

CASE COMP/39.398 - VISA EUROPE

COMMITMENTS OFFERED TO THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 9 OF COUNCIL REGULATION (EC) NO 1/2003

1. INTRODUCTION

1.1 In accordance with Article 9 of Council Regulation (EC) No 1/2003 (*Regulation 1/2003*), Visa Europe offers the following commitments (*Commitments*) to the European Commission (*Commission*) in full response to the Commission's concerns as set out in a Supplementary Statement of Objections dated 30 July 2012 (*SSO*) regarding Intra EEA Credit MIFs; Domestic Credit MIFs set by Visa Europe; International Credit MIFs; and domestic Cross-Border Acquiring; for consumer transactions.

1.2 In addition, the scope of these commitments is broader than the issues contained in the SSO.

1.3 Consistent with Article 9 of Regulation 1/2003, these Commitments are made without prejudice to Visa Europe's position that its MIFs and the Visa Europe rules referred to in the SSO do not infringe Article 101 TFEU. The Commitments cannot be interpreted as an acknowledgement by Visa Europe that any of the allegations made in the SSO are valid or that the MIF levels herein are the right level for setting any MIFs subject to these Commitments.

1.4 Capitalised terms in these Commitments shall have the meaning ascribed to them in Section 10.

2. INTRA EEA CREDIT MIFs

2.1 Two months following the Commencement Date Visa Europe commits to ensure that the yearly Weighted Average of its Intra EEA Credit MIFs complies with the Credit MIF Cap of 0.3%.

2.2 Within the Credit MIF Cap of 0.3%, Visa Europe shall be free to set Intra EEA Credit MIFs for particular categories of transaction as it sees fit, in particular to incentivise the adoption, by merchants and their acquirers, of secure technology and innovation.

3. DOMESTIC CREDIT MIFs

3.1 Visa Europe agrees that the Credit MIF Cap referred to in paragraphs 2.1 and 2.2 above will, in addition, apply to the Domestic Credit MIFs directly set by Visa

Europe and in those EEA countries where the Intra EEA Credit MIFs apply to domestic transactions in the absence of other MIFs.¹

4. MIFS WHERE THE ISSUER IS LOCATED OUTSIDE THE EEA

4.1 With effect from 1 January 2015 Visa Europe commits to ensure that the Credit MIF Cap referred to in paragraphs 2.1 and 2.2 above includes Intra Visa Europe Non-EEA Credit MIFs and that its Intra Visa Europe Non-EEA Debit MIFs complies with the Debit MIF Cap of 0.2%.

4.2 Visa Europe will implement International MIFs at the level agreed in a Commission decision pursuant to Article 9 of Regulation 1/2003 with third parties who are responsible for setting such MIFs, or at the level set out in any Commission decision pursuant to Article 7 of Regulation 1/2003 against such third parties, or resulting from any EU legislation governing the level of International MIFs.

5. TRANSPARENCY

MIF Plus Plus contracts

5.1 Visa Europe will introduce a rule in relation to consumer debit and consumer credit transactions which requires acquirers in the EEA to offer merchants the option of MSC pricing on a MIF Plus Plus basis for an administrative fee at the option of the acquirer. Visa Europe will adopt this new rule within two months of the Commencement Date. Visa Europe will require acquirers to implement the rule within 12 months of the Commencement Date with regard to all new agreements and within 18 months of the Commencement Date for existing contracts.

Simplification of MIF table

5.2 Two months following the Commencement Date Visa Europe commits to introduce a simplified MIF structure for MIFs set by Visa Europe to provide for a reduction of at least 25% in the number of fee categories to aid transparency and comparison between rates.²

Enforcement of Operating Regulations

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

¹ Currently, the countries where the Domestic Credit MIFs are set by Visa Europe and Visa Europe credit cards are issued are Belgium, Hungary, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands and Sweden.

² This provision excludes the MIFs introduced in paragraph 6.1 in relation to Cross-Border Acquiring and is without prejudice to Visa Europe's ability to introduce incentive MIFs for specific sectors where the sector incentive MIF applies to all transactions in that sector. Merchants in these circumstances will continue to enjoy a simplified MIF structure.

