European Commission

Competition and Regulation in the EU Payments Market; State of Play

THE PROS AND CONS OF ANTITRUST IN TWO-SIDE MARKETS

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Stockholm, 28 November 2014

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Outline

- Background to legislative package:
  - Some figures
  - What is the problem with existing business model in cards
  - Competition law enforcement
  - Internal Market issues
- Proposed legislative package
- Interchange Fee Regulation and E-Payments:
  - State of Play
  - Current debate

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Some figures

- Retail payment business up to 25% of bank revenues and 1% of EU GDP
- Cards most widely used cashless payment -nearly 40 billion payments in 2012 and more or less ubiquitous: 1.45 per capita in EU, 0.9 debit cards and 0.55 credit cards
- Card usage widely varies from 4,5 payments per year per inhabitant (Bulgaria) to 230.1 (Sweden)
- Average costs per transaction lowest for *cash* payments (€ 0,42) followed by debit cards (€ 0,70) – cheques € 3,55. In five countries debit cards have lower average transactional costs than cash
- Merchant service charges (MSC) paid by retailers for accepting payment cards ≈ €13 billion annually in the EU. About €10 billion are Interchange Fees
- This, in spite of the value of payment card transactions in the EU increasing continuously, from 7.4% in 2000 to 17.4% of EU GDP in 2012
- No sign of MIF rates decreasing (except in response to regulatory pressure or competition enforcement) as a result of scale effects or efficiency
- At the same time, *alternatives on the rise*:
  - Technology for mobile payments readily available
  - SEPA credit transfers and direct debits in place
  - On-line payments: less fraud risks with credit transfers than with cards?
  - Online shoppers in Europe expected to increase from 157 million in 2010 to 205 million by 2015

Leading business model for card payments based on Interchange Fees - what is the problem ?

- IFs are hidden fees based on collective agreements between banks that create a ‘floor‘ in the fees banks charge to retailers

- Retailers pass these fees on to consumers

- Harmful effect enhanced by
  - ✓ Incentives given to cardholders to use highest revenue generating cards – ‘subsidized’ by consumers paying with cash and low fee cards
  - ✓ Network rules restricting transparency

- No indication that consumers receive appropriate share of efficiency gains, also taking into account
  - ✓ 'Business stealing' effect on retailers
  - ✓ Reverse competition between schemes.

Competition law enforcement

MasterCard I

- December 2007: prohibition decision, MIFs for cross border transactions with consumer debit and credit cards

- April 2009: Unilateral undertakings by MasterCard reducing MIFs for cross border consumer card transactions to 0,20% (debit cards) and 0,30% (credit cards) and enhanced transparency

MasterCard II

- Proceedings opened in 2013 for **inter-regional MIFs** and **cross-border acquiring**

MasterCard and Visa proceedings (II)

Visa Europe and Visa Inc.

- Proceedings opened in March 2008
- December 2010: Commitments Decision regarding Visa Europe's debit card MIFs (cap at 0.2%) + enhanced transparency
- February 2014: Commitments Decision regarding Visa Europe:
  - As from 28 April 2014 MIFs for cross border consumer credit card transactions reduced to 0,3%;
  - As from 28 April 2016 MIFs for domestic consumer credit card transactions reduced to 0,3% in 10 Member States;
  - As from **1 January 2015** MIFs of 0,2% and 0,3% will apply where the merchant outlet and the acquirer are located in two different EEA Member States.
- Proceedings against Visa Inc. regarding **inter-regional fees** continue

MasterCard: ECJ judgment of 11 September 2014

- MC still an association of undertakings;
- MIFS are not objectively necessary;
- MIFs restrict competition by effect;
- MasterCard has not succeeded in demonstrating efficiencies that outweigh the harm done to merchants and final consumers.

