Payment cards: Visa debit card fees go down
by Annamaria Marchi, Gabor Gal (1)

1. Background

Card payments represent about 35% of all non-cash payments in the EU 27. It is estimated that businesses pay tens of billions of euros (25 billion in 2005) in fees per year to accept cards. The Commission has a long history of investigations and cases against card payment schemes and MasterCard and Visa in particular (2). For the most part, such cases have focused on so-called interchange fees. More effective competition in fees charged for payment card transactions is highly desirable as it is likely to lead to considerable benefits for merchants and consumers. It could also have important consequences more generally, as inefficiencies in the payments market, particularly for cross-border payments, are perceived to be one of the major barriers to cross-border trade, particularly over the internet.

The latest case has resulted in a Commission decision (3) to make commitments offered by Visa Europe binding. This will bring immediate benefits for merchants and consumers, based on the so-called Merchant Indifference Test, and will help ensure competition in the market. Below, we describe the background, details and importance of the commitments.

1.1. What are interchange fees?

In many payment card systems, each sales transaction at a merchant using a payment card is subject to a so-called interchange fee paid by the merchant’s bank (the ‘acquiring bank’) to the cardholder’s bank (the ‘issuing bank’).

When a customer uses a payment card to buy from a merchant, the merchant receives from its bank (the acquiring bank) the sales price less a ‘merchant service charge’ (often referred to as ‘MSC’), the fee a merchant pays to its bank for accepting the card as a means of payment for that transaction. A large part of the merchant service charge is determined by the interchange fee. The customer’s bank (the issuing bank), in turn, pays the acquiring bank the sales price minus the interchange fee and the sales price is deducted from the customer’s bank account. The interchange fee is therefore a fee that is ultimately charged to the merchant (through a reduction in the price paid), who generally passes the costs on to consumers in the price of the good or service.

Normally, interchange fees are either agreed bilaterally, between one issuing and one acquiring bank, or multilaterally, by a number of issuing/acquiring banks or by means of a decision binding all banks participating in a payment card scheme. The industry refers to these multilateral interchange fees as ‘MIFs’. A MIF can be a percentage, a flat fee or a combined fee (percentage plus flat fee).

1.2 What are the Commission’s concerns as regards interchange fees?

In the MasterCard Decision (4) the Commission established that multilaterally agreed interchange fees restrict price competition between merchants’ banks by artificially inflating the basis on which these banks set the fees. It was found that such arrangements indirectly lead to increased retail prices, while there was no evidence that such fees generated efficiencies passed on to consumers. In the aftermath of the decision, in April 2009, undertakings offered by MasterCard to significantly reduce interchange fees for cross-border transactions with consumer cards were accepted (5).

(1) The content of this article does not necessarily reflect the official position of the European Commission. Responsibility for the information and views expressed lies entirely with the authors.
(2) In 2002, the Commission adopted a decision to grant Visa an exemption under Article 81(3)EC (now 101(3)TFEU) for its multilateral interchange fees (MIFs) until the end of 2007, provided that the average level of the MIFs was reduced (Case COMP/29.373 — Visa International — Multilateral Interchange Fee). This decision was followed by a sector inquiry into retail banking between 2005 and 2007, which also investigated interchange fees, and by the adoption of a further decision regarding MasterCard’s interchange fees in 2007 (see footnote 4 below). In parallel with the MasterCard case, a new investigation into Visa’s network rules started in 2006, leading to the adoption of the latest decision discussed in this article.
In parallel with the investigations into MasterCard’s interchange fees, and after the expiry of its earlier decision exempting MIFs subject to certain conditions until 2007 (6), the Commission formally opened proceedings against Visa’s MIFs in March 2008.

The Statement of Objections sent to Visa Europe in April 2009 (7) outlined the Commission’s concerns that the MIFs set by Visa Europe may have as their object and as their effect an appreciable restriction of competition in the acquiring markets to the detriment of merchants and their customers. The MIFs appear to inflate the basis on which acquirers set the MSCs by creating a significant cost element common to all acquirers. They determine a minimum level for the merchant service charge below which merchants are unable to negotiate a price. According to the Commission’s preliminary view, Visa Europe’s MIFs are not objectively necessary.

