



EUROPEAN COMMISSION

Brussels, 27.6.2014
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Dear President,

The Commission would like to thank the Camera Deputaților for its Opinion on the proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions {COM (2013) 550 final} and apologises for the delay in replying.

The European Commission would like to thank the Camera Deputaților for its overall support of the Commission's proposal. The Commission also appreciates very much the support from the Camera Deputaților on restricting the "honour all cards rule" and prohibiting any rules which would prevent or discourage merchants from guiding their customers towards more effective payment instruments, or from disclosing to their customers the fees they pay to payment services acquirers.

The Commission would like to clarify the issues raised by the Camera Deputaților.

Caps on interchange fees for consumer credit and debit cards

The integration of the Union payment card market is far from complete as many payment solutions cannot develop beyond their national borders and new pan-Union providers are prevented from entering the market. The lack of market integration currently results in higher prices and less choice in payment services for consumers and retailers, and more limited opportunities to take advantage of the internal market. The Commission therefore considers that there is a need to remove obstacles to the efficient functioning of the card market, including mobile and internet payments that are based on card transactions which still pose barriers to the deployment of a fully integrated market (8th Recital of the proposal).

More precisely, the aim of the proposed Regulation is to avoid the fragmentation of the Internal Market resulting from widely diverging levels of Interchange Fees between Member States as well as divergences between Member States in terms of regulatory instruments or administrative decisions relating to these interchange fees. Even considering only the

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international payment card schemes, interchange fees differ up to a factor of ten, which gives rise to market fragmentation and prevents retailers and consumers from enjoying the benefits of an internal market for goods and services. It also prevents the emergence of 'new', pan-European payment solutions on the basis of business models with lower interchange fees, to the detriment of potential economies of scale and scope and their resulting efficiencies.

It is in this framework that the proposed Regulation should be seen. The proposed caps of 0.2 % and 0.3 % would not be based on banks' costs but on merchants' savings when they accept payment through a card instead of payment without a card – i.e. in cash. The benchmarks would derive from the "indifference test" developed in economic literature, which determines the level of fees that a merchant would be willing to pay for a card payment if he or she should compare these costs with the ones of a cash payment (taking into account the service fee paid to acquiring banks, i.e. the merchant service charge). Information in this regard has been provided in the Explanatory Memorandum of the proposal for Regulation and in the Impact Assessment¹. In addition, the procedure for establishing the ceilings of 0.2 % and 0.3 % has been clarified in the Impact Assessment². The aim would be to implement a constructive and established approach, as these figures or equivalent have already been accepted by MasterCard, Visa, the French Groupement and MasterCard in the Netherlands under their respective commitments in competition procedures³, the figures being based on studies by central banks.

It should be noted that at the time of the commitments the Commission undertook to collect recent data to assess possible claims under the merchant indifference test in current and future competition enforcement proceedings at European level. On 19 February 2014, the Commission presented preliminary results of this data collection regarding merchants' costs of accepting cash and card payments⁴. Since the results are preliminary and only concern a specific number of large retailers the Commission has not drawn conclusions yet; further work is required and a final, more comprehensive report is expected to be published before the summer. However, the preliminary results for large merchants do not exceed the benchmarks proposed in the draft Interchange Fee Regulation published in July 2013.

Secondly, under Indent 9 of its opinion the Camera Deputațiilor mentions the existing merchant fee levels in Romania, stating that these fees cover the costs of issuing and accepting card payments and related services provided by issuers. Before doing so the Camera Deputațiilor refers to the judgment of the General Court in the MasterCard case. In

¹ Explanatory memorandum of the proposal for Regulation p. 9 and 10 and Impact Assessment p. 22-24 and 101-105.

² Cf. Impact Assessment, including p.106 ff

³ Commission prohibition decision of 2007 against MasterCard's cross-border inter-bank fees (or MIFs) within the EEA, MasterCard unilateral Undertakings of 2009 to cap its debit and credit card MIFs at 0.20% and 0.30% respectively; Visa Europe commitments to cap its debit card MIFs at 0.20% made binding in December 2010. Visa Europe commitments to cap its credit card MIFs at 0.3% made binding in February 2014. The French Competition Authority made binding the commitments from the Groupement des Cartes Bancaires – the domestic card scheme- on 7 July 2011 of a weighted average fee of 0.30% for domestic debit and credit card transactions. Following an investigation by the Dutch Authority for Consumers and Markets, it was announced on 24 February 2014 that MasterCard will decrease its interchange fees for domestic credit card payments to 0.3% by January 1, 2016.

