

CASE COMP/39.398 - VISA EUROPE

COMMITMENTS OFFERED TO THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 9 OF COUNCIL REGULATION (EC) NO 1/2003¹

In accordance with Article 9 of Council Regulation (EC) No 1/2003 (*Regulation 1/2003*), Visa Europe offers the following commitments (the *Commitments*) to the European Commission (the *Commission*) in partial response to the Commission's concerns as set out in a Statement of Objections dated 3 April 2009 (the *SO*) concerning Visa Europe's Intra-Regional and certain domestic Multilateral Interchange Fees for Immediate Debit cards which operated between 1 January 2008 and 10 March 2009.

Consistent with Article 9 of Regulation 1/2003, these Commitments are made without prejudice to Visa Europe's position that the MIFs referred to in the SO do not infringe Article 101 TFEU and that the SO does not address the MIFs adopted by Visa Europe on 10 March 2009. The Commitments are offered to the Commission without prejudice to Visa Europe's position that its Immediate Debit MIFs do not infringe competition law should the European Commission or any other party decide to open proceedings or commence legal action in connection with the MIFs against Visa Europe. The Commitments cannot be interpreted as an acknowledgement by Visa Europe that any of the concerns raised in the SO are valid or that 0.2% is the right level for setting Immediate Debit MIFs.

These Commitments are offered by Visa Europe taking into account that the Commission is currently conducting a pilot study on the costs and benefits to merchants of accepting different payment methods which is expected to lead to a full study to be launched in 2010.

1. INTRA-REGIONAL IMMEDIATE DEBIT MIFs

1.1 Two months following the Commencement Date Visa Europe commits to cap its yearly weighted average Intra-Regional Multilateral Interchange Fee applicable to Immediate Debit transactions at 20 basis points (0.2%).

1.2 Within the weighted average cap of 20 basis points, Visa Europe shall be free to set Immediate Debit MIF rates for particular categories of transaction as it sees fit, and in particular in order to incentivise the adoption, by merchants and their acquirers, of secure technology and innovation. For the avoidance of doubt, the Commitments in paragraphs 1 and 2 shall not affect the Intra-Regional MIFs or domestic MIFs applicable to consumer credit or deferred debit or Commercial Cards transactions.

2. DOMESTIC IMMEDIATE DEBIT MIFs

2.1 Visa Europe agrees that the cap referred to in paragraphs 1.1 and 1.2 will, in addition, apply to the domestic Immediate Debit MIF rates in each of those countries for which Visa Europe directly set specific domestic Immediate Debit MIFs and in those countries where the Intra-Regional Immediate Debit MIF applies

¹ Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets.

in the absence of other MIFs . For the avoidance of doubt, Visa Europe agrees that the cap referred to in paragraphs 1.1 and 1.2 will also apply in any EEA country whose domestic Immediate Debit MIF will be directly set by Visa Europe or will default to MIFs set by Visa Europe.

2.2 Subject to paragraph 5 below, in respect of domestic Immediate Debit MIFs in those countries referred to in paragraph 2.1 above that are currently below a weighted average of 20 basis points, Visa Europe commits not to increase the relevant MIFs.

3. TRANSPARENCY

3.1 Visa Europe commits to continuation and further improvement of the transparency measures that were introduced by the Visa Europe Board on 10 March 2009.

3.2 As of the Commencement Date (unless specified differently), Visa Europe will ensure that the following measures are implemented:

Unblending

Visa Europe will maintain in force an Operating Regulation requiring that all new merchant contracts contain a provision that Merchant Service Charges (MSCs) must not be blended between VISA/ VISA Electron / V PAY card transactions and other payment card transactions.

Visa Europe will maintain in force an Operating Regulation requiring, with effect from 11 November 2010 that all existing merchant contracts contain a provision that MSCs must not be blended between VISA / VISA Electron / V PAY card transactions and other payment card transactions.

Visa Europe will maintain in force an Operating Regulation requiring acquirers to offer merchants separate MSCs for VISA / VISA Electron / V PAY branded consumer immediate debit, consumer deferred debit and credit and Commercial Cards. Such Operating Regulation will provide that such separate MSCs are offered unless the merchant requests blended pricing from the acquirer.

Visa Europe will neither discourage acquirers from unblending their prices nor allow them to encourage merchants to request blended prices.

Visa Europe will introduce an Operating Regulation requiring that acquirer invoices to merchants show separately from each other and from all other schemes (1) the number of transactions, (2) the total spend/value and (3) the total price charged by card type (i.e. VISA credit, VISA debit, VISA Electron, V PAY, VISA commercial - except when the merchant chooses blended pricing).