The potential restrictive effect of the MIFs appears to be enhanced by the implementation of other system rules and practices such as the ‘honour all cards rule’ (HACR) (8), ‘no surcharge rule’ (9), blending of merchant fees, (10) and application of different MIFs to cross-border as opposed to domestic acquirers (11).

Furthermore, according to the Statement of Objections, the MIFs do not meet the requirements for an exception under Article 101(3) of the Treaty on the Functioning of the EU (TFEU) by producing efficiencies with a fair share of the resulting benefit being passed on to consumers. However, MIFs are not deemed to be illegal as such. They can be

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(8) This rule is a Visa system rule that obliges merchants who have contracted to accept payments with a particular brand of card (e.g., VISA, VISA Electron or VPAY) to accept all properly presented cards of this brand without discrimination and regardless of the identity of the issuing bank or the type of card within that brand.
(9) This rule prevented merchants from adding surcharges to transactions with VISA, VISA Electron or VPAY payment cards.
(10) ‘Blending’ is a practice whereby acquirers charge merchants the same MSC for the acceptance of different payment cards in the same payment scheme (e.g. VISA debit and credit) or for the acceptance of payment cards belonging to different payment card schemes (e.g. VISA and MasterCard credit cards).
(11) Cross-border acquiring is where acquirers recruit merchants resident in a different EEA country than the one where the acquirer is established. Visa Europe’s rules impose the application of Intra-Regional MIF on cross-border acquired transactions even if they constitute domestic transactions, unless domestic MIFs have been registered with Visa Europe. In the Statement of Objections, the voluntary registration of domestic MIFs with Visa Europe was considered to increase the anti-competitive effect of Intra-Regional MIFs, since it puts cross-border acquirers at a disadvantage vis-à-vis their domestic competitors in cases where unregistered domestic MIFs are lower than the Intra-Regional MIFs.
considered compatible with EU antitrust rules if evidence is presented that they have positive effects on innovation and efficiency and do indeed allow a fair share of these benefits to be passed on to consumers in accordance with Article 101(3) TFEU.

2. The Commitment Decision on Debit MIFs

2.1. Visa Europe’s Commitments on Debit MIFs

Following the Statement of Objections, Visa Europe submitted, in April 2010, a commitment proposal for its consumer debit card MIFs and other network rules. This was subsequently amended in response to the observations received by the Commission in the course of the market test. In December 2010, the Commission adopted a decision making the commitments binding on Visa Europe.

The commitments provide that the weighted average MIF for consumer immediate debit cards will be capped at 0.2 %. The cap will apply to cross-border transactions in the EEA and to domestic transactions in those EEA countries where the MIFs are set directly by Visa Europe or default to the cross-border MIFs \(^{(14)}\). When the commitments were proposed, the countries concerned were Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, and Sweden \(^{(13)}\). In those countries, debit card MIFs will be reduced on average by about 60 %, with the cross-border reduction amounting to about 30 %. This will help to cut the costs borne by merchants for card acceptance and is expected to lead to a decrease in retail prices charged to final consumers.

During the lifetime of the commitments the list of countries covered by the commitments could change, for example if Visa becomes responsible for setting the MIFs in other EEA countries.

In addition to the MIF reduction, Visa Europe undertook to maintain and further develop measures to enhance the transparency of its payment scheme. In particular, Visa Europe will ensure that merchants have no preference whether a payment is made with a payment card or with cash. It therefore ensures that the fees borne by merchants for card acceptance on average do not exceed the benefits that merchants derive from accepting payment cards rather than alternative means of payment, in particular cash. Such benefits may arise, for instance, from avoiding cash handling and transport or when the time needed for a payment card transaction is shorter than for a cash transaction or when the costs associated with card fraud are lower than those in the case of cash fraud.

