and publication of all MIF rates, the full visibility and the electronic identification of commercial cards, the unbundling of acquirers, and the possibility for merchants to freely choose to accept VISA, VISA Electron, or VPAY debit cards.

The Commission accepted the commitments offered by Visa Europe and made them binding by adopting a decision on 8 December 2010. The proposed maximum weighted average MIF may be modified by the Commission, in agreement with Visa, if reliable new information comparing the cost of cards to the costs if cash becomes available. Currently, the reduction of the MIF to 0.20% of the actual transaction costs reflects the application of the Merchant Indifference Test, which seeks to establish the MIF at a level at which merchants have no preference whether a payment is made with a debit card or with cash. Within this context, the European Commission presently conducts a study which aims at assessing the costs of these two payment instruments to merchants. The commitments will be binding on Visa Europe for a period of four years. The Commission may re-assess the competitive situation on the market after the commitments have expired. This decision, however, does not cover MIFs for consumer credit and deferred debit card transactions which the Commission will continue to investigate. The commitments are also without prejudice to the Commission's right to initiate or maintain proceedings against Visa Europe's network rules such as the 'Honour All Cards Rule', the rules on cross-border acquiring, MIFs for commercial card transactions, and Inter-Regional MIFs.

See also: [Overview](#)

C. VISA I and VISA II

Parties: VISA International (scheme)

Legal basis: Article 101 (1) and (3) TFEU and Article 53 EEA agreement

Subject: rules and regulations of Visa's scheme for payment cards, multilateral interchange fees (MIFs) on cross-border payment transactions with Visa consumer cards within the EEA

Outcome: two independent Commission decisions: negative clearance decision (VISA I, Decision 2001/782/EC on 9 August 2001) and temporary exemption with conditions (VISA II, Decision 2002/914/EC on 24 July 2002)

Date: 9 August 2001 (VISA I); 24 July 2002 (VISA II)

VISA I and VISA II constitute the European Commission's first antitrust decisions in the field of international payment cards.

On 1977, Ibanco Ltd, since 1979 known as Visa International, notified various rules and regulations governing Visa International and its members to the Commission, applying for negative clearance under what is now article 101 (1) TFEU or an exemption under article 101 (3) TFEU. After the Commission had initially sent a comfort letter, investigations were reopened in 1992 following complaints by the British Retailer Consortium and EuroCommerce, concerning various aspects of *inter alia* Visa's international payment cards scheme, in particular interchange fees. After a thorough investigation, the Commission adopted a favourable position with regard to certain provisions concerning in the international payment scheme (VISA I Decision), while at the same time issuing a Statement of Objections in relation to Visa's interchange fees (leading to VISA II Decision).

'VISA I' Decision

In its VISA I decision, the Commission granted a negative clearance under Article 101(1) TFEU/Article 53(1) EEA with regard to a number of rules of Visa International. Amongst the rules concerned by this decision were the 'No Discrimination Rule', a rule prohibiting merchants from charging customers a fee for paying with a Visa card, or offering discounts for cash payments; the 'Honour All Cards Rule', which obliges merchants to accept all valid Visa branded cards, irrespective of the identity of the issuer, the nature of the transaction and the type of card being used; and the 'NO Acquiring Without Issuing Rule' that was held to promote the development of the system. Parts of these rules were cleared on the grounds of lack of appreciable or restrictive effect, without prejudice to market conditions evolving. This decision explicitly did not cover the interchange fees issue.

Separately from the VISA I decision described above, the Commission issued a second decision concerning Visa's inter-regional multilateral interchange fee.

See also: [Decision](#)

'VISA II' Decision

In its decision VISA II, the Commission temporarily exempted, under certain conditions, the intra-regional interchange fee scheme of Visa International for consumer cards (credit cards, deferred and immediate debit cards), as applied to cross-border point of sale Visa card payment operations between EEA Member States, under article 101 (3) TFEU and article 53 (3) EEA. The decision rejects the argument that the intra-regional MIFs were 'by their nature' outside of the scope of article 101 (1) TFEU/article 53 (1) EEA, nor could they be regarded as ancillary restraint. The decision also holds that the multilateral setting of the Visa MIFs between competing banks constitutes a restriction of competition within the meaning of Article 101(1). The Commission concludes, however, that a multilaterally fixed interchange fee can lead to beneficial efficiencies and economies within a payment network and can benefit from an exemption under Article 101 (3) TFEU under certain conditions. In this perspective, the following obligations were imposed on Visa by the Commission:

- Visa has to reduce the level of its MIF for the different types of consumer cards. For credit card payments, Visa has to decrease the weighted average MIF in stages from 1.1% to a level of 0.7% in 2007. For debit card transactions a flat-rate MIF of €0,28 had to apply before the end of 2002 for the period of five years;
- MIF have to be capped at the level of costs for certain specific services **provided by issuing banks, which in the Commission's view correspond to services provided by cardholders' banks which benefit those retailers who ultimately pay the cross-border MIF.** These services are: transaction processing, payment guarantee and free funding period. This ceiling applies regardless of the reductions in the level of the MIF offered by Visa (that is, if the cost cap is below 0.7%, then the MIF will have to be below 0.7%);
- Furthermore, Visa has to allow member banks to reveal information about the MIF levels and the relative percentage of cost categories to retailers at their request. Retailers are to be informed of this possibility.

The exemption was valid until 31 December 2007, after which the Commission made use of its freedom to re-examine the Visa MIF system in the light of the effects of the revised MIF market.

See also: [Decision](#)

II. Other cases

A. VISA MORGAN STANLEY

Parties: Visa International Service Association and Visa Europe Limited (scheme) & Morgan Stanley USA and Morgan Stanley Bank (bank)

Legal basis: Article 101(1) TFEU and Article 53 EEA agreement

Subject: refusal to admit Morgan Stanley as a member to the Visa scheme without an objective justification

Outcome: Decision to fine by Commission (Decision 2009/C 183/05 on 3 October 2007), judgment by the General Court confirming the Commission decision (14 April 2011, case T-461/07)

Date: 3 October 2007 (Decision); 14 April 2011 (Judgment GC)

A Statement of Objections was sent to Visa International and Visa Europe on 2 August 2004. The Statement arose out of the complaint jointly submitted by Morgan Stanley USA and Morgan Stanley Bank to the Commission, that Morgan Stanley was refused membership of Visa Europe which prevented it from issuing Visa cards and acquiring Visa and MasterCard transactions. At the time of the infringement, Visa Europe had the authority to decide whether to accept or reject any application for membership of Visa in the EEA. The By-Laws of Visa International and the Membership Regulations of Visa Europe contain the same rule according to which applicants deemed to be a competitor of the corporation cannot be accepted as members of the scheme. The request of Morgan Stanley to become a member of Visa Europe in March 2000 was rejected by Visa on the ground that Morgan Stanley was considered a competitor and allowance for membership would therefore infringe Visa Membership Regulations. As a consequence of the refusal, Morgan Stanley Bank, as incorporated by Morgan Stanley in the UK, was forced to confine its card operations to issuing MasterCard cards in the UK until the eventual approval of its membership. After a Statement of Objection had been sent by the Commission, the parties concluded a settlement agreement which admitted Morgan Stanley as member of the Visa scheme as from 2006 onwards.

Between 2000 and 2006, the Morgan Stanley group owned the Discover card network in the US. Discover was not present on the EU market and the Commission's investigations revealed that an appearance of Discover as a competitor to Visa in Europe was not likely to occur in the future. The investigations revealed further that retailers in the UK expect banks to offer card acceptance contracts as a package including both Visa and MasterCard. Therefore, the Commission took the view that Visa's refusal to admit Morgan Stanley as a member from 2000 to 2006 not only prevented the bank from providing services to merchants as regards Visa transactions, but also as regards other payment card transactions. The Commission concluded that Morgan Stanley's exclusion thus amounted to a restriction of competition in the provision of credit card acceptance services to merchants in the UK and fined Visa €10,2 million for a serious infringement of Article 101 TFEU and Article 53 of the EEA agreement.

Visa brought an action against the Commission before the General Court. According to Visa, Morgan Stanley was not prevented from entering the UK acquiring market and, even if it were, Visa's refusal to accept Morgan Stanley as member did not produce sufficient anti-competitive effects. Moreover, Visa claimed that no fine should have been imposed and that in any event the amount of the fine was disproportionate.

The General Court rejected Visa's claims and upheld the Commission's findings of an infringement and the fine against Visa. In particular, the Court rejected Visa's argument that the Commission had underestimated the degree of competition actually existing in the market. In line with the Commission's position, the Court held that an assessment of the conditions of competition in a given market has to be based not only on the existing competition between undertakings already present in the market in question, but also on potential competition from new entrants.

See also:

[Decision](#) (summary)
[Judgment](#)

B. GROUPEMENT DES CARTES BANCAIRES (CB)

Parties: Groupement des Cartes Bancaires (interest group of banks)

Legal basis: Article 101(1) TFEU and Article 53 EEA agreement

Subject: adoption by the Groupement of price measures which hinder the issuing of cards in France at competitive rates by certain member banks

Outcome: prohibition decision (Decision 2009/C 183/06 on 17 October 2007)

Date: 17 October 2007

On 10 December 2002 the Groupement des Cartes Bancaires (GIE CB) notified to the Commission pricing measures consisting of a mechanism for regulating the acquiring function (the 'MERFA'), a change in the membership fee for the *Groupement*, an additional membership fee and a fee for 'dormant members', as well as some other non-price measures. The GIE CB is an economic interest group under French law which manages the French payment card system and comprises some 155 banks.

With regard to the notified fees, the Commission rapidly formed the view that the latter stemmed from a secret, anti-competitive agreement designed to foreclose the market to new entrants.

Although, in principle, the notified charges were applicable to all members of the *Groupement*, they have been applied by the GIE CB management and by the major French banks in such a way as to hinder the issuing of cards by smaller banks at a lower price. Evidence confirming the Commission's suspicion was found during unannounced inspections in May 2003 which were carried out on the premises of GIE CB and certain member banks. In 2004 the European Commission sent a Statement of Objections to the GIE CB and nine major French banks. The Statement related to a secret agreement on bank payment cards by means of which the nine banks, with the help of GIE CB, shared out the market for the issuance of payment cards in France in order to restrict competition from new entrants.

On 17 October 2007 the Commission adopted a decision in which it analysed the measures concerned as a decision by an association of undertakings taken through the *Groupement*. The Commission deemed the measures to be anti-competitive in object and effect, therefore infringing article 101 TFEU. Since the measures were notified and their implementation had been suspended in 2004, the Commission did not impose a fine.

The GIE has lodged an appeal (Aff. T-491/07 Groupement des cartes bancaires (CB) c/ Commission européenne).

See also: [Decision](#)

C. The E-payments case against the EPC

Parties: EPC

Legal basis: Article 101(1) TFEU and Article 53 EEA agreement

Subject: antitrust investigation into the standardisation process for payments over the internet ('e-payments') undertaken by the European Payments Council (EPC)

Outcome: still pending

In September 2011, the Commission opened an antitrust investigation into the standardisation process for payments over the internet ('e-payments') undertaken by the European Payments Council (EPC). This process had been launched by the EPC as part of the self-regulatory Single Euro Payment Area or SEPA project, which aims to create an integrated payments market, where there is no distinction between cross-border and domestic payments (in Euros). Once implemented, it will cover credit transfers, direct debits and payment cards, and provide the necessary building blocks for innovative mobile and internet payment instruments.

The Commission will examine in particular whether the standardisation process limits market entry or innovation, for example through the exclusion of new entrants and payment providers who are not controlled by a bank. If proven, such behaviour could be in violation of EU antitrust rules that prohibit restrictive business practices. An opening of proceedings does not prejudice the outcome of the investigation but merely means that the Commission will investigate the case as a matter of priority.

See also: [Press release](#)

III. Study

Type: sector inquiry

Scope: retail market products and payment cards and payment systems

Main conclusions: indicators for several concerns

Date: January 2007 (end-date)

A competition sector inquiry is a fact-finding exercise concerning the functioning of given market(s) for goods or services. It focuses on how competition works in a given sector or market(s) and whether markets are competitive enough to deliver their full benefits to consumers. The main difference with other investigations carried out by DG Competition is that a sector inquiry gives a global view of a sector, rather than focussing on the relationships between certain companies.

In June 2005 the Commission decided to open a sector inquiry into two areas of retail banking, the market for retail market products and the markets for payment cards and payment systems

A. Market for payment cards and payment systems

The European payment cards industry is large and provides the means for consumer payments with an overall value of €1.350 billion per year. Such payments generate an estimated €25 billion in fees annually for banks from EU firms. The Commission's inquiry found indications of several concerns:



- highly concentrated markets in many Member States, particularly for payment card acquiring, may enable incumbent banks to restrict new entry and charge high card fees;
- large variations in merchant fees across the EU. For example, firms in Member States with high fees have to pay banks three or four times more of their revenue from card sales than firms in Member States with low fees;
- large variations in interchange fees between banks across the EU, which may not be passed on fully in lower fees for cardholders. The Commission is not arguing for zero interchange fees; however, their operation in some payment networks raises concerns;
- high and sustained profitability – particularly in card issuing – suggests that banks in some Member States enjoy significant market power and could impose high card fees on firms and consumers;
- rules and practises which weaken competition at the retailer level; for example blending of merchant fees and prohibition of surcharging;
- divergent technical standards across the EU prevent many service providers from operating efficiently on a pan-EU scale.

After publication of the interim report on payment cards and systems, the Commission met banks in a number of Member States to discuss where self-regulation could address competition concerns. This approach is yielding promising results. Good examples are Austria, Finland and Portugal, where market players have taken initial steps to address the Commission's concerns.

The European banking industry – with the full support of the Commission and the European Central Bank – is working to create a Single Euro Payments Area (SEPA) to improve efficiency and lower the cost of retail payments. The sector inquiry has highlighted several market barriers that should be addressed in the SEPA context.

B. Retail banking product markets

The EU retail banking industry generates €250-275 billion per year in gross income, equivalent to 2% of EU GDP. Markets are generally fragmented along national lines, divided by factors including competition barriers and regulatory, legal and cultural differences. The sector inquiry found indications of competition problems in several areas:

- in some Member States, the conjunction of sustained high profitability, high market concentration and evidence of entry barriers raises concerns about **banks' ability to influence the level of prices for consumers and small firms**;
- some credit registers, holding confidential data that lenders use to set loan rates, may be used to exclude new entrants to retail banking markets;
- some aspects of cooperation among banks, including savings and cooperative banks, can reduce competition and deter market entry;
- product tying, e.g. where a loan customer is forced to buy an extra insurance or current account, is widespread in most Member States. This could reduce **customer choice and increase banks' power in the market** place to influence prices;
- obstacles to customer mobility in banking – notably the inconvenience of changing a current account – are high. The **inquiry's analysis suggests that banks' profit margins are lower where customers are more mobile.**

All in all, the inquiry's main conclusion is that markets remain fragmented along national lines. Differences between countries on prices, profit margins and selling patterns between countries are contrasted by evidence of convergent behaviour in e.g. pricing and policies for core retail banking products. It moreover provides evidence that interchange

fees are not intrinsic to the operation of card payment systems. Several national systems operate without an interchange fee mechanism, resulting in generally lower merchant fees. The inquiry led DG Competition to review its understanding of the retail banking markets and, for instance, led DG Competition to prioritise payment cards and payment markets. The inquiry resulted in new areas of investigation, both for the Commission and for national competition authorities.

The main findings of the inquiry and possible next steps are contained in the Final Report, published on 31 January 2007, which takes the form of Communication from the Commission (see link below). The detailed analysis and findings from both parts of the inquiry are set out in the Commission staff working document and other associated documents (*idem*).