Registration

Visa Europe will maintain in force an Operating Regulation requiring all MIF rates applicable to transactions with VISA / V PAY cards in the EEA countries to be registered with Visa Europe and to be publicised on Visa Europe's website. Where the Intra-Regional MIF rate applies by default to domestic transactions this will be made clear on the relevant website. The registered MIF rates shall, in the absence of

¹ Currently, 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.

bilateral agreements, apply to transactions involving cross-border acquirers and cross-border issuers within the EEA

Publication

Visa Europe will publish all MIF rates set by Visa Europe as well as all MIF rates registered with Visa Europe by its members.

Visa Europe will ensure that the MIF rates are published in a way that identifies an applicable interchange rate for all types of transactions.

Visa Europe will require its acquirers to inform merchants of the availability of such information on Visa Europe's website.

Commercial Cards

Visa Europe will ensure that all Commercial Cards issued in the EEA will be visibly identifiable by merchants and that all such cards can be electronically identified at POS terminals by the acquirer and the merchant if the terminal has the necessary capability.

HACR

Visa Europe already has separate Honour All Cards Rule (HACR) for VISA, VISA Electron and V PAY cards, *i.e.* merchants may freely choose to accept VISA and/or VISA Electron and/or V PAY cards. Visa Europe will not make any changes to the HACR as it applies to Immediate Debit transactions.

Visa Europe will require its acquirers to inform merchants that they are permitted to accept VISA and/or VISA Electron and/or V PAY cards and/or the competing schemes' cards.

Unbundling and multiple acquirers

Visa Europe will maintain its current position whereby merchants are permitted to have different acquirers for handling transactions with each type of payment card within the Visa Europe system and/or competing schemes.

Enforcement of Operating Regulations

Visa Europe will enforce the above Operating Regulations in line with current procedures and practice for violations and wilful violations of the Operating Regulations.

4. MONITORING TRUSTEE

4.1 Visa Europe shall appoint a Monitoring Trustee to monitor Visa Europe's compliance with these Commitments. The Trustee shall be independent of Visa Europe or any other undertaking directly or indirectly controlled or affiliated with Visa Europe and shall possess the necessary qualifications to carry out its mandate and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Visa Europe in a way that does not impede the independent and effective fulfilment of its mandate.

Proposal by the Parties

4.2 No later than one week after the Commencement Date, Visa Europe shall

submit a list of one or more persons whom Visa Europe proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 4.1 above and shall include:

- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments; and
- (b) the outline of a plan which describes how the Trustee intends to carry out its assigned tasks.

Approval or rejection by the Commission

4.3 The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Visa Europe shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Visa Europe shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the Parties

4.4 If all the proposed Trustees are rejected, Visa Europe shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 4.1 to 4.3 above.

Trustee nominated by the Commission

4.5 If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Visa Europe shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

Duties and obligations of the Monitoring Trustee

- 4.6 The Monitoring Trustee shall:
- (a) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the Commitments;
 - (b) provide to the Commission, sending Visa Europe a non-confidential copy at the same time, a written report within [CONFIDENTIAL – BUSINESS SECRET] of the Commencement Date, and every [CONFIDENTIAL – BUSINESS SECRET] thereafter, on Visa Europe's compliance with the Commitments;
 - (c) report in writing to the Commission, sending Visa Europe a non-confidential copy at the same time, if it concludes on reasonable grounds that Visa Europe is failing to comply with these Commitments;
 - (d) reply to questions from the Commission with additional information or its views for the purpose of assessing Visa Europe's compliance with the Commitments;

- (e) where appropriate, propose to the Commission such measures as the Monitoring Trustee considers necessary to ensure Visa Europe's compliance with these Commitments.

Duties and Obligations on Visa Europe

4.7 Visa Europe shall provide the Monitoring Trustee with such assistance and information, including copies of all relevant documents, as the Monitoring Trustee may reasonably require in carrying out his Mandate.

5. DURATION AND REVIEW OF MIF RATES

5.1 The Commitments in paragraphs 1 and 2 above will take effect on and from the Commencement Date and, subject to paragraphs 5.3 and 5.4 below, shall remain in force for a period of 4 years.

5.2 During the period of these Commitments, Visa Europe shall refrain from setting and implementing other fees that are economically and/or legally equivalent to Intra-Regional Multilateral Interchange Fees applicable to Immediate Debit transactions, including but not limited to Visa Europe's scheme fees charged to acquirers and / or issuers.