Setting payment card MIFs at a level at which merchants are indifferent as to whether a payment is made by card or in cash also prevents card schemes (that is to say different rates according to the different types of Visa cards), will make commercial cards visibly and electronically identifiable \(^{(14)}\), and will allow merchants to freely choose to accept VISA, VISA Electron or VPAY cards (separate HACR for different types of Visa cards) and to have different acquirers for handling transactions with each type of payment card within the Visa Europe system and/or competing schemes. Furthermore, Visa Europe will publish all MIFs applicable in the EEA in a way that makes it easy for merchants to find the rates on Visa Europe’s website, and will make compulsory the registration of all MIF rates by Visa Europe’s members and the application of the registered rates to cross-border issued and acquired transactions.

The commitments were offered for a period of four years. A trustee appointed by Visa Europe and approved by the Commission will monitor Visa Europe’s compliance with the commitments.

2.2. The Commission’s assessment of the commitments

The weighted average MIF rate proposed by Visa Europe was assessed under the Merchant Indifference Methodology (MIT), a methodology developed in the economic literature \(^{(15)}\) to identify appropriate interchange fees.

The MIT seeks to establish the MIF at a level where merchants have no preference whether a payment is made with a payment card or with cash. It therefore ensures that the fees borne by merchants for card acceptance on average do not exceed the benefits that merchants derive from accepting payment cards rather than alternative means of payment, in particular cash. Such benefits may arise, for instance, from avoiding cash handling and transport or when the time needed for a payment card transaction is shorter than for a cash transaction or when the costs associated with card fraud are lower than those in the case of cash fraud.

\(^{(14)}\) Commercial cards are payment cards that are issued to public- or private-sector companies and self-employed individuals as well as their employees for use solely as a means of payment for business expenses. These cards normally carry a higher MIF than consumer cards. It is therefore important for merchants to be able to recognise this type of card in order to be able to steer their customers to the use of cheaper means of means of payment.

\(^{(15)}\) In particular, 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’Economie Industrielle (IDEl), Toulouse, http://idei.fr/doc/wp/2008/must_take_cards.pdf.)
from exploiting the reluctance of merchants to turn down card payments due to the fear that their competitors would steal their customers if they refuse to accept card payments. Furthermore, to the extent that the MIFs are passed on to cardholders by the issuers, they ensure that cardholders make efficient choices between payment instruments, thereby allowing for the promotion of efficient means of payment.

In order to assess whether the weighted average MIF rate of 0.2% for debit card transactions complies with the MIT, the costs to merchants of accepting payments in cash were compared to costs of accepting payments by card. The Commission based its calculations on four studies published by the central banks of the Netherlands, Belgium and Sweden, comparing the costs of cards with the costs of cash (16). On the basis of those data, it was concluded that the MIF rate offered by Visa Europe is in line with the MIT. If the MIF rate were higher, merchants would not receive any net benefit from any efficiencies resulting from cards. At the same time, the commitments only cap the MIF rates and do not prevent Visa Europe from introducing lower rates.

It has to be underlined that the commitments provide that the MIFs may be recalculated in line with the MIT should make reliable information regarding the costs of cards as compared to the costs of cash become available. The Competition Directorate-General will commission a study to collect further data on the costs of different means of payment.

The transparency measures envisaged by the commitments will also increase merchants’ awareness of the costs of the different types of Visa card, allowing them to negotiate more effectively with acquiring banks. Merchants will also be able to make informed choices about the types of cards that they wish to accept and to steer consumers towards the use of more efficient means of payment. These commitments are therefore particularly important in the light of the Payment Services Directive, which allows merchants to offer rebates in order to incentivise the use of efficient means of payment and prohibits any limitation on surcharging unless a Member State opts out from this prohibition (17). Furthermore, the measures introduced by Visa Europe are expected to increase competition between acquiring banks and remove the obstacles to cross-border acquiring caused by the application of different rates to local and cross-border acquirers. These measures therefore represent an important complement to the MIF reductions that will be brought about by the commitments.

In the light of these considerations and the benefits to merchants and consumers, the Commission concluded that the commitments offered by Visa Europe are suitable to address the concerns raised by the Commission in its Statement of Objections without being disproportionate. The commitments were therefore made binding on Visa Europe under an Article 9 Decision, which brought the investigation into Visa Europe’s debit MIFs to an end.