See also:

[Final Report](#)
[Overview](#)

IV. Regulation Single Euro Payment Area (SEPA)

Subject: Interchange fees for SEPA direct debit: from competition enforcement to legislation

Outcome: Regulation of the European Parliament and the Council establishing technical requirements for credits transfers and direct debits in euros

Single Euro Payment Area (SEPA) promotes competition among payment services providers by removing national borders in the payment industry. SEPA rules ensure transparent pricing and prompt transfer, which benefit all consumers. The SEPA project is therefore supported by the Commission. However, because the project is carried out by an association of banks and banking associations which are at least potential competitors - the European Payments Council ([EPC](#)) - it also merits close competition scrutiny. During most of 2008, a dialogue took place with the banking industry (represented by the European Payment Council or EPC) among other subjects, on the need and the justification of a Multilateral Interchange Fee (MIF) *per transaction* for direct debit transactions under EU competition rules.

Some banks and banking communities were reluctant to join the SDD without MIFs until the legal situation was clarified. It turned out impossible to solve this perceived lack of clarity by the development by the industry of a system entailing MIFs *per transaction* and/or MIFs for R-transactions that could be assessed positively under the EU competition rules. As a result, it was signalled to the industry that it had not succeeded in providing the necessary justifications for the proposed MIF. Further to this, to encourage migration to SDD a transitional regime for national and cross border MIFs per transaction for SDD was introduced in Regulation 924/2009. The Joint Statement of the ECB and Commission of 24 March 2009 clarified that MIFs per transaction were not acceptable but opened the door to the exploration of a MIF for R transactions compatible with competition rules. However, the industry was unable to agree on the mandate and composition of a working group of the EPC dedicated to this.

But without SEPA Direct Debit, European companies and consumers would have been deprived of a pan-European system that is likely to generate substantial savings and benefits. In order for SEPA Direct Debit to take off, the right incentives needed to be in place. To support migration and the launch of SDD, [Regulation 924/2009](#) on cross-border payments in the Community provides for a transitional regime until 1 November 2012

during which a MIF of up to 8,8 cents can be applied to direct debit payments in Member States that had a MIF in the past and must be applied to cross-border payments. This transitional regime runs from 1 November 2009 to 31 October 2012. This provided the necessary clarity for the EPC to agree on the launch of the pan European SEPA Direct Debit on 2 November 2009.

The European Commission published on 3 November 2009 a working document on the 'Applicability of Article 81 of the EC Treaty to multilateral interbank-payments in SEPA Direct Debit.' Following a [public hearing](#) held in Brussels on 17 November 2010 to assist the Commission in the finalisation of its proposal, the Commission published a [proposal for a Regulation](#) establishing technical requirements for credit transfers and direct debits in Euros and amending Regulation (EC) No 924/2009 on 16 December 2010. This draft Regulation contains a provision prohibiting per transaction inter-bank fee arrangements for direct debits but conditionally approving such arrangements for rejected and other so-called 'R' -transactions.

A compromise agreement was reached on 20 December 2011, and on 14 February 2012 the European Parliament agreed on a deadline of 1 February 2014 for banks to migrate to SEPA Credit Transfers and Direct Debits. On 28 February 2012 the Council unanimously adopted the SEPA Regulation. The Regulation will enter into force after its publication in the Official Journal of the EU in the second quarter of 2012. A prohibition of per transaction multilateral interchange fees (MIF) will enter into force on 1 November 2012 for cross-border direct debits. Per transaction MIFs for national direct debits will be prohibited from 1 February 2017 in the six countries where they still exist. Nonetheless, a MIF for so-called 'R' transactions will be allowed subject to certain conditions which are applicable as from 1 February 2014.

See also: [Overview](#)

V. Green Paper: 'Towards an integrated European market for cards, internet and mobile payment'

In spite of the substantial progress in the achievement of an integrated European market in the field of card, mobile and internet payments, a number of hurdles remain. Following an in-depth internal reflection process, the Commission has adopted a Green Paper on 11 January 2012, which assesses the current obstacles to an integrated market for card, internet and mobile payments in Europe. The Green Paper addresses issues such as lack of market access, widely diverging interchange fees, lack of possibilities for European retailers to centralise payment acceptance services with only a few European banks, lack of transparency and the lack of European technical and security standards and its obvious consequences for innovation in payment services, for instance in mobile and internet payments.

The public consultation process initiated with stakeholders in the payment market on the above mentioned issues aims at validating the Commission's analysis and at consulting on how to get an appropriate combination of regulation and antitrust enforcement with a view to addressing the existing obstacles. Regulation, self-regulation and competition law enforcement have complementary roles to play in this respect. Responses to the Green Paper can be submitted until 12 April 2012. On the basis of a throughout analysis of the consultation feedback, the Commission will announce the next steps to be taken before the summer of 2012.

See also: [Green paper](#)

AUSTRIA

Case on interchange fees

Europay Austria

Parties: Europay Austria Zahlungsverkehrssysteme GmbH (Europay Austria)
Legal basis: Kartellgesetz 1988 7. KartGNov. 2002 and KartG 2005
Subject: collusion by object and abuse of dominant position by Europay Austria with regard to debit card interchange fees
Outcome: Fine (€5 million in Cartel Court, increased to €7 million in appeal in the Supreme Cartel Court)
Date: 12 September 2007

In this case, dating from 12 September 2007, the Bundeswettbewerbs-behörde (Austrian Federal Competition Authority – FCA) investigated Europay Austria Zahlungsverkehrssysteme GmbH (Europay Austria). As predecessor of PayLife Bank GmbH, Europay Austria was a subsidiary of almost all Austrian banks and a major Austrian provider of payment cards and payment systems.

The investigation concentrated on the high debit card interchange fee charged to competitors for using Europay's POS-terminals. The Cartel Court established collusion by object and abuse of the dominant position under national competition rules, followed by a court decision in which the high transaction fee was found excessive. The fine imposed on Europay Australia amounted to €5 million. In appeal, instigated by the FCA, the Federal Cartel Prosecutor and Europay Austria, the Supreme Court increased the fine on Europay Austria from €5 million to €7 million.

See also:

[Press release](#) (German)
[decision](#) (German)

BELGIUM

Case on debit card payments and electronic payment terminals market

Parties: Banksys (now ATOS Worldline)

Legal basis: Article 102 TFEU and article 3 of the Belgian Act on the protection of economic competition. Moreover, The Belgian Competition Council made a direct application of article 5 and Article 45 Council Regulation (EC) 1/2003. Reference to Article 45 seemed necessary as the Belgian Competition Law had not yet transposed Regulation 1/2003 at the time of the decisions). According to Recital (13) of Regulation 1/2003, the Belgian Competition Council found that there are no longer grounds for action without concluding whether or not there has been or still is infringement.

Subject: excessive prices, price discrimination and cross-subsidization in debit cards payments and in electronic payment terminals market

Outcome: commitments to end the alleged abusive practices

Date: 31 August 2006

Banksys, a company formed by the merger between two payment schemes for debit cards in Belgium, presented to the Belgian competition authority commitments to end abusive practices observed in the market of electronic payment terminals. Banksys' practices consisted of excessive prices in this market, taking advantage of its dominant position. The commitments have ended these practices, while bringing more transparency in this market.

The investigations leading to this Banksys Commitment Decision were initially based on a request submitted in October 2000 by the Minister for Economics to start an inquiry and on complaints for abuse of dominant position against Banksys introduced by two Merchants associations, 'Unie van Zelfstandige Ondernemers' (UNIZO) and 'Fédération Nationale des Unions de Classes Moyennes' (FNUCM, now 'UCM') in 2002.

The College of Competition Prosecutors of the Belgian Competition Authority opened an *ex officio* investigation regarding the prices charged by Banksys in relation to the use of immediate debit cards. The Competition Prosecutor sent Statements of Objections to Banksys in 2002 and 2003 with regard to Price discrimination and Excess Prices with respect to MSCs (Merchant Service Charge or Merchant Discount), Excess prices on terminals/printers and Cross-subsidization between the market for debit cards payments (where Banksys was in dominant position) and the market for terminals/printers. Banksys was the major market player in the electronic payments in Belgium, especially the immediate debit cards Bancontact/MisterCash (in short: 'BC/MC') and the e-purse Proton.

During the period of investigation and until the beginning of the Fall of 2006, Banksys was owned by the main Belgian banks, which also owned a sister company of Banksys, specifically Bank Card Company (BCC). BCC is the acquirer of the main credit cards in Belgium including Visa and MasterCard. At the time when the Belgian Competition Council's decision at stake was taken, these main Belgian banks were in the process of selling their controlling equity stakes in both Banksys and BCC to the French provider of ICT and infrastructure network services ATOS ORIGIN, through a subsidiary Atos Worldline. Simultaneously, the main Belgian banks which are the ultimate owners of the Intellectual Property Rights on BC/MC, agreed with MasterCard on a brand migration to

Maestro (as of the 1st of January 2008) for domestic transactions (about 98% of the transactions made in Belgium by means of an immediate debit card BC/MC are domestic transactions; the remaining 2% transactions are performed under the MAESTRO scheme, most BC/MC debit cards being co-branded).

This change of control of Banksys and BCC was cleared unconditionally by DGCOMP on 29 September 2006 (Case No COMP/M.4316 – Atos Origin / Banksys / BCC), *i.e.* one month after the decision here at stake on the article 82 case concerning Banksys was taken by the Belgian Competition Council. On 1 June 2007, Banksys and BCC merged and are now operating under the single name 'Atos Worldline'.

At the time of the inquiry and of the hearing, Banksys was operating in a close-knit Cooperative Model, where the four main Belgian banks:

- were – as said above – the controlling shareholders of Banksys and BCC, until the Fall 2006;
- are the issuing banks;
- are the sole shareholders of Brand & License Company (B&L), which owns the Intellectual Property Rights of the BC/MC (and Proton) payment schemes; Banksys (now Atos Worldline) has been the licensee and pays a flat fee per transaction to the issuing banks ('issuers'), this flat fee being set by B&L.

Another striking feature regarding this Banksys case was the degree of vertical integration as Banksys was:

- sole acquirer on the market for debit cards;
- charges the MSC to the merchants for the use of debit cards BC/MC and for the use of e-purse Proton. The MSC of the BC/MC payment scheme is a two-part tariff: (i) a monthly flat fee ('abonnement') for acquiring processing and infrastructure network services. (ii) A flat fee per transaction, *i.e.* €0,057 or €0,11 depending on whether the merchant rolls over the transaction fee onto the consumer/cardholder;
- maker and provider of terminals/printers for which merchants are charged a rental fee.

In the Statements of Objections, the alleged price discrimination was between large warehouses and smaller merchants with respect to MSC, specifically as regards the flat fee per transaction.

The alleged excess prices on the MSC was stated specifically as regards the monthly flat fee. The alleged excess prices on terminals were related to the rental fee charged to merchants. The alleged cross-subsidization was from the market for debit cards payments (where Banksys was in dominant position) to the market for terminals, which had been opening to competition.

During the inquiry, the issue of excess prices was investigated on the basis of a study comparing the return on invested capital (ROIC) of Banksys with the Weighted Average Cost of Capital (WACC).

The same economic methodology had been applied by the Dutch Competition Authority (NMa) for the case Interpay in 2004.

After the hearings, Banksys offered commitments in order to meet the Belgian **Competition Council's concerns. The Belgian Competition Council accepted on 31 August 2006** the following commitments:

- Price cap on the rental fee of terminals until 1 July 2009;

- Commercial unbundling between the market for acquiring (of immediate debit cards payments) and the market for terminals (this meets the competition concern about alleged cross-subsidization): clear separation of the costs of terminals on the invoice, the merchant will be presented a list of competing, compatible terminals and the merchant will get a 48 hours delay (after signing the contract for acquiring) before any commitment for the purchase of a terminal;
- Confirmation of earlier agreements that had been made at the end of 2003 **between Banksys and merchants' Associations (UNIZO and UCM) which led to (1)** the removal of price discrimination between large warehouses and smaller merchants with respect to MSC (specifically as regards the flat fee per transaction) and **(2)** the lowering of the monthly flat fee in the MSC (which merchants have to pay for the acquisition (processing) of the BC/MC debit card) with a price freeze (except for indexation on the CPI) until 31 December 2008.

It is especially worth mentioning that, as regards the level of the flat fee per transaction (€0,057 or €0,11, depending on whether the merchant rolls over the transaction fee onto the consumer/cardholder, see above), it was not mentioned at all in the Statement of Objections. As a matter of fact, the transaction fee that Belgian merchants have to pay currently for every use of the domestic debit card is mostly the flat fee of €0,057 per transaction as there is mostly no surcharge. This makes the Belgian domestic payment scheme for immediate debit cards BC/MC particularly cheap by international yardsticks; specifically it is widely recognized that a peculiar advantage of this payment scheme is the fact that this transaction fee is flat, i.e. it is not an ad valorem fee equal to a percentage of the amount of the payment (contrary to MasterCard and VISA for their debit cards and contrary to the e-purse Proton).

This flat transaction fee is not formally called a MIF, because Banksys was simultaneously the acquirer and on the side of the issuer because Banksys was, before being sold to ATOS, under the full control of the issuing banks. In other words, there is no formal Interchange Fee in the BC/MC payment scheme, although the transaction fee is supported by the merchant who pays it to Banksys (now Atos Worldline) which, as seen above, has been the licensee of the scheme and has to pay a flat fee per transaction to the issuing banks, this flat fee being set by B&L (see above).

This flat transaction fee results from an old agreement made on 20 January 1998 between Banksys and FEDIS (the professional association of the Belgian retail sector, now called COMEOS) with the blessing of the Belgian Government at that time.

As regards the welfare gain of those commitments, a conservative estimation focuses on **this Banksys decision's price lowering effect on the MSC for small users (small being defined in number of transactions)** and on the rental fee of terminals/printers.

In 2007, the Merchants associations UNIZO evaluated the impact of the tariff reduction for small users. Every user benefiting from the new tariffs saved annually on average approximately €113. In 2007 there were about 22.000 such users, the positive price effect of the decision amounting thus to €2.491.368.

In 2008 26.700 users benefited of the new tariffs and the positive price effect of the imposed remedies amounted to €3.025,264.

There are however approximately 45.000 terminals in use. If every user benefits from the new tariffs from 2009 onwards, the positive price effect can therefore be increased to about 5 million EUR on an annual basis.

The estimation of the welfare gains brought about by the Belgian Competition Authority in the field of electronic payments can reach a far higher amount if we take into account **the Authority's informal role in upholding the aforementioned low flat fee per transaction (€0,057)** of the domestic payment scheme for immediate debit cards BC/MC, despite the fact that the Belgian banks had agreed with MasterCard in 2006 on a brand migration to Maestro as of the 1st of January 2008. This re-branding of the BC/MC national debit card payment scheme into Maestro of MasterCard would have led to the end of the very cheap BC/MC debit scheme and its replacement by the ad valorem 'Fall-back interchange fee' applicable for cross-border Maestro card.

The hypothetical welfare loss that would have resulted from the implementation of the Fall-back interchange fee would have increased the total amount of MSC charged to Belgian merchants by, at the very least, an amount of **€15 million** on an annual basis. This extremely conservative estimation gives the minimum yearly welfare gain from deterring the migration to Maestro and from upholding the BC/MC payment scheme in the years 2008 up to now.

See also: [Decision](#) (French)

BULGARIA

Study

Type: sector inquiry

Scope: competitive environment in retail banking (bank accounts and credits) from 2006 – 2008

Main conclusions: no dominant position, no serious barriers to entry, debit cards more popular than credit cards and growing tendency in the number of payment cards

Date: November 2008

In November 2008, the Bulgarian Commission on Protection of Competition (CPC) completed a sector inquiry of the competitive environment in retail banking (bank accounts and credits). The analysis covering the period 2006 – 2008 is twofold: it examines the competitiveness and transparency of the market, and conditions in which it operates, as well as benefits to consumers.