6. CROSS-BORDER ACQUIRING IN THE EEA

6.1 Visa Europe commits to modify its Operating Regulations with effect from 1 January 2015 so as to allow Cross-Border Acquirers to offer either the Domestic Immediate Debit MIF or Domestic Credit MIF applicable in the location of the merchant or (i) an immediate debit MIF of 0.2%; and (ii) a credit MIF of 0.3%, for domestic consumer Cross-Border Acquired Transactions which meet the following conditions:

- (a) the acquiring bank identifies the merchant accepting the card transaction with its Single Merchant Identifier;
- (b) the transaction is correctly accepted by the merchant using EMV, Verified by Visa or other equivalent secure Visa Europe technology and correctly processed into the Visa Europe system; and
- (c) the contract entered into by the merchant and the acquirer, sets the MSC on a MIF Plus Plus basis and does not blend the MSCs paid in relation to Visa card transactions with the MSCs paid in relation to any other payment system transaction. In addition the Cross-Border Acquirer shall offer merchants separate MIF Plus Plus pricing for each of Credit Cards and Immediate Debit Cards.

7. CONSUMER PROTECTION

7.1 Visa Europe will be entitled to continue to adopt appropriate consumer protection measures to ensure that consumers will not be adversely affected by the effects of Cross-Border Acquiring as provided for in these Commitments (in particular concerning matters such as fraud, currency conversion, refunds and charge backs).

8. MONITORING TRUSTEE

8.1 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 any conflict of interest. In particular, members of the Trustee team shall not provide services to or become employees of Visa Europe or its affiliates neither during the Trustee mandate nor for a period of three years following termination of the Trustee mandate. 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

8.2 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 8.1 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

8.3 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

8.4 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 8.1 to 8.3 above.

Trustee nominated by the Commission

8.5 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.

Functions of the Trustee

8.6 The Monitoring Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or Visa Europe, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the Commitments.

Duties and obligations of the Monitoring Trustee

8.7 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 [time period – Confidential - Business Secret] of the Commencement Date, and every [time period – 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; and
- (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

8.8 Visa Europe shall provide and cause its advisors to provide the Monitoring Trustee with all such co-operation, assistance and information, as the Monitoring Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access, subject to reasonable notice, to any of Visa Europe's books, records, documents, management or other personnel, facilities, sites and technical information, save for legally privileged material, necessary for fulfilling its duties under the Commitments, and Visa Europe shall provide the Trustee upon request with copies of any such document. Visa Europe shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information that is reasonably necessary for the performance of its tasks.

8.9 Visa Europe shall indemnify the Monitoring Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Visa Europe for any liabilities arising out of the performance of the Monitoring Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.

Replacement, discharge and reappointment of the Trustee

8.10 If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

- (a) the Commission may, after hearing the Trustee, require Visa Europe to replace the Trustee; or
- (b) Visa Europe, with the prior approval of the Commission, may replace the Trustee.

8.11 If the Trustee is removed, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to above.

8.12 Beside the removal according to paragraph 8.10, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant commitments might not have been fully and properly implemented.

9. DURATION AND REVIEW OF MIF RATES

9.1 The Commitments will take effect on and from the Commencement Date.

9.2 Without prejudice to Article 9(2) of Council Regulation 1/2003 these Commitments will remain in force for a period of 4 years from the Commencement Date.

9.3 During the period of these Commitments, Visa Europe shall refrain from setting, or in respect of the MIFs referred to in Sections 2.1 and 4.1 of these Commitments implementing, other fees that are economically and/or legally equivalent to the MIFs referred to in Sections 2.1, 3.1 and 4.1 of these Commitments, including but not limited to Visa Europe's scheme fees charged to acquirers and/or issuers.

10. DEFINITIONS

Charge Card means a card which is not directly linked to an account and which offers a line of credit which is billed separately and which must be paid in full at the end of each billing period.

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

Credit Card means a consumer Revolving Credit Card, Deferred Debit Card or Charge Card. For the avoidance of doubt Immediate Debit MIFs (and not Credit MIFs) apply to Prepaid Cards.

Credit MIFs means Domestic Credit MIFs, Intra EEA Credit MIFs and Intra Visa Europe Non-EEA Credit MIFs applicable to POS consumer Credit Card transactions.

Credit MIF Cap means that the Weighted Average shall not exceed 0.3%. When applying the MIF Cap the precise Weighted Average will be used and no rounding will be taken into account.

Cross-Border Acquired Transaction means a transaction where the merchant POS and the merchant's acquiring bank are located in two different EEA member states.

Cross-Border Acquirer means an acquirer involved in Cross-Border Acquiring.