5.3 Pursuant to Article 9(2) of Council Regulation 1/2003, the Commission may, on its own initiative or at the request of Visa Europe, reopen the proceedings where there has been a material change in any of the facts on which the decision was based, in particular:

(a) as a result of the judgments and reasoning of the General Court or of the Court of Justice with regard to interchange fees; or

(b) if more reliable data for calculating the Immediate Debit weighted average MIF rate based on the Merchant Indifference Test becomes available (for example the Commission's study on costs and benefits to merchants of accepting different payment methods).

Visa Europe understands that reopening proceedings pursuant to paragraphs 5.3(a) or 5.3(b), would be without prejudice to Visa Europe's right to be heard.

5.4. Without prejudice to Article 9(2) of Council Regulation 1/2003, the Commission may, in agreement with Visa Europe, modify the cap referred to in paragraphs 1 and 2 above if more reliable data for calculating the Immediate Debit weighted average MIF rate based on the Merchant Indifference Test becomes available, for example following the completion of the Commission's study on costs and benefits to merchants of accepting different payment methods.

Visa Europe understands that the Commission will respond and will duly motivate any rejection of a reasoned request by Visa Europe to modify the cap pursuant to paragraph 5.4.

5.5 Visa Europe will be further consulted on the methodology and scope of the Commission's study on costs and benefits to merchants of accepting different payment methods and the results of the study will be disclosed to Visa Europe.

6. DEFINITIONS

Commencement Date means the date on which Visa Europe is notified of the European Commission's final decision accepting these Commitments pursuant to Article 9 of Regulation 1/2003.

Commercial Cards means payment cards issued to undertakings or public sector entities that are limited in use for business expenses of employees or civil servants or cards issued to self-employed natural persons engaged in a business activity that are limited in use for business expenses of those self-employed natural persons or their employees.

HACR or Honour All Cards Rule means a Visa system rule which obliges merchants who have contracted to accept payments with a particular brand of card (e.g., VISA, VISA Electron or V PAY) to accept all cards properly presented of such brand without discrimination and regardless of the identity of the issuing bank or the type of card within that brand.

Immediate Debit transaction means a consumer transaction with any Visa Europe's payment card brand (VISA, VISA Electron, V PAY or any other payment card brand of Visa Europe) linked to a current or deposit access account to which a transaction is debited immediately (in a maximum of two working days) on receipt of the transaction by the issuer and shall include transactions with prepaid consumer cards.

Immediate Debit means in connection with cards or MIFs, the cards used for and the MIFs paid for the Immediate Debit transactions.

Intra-Regional Multilateral Interchange Fee or Intra-Regional MIFs means the MIFs directly set by Visa Europe which apply to cross-border transactions in the EEA in the absence of bilateral interchange fees.

Merchant Indifference Test means, in relation to Immediate Debit transactions, a test referred to in academic literature concerning the calculation of multilateral interchange fees in four-party card systems and, in particular, to the article jointly authored by Professor Jean-Charles Rochet and Jean Tirole, ("Must Take Cards and the Tourist Test", No 496, IDEI Working Papers from Institut d'Économie Industrielle (IDEI), Toulouse, http://idei.fr/doc/wp/2008/must_take_cards.pdf).

MIFs mean multilaterally agreed interchange fees paid by one acquiring bank to a separate issuing bank or vice versa.

Monitoring Trustee means the trustee to be appointed pursuant to paragraph 4 of these Commitments.

MSC or Merchant Service Charge means a charge that is agreed between, and charged by, an acquirer to a merchant on a per-transaction basis in respect of payment card transactions.

VISA / V PAY means VISA, VISA Electron and V PAY or any other payment card brand of Visa Europe.

Weighted average means, in connection with the Immediate Debit MIFs, the total amount of the Immediate Debit MIFs divided by the total value of transactions carrying such Immediate Debit MIFs. The weighted average will be calculated on a yearly basis (in respect of each twelve consecutive calendar months commencing with the first quarter following the Commencement Date), separately for (a) cross-

border Immediate Debit transactions and (b) for domestic Immediate Debit transactions in each country where the domestic Immediate Debit MIFs default to the Intra-Regional Immediate Debit MIFs or where the domestic Immediate Debit MIF rates are set by Visa Europe directly. Visa Europe will require its members to provide the MIF information relevant to the calculation of the weighted average for those transactions which are not processed by VisaNet. Visa Europe will use the same reasonable efforts to verify the information regarding transactions not processed by VisaNet as it uses for information currently provided to Visa Europe in its Operating Certificates, but it cannot be held responsible for its completeness or accuracy.

26 April 2010