It has been found that all banks in Bulgaria operate in retail banking. None of them has a dominant position pursuant to the Competition Law. Three product markets have been analysed: i) deposits attracted by banks from individuals, ii) bank housing loans and iii) consumer loans. These markets are characterized by low to moderate level of concentration. Serious barriers to entry for new participants have not been identified.

The sector inquiry also reviews the state and trends concerning cards and card payments. During the analysed period, the debit cards are more popular than the credit cards. The review shows that there is a growing tendency in the number of cards and the number of payments with cards which is also due to the increased possibilities for online payment.

See also:

[Press release](#) (English)

[Detailed summary](#) (English)

[Decision](#) (Bulgarian)

CYPRUS

Case on Domestic Interchange fees, Merchant Service Charges

Parties: JCC Payment Systems Limited (JCC) and a number of commercial banks (1. Bank of Cyprus Public Co Ltd, 3. Marfin Popular Bank Public Co Ltd, 4. Hellenic Bank Plc, 5. USB Bank Plc, 6. Alpha Bank Cyprus Ltd, 7. Emporiki Bank Cyprus Limited, 8. National Bank of Greece (Cyprus) Ltd, 9. Societe Generale Cyprus Ltd, 10. Piraeus Bank (Cyprus) Ltd.)

Legal basis: both national and Community competition provisions

Subject: practices on Domestic Interchange fees (DIFs) and Merchant Service Charges (MSCs) and the refusal of the Bank of Cyprus, the sole representative of AMEX cards in Cyprus, to allow FBME to process AMEX cards

Outcome: investigation in process

Date: January 2010 (complaint filed)

JCC Payment Systems Limited was established in 1989 following a decision by Cyprus' two major banking institutions (Bank of Cyprus and Marfin Laiki Bank) to collaborate for the purpose of administering, processing and settlement of card payments.³ From 1989 until the end of 2008, JCC was the only acquiring firm in Cyprus and has set the level of Domestic Interchange fees (DIFs) of the two payment systems, (MasterCard and Visa⁴) with the abovementioned commercial banks. The level of DIFs are the same for both credit and debit cards. At present, JCC provides acquiring services to all issuers in Cyprus.

FBME Card Services Limited (FBME) is a wholly owned subsidiary of FBME Bank Ltd, which is since 2003 a fully licensed bank established in Tanzania. In the beginning of 2009, FBME entered the Cyprus market operating as an acquirer for card payments. In January 2010, FBME filed a complaint to the Commission for the Protection of Competition of the Republic of Cyprus (C.P.C.), arguing that JCC and the issuing banks⁵ hold a collective dominant position and are in violation of competition law. According to FBME these institutions coordinate their behaviour, subsequently resulting in high levels of DIFs⁶ in general and increased profit for the issuing banks in particular. Moreover, the complainant argued that upon entry of the market, JCC had started a price war by lowering MSCs to a level resulting in the practice of predatory pricing. High DIFs, set by JCC and the issuing banks, and the continuous lowering of MSCs forecloses, according to the complainant, the acquiring market for new competitors in Cyprus. The complaint also included the refusal of Bank of Cyprus, sole representative of AMEX cards in Cyprus, to allow FBME to process AMEX cards.

³ The shareholders of JCC at present are Bank of Cyprus (45%), Marfin Laiki Bank (30%), Consortium (Hellenic Bank, National Bank of Greece (Cyprus), Piraeus Bank, Alpha Bank) (25%).

⁴ Posted by Visa Europe through its website:

http://www.visaeurope.com/en/about_us/what_we_do/fees_and_interchange/interchange_fees.aspx

⁵ Some of which are the shareholders of JCC and therefore play a decisive role in setting the level of both MSCs and DIFs.

⁶ There are no allegations by the complainant for commercial cards.

CZECH REPUBLIC

Study

Type: questionnaire sent to banks operating on Czech market

Scope: situation on the market for payment cards (both credit and debit); mechanism of setting merchant service charges and intra-country interchange fees

Main conclusions: no formal decision has been taken

Date: 2008-2009

The Office for the Protection of Competition (OPC) made an investigation in the years 2008 and 2009. The OPC sent the banks operating on the Czech market a questionnaire that included questions to determine the situation on the market for payment cards (both credit and debit) in the Czech Republic and the mechanism of setting merchant service charges and intra-country interchange fees. The questions were related to the payment cards of both MasterCard and Visa. The OPC focused on the investigation and no formal decision has been taken.

DENMARK

Study

Type: survey

Scope: interchange fee for transactions with the domestic debit card scheme in non-physical trade using cost-based approach

Main conclusions: fair overview of the relevant costs, without giving rise to further investigation

Date: 23 February 2007

The Danish Competition and Consumer Authority (DCCA) was the administrator of the Act on Certain Payment Instruments. In 2006, the DCCA decided to carry out a survey of the interchange fee for transactions with the domestic debit card scheme (Dankort) in non-physical trade⁷ in order to determine whether the fees were in compliance with paragraph 15 of the Act on Certain Payment Instruments.⁸ The DCCA collected cost data from 8 representative banks, including the central Danish acquirer, PBS (now Nets), which combined cover the majority of the market.

The methodology of the survey came down to a cost-based approach. The banks had difficulties gathering the relevant costs since their costs regarding Dankort had to be segregated from a number of management accounts. Nevertheless, after some adjustments the DCCA found that the data gave a fair view of the relevant costs. Ultimately, the survey revealed that the average costs of the banks were 1.06 DKK. Since the interchange fee was set at 1.10 DKK, this outcome did not give rise to further investigation into a possible infringement of the Act on Certain Payment Instruments.

See also:

[Survey](#) (Danish)

⁷ I.e. e-commerce and other non-face-to-face transactions

⁸ Act on Certain Payment Instruments § 15 states that '*[u]nreasonable prices and profit margins may not be applied in setting charges etc. in connection with execution of payment transactions with a payment instrument. Unreasonable prices and profit margins shall mean prices and profit margins which are greater than those which would apply under effective competition*'. Today, the act is implemented in the Payments Serviced Act, and § 15 has been replaced by § 79; <https://www.retsinformation.dk/Forms/R0710.aspx?id=136858>

ESTONIA

Case on MIFs for debit and credit cards domestic transactions

Parties: Main Estonian banks (Six Licensed Credit Institutions and Affiliated Branches of Foreign Credit Institutions)

Legal Basis: domestic legislation (§§ 4 and 6 of the Estonian Competition Act)

Subject: MIFs for debit and credit cards domestic transactions

Outcome: Decision closing proceedings after the reduction of interchanges fees agreed by the banks

Date: 20 February 2012

In recent years The Estonian Competition Authority has analysed the interchange fees for card payments. To date, the banks have reduced the fees substantially and made the system more open to competition. For this reason, the Competition Authority has decided to terminate the proceedings.

In the past, the banks operating in Estonia have multilaterally agreed on the interchange fees. During the proceedings the banks changed to the system of bilaterally agreed interchange fees, where each bank should agree on interchange fees with other banks on an individual basis. The current system is more open to competition, because the interchange fees are affected by each bank's business strategy.

Banks have reduced interchange fees on a number of occasions during the course of the proceedings. As a result, the interchange fees have decreased from the jointly agreed 1% initially in force at the beginning of 2008 on average to 0,5%. Thereby, some banks have agreed on an additional reduction of interchange fees with the increase of card payments in volume. As a result the average fees will most likely continue to decrease significantly in the future. The analysis shows that the cuts of the existing interchange fees have been carried over to the merchants' fees, and this should also impact consumers.

See also:

[Press release](#) (English)

FINLAND

Study

Type: market survey

Scope: operating mechanisms and levels of interchange fees applicable to Visa and MasterCard consumer card (debit and credit) payments

Main conclusions: levels of interchange fees cannot be made public. The Finnish Competition Authority continues to follow the development of the level of the fees

Date: July 2011

For several years, the Finnish Competition Authority (FCA) has followed the effects of the Single Euro Payments Area (SEPA) in the Finnish payment card market. As part of this assessment, the FCA has launched an *ex officio* market survey on the operating mechanisms and levels of interchange fees applicable to Visa and MasterCard consumer card (debit and credit) payments in Finland. These levels of the interchange fees are considered business secrets and can therefore not be made public.

The national bank card, which has been widely used before, is being replaced by the debit cards of Visa and MasterCard with the introduction of SEPA due to decisions made by each bank individually. The international card companies contain transaction-specific interchange fees as part of their pricing structure. The national bank card system does not have corresponding fees.

The principal provider of acquiring services of the Visa and MasterCard transactions in Finland has been Luottokunta, which is a service provider for card payments jointly owned by the banks and retailers. The Finnish market is in a state of flux. The number of market operators is increasing, because the replacement of the bank card by Visa/MasterCard payment cards increases the number of transactions made by these cards and hence the attractiveness of the operations. In October 2010 Handelsbanken started disbursing Visa and MasterCard card transactions to Finnish retailers. As a result of the market development, Luottokunta is now becoming a wholesale operator offering processing services of card payments to the banks.

The closing of the survey in July 2011 was influenced by the fact that the Finnish market is undergoing a considerable change. The number of market operators is growing and the retailers' freedom of choice is increasing. In addition, the interchange fees are at a **relatively low level in Finland compared to the rest of the Europe. The FCA's assessment** was also affected by the fact that the Visa and MasterCard cases are still pending at the EU level.

The FCA continues to follow the development of the level of the fees in Finland. If necessary, the FCA may take the interchange fees under review again.

FRANCE

I. Case on collusion regarding fees (interbank, check-image, costs)

Parties: Banque de France, BPCE¹, Banque postale, BNP-Paribas, Confédération Nationale du Crédit Mutuel, Crédit Agricole, Crédit du Nord, Crédit Industriel et Commercial (CIC), LCL, HSBC and Société Générale
Legal basis: Article 101(1) and (3) TFEU and Article L.420-1 Code de commerce
Subject: collusion regarding interbank fees for processing cheques created when the transition to a new digital clearing system happened: exchange cheque-image fee; cost of banking (reversal) services
Outcome: fines (i. collusion during the transition to a new digital system: €381,1 million; ii. disproportionate fees for reversals services compared to costs incurred: €3,8 million). **The Autorité's decision was** annulled and replaced by the Paris Court of Appeal.
Date: 20 September 2010 (Decision); 23 February 2012 (Judgment Paris Court of Appeal)

On 20 September 2010, the Autorité de la concurrence issued a decision in which it fined 11 leading French banks and the Central Bank (hereafter 'the banks') for colluding during the transition from a manual cheque processing system to a new electronic system. From January 2002 to July 2007, these banks agreed, in particular, to charge an unjustified €0.043 fee on 80% of the cheques cleared between banks in France. Additional fees for 'related services' have also been applied by the banks. These agreements were deemed to be anticompetitive by their very object and to infringe Article 101 TFEU and the corresponding French provision: the Autorité therefore imposed on the banks fines totaling €384.900.000.

During the investigation, it was found that together, the banks had decided to raise several fees - among which the Exchange Cheque-Image Fee (CEIC). This latter fee had been charged since 2002 and should have been revised after three years. It was removed in 2007, under the pressure of the ongoing proceedings conducted by the Autorité.

The CEIC is a €0,043 fee per cheque charged for each operation and paid by the payees' bank (merchants' bank) to the payers' bank (consumer's bank). According to the banks, its aim was to offset losses caused by the acceleration of interbank clearing processes, to the detriment of payers' banks. Under the new system, the payers' banks were debited earlier and had no longer the possibility to invest the corresponding cash. Conversely, payees' banks were credited earlier and therefore were able to invest the cash arising from the payment.

The Autorité found that the CEIC did not correspond to any actual service, that no bank incurred a net loss, and that the CEIC had artificially increased the costs for payees. The Autorité also observed that the design of the CEIC, based on the number of cheques rather than on their overall value, could not, at any rate, have compensated for a possible loss. It was therefore not justified under competition rules and infringed Article 101 TFEU as well as the corresponding French provision. The banks were fined €381.100.000.

The Autorité also fined the aforementioned banks for having applied two additional fees for 'related services', i.e., reversal services, which were still in force on the date of the decision. The Autorité ascertained that the level of those fees was not proportionate to the costs incurred by banks and ordered their adjustment in function of the benchmark costs of the most efficient bank. For this second infringement of Article 101(1) TFEU, the fines amounted to a total of €3.800.000. The banks were also ordered to audit the costs related to reversal services and reevaluate accordingly their fees on the basis of the costs incurred by the most efficient bank.

The Autorité imposed a 10% increase of the overall fine on the three banks that had led the collusion and another 20% rise on five banks for recidivism.

The Autorité also examined six other fees for 'related services' which were deemed justified under Article 101(3) TFEU and the similar French provision (Article L. 420-4 of the Code of commerce). On the basis of evidence of efficiencies adduced by the parties, the Autorité established that the fees at hand were necessary with regard to transaction costs of thousands of bilateral agreements, that they compensated for transfers of costs resulting from the dematerialization of the cheques exchanges system (e.g., cheque storage), and that a fair share of the efficiency gains had been passed on to consumers.

The Autorité's decision was annulled and replaced by the Paris Court of Appeal on 23 February 2012, on the grounds that the restrictive object of the aforementioned practices was not established. To reach this finding, the Court considered *inter alia* the legal and economic context, stressing the influential role of the regulatory authority, the *Banque de France*, in reaching the agreement and the fact that the fees which were set up were inseparable, according to the Court, from the broader objective pursued by the banks, i.e., the dematerialized treatment of cheques. The Court further held that the transitory (notwithstanding the absence of revision after 3 years as initially planned) and compensatory (regarding the CEIC) nature of the interbank fees meant that the absence of correlation between the fee levels and actual costs or losses could be disregarded. Finally, the Court held that the negative effects on prices charged by the banks to payees were not sufficiently certain in the absence of an agreement amongst banks to pass on the fees or a "floor-fixing" effect. This judgment is not definitive and a further appeal may yet be lodged before the *Cour de cassation* (French Supreme Court).

See also:

[Overview of the case](#) (French)

[Decision of 20 September 2010](#) (French)

[Press release](#) (English)

[Judgment of the Paris Court of Appeal](#) (French)

II. Case on commitments reducing inter-bank fees

Parties: GIE cartes bancaires

Legal basis: Article 101(1) and (3) TFEU and Article L.420-1 Code de commerce

Subject: MIFs on debit and credit cards transactions

Outcome: commitments

Date: 7 July 2011 (Commitments)

On 7 July 2011, the Autorité made commitments from the *Groupement des Cartes Bancaires* (hereinafter, the *Groupement*), which includes over 130 banks, bidding. The

Groupement's commitments have since then led to a cut in the main multilateral interchange fees (MIFs) on payment cards of 20 to 50%. These fees had not changed in over twenty years. MIFs on cheques fall outside of the scope of the procedure (see decision 10-D-28 of 29 September 2010).

The Autorité had expressed the concern that by jointly setting inter-bank fees, the *Groupement* would be likely to assist an anticompetitive agreement between its members, unless they could satisfy the conditions of Article 101(3) TFEU. Concerning the MIF on payments, the Autorité considered it constituted a common cost for all acquiring banks that was very likely to be passed on to the merchants. The Autorité analyzed that fee using two standards: the tourist test, which has been previously used in the *Visa* case at EU level (Case COMP/D-1/39.398, Decision of 8 December 2010) and, in addition, the costs of the issuing bank related to the payment.

