

**Notice published pursuant to Article 27(4) of Council Regulation (EC) No 1/2003 in Case  
COMP/39.398 — Visa MIF**

(Text with EEA relevance)

(2010/C 138/10)

### 1. INTRODUCTION

- (1) According to Article 9 of the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the TFEU<sup>(1)</sup>, the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission. According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

### 2. SUMMARY OF THE CASE

- (2) On 3 April 2009, the Commission adopted a Statement of Objections against Visa Europe Limited ('Visa Europe'), Visa Inc. and Visa International Services Association.
- (3) The Statement of Objections, which constitutes a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003, outlines the Commission's preliminary view that Visa Europe, which is an association of European banks, has infringed Article 101 of the TFEU and Article 53 of the EEA Agreement by setting multilaterally agreed interchange fees ('MIFs') that apply to cross-border and certain domestic<sup>(2)</sup> point of sale transactions with VISA, VISA Electron and V PAY consumer payment cards within the EEA.
- (4) Interchange fees are in effect paid by a merchant's bank ('acquirer') to a cardholder's bank ('issuer') for each transaction made at a merchant outlet with a payment card. When a cardholder uses a payment card to buy goods or services from a merchant, the merchant in effect pays a merchant service charge to its acquirer. The acquirer keeps

part of this charge (the acquirer's margin), part is passed on to the issuer (the MIF) and a small part is passed to the scheme operator (in this case Visa). In practice, a large part of the merchant service charge is determined by the MIF.

- (5) The Statement of Objections expressed a concern 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. According to the Commission's preliminary view, Visa Europe's MIFs are not objectively necessary. 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 (Honour All Cards Rule ('HACR'), No Discrimination Rule ('NDR'), blending, and application of different MIFs to cross-border as opposed to domestic acquirers). Furthermore, according to the Statement of Objections, the MIFs do not meet the requirements for receiving an exception under Article 101(3) TFEU of producing efficiencies with a fair share of the resulting benefit being passed on to consumers.
- (6) The Statement of Objections was also addressed to Visa Inc. and Visa International Service Association on 29 May 2009 in particular regarding the potential application of their Inter-Regional MIF rates by default (i.e., inasmuch as these fees could apply to cross-border or domestic transactions with VISA and V PAY consumer cards within EEA) and their involvement in setting the HACR and the NDR.

### 3. THE MAIN CONTENT OF THE OFFERED COMMITMENTS

- (7) The parties subject to the proceedings do not agree with the Commission's preliminary assessment. Visa Europe has nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003, to meet the Commission's competition concerns in the segment of immediate debit cards.

- (8) The commitments are briefly summarised below and published in full in English on the website of the Directorate-General for Competition at:

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the TFEU. The two sets of provisions are in substance identical. For the purposes of this notice references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty when applicable.

<sup>(2)</sup> Currently, domestic MIF rates are set by Visa Europe in nine countries. In the remaining EEA countries, domestic MIF rates are set by Visa Europe's members.

- (9) Visa Europe commits to cap its yearly weighted average cross-border MIFs applicable to transactions with its consumer immediate debit cards at 20 basis points (0,2 %) two months following the notification of the commitment decision to Visa Europe. 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 and in those EEA countries where the cross-border MIF rates apply in the absence of other MIFs.
- (10) Based on studies conducted by the central banks of several EEA countries comparing the costs of cards with those of cash, the Commission is of the preliminary view that the MIF Visa Europe has committed to apply to consumer immediate debit card transactions is in conformity with the 'merchant indifference methodology' (or 'tourist test') developed in economic literature<sup>(1)</sup>. The fee that meets this test (also referred to as the balancing fee) is set at such a level that merchants are indifferent as to whether they receive a card or cash payment. The balancing is such that merchants do not pay higher charges than the transactional benefit that the card use generates for them. For instance, transactional benefits arise where card payments reduce merchants' costs as compared to cash payments (e.g., because transportation and security expenses for cash are saved or check-out times at cashier desks are reduced). Under certain assumptions (e.g., the extent to which the fee is passed on to cardholders), it will ensure that cardholders make efficient choices across payment instruments. In that case, the MIF will allow giving correct price signals to cardholders who will adjust their behaviour accordingly.
- (11) In addition, Visa Europe commits to continue to implement and to further improve the transparency measures that were introduced by the Visa Europe Board in March 2009. In particular, Visa Europe commits:
- to continue to operate the rule against blending merchant services charges applicable to more than one payment card system or more than one type of Visa Europe's cards and to require acquirers to invoice merchant service charges itemised according to different types of cards,
  - to continue to require Visa Europe members to register all MIF rates and apply them to cross-border issued and cross-border acquired transactions,
  - to continue to publish all intra-regional and domestic MIFs on its website in a way that identifies an applicable interchange rate for all types of transactions and to require acquirers to inform merchants of the publication,
  - to ensure that commercial cards issued in the EEA are fully visibly identifiable and that all such cards can be electronically identified at POS terminals by the acquirer or merchant if the terminal has the necessary capability,
  - Visa Europe already has separate Honour All Cards Rules (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. Also, 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.
  - to 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.
- (12) Visa Europe shall appoint a Monitoring Trustee to monitor Visa Europe's compliance with the commitments. Before appointment, the Commission shall have the power to approve or reject the proposed Trustee.
- (13) The commitments will be valid for a period of four years from the date of notification of the commitment decision to Visa Europe and include a review mechanism.
- (14) The commitments do not cover Visa Europe's current MIFs for consumer credit and deferred debit card transactions, which will be included in the ongoing antitrust investigation by the Commission covering Visa Europe's past MIFs for consumer credit and deferred debit card transactions. The proposed commitments are also without prejudice to the right of the Commission to initiate or continue proceedings against other Visa network rules, such as the HACR, Visa Europe's MIFs for commercial card transactions, or the Inter-Regional MIFs.

<sup>(1)</sup> See 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](http://idei.fr/doc/wp/2008/must_take_cards.pdf)

(15) These commitments only apply to Visa Europe. Consequently, the current antitrust investigation (supra point 6) against Visa Inc. and Visa International Service Association, including consumer immediate debit card MIFs, will remain open pending further assessment by the Commission, possibly including any comments made in response to this notice.

#### 4. INVITATION TO MAKE COMMENTS

(16) Subject to the comments in response to this notice, the Commission intends to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring the commitments summarised above and published on the Internet, on the website of the Directorate-General for Competition, to be binding. If there are substantial changes to the commitments a new market test will be launched.

(17) In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the

Commission no later than one month following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments, in which commercial secrets and other confidential passages are deleted and are replaced as required by a non-confidential summary or by the words 'commercial secrets' or 'confidential'. Legitimate requests will be respected. If no non-confidential version of the comments is sent, the Commission will be entitled to consider that the comments do not contain confidential information.

(18) Observations can be sent to the Commission under reference number 'Case COMP/39.398 — Visa MIF' either by e-mail (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

European Commission  
Directorate-General for Competition  
Antitrust Registry  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË

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