

Summary of Commission Decision
of 26 February 2014
relating to a proceeding under Article 101 of the Treaty on the Functioning of the
European Union and Article 53 of the EEA Agreement

(Case AT.39398 Visa MIF)

(notified under document C(2014) 1199 final)

(Only the English text is authentic)

(2014/C 147/06)

On 26 February 2014, the Commission adopted a decision relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA agreement. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, including any penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business secrets.

(1) The case concerns the setting of multilaterally agreed interchange fees ('MIFs') by Visa Europe Limited ('Visa Europe') that apply to Intra-regional, certain domestic⁽²⁾ and intra Visa Europe non-EEA⁽³⁾ point of sale ('POS') transactions with Visa consumer credit cards and with Visa consumer debit cards and the rules relating to cross-border acquiring.

1. PRELIMINARY COMPETITION CONCERNS

(2) In its Statement of Objections of 3 April 2009 (the 'Statement of Objections'), the Commission came to the provisional conclusion that Visa Europe had infringed Article 101 of the Treaty and Article 53 of the EEA Agreement when setting MIFs.

(3) On 8 December 2010, the Commission adopted a decision pursuant to Article 9 of Regulation (EC) No 1/2003 (the 'debit commitment decision'). The decision made legally binding on Visa Europe for four years the commitments to (i) cap at 0,20 % the weighted average MIF applicable to consumer debit transactions covered by the proceedings and (ii) maintain and/or introduce a number of changes to their network rules.

(4) In its Supplementary Statement of Objections on 31 July 2012 (the 'Supplementary Statement of Objections') the Commission reformulated and further refined its objections with regard to consumer credit card multilateral interchange fees ('MIFs'). It also extended the scope of proceedings to the direct application of Inter-Regional (or international) MIFs where merchants are located in the EEA and it also took the preliminary view that Visa Europe's rules on cross-border acquiring had infringed Article 101 of the Treaty and Article 53 of the EEA Agreement.

(5) 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.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1.

⁽²⁾ Currently in Belgium, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, Netherlands, Latvia and Sweden.

⁽³⁾ These are transactions carried out with merchants located within the EEA with Visa consumer cards issued in non-EEA countries in the Visa Europe territory. The Visa Europe territory consists of the EEA, Andorra, Faroe Islands, Greenland, Israel, Monaco, San Marino, Svalbard and Jan Mayen Islands, Switzerland, Turkey and Vatican City.

(6) The Preliminary Assessment expressed a concern that the MIFs have as their object and they also have as their effect an appreciable restriction of competition in the acquiring markets to the detriment of merchants and, indirectly, their customers. The MIFs appear to inflate the base on which acquirers set the MSCs by creating an important cost element common to all acquirers. According to the Commission's Preliminary Assessment, 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, namely the Honour All Cards Rule (the 'HACR'), the No Discrimination Rule (the 'NDR'), blending⁽¹⁾ and the segmentation of acquiring markets due to rules restricting cross-border acquiring⁽²⁾. Furthermore, according to the Statement of Objections and the Supplementary Statement of Objections, the MIFs do not meet the requirements for an exception under Article 101(3) of the Treaty of producing efficiencies with a fair share of the resulting benefit being passed on to consumers.

(7) In Visa Europe's system, cross-border acquirers are subject to a rule which mandates the application of the MIFs that are applicable in the country of transaction. According to this rule, cross-border acquirers must apply as a default either the Country-specific MIFs or Intra-Regional MIFs or the registered domestic MIFs. Visa issuing and acquiring members in the country of transaction and cross-border acquirers may deviate from domestic MIFs or Country-specific MIFs by concluding bilateral agreements involving lower or no interchange fees. However, cross-border acquirers are liable to be at a disadvantage if they want to enter into bilateral agreements of this type, because they are not likely to have strong links to domestic issuers. In countries where there are significant bilateral agreements involving domestic acquirers, cross-border acquirers would typically have to apply the higher Country-specific or Intra-Regional MIFs or registered domestic MIFs. This rule is also considered to be a territorial and price restriction by object and effect, which hinders acquirers in countries where the MIF is lower from offering their services in other countries at prices reflecting their low MIFs. In light of the objective of the achievement of an internal market in payments, this is a very serious restriction which appears to be unjustified. Such an artificial partitioning of acquiring markets harms consumers, as merchants are obliged to pay higher prices for acquiring services. Therefore the Commission took the preliminary view in the Supplementary Statement of Objections that the objective and the content of this rule is to maintain the segmentation of national markets by limiting the entry and price competition from cross-border acquirers.

2. COMMITMENT DECISION

(8) On 10 May 2013 Visa Europe offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 to meet the Commission's competition concerns.