In the course of the investigation, the *Groupement* proposed commitments amounting to a reduction of most inter-bank fees. After carrying out a market test on 5 April 2011, the Autorité held two hearings for a debate about the bank card system between the **complainants (mainly merchants' associations) and the banks. Following these hearings**, the Autorité de la concurrence obtained from the *Groupement* further reductions in the level of MIFs.

The inter-bank payment and withdrawal fees, which are the most significant ones in terms of value, saw their respective amounts decrease perceptibly by 36% and 20 % from 1 October 2011, the due date by which the commitments had to be implemented.

The inter-bank payment fee (CIP), which is paid by the retailer's bank to the cardholder's bank, decreased from 0.47 % to 0.30 % on average, equivalent to a reduction of 36 %. The CIP annual revenue, which is close to €1.500 million today, will ultimately be **reduced by approximately €500 million.**

The inter-bank withdrawal fee (CIR), paid upon each withdrawal by the cardholder's bank to the bank operating the automatic teller machine, was reduced by more than 20%, **dropping from €0,72 to €0,57.** The new level of the CIR was based on a cost study of the banks and corresponds to the cost of the most efficient bank. The reduction of the CIR **will lead to a drop of around €100 million in the CIR annual revenue, which amounted to around €450 million prior to the commitments. The reduction in this fee, which was and is still currently often passed on to the cardholders by the majority of the banks, will very likely have a direct and downward effect on cardholders' bills.**

These commitments entered into relate not only to 'consumer' cards but also commercial cards. Moreover, in order to take account of the developing market context, the period of the commitments had been reduced from 5 to 4 years, subject to a revision of the methodology for calculating the fees once the 4 year period expires. This methodology is currently being considered by a steering committee, chaired by the Autorité and gathering all players involved, i.e. the *Groupement* as well as *Visa* and *MasterCard* representatives, representatives of retailer and consumer associations, the European Commission, the national banking regulator (*Autorité de contrôle prudentiel*) and the *Banque de France*.

See also:

[Overview of the case](#) (French)

[Decision 7 July 2011](#) (French)

[Press release](#) (English)

III. Opinion regarding surcharging

Legal basis: Article L.462-2 Code de commerce

Subject: Surcharging

Outcome: Opinion

Date: 26 June 2009

The Autorité has been requested for an opinion by the Ministry of Economy on the transposition of the Directive on payment services (2007/64/EC), and more particularly on the question of the possible application into French law of "surcharging". After analyzing the conditions of competition in the payments sector and the Australian experience, the Authority concludes that it must allow consumers to become aware of the cost of the mean of payment used, and therefore to favor of the more efficient one (overall).

See also:

[Overview](#)

[Opinion](#)

GERMANY

I. Cases on interchange fees

A. MASTERCARD / VISA

Parties: MasterCard; Verein zur Förderung der Aktivitäten von MasterCard in Deutschland e.V.; Visa; Visa Deutschland e.V.; Members of the two associations
Legal basis: Article 101(1) TFEU and equivalent rules of German competition law
Subject: MIFs for domestic transactions within Germany using MasterCard / Visa branded credit cards; Honour all cards/banks rules, prohibition of surcharging
Outcome: still pending

The investigations were triggered by a complaint submitted by several retail, hotel, taxi and airline associations. The MIFs applied by MasterCard and Visa in Germany are very similar to those applied in other Member States or for cross-border transactions in Europe (see MasterCard Case of the Commission). Details of the MIFs are decided on in the Verein MasterCard e.V. and die Visa Deutschland e.V. However the market situation in Germany differs from other countries or from the cross-border view especially because the relevance of credit cards of the two international schemes as payment cards in Germany is not very high. The main payment card scheme in Germany still is the national debit card scheme 'girocard' together with the electronic direct debit method of paying without cash at POS (see under 'other cases').

The Bundeskartellamt has engaged in extensive investigations concerning all market players involved in the payment cards schemes. It commissioned a study among retailers and other POS aimed at assessing the relevance of the two card schemes in Germany and the consequences of the MIFs and other scheme rules for the merchants. Due to the strong position of the national debit card scheme the Bundeskartellamt is currently concentrating on competition problems in that scheme (see under 'other cases').

B. GIROCARD – interchange fees

Parties: Zentraler Kreditausschuss (consisting of the main German banking associations)
Legal basis: § 1, 29 German Competition Law (at that time there was still a special exemption regime for agreements among banks)
Subject: New introduction of MIFs for girocard based domestic transactions within Germany
Outcome: The application for exemption was withdrawn when the Bundeskartellamt signalled its concerns regarding the introduction of MIFs.

In 2001 the Zentraler Kreditausschuss (hereinafter ZKA) notified an agreement among all bank associations in Germany on the introduction of MIFs for transactions with girocard at national POS. The MIFs were to be paid **by the merchants' bank to the customers' bank**. The MIF was to replace the existing merchant fee determined jointly by the banks. Furthermore a MIF was to be introduced for the ELV ('Elektronisches Lastschriftverfahren'), the German electronic direct debit method of paying cashless at POS. For this payment method there was no collective fee.

In the competitive assessment the Bundeskartellamt took the view that banks would exhaust the full amount of the maximum MIF as this was the case in other four-party payment schemes in the past. The banks argued that a MIF would be necessary to sustain the loss-making national debit card scheme. However, the Bundeskartellamt was convinced that less anticompetitive methods could be introduced to cope with such actual or potential losses, such as raising fees from card users.

The Bundeskartellamt informed the bank associations of its views which in the end led to a withdrawal of the application for exemption.

II. Other cases

A. GIROCARD – merchant fees

Parties: Zentraler Kreditausschuss (consisting of the main German banking associations)
Legal basis: Article 101(1) TFEU and equivalent rules of German competition law
Subject: collective merchant fee for three-party national debit card scheme 'girocard', honour all banks rule, prohibition of surcharging
Outcome: still pending

The four main German banking associations introduced in 1989/90 a national debit card scheme called 'electronic cash' or 'girocard'. Over the last two decades, girocard has become the leading card payment system in Germany. From the beginning, the scheme rules foresee a common fee to be paid by the girocard accepting merchant to the issuing bank (with a special rate for the petrol sector), a no surcharge obligation and an honour all banks rule.

Developments in 2009 seem to suggest that these rules, in particular the collective fee, are no longer indispensable for the proper functioning of the scheme as the association of the savings banks and the association of the cooperative banks started to negotiate fees with larger merchants i.e. the merchants' payment service providers.

The Bundeskartellamt opened a formal procedure beginning of 2011 and is currently in debate with the banking associations about a model allowing more negotiations for merchants on the level of fees and eliminating other anticompetitive rules of the scheme.

B. Interbank agreements and Standard Terms and Conditions for direct debit payments

Parties: Zentraler Kreditausschuss (consisting of the main German banking associations) meanwhile renamed 'Deutsche Kreditwirtschaft'
Legal basis: Article 101(1) TFEU and equivalent rules of German competition law
Subject: effects of changes in Interbank agreements and in Terms and Conditions for ELV (electronic direct debit method of paying cashless at POS)
Outcome: the case was closed after the bank associations published explanations on the effect of the changes
Date: November 2011 (case closed)

In July 2011 the main German banking associations through their umbrella association 'Zentraler Kreditausschuss' (ZKA) (meanwhile renamed 'Deutsche Kreditwirtschaft' (DK)) informed the Bundeskartellamt that they intended to amend two interbank agreements and three standard terms and conditions, regarding national direct debits and SEPA direct debits. Two reasons were put forward: firstly, some of the amendments are a reaction to a recent judgment of the German Federal Court of Justice dealing with the conditions necessary to protect direct debits from being recoverable in case of the insolvency of the payer, and secondly, the need to prepare the transition to SEPA direct debit (migration of national legacy direct debit mandates to SEPA).

With regard to the current national direct debit scheme ('Einzugsermächtigungsverfahren'), the proposed amended standard terms and conditions provide for mandatory data elements within the direct debit mandate ('Autorisierungsdaten'), including the 'designation of the payee', the 'designation of the payer' and the 'identifier of the payer' (the latter defined as the bank account number and the national bank code). According to the amended standard terms and conditions the payee has to transmit this data to his bank in order to initiate the direct debit.

A preliminary assessment of the proposed amendments led to the conclusion that the introduction of mandatory data elements to be included in the direct debit mandate might restrict the operability of the ELV ('Elektronisches Lastschriftverfahren'), a German card-based direct debit scheme. The Bundeskartellamt opened a case and, as a first measure, sent a request for information to the companies that offer (POS-) payments through ELV ('ELV providers') in order to determine whether the amendments might lead to any restrictions to the operability of ELV. The main point of concern raised by ELV providers was that the mandatory data element 'designation of the payer' could potentially restrict the operability of ELV or even eliminate it, depending on the interpretation of the concept. According to ELV providers, the operability of ELV – as currently practiced – was likely to be compromised if 'designation of the payer' was to be interpreted as 'name of the payer' or 'name and address of the payer' as the name and the address of the payer are not stored on the magnetic stripe of the 'girocard'.

In order to eliminate the preliminary competition concerns, Deutsche Kreditwirtschaft proposed to publish more precise indications regarding the meaning of the data element 'designation of the payer', which in their view encompasses all types of direct debit mandates that are currently used, including the submission of 'other data elements' like card numbers in the ELV. The Bundeskartellamt closed the case and informed Deutsche Kreditwirtschaft by an informal letter dated 18 November 2011.

C. Online credit transfer services

Parties: Deutsche Kreditwirtschaft (consisting of the main German banking associations)
Legal basis: Article 101(1) TFEU and equivalent rules of German competition law
Subject: General Terms and Conditions restricting online banking users in their choice of online payment service providers
Outcome: *Amicus Curiae* intervention by the Bundeskartellamt in civil law procedure; competition law case still pending
Date: February 2011 (*amicus curiae* statement to the court)

In 2010 the Bundeskartellamt received a complaint by Payment Network AG, a company offering an online credit transfer service called Sofortüberweisung.de. The company complained about being barred by the German banks from offering its online credit transfer service to merchants and payers. Among others this was being executed by way of a lawsuit by Giropay GmbH (a Joint Venture of Postbank and companies out of the savings bank group and the cooperative bank group) against Payment Network AG. Giropay is claiming that Payment Network AG is inducing bank account customers to use their online-banking credentials on websites that have not been authorized by their banks. The clauses on using credentials form part of the General Terms and Conditions that are developed by Deutsche Kreditwirtschaft and are generally taken over by the banks. Banks only allowed using credentials on their own website or on websites of Giropay as a bank owned online service.

In September 2010 the Bundeskartellamt announced to the competent regional court that it intended to issue an *amicus curiae* statement and asked for transmission of the court file, the court cancelled an already envisaged date for the pronouncement of its decision. In October 2010 the Bundeskartellamt opened a procedure against Deutsche Kreditwirtschaft in order to assess the compatibility of the recommended General Terms and Conditions for online banking by the Deutsche Kreditwirtschaft with the competition rules.

After preliminary assessment, the Bundeskartellamt submitted its *amicus curiae* statement to the court in February 2011. It came to the conclusion that the General Terms and Conditions for online banking probably constitute an infringement of Article 101 TFEU and § 1 of the German Competition Law because the exclusion of online credit transfer services from all but specific (bank owned) service providers are not indispensable for guaranteeing a secure online banking system – as was claimed by the plaintive in the court case and by Deutsche Kreditwirtschaft in the competition procedure. Rather, other measures could be taken in order to safeguard the online banking system, such as the development of a certification procedure comparable to existing certification procedures in other areas of banking services. The court decided in March 2011 to stay its procedure until the competition procedure was concluded.

In August 2011 Deutsche Kreditwirtschaft has issued a first concept for a certification procedure for nonbank online banking service providers. Whereas the certification requirements proposed seem to be acceptable, discussions are still ongoing regarding the need of bilateral contracts with each customer bank and issues of liability. The case is still pending.

GREECE

Case on the setting of ATM, debit and transfer interchange fees

Parties: (i) the majority of banks (Greek and foreign), that have residence in the Greek territory; (ii) the Hellenic Bank Association (HBA); (iii) DIAS S.A., connected electronically with all banks and the National Bank of Greece (the central bank).

Legal basis: Article 101(1) TFEU and equivalent rules of Greek competition law

Subject: setting of the ATM, debit and transfer interchange fees.

Outcome: commitments that aim to reduce the level of interchange fees

Date: 29 July 2008 (case closed)

During its meeting of 29 July 2008, the Hellenic Competition Commission decided by **majority to accept the improved commitments' proposal submitted by the banks involved** in the proceedings, the HBA and DIAS SA. **DIAS's Systems are net payment systems. All transactions are netted and cleared at the end of each working day. Clearing results are transmitted through ERMHS/TARGET to the Bank of Greece, the same day of the final settlement. Members of DIAS are all the banks that operate in Greece and the National Bank of Greece. The commitments were proposed in response to the objections expressed in the Directorate General for Competition's Report concerning the setting of the DIAS ATM, DIAS DEBIT and DIAS TRANSFER interchange fees.**

By these commitments, the banks involved in the proceedings undertake the obligation to drastically reduce the level of interchange fees, one of the core objections and concerns of the Directorate General for Competition. Moving a step further, the aforementioned banks will proportionately reduce the level of commissions charged to consumers for services rendered. In particular:

- I. The banks involved undertake the obligation to refrain in the future from any agreement that might be considered as incompatible with national and EC competition provisions;
- II. The terms of the DIAS ATM Regulation on interchange fees shall no longer apply;
- III. **Within three months following the notification of the Commission's decision, the banks involved shall reduce the interchange fees charged for ATM use by a percentage exceeding on average 50% of currently charged fees. Furthermore, the banks involved shall reduce by the same percentage the commissions charged to ATM users;**
- IV. For transparency reasons, the banks involved shall adapt, in cooperation with DIAS S.A., their information banking systems to advise customers in due time, i.e. before completing any transaction, of any additional fees charged;
- V. The banks involved in the proceedings shall not to apply uniform fees for the use of the DIAS DEBIT and DIAS TRANSFER systems, unless such a provision is adopted in the context of the Single Euro Payment Areas (SEPA);
- VI. Moreover, with respect to the DIAS DEBIT and DIAS TRANSFER systems the banks involved undertake the obligation firstly to reduce any existing bilateral commissions to a lower level than the one applied on the basis of the multilateral interbank agreements examined and secondly to respectively adjust their billing policy towards customers;
- VII. The aforementioned commitments will stay in force until the 01.08.2010.

Having accepted the above commitments, in conformity with provisions of paragraph 1b of article 9 of law 703/77, the Competition Commission closed its *ex officio* investigation on the DIAS ATM, DIAS DEBIT and DIAS TRANSFER interchange fees.

Text based on [press release](#)

HUNGARY

I. Case on interchange fees

Parties: Twenty-three commercial banks & Visa Europe Ltd. and MasterCard Europe S.p.r.l. (payment card schemes)

Legal basis: Article 101(1) TFEU and Article 11 (1) of the Hungarian Competition Act

Subject: Hungarian banks set uniform interchange fees in transaction by payment cards of Visa and MasterCard

Outcome: Decision to fine by Hungarian Competition Authority (Vj-18/2008/341.), appeal against the decision is still pending and has been suspended to await the outcome of the MasterCard case (T-111/08) before the EU General Court

Date: 24 September 2009

The Gazdasági Versenyhivatal (Hungarian Competition Authority – GVH) initiated an **enforcement action ('competition supervision proceeding')** on 31 January 2008 against 23 card issuing banks and MasterCard Europe and Visa Europe. The investigation focused on the multilateral interchange fees (MIFs) concerning payment card transactions which were fixed by agreement between the Hungarian card issuing banks for domestic transactions. The GVH presumed that the agreement was capable of restricting competition within the Hungarian market. One concern was that the fee restricted competition among card acquiring banks and functioned as a threshold for the merchant service fee (MSC). The investigation included both debit and credit payment cards, and due to the relatively limited number of commercial cards in Hungary the decision does not distinguish between consumer and commercial cards.