⁴ The presentation can be downloaded at http://ec.europa.eu/competition/sectors/financial_services/presentation_results_en.pdf

this context it is worth specifying that the Court confirmed in this judgment that Multilaterally agreed Interchange Fees paid by acquiring banks to issuing banks are not objectively necessary for the operation of a four party card payment scheme. According to the Court banks can operate within a payment system without Multilateral Interchange Fees, save costs from card issuing (the use of debit cards reduces the need for cash handling by banks) and receive additional revenue from card issuing (interest on credit card balances).

Four corner payment cards schemes in Europe operate in a very similar manner. Therefore, there would seem to be no reason to believe that in terms of their object and effect the multilateral interchange fees that apply in a national context of international payment card systems are any different from MasterCard's fees that were deemed unlawful and not justifiable under competition rules⁵. In this light, a differentiated approach between Member States in the proposed Regulation would seem difficult to justify.

Other aspects of the Opinion

Concerning the Camera Deputaţilor's statement that in Romania cash is preponderant, the Commission would like to reply that the Impact Assessment looked at payment card markets at national and European level, presenting extensive data including on card issuing, usage and acceptance and analysing studies and theoretical arguments, on the basis of which an in depth qualitative and quantitative assessment was conducted. Furthermore, the Impact Assessment looked at the consequences of reducing interchange fees – in and outside the EU, inter alia considering impact on merchants, consumers and market entry.

The Impact Assessment shows that the likely effects of a decrease of interchange fees are dependent on a variety of factors and a degree of caution is necessary in making forecasts. However, low interchange fees are generally associated with a high acceptance and usage of cards; domestic schemes with no interchange fees in fact have the highest levels of card usage in Europe. Furthermore, in Spain, card use increased after an intervention by public authorities leading to lower interchange fees, with the average transaction value (ATV) for card payments decreasing by 15% from 2005 to 2010. In parallel, card transactions' volume and value increased⁶.

Currently, many small merchants do not accept card payments because of the high fees they are charged by their acquirers. The proposed Regulation, by promoting card acceptance would therefore benefit consumers by enabling them to use their cards on a wider scale. By doing so the Regulation would also contribute to the wider use of more efficient and safer electronic means of payment.

As to the likelihood of a reduction of final prices it is noted that when retailers pay, the final costs are borne by consumers since retailers pass the fees on to consumers through increased retail prices. Although it is difficult to identify likely price decreases as a consequence of decreases in interchange fees, due to the higher competitive pressure in retail than in retail

⁵ MasterCard decision of the European Commission, 19 December 2007, OJ C 264, 06/11/2009, p. 8–11 currently subject of appeal.

⁶ Impact Assessment of the proposal for Regulation on interchange fees for card-based payment transactions p. 207.

banking it is likely that the resulting costs-savings to retailers will be passed on to consumers through lower retail prices. However, the pass-on to consumers could depend on many factors such as the retail sector considered, the size of the merchant and its use of payment instruments. To the extent that card use is still limited in Romania such pass on effects would obviously also be limited. However, in the perspective of a future more developed Romanian card payment market Romanian consumers would stand to benefit from a wide(r) acceptance of efficient and safe payment means, on the basis of transparent pricing.

The Camera Deputaţilor raised a number of issues including that of an alleged link between high interchange fees and investment or innovation.

However, according to the Commission's view, there is no evidence that high interchange fees lead to investment or innovation. Experience shows that most schemes in the EU were established at a time of low or no interchange fees. Higher fees were introduced as a result of international card schemes taking over the national scheme by offering higher interchange fees to issuing banks willing to issue cards their cards instead of those of the national scheme.

Also, many investments for innovation, such as terminals for mobile payments, are made by the acquiring side of the market, which pays the interchange fees and does not receive them.

As to the risk of recoupment of lost revenues from alternative sources, based on experience with interchange fee reduction in other jurisdictions there are no indications of an automatic link between a decrease of interchange fees and an increase of annual card fees (as seen e.g. in the US, Australia, France and Switzerland). Therefore, it seems plausible that cardholder fees and the extent to which banks can increase their level are determined primarily by competition in retail banking.

In this context it is also worth noting that capping interchange fees at the level of the three best performing Member States as suggested by the Camera Deputaţilor would result in lower caps for debit cards than under the Commission's proposal. Capping fees at a fixed amount would risk discouraging the use of electronic payments for low amount transactions, which would run counter to the objective of favouring electronic payments.

The comments from the Camera Deputaţilor will be duly considered by the Commission in the framework of the discussions on the regulation on interchange fees and within the scope of its role in these, or when possible in the context of other proposals when these comments fall outside the scope of the regulation. The Commission would also like to refer to its reply to the Camera Deputaţilor's Opinion on the review of the Payment Services Directive {COM(2013) 547 final}⁷.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council at which your government is represented.

⁷ C(2014) 1664

The Commission hopes that these comments address the concerns raised by the Camera Deputaților and looks forward to continuing our political dialogue.

Yours faithfully,

*Maroš Šefčovič
Vice-President*