The commitments do not cover Visa Europe’s MIFs for consumer credit cards, which will continue to be investigated by the Commission. Concluding the proceedings on the basis of the commitments is also without prejudice to the right of the Commission to initiate or continue proceedings against other Visa network rules, such as the HACR, the rules governing cross-border acquiring, Visa Europe’s MIFs for commercial card transactions, or the Inter-Regional MIFs (18).

Visa Europe’s commitments are in line with the undertakings announced by MasterCard in April 2009 to comply with the prohibition decision of December 2007. MasterCard undertook to calculate its weighted average cross-border MIFs in accordance with the MIT. As a result, credit card MIFs were capped at 0.30% and debit card MIFs at 0.20%. MasterCard also undertook to implement a number of transparency measures similar to those in Visa Europe’s commitments. Although MasterCard’s undertakings also cover credit card MIFs, they only apply to cross-border transactions, unlike Visa Europe’s commitments, which also apply to domestic MIFs in nine EEA countries.

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(17) See Article 52(3) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007, which provides that ‘The payment service provider shall not prevent the payee from requesting from the payer a charge or from offering him a reduction for the use of a given payment instrument. However, Member States may forbid or limit the right to request charges taking into account the need to encourage competition and promote the use of efficient payment instruments.’

(18) Inter-Regional MIFs are interchange fees set by Visa International and/or Visa Inc. that apply, by default, to inter-regional transactions, that is to say transactions made with a card issued outside the Visa Europe Territory at merchants’ outlets located in the EEA.
2.3. A ‘Partial’ Commitment Decision

This is the first time that Commission has adopted a ‘partial’ commitment decision, bringing the proceedings to an end insofar as debit card MIFs are concerned, while leaving open the investigation into the MIFs applicable to credit card transactions. The negotiations on a possible settlement with Visa Europe concerned the MIFs for both debit and credit card transactions. However, agreement could not be reached on the appropriate methodology for calculating the MIFs for credit card transactions.

The adoption of a ‘partial’ commitment decision ensures that the divergences between the Commission and Visa Europe on credit card MIFs will not prevent merchants and consumers from immediately benefiting from the considerable reduction in debit card MIFs and from the increased transparency and competition in the market that the commitments will bring about.

3. The wider context

The Commission’s action on collectively agreed inter-bank fees is particularly important given that certain national debit card schemes, which generally apply lower or even no collectively agreed inter-bank fees, may withdraw from the market in view of the investment needed to comply with the Single Euro Payments Area (SEPA) standards. Such national schemes are often being replaced by the two international schemes (Maestro and V-Pay/Visa Electron). The continued existence of high inter-bank fees in countries not covered by the commitments may constitute a barrier to potential new entrants. Card issuing banks are likely to be reluctant to issue cards that do not generate the revenues from inter-bank fees they have been receiving so far. In addition, the continued existence of high inter-bank fees may make banks less interested in investing in innovation that may lead to more cost-effective payment solutions (with lower fees), for instance in the field of online payments.

Emerging innovative technological payment solutions (either online or mobile) and SEPA have the potential to transform the ways we use non-cash payment methods in Europe. But to achieve these benefits effective competition is essential, not only to ensure that the benefits are passed on to consumers but also to ensure a level playing field without unnecessary barriers to new entrants. Therefore, at such a crucial stage in the development of the payments market, it is all the more important that the Commission and national competition authorities actively enforce the competition rules and regulators ensure that the regulatory framework promotes competition.

(19) SEPA (Single Euro Payments Area) is an initiative launched by the European banking industry to create a fully integrated market for retail payment services in the euro area, with no distinction between cross-border and national payments in euros. For card payments, a framework — that is to say, a set of high-level principles and rules — has been defined. It will be implemented by individual card schemes with the aim of establishing an integrated SEPA market where card-holders can make payments in euros abroad with the same ease and convenience as they do in their home countries. This may lead to the replacement of the various national schemes with international schemes that already cover all the euro countries, to alliances between national schemes and international schemes with a view to covering the entire euro area, and to the emergence of new pan-euro payment schemes in the market.

(20) This has happened for instance in the Netherlands and in Finland.