On 24 September 2009, the GVH found that competition law was infringed. The decision revealed that the Hungarian banks had already agreed in 1996 that they would introduce the same interchange fees both for Visa and MasterCard. Following the agreement, competition between the two payment card schemes and the card-acquiring banks was distorted as it indirectly uniformized the commissions paid by retailers accepting payments via payment cards. Normally such fee serves as one of the most important factors in competition between operating banks and card acquiring banks (operating terminals). Moreover, the agreement reduced competition regarding fees between the acquiring banks. The GVH established that the agreement on uniform interchange fees concluded between banks has indirectly influenced (uniformized) the commissions paid by merchants accepting payment cards. The banks have admitted that the two payment card schemes offered explicit help in concluding the agreement. The practice of the payment card schemes themselves was also considered to infringe competition law since it enabled the banks to conclude agreements that hindered competition.

The commitments offered by the parties were rejected by the Council, because they were inappropriate to remedy the infringement. These commitments were aimed at improving the functioning of the acquiring market in Hungary.

Seven Hungarian banks and the two payment card schemes Visa and MasterCard were fined for infringing Article 101 TFEU and Section 11 of the Hungarian Competition Act. A **total fine of HUF 968 million (approx. €3,57 million) was imposed on the seven banks**, while the two payment card schemes Visa and MasterCard were fined HUF 477 million (approx. €1,76 million) each.

When calculating the fines, the GVH took into account the total amount of domestic interchange fees between 2004-2007. The GVH also took into consideration the market shares in 1996 as well as the current market shares of the banks concerned. In relation to some other financial institutions, which entered the agreement afterwards, the GVH also found an infringement. However, no fines were imposed on them considering their limited involvement in the infringement and their cooperation with the GVH during the investigation.

The parties fined by the GVH lodged an appeal with the Budapest Metropolitan Court, stating that the agreement was not contrary to the competition rules. They declared that the GVH had not looked into the actual effects of the MIF agreement and that, therefore, the decision of the GVH should be amended or annulled.

The judicial proceeding is still pending and it was suspended by the court with respect to the MasterCard case (T-111/08) before the General Court.

II. Study

Type: market survey by market research company

Scope: experiences and opinions of a wide selection of merchants regarding payment cards transactions

Main conclusions: strong relation card acceptance and size of / activity carried out by the merchant; price is a factor in card acceptance; low awareness of interchange fees; cards vs. cash contrast; different views on pass-through of costs reduction in price

The GVH appointed MASMI Hungary, a market research company, to make a market survey focusing on the experiences and opinions of merchants regarding payment card transactions. The scope of the survey comprised large size retail units; fuel distributors; catering companies (hotels, restaurants); airlines, travel agencies; online companies and web shops.

The survey was carried out via personal interviews with the representatives (financial managers) of the abovementioned target groups.

The market survey resulted in the following findings:

- card acceptance was found to depend significantly on the size of the merchants and the activity carried out by them. Some economic sectors were found to be more willing to accept cards (large retailers and petrol stations), while others thought their activity is less affected by the acceptance of cards. (car dealers);
- price for card acceptance was considered to be a factor: 14% of the merchants in the total sample stated that they were willing to accept cards if the price went down;
- awareness about the interchange fee was relatively low: most of the responding financial managers were unaware not only the level, but also of the concept of the interchange fees;
- card vs. cash. The responding merchants considered card transactions slower and more expensive than transactions by cash. However cash transactions are only preferred by 6% of the respondents;
- pass-through of cost reductions. Generally merchants considered pass-through of card fee (MSC) reductions unlikely, only 8% expect a price decrease after lower MSCs. However this figure varies greatly according to the sector concerned.

ITALY

I. Cases on card interchange fees

A. MasterCard

Parties: the legal entities representing the MasterCard payment organization - MasterCard Inc., MasterCard Intl. Inc., MasterCard Europe S.p.r.l. - and MasterCard's acquirers in Italy - Unicredit, Intesa Sanpaolo, BNL, BMPS, ICBPI, Barclays, Deutsche Bank, Banca Sella Consorzio Bancomat (bank association)

Legal basis: Article 101 TFEU

Subject: the definition of interchange fees for domestic transactions in Italy by MasterCard and their implementation by the acquirers through the merchant fee, plus the inclusion of other restrictive provisions in the contracts with merchants

Outcome: prohibition decision, cancelled on appeal. Second instance administrative court appeal pending

Date: 3 November 2010 (Decision) 11 July 2011 (Judgment Italian Court of First Instance)

In July 2009, the Autorità Garante della Concorrenza e del Mercato (Italian Competition Authority – ICA) opened an *ex officio* investigation for alleged violations of art. 101 (1) TFUE against the legal entities representing the MasterCard payment organization (MasterCard Inc., MasterCard Intl. Inc., MasterCard Europe S.p.r.l.) and 8 banks (Unicredit, Intesa Sanpaolo, BNL, BMPS, ICBPI, Barclays, Deutsche Bank, Banca Sella) representing MasterCard's acquirers in Italy. The alleged violations concerned the definition of interchange fees for domestic transactions in Italy by MasterCard, which was considered an association of undertakings, and their implementation by the acquirers through the merchant fee, plus the inclusion of other restrictive provisions in the contracts with merchants.

The ICA qualified MasterCard as an association of undertakings even after its IPO because of the role that the licensees still play, directly and indirectly, in the governance of the network.

- I. Directly, because of
 - i. the role that licensees continued to play in the election process of some members of the governance of MasterCard;
 - ii. the presence of banks representatives in the governance boards of MasterCard;
 - iii. the role that the pre-IPO board of directors of MasterCard had played in the election of the first Global Board after the IPO.
- II. Indirectly, because of the flow of information between the Europe Board and the Global Board related to
 - i. the fact that some people were both members of the Europe Board and the Global Board (the President/CEO of MasterCard Incorporated and the Class M Global Board member from the European area);
 - ii. evidence collected during inspections related to formal and informal meetings, on the topic of MIFs in Europe after the IPO, between members of the Europe Board and members of the Global Board.

The ICA found that the MIFs that MasterCard had introduced specifically for Italy in April 2007, when it decoupled domestic transactions from the intra EEA fallback ones, had no economic justification, but had been introduced, as MasterCard itself declared, because **of MasterCard's expectation of a negative decision of the European Commission.** Moreover, the ICA considered the vertical relationships, through the licensee agreements, between MasterCard and its acquirers in Italy.

The ICA assessed that this relation was not limited to the application of the MIFs by acquirers, establishing a common floor for the level of the merchant fees, thus restricting competition in the acquiring market. There were also other conditions introduced by acquirers in the contracts with their merchants that increased the effects of MIFs. Those conditions were sometimes linked to the network rules of MasterCard (Honour All Cards Rule) and sometimes introduced by banks, such as blending merchant fees of MasterCard/VISA or the imposition of the same merchant fees when transactions were on-us. All those conditions mutually benefitted MasterCard and each of its acquirers.

In December 2009 MasterCard and the acquiring banks offered commitments to allay the **ICA's competition concerns outlined in its decisions to open the proceeding, on the basis** of article 14-*ter* of the Law n. 287 of 10 October 1990. ICA rejected those commitments, considering that they were manifestly inadequate to address its concerns. Despite the appeal by the parties, ICA's rejection decision was definitely confirmed by the Italian second instance administrative court (Consiglio di Stato) on May 2, 2011.

On November 3, 2010 the ICA adopted the final decision which declared infringements of art. 101 (1) TFUE for anticompetitive agreements regarding both (i) the definition of national specific MIF for Italy adopted by MasterCard as an association of undertakings (ii) the vertical relationship, through the licence agreements, between MasterCard and its acquirers in Italy regarding the application of merchants fees and other contractual provisions that increase the effect of MIFs. MasterCard Inc. was imposed a fine amounting to 2.7 million euro, whereas the eight banks were imposed a fine which comprehensively amounted to euro 3.330.000.

MasterCard and the acquiring banks appealed the ICA's final decision. On 11 July 2011 the Italian Court of First Instance (Tribunale Amministrativo Regionale – TAR.) upheld the **Parties' appeal and cancelled the ICA's decision. The ICA then appealed the TAR's** decision to the second instance administrative court (Consiglio di Stato).

See also: [press release](#) (English)

B. PagoBANCOMAT

<p>Parties: Consorzio Bancomat (bank association) Legal basis: Article 101 TFEU Subject: MIFs for national transactions using national PagoBANCOMAT branded debit cards Outcome: commitment decision Date: 30 September 2010 (final decision)</p>

On 25 October 2009, the ICA opened an *ex officio* investigation regarding the definition, by Consorzio Bancomat, of a new MIF level for the PagoBANCOMAT branded national

debit card, which accounts for 75% of the debit cards issued in Italy⁹. Consorzio Bancomat is an association of about 600 Italian banks which manages the PagoBANCOMAT network. The MIF set by the Consorzio was made of two parts: a fixed **sum amounting to €0,13** per transaction and a variable sum, defined as a percentage (0,1579%) of the transaction value.

In the opening of proceedings decision, the ICA considered that the definition of the interchange fee by an association of undertakings infringed Article 101 TFEU since, **determining a common floor for the MSC price, it was likely to limit the banks' autonomy** to plan out their commercial strategies toward final consumers. As a consequence, the competition among banks was likely to be restricted.

During the proceedings Consorzio Bancomat offered the following commitments:

- i. to reduce the existing MIF applicable to transactions using PagoBANCOMAT by 4%, in the light of the whole system economic efficiency;
- ii. not to increase the MIF level in future;
- iii. to re-define the future MIF for the service according to the Merchant Indifference **Test (within 6 months from the Commission's publication of the studies on the costs and benefits of various payment instruments)** in accordance with ICA.

The ICA considered the above said commitments appropriate and necessary in order to dispel concerns about the potential restrictive effects due to the definition and application of MIFs. Therefore on 30 September 2010, it adopted the final decision which declared the commitments binding and terminated the proceeding without ascertaining the alleged violation. **The ICA's decision has not been challenged.**

See also: [press release](#) (Italian)

II. Cases on direct debit service interchange fees

<p>Parties: Italian banks association (ABI) Legal basis: Article 101 TFEU Subject: MIFs for national direct debit service Outcome: commitment decision Date: 30 September 2010 (final decision)</p>

A. The present MIF

On 25 October 2009, the ICA opened an *ex officio* investigation regarding the definition, by ABI, of a new MIF level for the national direct debit service (RID).¹⁰ABI is the main association of Italian banks, representing about 750 banks which do business in Italy. The Italian RID also includes a procedure that aligns electronically the direct debit databases **of the payer bank and the payee bank (AOS).**According to this procedure, the payer's bank may collect from its client the authorization to debit its account when a payment request issued by a payee is received (DMF). Besides it checks that the data provided by **the payer are indeed correct and saves all the 'aligned' authorizations in a specific**

⁹ The pre-existing MIF had been set by the Consorzio Pagomancomat (at that time CO.GE.BAN) in 2004 and examined, on the basis of the Italian Competition Law (Law No. 287 of October 10, 1990), by the Bank of Italy, which at the time was in charge of the antitrust enforcement in the banking sector. The Bank of Italy had considered that the definition of the interchange fee by an association of undertakings infringed article 2 of the Italian Competition Law and had granted a 5 years exemption under article 4 of the same law.

¹⁰The pre-existing MIF had been set by ABI and examined by the ICA in 2005 (see below).

dataset, which makes sure that each payment goes through only when the request for payment is fully compliant with the specifications of the payer's mandate.

Accordingly, the RID's MIF referred to in the ICA's proceeding comprised two components: one for the basic service and the other for the AOS. Comprehensively they amounted to €0,25.

In the opening of proceedings decision, the ICA considered that the definition of the interchange fees by an association of undertakings infringed article 101 TFEU since it set a floor (or a minimum price) for the fees charged by the payee banks. Such floor was common to all banks providing such services; therefore competition in the acquiring market was likely to be restricted.

During the proceedings IBA offered the following commitments:

- I. to reduce the existing MIF applicable to RID by 36% (i.e. from €0,25 to €0,16), setting the **component for the basic service at €0,088 and the component for the AOS at €0,071. The new level was based on the costs that payers banks incurred** in order to provide their services to payers; such costs were measured only on the most efficient banks included in the sample surveyed by ABI;
- II. to eliminate the component of the MIF due to the basic DD service (€0,088) by October 31^o, 2012;
- III. **not to increase the MIF's level in future.**

Considering the aforementioned commitments appropriate and necessary in order to dispel concerns about the potential restrictive effects due to the definition and application of MIFs, the ICA, on 30 September 2010, adopted the final decision which declared the commitments binding and terminated the proceeding without ascertaining the alleged violation. **The ICA's decision has not been challenged.**

See also: [press release](#) (Italian)

B. The pre-existing MIF

In 2005, the ICA carried out an *ex officio* investigation aimed at examining the pre-existing MIF for direct debit (and other) services on the basis of Article 101 TFEU, following the 3 years exemption under art.4 of L.287/90 granted by the Bank of Italy. The latter had in fact considered that the **direct debit MIF's set by ABI was justified** according to a cost-based approach.

In the opening of proceedings decision, adopted on March 29, 2005, the ICA considered the MIFs as intermediate service prices charged by banks in order to share out the income coming from a joint service; their agreed definition was deemed to infringe article **101 TFEU since it was likely to limit the banks' autonomy to plan out their commercial strategies toward final consumers.** As a consequence the competition among banks was likely to be restricted.

During the proceedings the Parties and ABI had offered the following commitments:

- I. to reduce MIFs since January 2007 at the levels resulting from the application of a renewed methodology (no more mark up and indirect costs; direct costs drops) to the available cost sample;
- II. to make a new cost analysis on July 2007, for a more representative sample, excluding - when calculating the sample mean - the 50% of the banks of the sample that presents higher costs;

- III. to set maximum MIFs levels resulting from the July 2007 cost analysis at a pre-specified values, stemming from further improvements in the cost methodology;
- IV. to make new costs analysis based on the new methodology every two years starting from July 2007, taking into account any further cost decreasing factor; apply the resulting MIFs.

Considering the aforementioned commitments appropriate and necessary in order to dispel concerns about the potential restrictive effects due to the definition and application of MIFs, the ICA had declared the commitments binding and terminated the proceeding without ascertaining the alleged violation.

See also: [press release](#) (English)

III. Cases on ATMs cash withdrawal interchange fees

Parties: Consorzio Bancomat (bank association)
Legal basis: Article 101 TFEU
Subject: MIFs for ATMs cash withdrawal
Outcome: commitment decision
Date: 30 September 2010

On 25 October 2009, the ICA opened an *ex officio* investigation regarding a new MIF level for ATMs cash withdrawal¹¹. The existing MIF, set by Consorzio Bancomat, amounted to €0,58. As for the other services, in the opening of proceedings decision the ICA considered that the definition of the interchange fee by an association of undertakings might infringe article 101 of the TFEU since it was likely to limit the banks' autonomy to plan out their commercial strategies toward final consumers. As a consequence, the competition among banks was likely to be restricted.

During the proceedings Consorzio Bancomat committed to reduce the MIF on ATM withdrawal to €0,56 on the basis of an analysis of the costs incurred by the owner of the ATM machine in the interest of the cardholder. Considering such commitment appropriate and necessary in order to dispel concerns about the potential restrictive effects due to the definition and application of MIFs, on 30 September 2010 the ICA declared them binding and terminated the proceeding without ascertaining the alleged violation. The ICA's decision has not been challenged.