(9) On 14 June 2013 a notice was published in the *Official Journal of the European Union* pursuant to Article 27(4) of Regulation (EC) No 1/2003, summarising the case and the proposed commitments and inviting interested third parties to give their observations on the commitments within one month following publication. On 30 August 2013 the Commission informed Visa Europe of the observations received from interested third parties following the publication of the notice. On 5 November 2013, Visa Europe submitted revised commitments.

⁽¹⁾ The HACR is a Visa system rule which obliges merchants who have contracted to accept payments with a particular brand of card (for example, 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. The NDR is a Visa system rule which prevents merchants from adding surcharges to transactions with VISA, VISA Electron or VPAY payment cards, unless local law expressly requires that a merchant be permitted to impose a surcharge. Blending is a practice whereby acquirers charge merchants the same MSC for the acceptance of different payment cards of the same payment scheme (for example, VISA debit and credit) or for the acceptance of payment cards belonging to different payment card schemes (for example, VISA and MasterCard Credit cards). In its Preliminary Assessment that those rules and practices reduce merchants' capacity to constrain the collective exercise of market power of Visa Europe's members through the MIF, thereby reinforcing the anti-competitive effects of the MIF.

⁽²⁾ Cross-border acquiring is the activity undertaken by acquirers aiming at recruiting merchants for acceptance residing in a different EEA country than the one where the acquirer is established.

(10) By decision of 26 February 2014, pursuant to Article 9 of Regulation (EC) No 1/2003, the Commission made the revised commitments binding on Visa Europe for four years. The main content of the commitments is summarised below:

- (a) Visa Europe commits to cap its yearly weighted average Intra-EEA credit MIFs applicable to transactions with its consumer credit cards at a level of 0,3% two months following the notification of the commitment decision to Visa Europe;
- (b) the cap will also apply individually two years after the notification of the commitment decision in each of those EEA countries for which Visa Europe directly sets specific domestic consumer credit MIF rates and in those EEA countries where the Intra-EEA Credit MIFs apply to domestic transactions in the absence of other MIFs;
- (c) Visa Europe also proposes to ensure that, as from 1 January 2015,
 - the 0,3% credit MIF cap also applies to all MIFs set by Visa Europe regarding transactions carried out with merchants located within the EEA with Visa consumer credit cards issued in non-EEA countries belonging to the Visa Europe territory⁽¹⁾ (intra Visa Europe non-EEA credit MIFs), and
 - the 0,2% debit MIF cap also applies to all MIFs set by Visa Europe regarding transactions carried out with merchants located within the EEA with Visa consumer debit cards issued in non-EEA countries belonging to the Visa Europe territory (intra Visa Europe non-EEA debit MIFs);
- (d) Visa Europe commits to amend its rules on cross-border acquiring from 1 January 2015 to allow cross-border acquirers to offer either the domestic debit MIF or the domestic credit MIF applicable in the location of the merchant or a MIF rate of 0,2% for consumer debit transactions and 0,3% for consumer credit transactions, subject to certain conditions;
- (e) Visa Europe commits to continue to implement further transparency measures. In particular, Visa Europe commits:
 - to introduce a rule which requires acquirers to offer merchants merchant service charge pricing on a 'MIF plus plus' basis for an administrative fee (in other words, acquirers must, if requested, clearly break down in their contracts and invoices the MSC into three components, namely the MIF, all the other applicable payment system fees and the acquirer's fee). Visa Europe will require acquirers to implement this rule within 12 months following the notification of the commitment decision to Visa Europe with regard to all new agreements and within 18 months for existing contracts,
 - 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.

(11) 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.

(12) The commitments will be valid for a period of four years from the date of notification of the commitment decision to Visa Europe.

(13) The weighted average MIF caps provided for in the commitments were assessed under the MIT. The decision finds that the commitments are appropriate and necessary to address the concerns identified in the Statement of Objections and the Supplementary Statement of Objections without being disproportionate.

⁽¹⁾ The Visa Europe territory includes the EEA, Andorra, Faroe Islands, Greenland, Israel, Monaco, San Marino, Svalbard and Jan Mayen Islands, Switzerland, Turkey and Vatican City.

(14) The Advisory Committee on Restrictive Practices and Dominant Positions issued a favourable opinion on the adoption of the decision on 17 February 2014. On 19 February 2014 the Hearing Officer issued his final report.

(15) The decision brought the proceedings to an end as regards Visa Europe's Intra-EEA Credit multilaterally agreed interchange fees, Domestic Credit MIFs set by Visa Europe, Intra Visa Europe Non-EEA Credit and Debit MIFs, International MIFs and Visa Europe's rule on the applicable MIF in the case of cross-border acquiring.

(16) The decision, however, does not cover MIFs set by Visa Inc. and Visa International Service Association which the Commission will continue to investigate.