Cross-Border Acquiring means the activity of an acquirer aiming at acquiring transactions at a merchant located in a different EEA member state than the EEA member state of the acquirer's principal place of business.

Debit MIF Cap means that the Weighted Average shall not exceed 0.2%. When applying the MIF Cap the precise Weighted Average will be used and no rounding will be taken into account.

Deferred Debit Card means a card linked to an account whereby the transactions are accumulated with other transactions on a deferred basis, a statement is issued and the cardholder is required to pay the outstanding balance in full.

Domestic Credit MIFs means the MIFs that apply by default to POS consumer Credit Card transactions where the issuer of the card used and the merchant outlet where the card is used are located in the same EEA member state.

Domestic Immediate Debit MIFs means the MIFs that apply by default to POS consumer Immediate Debit Card transactions where the issuer of the card used and the merchant outlet where the card is used are located in the same EEA member state.

EEA means the European Economic Area.

Immediate Debit Card means a card that is linked to a current or deposit 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 Cards.

International Debit MIFs means the MIFs set by Visa International and/or Visa Inc that apply, by default, to international POS consumer Immediate Debit Card transactions where the issuer is located outside the Visa Europe Territory and where the merchant outlet is located within the EEA.

International Credit MIFs means the MIFs set by Visa International and/or Visa Inc that apply, by default, to international POS consumer Credit Card transactions where the issuer is located outside the Visa Europe Territory and where the merchant outlet is located within the EEA.

International MIFs means the International Credit MIFs and International Debit MIFs.

Intra EEA Credit MIFs means the MIFs directly set by Visa Europe that apply, by default, to POS consumer Credit Card transactions where the issuer of the card used, and the merchant outlet where the card is used, are located in different EEA member states.

Intra Visa Europe Non-EEA Debit MIFs means the MIFs that apply, by default, to POS consumer Immediate Debit Card transactions where the issuer is located outside the EEA but within the Visa Europe Territory and where the merchant outlet is located within the EEA.

Intra Visa Europe Non-EEA Credit MIFs means MIFs that apply, by default, to POS consumer Credit Card transactions where the issuer is located outside the EEA but within the Visa Europe Territory and where the merchant outlet is located within the EEA.

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

MIF Plus Plus means pricing in a contract entered into between an acquirer and a merchant where the Merchant Service Charge for Visa card transactions referred to in the contract and on invoices is broken down into separate components comprising the MIF, all other fees applicable to Visa card transactions and the acquirer's fee (including the margin).

Monitoring Trustee means the trustee to be appointed pursuant to Section 8 above.

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.

POS means point of sale.

Prepaid Card means a card used to access funds in a prepaid account or a card where monetary value is stored on a chip.

Revolving Credit Card means a card that offers the cardholder a line of credit, specific to that Revolving Credit Card account and the ability to revolve part, or all, of any outstanding balance on the Revolving Credit Card account during each statement cycle.

Single Merchant Identifier means the identifier assigned to merchants belonging to the same group of companies, or each franchise arrangement, for which there is a single merchant relationship, by Visa Europe at their request.

Visa Europe Territory means the EEA, Andorra, Faroe Islands, Greenland, Israel, Monaco, San Marino, Svalbard and Jan Mayen Islands, Switzerland, Turkey and Vatican City.

Visa Inc means a Delaware stock corporation listed on the New York Stock Exchange on 19 March 2008 with CIK number 0001403161.

Visa International means Visa International Service Association.

Weighted Average means the total amount of the relevant MIFs divided by the total value of transactions carrying such MIFs. The Weighted Average will be calculated on a yearly basis (in respect of each twelve consecutive calendar months commencing with the first quarter, two months following the Commencement Date), for each of Intra EEA Credit MIFs and for Domestic Credit MIFs in each of the EEA countries where Visa Europe members have not set a Domestic Credit MIF, subject to an exemption from the requirement to calculate an individual Domestic Credit MIF for any country where the value of the domestic interchange fees covered by these Commitments is no greater than € [threshold – Confidential - Business Secret]. However, the Weighted Average of all Credit MIFs covered by Sections 2.1, 3.1 and 4.1, of these Commitments must also meet the overall Credit MIF Cap of 0.3%. 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 the Visa System. Visa Europe will use the same reasonable efforts to verify the information regarding transactions not processed by the Visa System 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.

10 May 2013