See also: [press release](#) (Italian)

IV. Cases on other payments services interchange fees

Parties: Italian banks association (ABI)
Legal basis: Article 101 TFEU
Subject: MIFs for other national payment services
Outcome: commitment decision
Date: 9 April 2009; 30 September 2010

¹¹ The pre-existing MIF had been set by Consorzio Bancomat (at that time CO.GE.BAN) and examined by the ICA within the investigation carried out in 2005 (see section 2.B)

Two proceedings concluded by the ICA respectively on 30 September 2010 and on 9 April 2009 were focused on the definition of new MIF levels for other payment services¹², namely

- checks;
- the so-called MAV (a sort of giro transfer);
- an electronic payment instrument (RiBa) used by Italian firms to receive payments by their clients (B2B).

The existing MIF, set by ABI, amounted to:

- **between €0,02 and €0,06 for truncated orders**
- **€3,62 on bounced checks**
- **€3,62 on bounced checks brought by the drawer's bank to the clearing office of the Bank of Italy,**
- **€0,61 on MAV,**
- **€0,57 on RiBa.**

According to the ICA the definition of the interchange fees by an association of undertakings infringed article 101 TFEU since it set a floor (or a minimum price) for the fees charged by the payee banks. Such floor was common to all banks providing such services. Therefore competition in the acquiring market was likely to be restricted.

During the proceedings IBA offered the following commitments:

- I. to eliminate the interchange fees on **truncated order and cashier's checks**;
- II. **to reduce the interchange fee paid on bounced checks brought by the drawer's bank to the clearing office of the Bank of Italy from €3,62 to €3,24**;
- III. to carry out by the end of June 2009 (and then every two years) a cost review for the two interchange fees which refer to bounced checks (fee on bounced checks **and fee on the bounced checks brought by the drawer's bank to the clearing office of the Bank of Italy**) and for the MAV interchange fee;
- IV. to reduce the RIBA service MIF of 20% on the basis of an analysis of the costs incurred by the debtor banks in favour of the creditor.

The ICA considered that **ABI's commitments eliminated the two most important interchange fees, namely those on truncated order and cashier's checks.** The two interchange fees which referred to bounced checks (fee on bounced checks and fee on **the bounced checks brought by the drawer's bank to the clearing office of the Bank of Italy**) were not eliminated because they were needed for the efficiency of the clearing process. Besides, the interchange fee on the MAV, which was a marginal payment instrument, was considered justified because it exhibited the features of a two sided market. Finally, as for the MIF on RiBa, the ICA considered that it was set in the light of the whole system economic efficiency. **Therefore the ICA declared IBA's commitments binding and terminated the proceeding without ascertaining the alleged violation.**

The ICA's decision has not been challenged.

See also:

[Press release](#) (Italian)

[Press release](#) (English)

¹² The pre-existing MIF for RIBA had been set by ABI and examined by the ICA within the investigation carried out in 2005 (see section 2.B), whereas the pre-existing MIF for checks and MAV had been examined in 2003, on the basis of the Italian Competition Law (Law No. 287 of October 10, 1990), by the Bank of Italy, which at the time was in charge of the antitrust enforcement in the banking sector. The Bank of Italy had considered that the definition of the interchange fee by an association of undertakings infringed article 2 of the Italian Competition Law and had granted a 5 years exemption under the article 4 of the same law.

LATVIA

Case on multilateral agreement between banks

Parties: 22 Banks active in the Latvian payments market

Legal basis: Article 11 Part 1.1 of the Competition Law

Subject: participation in a multilateral agreement on the interchange fee for cash withdrawals at ATM, cash withdrawals at branches, balance inquiries at ATM and the multilateral interchange fee (MIF) on card payments at POS, incl. internet-based POS

Outcome: fines, but appealed by some of the banks; court decision is pending.

Date: 3 March 2011 (Decision)

The Kunkurences Padome (Competition Council of Latvia – CC) started an investigation into Latvian banks active in the payments market, resulting from the outcome of a market study. On 3 March 2011, the CC decided that 22 Latvian commercial banks had infringed Article 11 Part 1.1 of the Competition Law by participating in the Multilateral agreement on the interchange fee for cash withdrawals at ATM, cash withdrawals at branches, balance inquiries at ATM and the multilateral interchange fee (MIF) on card payments at POS, incl. internet-based POS.

The Relevant markets were defined as the markets for issuing of payment cards, for acquiring card payment services (POS, Internet) and market for ATM services (cash withdrawals, balance inquiries at ATM) in Latvia. Contrary to what the banks argued, the CC concluded that a MIF was not necessary for the cards market promotion. During the investigation, the CC repeatedly asked banks to provide evidence that the benefits of the multilateral agreement counterbalanced restrictions to the competition. Nevertheless the banks had not provided such evidence. Instead, banks explained the necessity of cards payments that was not questioned by the CC, therefore banks failed to justify the necessity to keep the fixed MIF for such a long time.

The CC has mentioned the following main arguments regarding fixing of the MIF:

- I. the MIF has actually fixed the minimum merchant service charge (MSC) set by the acquiring banks to merchants, thus restricting the acquiring banks capabilities to set lower MSC than MIF, i.e. to set the service price based on free competition;
- II. Acquiring banks (competitors) were aware that merchants – clients of other acquiring banks – would pay the same MSC level because the MIF was the base for the MSC minimum amount. Therefore the risk of losing customers (merchants) was low because the banks did not reduce MSCs lower than MIFs (except for some insignificant exceptions). As a result a common understanding was reached between the acquiring banks regarding the lowest MSC level, thus restricting competition among the acquiring banks;
- III. Neither merchants, nor consumers had an ability to impact MIFs;
- IV. MIFs have affected all card payments – directly interbank card payments and indirectly on-us card payments;
- V. MIFs were **the issuing banks' income, unrelated to their actual costs. Due to the fact that historically all acquiring banks happen to be issuing banks as well, issuing banks were interested to agree on a high MIF. Therefore CC concluded that banks had motivation to get financial gain out of MIF.**

The CC also investigated the part of the multilateral agreement which set fixed interchange fees for cash withdrawals at other banks' ATM, other banks' branches and

balance inquiries at ATM. The CC concluded that the multilateral agreement had a direct impact on the charge which banks applied to their customers (cardholders) for these services. The impact of this agreement was severe at the beginning of the assessment period (2002). Banks have provided information that the mark up for the interchange fee for cash withdrawals in ATMs was at the level of 253% or 289% depending on the fee applied.

Within a due time banks have concluded bilateral agreements which have left a positive impact on the market because the banks have reduced or even removed the charge applied to their customers for such services.

The CC has mentioned the following main arguments regarding the interchange fee (on services at ATMs):

- I. The interchange fee for cash withdrawals at ATMs has been established at a level substantially higher than the service costs as well as by taking into account VISA and MasterCard's fees without proper justification;
- II. The interchange fee has established a minimum charge of issuing banks applied to their customers (cardholders). Empirical evidence confirmed that issuing banks' charges were not set lower than the interchange fee;
- III. Banks have agreed on a lower interchange fee in cases of bilateral agreements:
 - a. interchange fee was lower in the bilateral agreements than in the Multilateral agreement;
 - b. the interchange fees established by bilateral agreements were lower not only for banks which have ATMs at their possession, but also for those banks which do not have ATMs;
 - c. the banks have amended the bilateral agreements to reduce the interchange fee for cash withdrawals at ATM;
 - d. the issuing banks have applied lower charges to their customers (cardholders) for cash withdrawal at those banks' ATM with whom they have bilateral agreement in comparison to charges for cash withdrawals at those banks' ATM with whom they only have a Multilateral agreement.

The CC concluded that the Multilateral agreement on MIFs and interchange fees for cash withdrawals at **other bank's ATM, in other bank's branches and balance inquiry at ATM** has to be considered as an agreement between competitors that by object and effect hampers, restricts and distorts competition in the relevant markets, by excluding the most important tool for competition, i.e. competition with price. The Multilateral agreement was in effect from end 2002 until beginning 2011 and the CC has imposed fines to the banks in the total amount of 5.5 million lats (7.8 million euro). However, as the multilateral agreement was abolished during the investigation by concluding bilateral agreements between the banks, no legal obligations were taken.

The decision was appealed by some of the fined banks and the appeal is still pending.

(Text based on http://www.kp.gov.lv/?object_id=1084&module=news)

THE NETHERLANDS

Study

Type: study

Scope: fees and tariff-structures of payment instruments in the Netherlands (in order to get an overview of developments in prices of card payments, direct debits, credit transfers and e-payments that could be an indication of i) the effects of the migration from national payment instruments to SEPA and/or ii) violations of the Dutch Competition act

Main conclusions: average tariffs paid by merchants to their banks for accepting debit card payments, for direct debits and e-payments slightly decreased. Also in bilateral agreements on interchange fees for direct debits, debit card payments and e-payments (iDeal) the NMa observed a downward trend.

Date: 2009

In 2009 the Netherlands Competition Authority (NMa) started a study into fees and tariff-structures of payment instruments in the Netherlands. The aim of this study is to get an overview of developments in prices of card payments, direct debits, credit transfers and e-payments in the Netherlands. Monitoring the prices could give an indication of the effect on prices of the migration from national payment instruments to SEPA payment instruments. This study could also give indications of violations of the Dutch Competition act.

In this market study each year the NMa sends inquiries to suppliers of payment instruments and asks for merchant and consumer prices. The NMa also asks for information on the level of (bilateral) interchange fee levels for several payment instruments.

In the years from 2008 to 2010 on average tariffs paid by merchants to their banks for accepting debit card payments, but also for direct debits and e-payments slightly decreased. Also in bilateral agreements on interchange fees for direct debits, debit card payments and e-payments (iDeal) the NMa observed a downward trend. Dutch consumers usually do not pay a fee per transaction. Instead, they pay a fixed fee each year to the bank. Prices charged by banks for payment packages for consumers (including a bank account, internet banking and a debit card) slightly increased from 2008 to 2010.

POLAND

Case on MIFs applicable to domestic transactions with Visa and MasterCard cards

Parties: MasterCard Europe, Visa Europe, Visa International, 20 Polish banks (*i.e.* the majority of banks operating in Poland and issuing cards in Visa and MasterCard systems), Polish Banks Association

Legal basis: Article 5(1) [currently art. 6(1)] of the Competition and Consumer Protection Act and Article 101(1) TFEU

Subject: MIFs applicable to domestic transactions with Visa and MasterCard cards

Outcome: Prohibition decision (Decision no. DAR 15/2006 of 29 December 2006)

Date: 29 December 2006

The investigation of domestic interchange fees in Poland by the Office of Competition and Consumer Protection (OCCP) was launched in 2001, following a complaint by the Polish Trade and Distribution Organization alleging price fixing by banks (active both in Visa and MasterCard systems) as well as illegal activities by major card networks (Visa and MasterCard), their member banks and the Polish Banks Association, aimed at restricting non-members' access to the payments market. The case was investigated under both Polish and EC competition law (the latter following the entry of Poland to the EU in 2004).

On 29 December 2006 a decision was issued, declaring the banks guilty of participation in a price fixing agreement, while clearing both banks and card networks of the allegation of engaging in activities aimed at restricting access to payments market.

Interchange fees in Poland, both in Visa and MasterCard networks were set by banks, grouped in the decision making bodies of the card networks. Such agreements were found to have actual restrictive effects on competition in the acquiring market (*i.e.* a market where acquirers compete for merchants), as it created an artificial price floor, appreciably restricting acquirers in the level of prices they could offer. Costs associated with interchange fees constituted over 80% of the fee charged by acquirers to merchants (MSC). As the interchange fee agreements were not found to be indispensable for the functioning of the four-party card systems, they were analysed in the light of the exemption criteria set out in Article 101(3) TFEU and corresponding Polish legislation. The parties provided cost studies purporting to show that the MIFs based on them fulfilled the exemption conditions. After a thorough analysis, the Polish competition authority came to a conclusion, that at least the first two conditions (contribution to economic or technical progress and fair share of such benefits being distributed to consumers) were not met by the agreements and, consequently, found the latter to be in breach of the Polish and EC competition law.

The second allegation was dismissed on the grounds that even if interchange fees might theoretically have some exclusionary consequences (in that non- or low-MIF payment systems may find it hard to enlist banks, reluctant to forego substantial MIF-related

revenues, which in turn could make entry into the payments market significantly more difficult), no indication was found that either card networks or banks, while setting MIF rates, aimed to exclude any entity from the payments market, as the complainant alleged.

The collective amount of fines imposed on 20 banks participating in the setting of domestic MIFs within Visa and MasterCard systems ran to over 164 million PLN (approx. €43 million at the date of the decision).

The banks, as well as MasterCard, appealed the decision to the Competition and Consumer Protection Court, which in November 2008 ruled that it should be reversed, as the interchange fees did not restrict competition in the relevant market identified, *i.e.* the acquiring market, possible anti-competitive effect occurring in some other market (not specified by the court), with issuing banks on one side and merchants on the other. The Polish competition authority appealed the verdict. The appellate court, pointing to the **European Commission's analysis in the decision concerning MasterCard cross-border MIF**, ruled on 22 April 2010 that the interchange fees did restrict competition in the acquiring market and remanded the case, obliging the first instance court to analyse in particular arguments concerning the possibility of an exemption. The proceedings before the Court of Competition and Consumer Protection, having commenced in December 2011, are ongoing.

See also:

[Press release Decision OCCP](#) (English)

[Press release Court of Appeals judgment](#) (English)

[ECN Brief 2010-03](#) (English)

ROMANIA

Study

Type: sector inquiry

Scope: banks issuing and accepting payment cards (credit, debit and commercial cards), undertakings, Visa and MasterCard with regard to the interchange fees

Main conclusions: sector inquiry ongoing

Date: 22 February 2011 (sector inquiry opened)

The Romanian Competition Council – RCC – opened a sector inquiry on 22 February 2011, targeted to the banks which issue and accept payment cards, undertakings, Visa and MasterCard. The payment cards inquiry envisaged credit, debit and commercial cards. The level of the interchange fee was set by the representatives of the banks, which are members of Visa and MasterCard, holding over 75% aggregated market share. A high level of interchange fees may negatively affect competition, by setting down a **threshold over which the merchants' costs for accepting payment cards will be considered**, inflicting increased prices for goods and services delivered to the final consumers.

The sector inquiry is currently ongoing. Once it is finalized, a report will be adopted by RCC, which will be published on the [institutional site](#).

SLOVENIA

I. Case on standing orders at the time of a common bank product launch

Parties: Bank Association of Slovenia

Legal basis: Article 5 in relation to Article 3 of Slovenian Competition Act (concerted practices), which reflects the Article 101 TFEU

Subject: *ex officio* procedure against the Bank Association of Slovenia into the decision calling on banks to cancel contracts for standing orders at the time of launching a common bank product – BankKredit.

Outcome: administrative procedure resulted in the obligation for Bank Association of Slovenia to take active steps in countering the effects of the agreement. Furthermore, fines were imposed on Bank Association of Slovenia and on the person responsible. The decision has been upheld by the Administrative court in Ljubljana.

Date: 15 November 2006 (Decision); 11 November 2008 (Judgment)

The supervisory board of Bank Association of Slovenia (hereinafter: ZBS) adopted a decision calling on banks to cancel contracts for standing orders at the time of launching a common bank product – BankKredit. A standing order is a modern payment instrument that served as an efficient mechanism to provide the possibility of paying in instalments or crediting. ZBS wanted to start an efficient marketing campaign of its product by excluding from the market of instalment payments (crediting) at selling points the offer of instalment payments with standing orders and thus excluded the possibility that sellers would offer to their customers the instalment payments with standing orders as a more favourable alternative. When buying goods or services in instalments using a standing order, the customer was able to pay the price of goods or services in several instalments without any additional costs, whereas in the case of the BankKredit service, they have to pay a high price for the application approval, insurance and interest rates. At the cost of consumers, ZBS members replaced a less expensive manner of crediting with a more expensive one.

The Slovenian Competition Authority (CPO) initiated an *ex officio* procedure against ZBS, as it found that ZBS could breach the Article 5 in relation to Article 3 of Slovenian Competition Act (concerted practices), which reflects the Article 101 TFEU. After conducting a procedure, the CPO established that the object of provisions of the aforementioned decision was to cancel an efficient service for paying goods or services in instalments and consequently to exclude competitors (points of sale) from offering the possibility of paying in instalments or of crediting at points of sale.

On 15 November 2006 the CPO issued a decision ordering ZBS to re-establish circumstances comparable to those that existed before cancellation of the possibility to pay in instalments or crediting with a standing order at a selling point. In the decision the CPO established that the disputed decision of ZBS represents a decision by an association of undertakings on the conditions of operating in a market, whose object is prevention, restriction and distortion of competition in the Republic of Slovenia, which makes it prohibited and null. By the decision the CPO imposed on ZBS the following duties: to inform in writing all its members that the decision in question was null, to call on all its members in writing to facilitate the establishment of such contractual relations with business partners (traders and others) that would allow them to independently offer sale

in instalments or crediting at a point of sale with the use of a standing order or any other adequate payment instrument, and to inform in writing all its members that statements sent to be signed in accordance with the decision of the supervisory board are null and void in the part referring to the launch of the activity.

The ZBS appealed against the CPO's decision at the Administrative court in Ljubljana, and the court has upheld the decision in its 11 November 2008 judgment. In addition to the administrative procedure the CPO fined the ZBS and the responsible person at the ZBS.

II. Case on simultaneous introduction of identical ATM withdrawal fees

Parties: Nova Ljubljanska banka d.d., Banka Celje d.d., Nova KBM d.d., Abanka Vipava d.d.

Legal basis: Article 5 in connection with Article 3 of Competition Act (concerted practices)

Subject: investigation by the Slovenian Competition Authority into the simultaneous introduction of an identical withdrawal fee

Outcome: decision by the Slovenian Competition Authority that the four banks had infringed competition law. The Administrative Court has upheld the decision in its judgment. The four banks were also fined by the Competition Authority for their illegal behaviour.

Date: 26 February 2007 (Decision);

The Slovenian Competition Authority (CPO) learned from the media and from the Slovenian banks that some banks decided to introduce on the same day the same fee for **withdrawal of cash from ATM's other than the ATM's of the bank that has issued the debit card** used for withdrawal (hereinafter: withdrawal fee). Accordingly, the CPO initiated on 17 May 2006 *ex officio* procedure against the following five banks: Nova Ljubljanska banka d.d. (hereinafter: NLB), Banka Celje d.d., Nova KBM d.d., Abanka Vipava d.d. and Banka Koper d.d. as such behaviour could breach the Article 5 in relation to Article 3 of Slovenian Competition Act (concerted practices), which reflects the Article 101 TFEU.

In its decision on 26 February 2007, the CPO found that four of the banks (NLB, Banka Celje, Nova KBM and Abanka Vipava) had acted in concert by starting to apply on the same day, that is 20 February 2006, identical withdrawal fee of 80 SIT, which is an infringement of Article 5 in connection with Article 3 of Competition Act (concerted practices). The CPO found that these four banks had announced their intention to introduce the withdrawal fee simultaneously on two occasions. First they had intended to introduce the withdrawal fee on 1 February 2006, but later changed the date to 20 February 2006. In addition the CPO found no evidence to suggest that the banks could have not set different withdrawal fees. As it regards the fifth bank, Banka Koper, the CPO found that it was only following the lead of the other four banks, since its announcement to introduce the withdrawal fee came after the announcement of other banks had been made public and terminated proceeding against it.

All four banks that have been found to be infringing Competition Act have filed an appeal against the decision with the Administrative Court. The Administrative Court has upheld the decision of CPO in its judgment of this case. The four banks were also fined by the CPO for their illegal behaviour.

SPAIN

Case on the fixing of interchange fees

Parties: Servired, 4B and EURO6000

Legal basis: domestic legislation, Ley 15/2007, de 3 de julio, de Defensa de la Competencia

Subject: agreement among the three platforms and the merchants to fix interchange fees, resulting in a commitment decision and monitoring by the Spanish Competition Authority.

Outcome: Termination by Commitments Agreement (TCA) and monitoring by the Spanish Competition Authority. The decision closing the monitoring has been appealed by several parties and awaits judgment.

Date: 16 November 2006 (TCA)

On 25 April 2005, the former Competition Service had opened formal proceedings in relation to an agreement to fix intersystem interchange fees between SERVIREDA, SISTEMA 4B and EURO6000, following a complaint received from the associations of traders and tourist businesses (ANGED, CAAVE, CEC, FEH and FEHR). The associations started to take the platforms/schemes to court, crowding courts of proceedings. The Ministry of Industry promoted an agreement to calm the situation and to promote legal certainty.

The case involved credit and debit cards, but not commercial cards. The alleged infringement was an agreement among the three platforms to fix interchange fees. Each scheme individually fixed 'on us' fees. Nevertheless, they did not distinguish between credit and debit, in all of them fees varied depending on the economic activity, and the procedure of fixing fees was a discretionary competence of the schemes which developed it without transparency. For intersystem fees there was an agreement of merchants and schemes about maximum fees, authorized by the Spanish Competition Authority in 2000.

On 16 November 2006, the Competition Service entered into a Termination by Commitments Agreement (TCA) with SERVIREDA, SISTEMA 4B and EURO6000 and the trade associations, which involved a series of commitments in relation to the interchange fees applicable to inter-system and intra-system transactions using debit and credit cards. An 'Observatory of Electronic Payment System' was created as a forum to monitor, disclose and analyse card payment systems in Spain.

The TCA was based on compliance with the following concurrent principles: i) costs-based objectivity, ii) transparency and differentiation between operations with credit and debit cards and iii) express commitment to an effective reduction in the levels of interchange fees, applicable immediately and progressively. The TCA appeared to be the best possible solution at that time. However, the TCA was approved at a time when the European Commission was considering changing its approach to interchange fees and therefore, would have to be modified by reference to those changes. In order to give effect to the agreed terms, the TCA provided for the presentation of certain costs studies that would serve as the basis for the calculation of the interchange fees to be applied from 1 January 2009. However, in accordance with the principle of having an effective and immediate reduction in the levels of interchange fees, the Agreement provided for the application of certain maximum limits for the interchange fees on a transitional basis until 31 December 2008. These limits differentiated between the volume of the

transaction and between credit and debit operations and decreased in the course of 2006, 2007 and 2008. In addition, clause seven of the TCA provided that the transitional limits 'shall be extended, if necessary, until 2010, as long as the effective application of the maximum limit deriving from the costs study has yet to take place'. In fact, such maximum limits for the 2009/2010 period are fixed in the Agreement (the so-called 'column four' of the table).

In 2009, various reasons led the now Council of the CNC (Spanish National Competition Commission) to conclude that it would not be appropriate to apply the maximum limits deriving from the costs studies to the intra-system interchange fees. Fundamentally, the maximum limits that would result from the application of the costs studies presented by the parties would have been higher than the transitional maximum limits provided for in the TCA, contravening the express commitment to an effective reduction of the levels of interchange fees, which formed the basis of the TCA. In addition, the Council indicated that the assessment of interchange fees carried out by the European Commission and several National Competition Authorities was no longer based on the costs method.

In light of this, in its Resolution of 29 July 2009, the CNC Council resolved that it would not be appropriate to apply the maximum limits deriving from the costs studies presented by each payment system to the Investigations Division in the course of its monitoring of the case to the intra-system exchange rates, and urged that the intra-system interchange fees provided for in column four of the TCA should be applied until 31 December 2010. On 20 December 2010, the CNC Council declared the monitoring of the Termination by Commitments Agreement (TCA) which had been concluded with SERVIDED, SISTEMA 4B and EURO6000 closed to the extent that it expired on 31 December 2010. The parties are from then on free to determine the interchange fees applicable to transactions using debit and credit cards to be applied from 1 January 2011, provided that they do so with complete respect for the provisions of Act 15/2007, in particular Article 1, and Article 101 TFEU.

One scheme (4B) appealed the closing of the monitoring. Also merchants appealed the decision, claiming that it was incomplete as it did not include sanctioning a breach of the agreement by the schemes (applying the maximum fee for 2008 the first months of 2009). Up to now the National Audience has supported the Spanish Competition Authority Decision; however it still has to pronounce a judgment on three appeals.

Text based on [ECN Brief 01/2011](#)

See also: [Proceedings 2457/03](#) (Spanish)

UNITED KINGDOM

I. Case on interchange fees (ongoing)

Parties: MasterCard International Inc/MasterCard Europe Sprl, Visa Europe Ltd and their respective UK issuing and acquiring licensee banks. Another relevant party no longer in existence was S2 Card Services Ltd.

Legal basis: Article 101 TFEU and Chapter I of the Competition Act 1998 (CA98)

Subject: Interchange fee arrangements for UK domestic point-of-sale transactions

Outcome: Still pending

The Office of Fair Trading (OFT) is investigating whether the interchange fee arrangements for UK domestic point-of-sale transactions made using MasterCard/Maestro and Visa consumer payment cards are agreements that infringe Article 101 TFEU and Chapter I of the Competition Act 1998 (CA98). Payment cards concerned include MasterCard (including Maestro) and Visa consumer credit, charge, deferred debit and immediate debit cards. Article 101 TFEU and Chapter I CA98 apply to agreements which prevent, restrict or distort competition.

The UK Government intervened in support of the European Commission before the General Court in the appeal proceedings brought by MasterCard against the decision of the European Commission regarding MasterCard's, including Maestro's, intra-European cross-border interchange fee arrangements. The General Court hearing was held on 8 July 2011. The OFT expects to decide on the way forward in its investigations after the General Court judgment.

See also: [Web link](#) (English)

II. Case on interchange fees (closed)

Parties: MasterCard International Inc/MasterCard Europe Sprl, MasterCard UK Members Forum Ltd (MMF) (previously known as MasterCard/Europay UK Ltd), MMF members (the major UK issuing and acquiring licensee banks) and other MasterCard licensees in the UK

Legal basis: Article 101 TFEU and Chapter I of the Competition Act 1998 (CA98)

Subject: Multilateral interchange fee (MIF) arrangements for UK domestic point-of-sale transactions. The OFT's case concerned the arrangements for setting UK domestic MIFs that were in place between 1 March 2000 and 18 November 2004.

Outcome: Formal infringement decision. The decision was set aside by the Competition Appeal Tribunal due to procedural problems.

Date: 6 September 2005 (Decision); 19 June 2006 (CAT judgment)

The OFT investigated the MIF arrangements for UK domestic point-of-sale transactions made using MasterCard consumer credit and charge cards that were in place between 1 March 2000 and 18 November 2004. From 18 November 2004, new arrangements for setting UK domestic MIFs were introduced by MasterCard.

The OFT reached a formal infringement decision on 6 September 2005 based on Article 101 TFEU and Chapter I CA98. The infringement decision found that the UK Domestic Rules adopted by MMF's members (which included the MIF agreement) constituted an

agreement between undertakings and/or a decision by an association of undertakings. The MIF agreement was found to have had the effect of restricting competition in two ways. First, it gave rise to a collective agreement on the level of the MIF (essentially, a collective agreement on price). Secondly, it resulted in the unjustified recovery of certain costs (extraneous costs) incurred by MMF members and other MasterCard licensees through the MIF. The OFT did not make any definitive finding as to whether the MIF agreement had the object of restricting competition.

The agreement in question was notified to the OFT for decision. This being so, the OFT did not consider it appropriate to impose a penalty in respect of the infringement arising from the agreement.

The OFT's decision was appealed to the Competition Appeal Tribunal (CAT) in November 2005 by MMF, MasterCard International Inc/MasterCard Europe Sprl and the Royal Bank of Scotland Group. Visa Europe Ltd/Visa UK Ltd intervened in support of the appellants. The British Retail Consortium intervened in support of the OFT. On 19 June 2006, the CAT set aside the OFT's decision. The OFT wished to rely in the CAT on arguments not contained in the OFT's original decision, raising serious procedural problems. The OFT concluded that it was better to focus its energies on the investigations of MasterCard's and Visa's current MIF arrangements that were already in progress (see above for more information).

See also:

[Web link](#) (English)

[Press release](#) (English)

III. Other completed work

[Link agreement \(October 2001\)](#)

[UK payment systems \(May 2003\)](#)

[Store cards \(March 2004\)](#)

[Payment Systems Task Force, First annual progress report \(May 2005\)](#)

[Payment Systems Task Force, Second annual progress report \(May 2006\)](#)

[Payment Systems Task Force, Final report \(February 2007\)](#)

[Review of the operation of the Payments Council \(March 2009\)](#)

[Surcharging \(June 2011\)](#)

[Travel money \(December 2011\)](#)

NORWAY

Case on Visa and MasterCard cards

Parties: Visa Norge Bankgruppe AS and Norwegian MasterCard Licensees Forum

Legal basis: Section 10 of the Norwegian Competition Act

Subject: enforcement action on all types of cards under the brands of Visa and MasterCard issued in Norway

Outcome: the Norwegian Competition Authority has not yet issued a statement of objections

The Konkurransetilsynet (the Norwegian Competition Authority - NCA) opened cases against Visa and MasterCard in May 2008 and issued letters to the national scheme forums, respectively Visa Norge Bankgruppe AS and Norwegian MasterCard Licensees Forum.

The NCA held meetings with both Visa and MasterCard where the two schemes were given the opportunity to give an account of their chosen methodology and the reasoning for the (relatively high) fee levels. In addition to concerns related to the levels of the interchange fees, the contractual clauses, and especially the no-discrimination rule, were relevant. In meetings and written correspondence with the NCA, the national forums have been assisted by representatives from their European organizations.

The NCA took an approach of enforcement action combined with advocacy towards the Visa and MasterCard schemes. No division was made between debit and/or credit cards at the early stages of the proceedings – the cases involved all types of cards under the brands of Visa and MasterCard that are issued and acquired in Norway.

The NCA has not yet issued a statement of objection.

SWITZERLAND

I. Cases on interchange fees

A. Credit Card-Interchange Fees I (KKDMIF I)

Parties: Swiss Issuers and Acquirers of Visa and MasterCard (banks), Verein Elektronischer Zahlungsverkehr, VEZ (merchant association)
Legal basis: Article 5 Sections 3 (a) and 1 Swiss Cartel Act (price fixing agreement)
Subject: Domestic Multilateral Interchange Fees (DMIFs) for transactions in Switzerland using Visa and MasterCard branded (consumer and commercial) credit cards
Outcome: settlement (5 December 2005), publication in RPW/DPC, 2006/1, p. 65 ff
Date: 5 December 2005 (settlement, expired on 1 September 2010)

In Switzerland, the Domestic Multilateral Interchange Fees (DMIFs) are fixed by two bodies, the Issuer/Acquirer Forum Visa (IAFV) and the Card Committee MasterCard (CC). As in Switzerland at that time all Issuers and Acquirers offered both Visa and MasterCard branded credit cards ('dual branding'), the same companies were represented in both bodies. The cartel investigation was opened against all members of these bodies, specifically against the following companies: The four domestic Issuers (UBS, Swisscard [a subsidiary company of Credit Suisse], Visa Card Services SA [Viseca is a joint enterprise of the small and medium-sized Banks] and Cornèr Banca SA) and the two domestic Acquirers (Telekurs Multipay AG [nowadays SIX Multipay AG] and Aduno SA (a subsidiary company of Visa)). Not involved as parties were the two German Crossborder-Acquirers (ConCardis GmbH and B&S Card Service GmbH) that are active on the Swiss market.

COMCO qualified the DMIF as a price-fixing agreement and argued that the DMIF is the most important cost component for the acquirers, as it is an essential element of the MSC (around 70%). The level of the DMIF thus had a direct effect on the range available to the acquirers for setting prices. In practical terms, the DMIF was considered to be a minimum price in the acquiring business. Likewise, COMCO brought forward that the DMIF also influences the range available for setting prices on the issuing side, albeit in the opposite direction. **The revenues from the DMIF amounted to a fifth of the issuers' overall revenue.**

With respect to the argument that interchange fees have a balancing effect in the two-sided markets for credit cards, COMCO could show that several raises of the interchange fees' level did not lead to lower fees for cardholders. Thus, raising the DMIF has primarily increased the revenue of the issuers.

Nevertheless, COMCO accepted that in this four-party system, this type of multilateral procedure could have efficiency advantages. In particular, it could simplify market entry for foreign acquirers and save transaction costs compared to a bilateral system. According to the COMCO, however, the advantages of the multilateral procedure only outweigh its disadvantages if the DMIF is limited to the cost elements which are directly linked to operating the network. In other words: an issuer-cost-based approach was chosen, similar to the decision of the Reserve Bank of Australia and the 'Visa II'-decision of the European Commission.

Due to these circumstances the parties agreed to base the level of the DMIF only on measurable network cost elements. For this purpose, they accepted a cost scale based on measurable cost elements relating to operating the network. In particular, the costs of the interest-free period as well as the costs of credit losses in terms of the payment guarantee have been excluded. The same applied to the costs of the Merchant Marketing and Spend Incentives programs.

The amicable settlement with the parties ('Einvernehmliche Regelung I'; EVR I) included the following points:

- I. Immediate decrease of the weighted average DMIF of 0.2% from 1.7% to 1.5%. Afterwards decrease of the weighted average DMIF in stages to a level of 1.3% in 2008. After 2008, capping of DMIF at the level of average issuer-costs.
- II. Abolition of the 'non-discrimination rule' (NDR). The NDR was already the subject of a decision in the year 2002 (cf. below II.A.)
- III. Creation of transparency: The acquirers have to disclose to merchants (on request) the (sector) relevant interchange fee rate.
- IV. Prohibition of the exchange of data within the card committees.

In Switzerland, fines for infringements of the Cartel Act have only been possible since the amendment of the Cartel Act in the year 2004. As the parties signed the settlement before the expiry of the transition period for the revised Cartel Act and had expressed their intention to implement it immediately, no fines have been imposed.

There was no appeal against COMCO's settlement-decision. The settlement expired on 1 February 2010.

B. Credit Card-Interchange Fees II (KKDMIF II)

Parties: Swiss Issuers and Acquirers of Visa and MasterCard (banks), Visa and MasterCard (schemes), Verein Elektronischer Zahlungsverkehr (merchant association)
Legal basis: Article 5 Sections 3 (a) and 1 Swiss Cartel Act (price fixing agreement)
Subject: Domestic Multilateral Interchange Fees (DMIFs) for transactions in Switzerland using Visa and MasterCard branded (consumer and commercial) credit cards
Outcome: preliminary injunctions (25 January 2010), publication in RPW/DPC, 2010/3, p. 473 ff.; pending investigation
Date: 15 July 2010 (opening of investigation)

Due to the expiration of the settlement of 2005, the COMCO decided on 15 July 2010 to open a new investigation to reassess the consequences of the DMIF for credit cards. The aim of the current investigation is to examine if the considerations and results of the decision from the 5th of December 2005 are still applicable, whether the objectives of the amicable settlement ('Einvernehmliche Regelung I' – EVR I) were achieved and whether the methods of fixing the DMIF should be kept as it is or if another approach would better fit the current market situation. In this context the international developments have to be considered, particularly the experiences of the European Commission with the merchant indifference test.

In order to avoid a time period without regulation of the DMIF and to give legal certainty to the parties, COMCO concluded a new amicable settlement ('Einvernehmliche Regelung II' – EVR II) with the parties in the form of preliminary injunctions.

The EVR II is primarily a continuation of the EVR I, as an evaluation of the effects of the EVR I led to the following results:



- Reductions of the DMIF were fully passed on by the acquirers to the merchants. In the time period 2005 to 2008, the merchants saved 70 to 90 Mio. Swiss Francs. The number of merchants accepting credit cards increased considerably. Particularly the two largest retailers began to accept credit cards.
- Surprisingly, the cardholder-fees decreased at the same time realizing cumulated savings for the cardholders of about 200 to 250 Mio. Swiss Francs for the years 2005 to 2008. This can be interpreted as indication that the balancing function of interchange fees was not yet effective and that the price level was still too high. Issuers argue that there is no causality between the EVR I and the development of the issuing-market. This is not completely true, as the introduction of credit cards without annual fee was initiated by the two largest retailers (in cooperation with issuers). At least one of the retailers informed COMCO that the decision to accept credit cards and even to launch an own credit card only was possible after the reduction of the DMIF.
- Three new issuers (Postfinance, GE Money Bank and Jelmoli Bonus Card) entered the market. All three considered that the decrease of the DMIF had facilitated market entry.

However, some adjustments of the EVR I had to be made. The average issuer-costs only decreased marginally from 1.313% to 1.282%. This was due to the fact that a minority of the issuers had increased the costs considerably while the majority of the issuers showed limited to strong declines of their costs. The interpretation of this result is delicate as the costs were collected only one time, three years after the adoption of the decision. Therefore the EVR I has been adjusted as follows:

- Changes to the weighting of the individual issuer-costs. While in the EVR I basically an average of all issuer-costs was calculated, the EVR II focuses on the two most efficient issuers (those with the lowest individual issuer-costs). The most inefficient issuer is not included in the calculation. This new calculation method will prevent the excessive impact to the overall result by an individual issuer with especially high costs. Eliminating the highest costs will also minimize the incentive for issuers to strategically allocate costs so that their costs are at an extraordinary high level during a survey year. The increased emphasis on the companies with the lowest costs is intended to create an incentive to invest in additional cost reduction measures.
- The issuer-costs are surveyed and the cap adapted every year instead of every three years.

The adjustment of the calculation method led to an immediate reduction of the average DMIF from 1,282% to 1,058% for the year 2010. Due to the yearly adaptation the average DMIF another reduction took place for the year 2011 from 1,058% to 0,990%.

One of the new issuers appealed against the preliminary injunctions but the administrative court decided that this issuer was not legitimated to appeal as he had not signed the settlement.

The preliminary injunctions will be in force until the procedure will be closed with the final decision.

C. V PAY

Parties: Visa Europe
Legal basis: Article 5 Swiss Cartel Act (Unlawful anti-competitive agreement)
Subject: introduction of a DMIF for the debit card system Visa V PAY
Outcome: no opening a formal investigation during market entry phase, publication in RPW/DPC 2009/2, p. 122 ff
Date: 2009

In 2009, the Secretariat of the COMCO completed a preliminary investigation concerning the introduction of a DMIF for the Visa debit card 'V PAY' (which is, however, not yet present in the Swiss market). The Secretariat of the COMCO concluded that there is no reason to intervene during a market entry phase of up to three years and as long as the market share of 'V PAY' remains below 15% and the DMIF does not exceed 0.20 Swiss francs per payment transaction.

D. Maestro and Debit MasterCard

Parties: MasterCard Inc., MasterCard International Inc. and MasterCard Europe SPRL
Legal basis: Article 5 and 7 Swiss Cartel Act (Unlawful anti-competitive agreement and Abuse of a dominant position)
Subject: Maestro Fallback Interchange Fee und Debit MasterCard Interchange Fee
Outcome: renouncement of opening a formal investigation during market entry phase for Debit MasterCard and threat of immediate opening of a formal investigation in case of introduction of interchange fees for Maestro
Date: June 2011 (preliminary investigation closed)

In June 2011, the Secretariat of the COMCO closed a preliminary investigation against MasterCard regarding the implementation of an interchange fee for its debit cards Maestro and Debit MasterCard. Besides cash payments, Maestro is the most frequently used payment system in Switzerland.

In contrast to other European countries, the Maestro system in Switzerland has previously operated without any interchange fee. In December 2008, MasterCard formally announced the introduction of a Domestic Fallback Interchange Fee (DFIF) for the Maestro system. Due to the opening of the preliminary investigation, MasterCard has provisionally refrained from the implementation of a DFIF.

The Secretariat of the COMCO concluded that an interchange fee for Maestro could violate the Cartel Act, but stated that an interchange fee for the new 'Debit MasterCard' might be possible within certain limits. Concretely, the Secretariat of the COMCO declared that it would not request the COMCO to open an investigation during the introduction phase of up to three years of 'Debit MasterCard' provided that this card does not exceed a market share of 15 per cent and that its interchange fee, on average, amounts to no more than 0.20 Swiss francs per payment transaction. MasterCard accepted to comply with these conditions, which correspond to the conditions imposed on VISA in 2009 for its debit card 'V PAY'.

Concerning Maestro the Secretariat of the COMCO argued that there is no reason for an interchange fee in a mature system which has previously been functioning without such a fee.

II. Other cases

A. Credit Card-Acceptance Business (NDR-Decision)

Parties: Swiss Acquirers of Visa, MasterCard, Amex, JCB and Diners credit cards (banks)
Legal basis: Article 7 Section 2 (c) Swiss Cartel Act (Abuse of a dominant position)
Subject: imposition of the Non-Discrimination-Rule (NDR) by the acquirers to the merchants
Outcome: prohibition of the NDR, publication in RPW/DPC, 2003/1, p.106 ff

This was the first of COMCO's decisions related to credit cards. Therefore several questions were examined for the first time and the reasoning in this case is still of some interest. Particularly the basic concept for the definition of the relevant markets was developed in this decision. COMCO concluded that access to monetary transactions via credit card cannot be substituted with other payment systems (e.g. cash or debit cards). Rather, there is a complementary relationship between these means of payment.

Subject of the investigation was the 'Non Discrimination Rule' (NDR) prescribing the non-discrimination with respect to prices between different means of payment (e.g. cash vs. credit card) as well as different credit card systems. At that time all actors in the Swiss acquiring market specified such a NDR.

The NDR-Case had a special and until then unique approach, as the unlawful restraint of competition was not based on an agreement between competitors but on a collectively dominant market position of the acquirers. Such a collectively dominant market position can either be reached by explicit or tacit collusion. COMCO examined several criteria (market concentration, transparency and stability; interest, product a cost symmetries and the position of the demand side of the market) and concluded that the four big players in the Swiss acquiring market were in a position to coordinate their behaviour in a collusive way. According to the Swiss cartel law, using a dominant market position for the enforcement of inadequate business conditions is discriminating. COMCO considered, that the imposition of a NDR profoundly constrains the possibility of the merchants to independently set their prices and, therefore, has to be qualified as an inadequate business condition prohibited under the Swiss cartel law.

The parties appealed the decision. The Competition Appeals Commission referred the case back to the Competition Commission for re-examination in June 2005. The grounds for doing so were mainly related to changes in market conditions in the acquiring business since the decision. COMCO in turn appealed the decision of the Competition Appeals Commission. The appeal was still pending before the Swiss Federal Supreme Court when the acquirers agreed in the 'KKDMIF I'-Case (cf. above I.A.) to abolish the NDR.

B. Maestro Development Fund (MDF) and Maestro Volume Fee (MVF)

Parties: MasterCard Europe SPRL
Legal basis: Article 7 Swiss Cartel Act (Abuse of a dominant position)
Subject: Acquiring Fees on Maestro-Transactions.
Outcome: case pending
Date: June 2010 (opening preliminary investigation)

In June 2010, the Secretariat of the COMCO has opened a preliminary investigation in order to determine whether there are indications that MasterCard could possibly have abused a dominant position in introducing and maintaining the acquiring fees Maestro Volume Fee (MVF) and Maestro Development Fund (MDF).

C. SIX / Payment Terminals with the DCC-Function

Parties: SIX Multipay AG (acquirer), SIX Card Solutions AG (payment terminal manufacturer), SIX Group AG (parent company)
Legal basis: Article 7 Swiss Cartel Act (Abuse of a dominant position)
Subject: refusal to provide interface information needed for interoperability with the DCC-Functionality offered by SIX Multipay to its merchants
Outcome: decision to fine, publication in RPW/DPC, 2011/1, p. 96 ff.; pending appeal
Date: 29 November 2010 (Decision)

The Dynamic Currency Conversion (DCC) functionality, which was launched by SIX Multipay AG in 2005, allows holders of a foreign credit or debit card to have the price of a transaction converted to their local currency when making a payment in a foreign currency. It thus offers the opportunity to such holders to decide, directly at the terminal, if they wish to make their payment in Swiss francs or in their national currency. In the latter case, the cardholder knows both the conversion rate and the final amount that will be charged. For the merchant, the DCC function is interesting due to shared revenues from the currency conversion.

The procedure was initiated in 2006 following a complaint from the card terminal manufacturer Jeronimo (nowadays CCV-Jeronimo). Jeronimo complained that the DCC function offered by SIX Multipay AG was available only on the terminals of its sister company SIX Card Solutions AG and that SIX Multipay AG refused access to the interface information needed to establish interoperability of the DCC function with other payment terminals. The investigation showed that SIX Multipay had refused to provide the interface information not only to Jeronimo but to all competitors of SIX Card Solutions that had asked for access.

In its decision COMCO established that SIX Multipay AG holds a dominant position in the markets for acquiring Visa and MasterCard credit cards and Maestro debit cards. The market shares of SIX Multipay at the time of the refusal (2006) amounted to 60–70% for Visa and MasterCard credit cards and over 90% for Maestro.

As a result of SIX Multipay's refusal to give access to interface information, merchants with an acquiring contract with Multipay could not offer DCC service to their own clients, unless they accepted to have a SIX Card Solutions payment terminal. As in the years 2005 and 2006 most merchants had to change their terminals due to a new standard, the terminals from SIX Card Solutions had a considerable competitive advantage compared to the other manufacturers of payment terminals which was not based on its own merits. Due to this distortion of competition the market share of SIX Card Solutions increased from 40–50% up to 60–70% to the detriment of its competitors.

COMCO qualified the behaviour of SIX as an unlawful leveraging of market power from a dominated to an adjacent market. The behaviour fulfilled several of the abusive practices listed in Article 7 Section 2 of the Swiss Cartel Act, specifically refusal to supply, discrimination, tying and restrictions on technical development.

COMCO imposed a fine of CHF 7 Mio (€ 5.8 Mio)

The barrier to competition had ended already in December 2006 when, during the preliminary investigation, SIX Multipay accepted to open up access to the necessary technical information needed by competing terminal manufacturers.

SIX appealed the decision. The Administrative Federal Court closed the exchange of written submissions January 2012.

D. ATM-Fees

Parties: banks

Legal basis: Article 5 Swiss Cartel Act (Unlawful anti-competitive agreement)

Subject: Multilateral ATM-Fees

Outcome: Renouncement of opening a formal investigation

Date: 2006

In the year 2006 the Secretariat of the COMCO conducted a preliminary investigation in order to clarify if the multilateral agreement between banks on ATM-Fees can be qualified as a price-fixing agreement. ATM-Fees are fees which a bank has to pay when one of its clients uses an ATM of another bank. The preliminary investigation showed that even when the ATM-Fees between the banks were fixed on the same level, the passing-on of the fee to the customers varied from bank to bank.