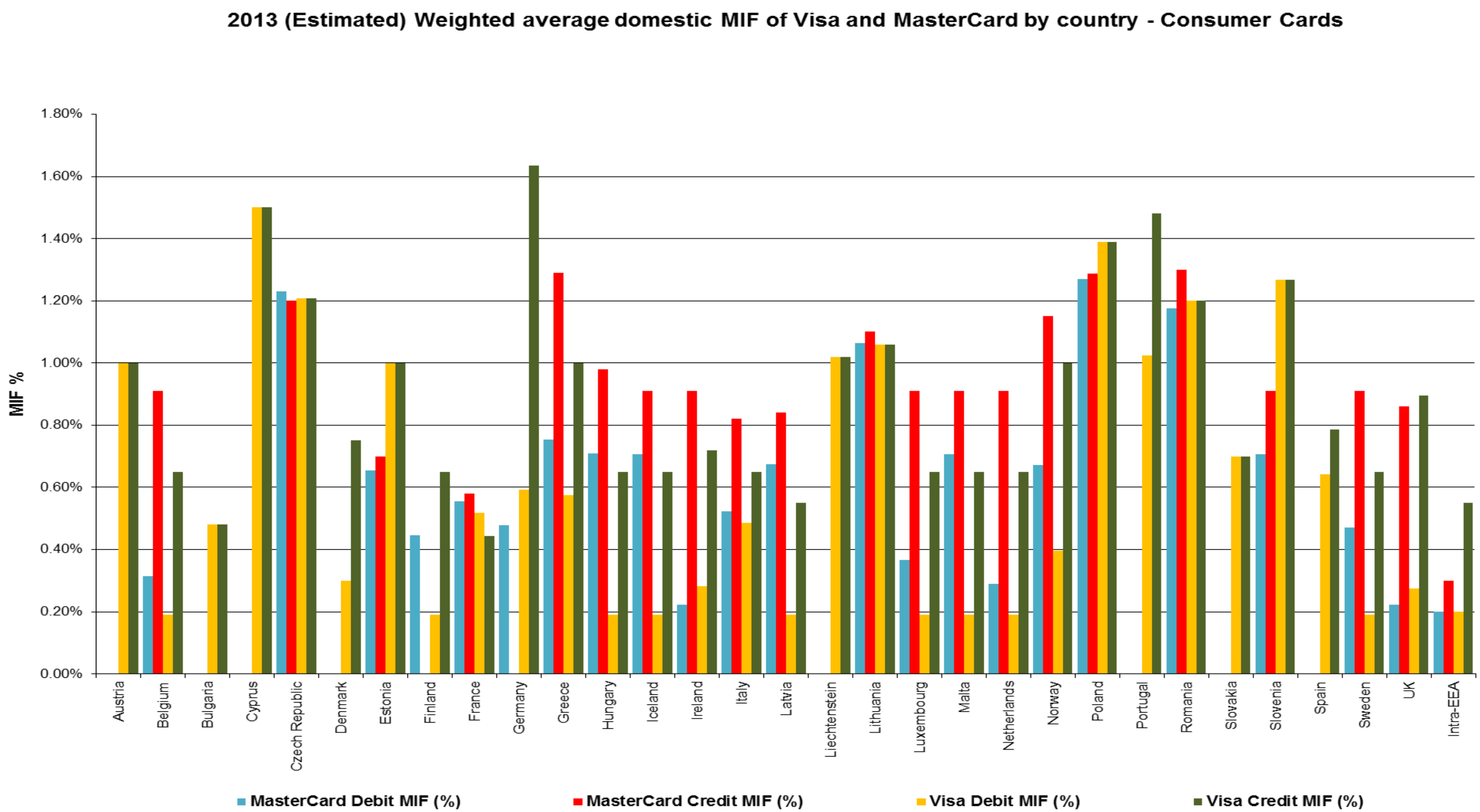
Private damages actions before national civil law courts:

- Various procedures in which retailers claim compensation for damages

Internal market: national MIF proceedings

Prohibition proceedingss	Prohibition proceedings
AUSTRIA: Europay for charging excessive debit card IF to competitors for using Europay's POS terminals. **FRANCE**: 11 leading French Banks and the Central Bank for colluding regarding interbank fees for processing cheques during the transition from manual to electronic cheque processing. Annulled by the Paris Court of Appeal. Appeal suspended awaiting MC judgment. **HUNGARY**: 23 commercial banks, Visa and MC for setting uniform MIFs for Visa and MC debit and credit cards. Appeal suspended awaiting MC judgment. **ITALY**: MC and MC acquirers for fixing and implementing MIF for domestic transactions, appeal pending. Appeal suspended awaiting MC judgment. **LATVIA:** 22 banks for setting a multilateral agreement on IF for ATM withdrawals, cash withdrawals at branches, balance inquiries at ATM and MIF on card payments at POS.	**LITHUANIA**: G4S Lietuva and three major banks for entering into exclusive dealing agreements for the purchase of cash handling services. The Supreme Administrative Court confirmed the analysis but reversed the decision with regard to fines on the banks. **POLAND**: Visa and MC for setting domestic MIFs. **SLOVENIA**: 4 banks for the simultaneous introduction of identical ATM withdrawal fee. **UNITED KINGDOM**: MC, major UK issuing and acquiring banks and other MC licensees in the UK for setting MIFs for UK domestic POS transactions. Set aside due to procedural problems.

Effects on Internal Market



State of Play legislative package

<u>Commission</u>:

Legislative package announced on 24 July 2013:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52013PC0550:EN:NOT

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52013PC0547:EN:NOT

<u>Parliament</u>:

Texts adopted on 03.04.2014:

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0167+0+DOC+XML+V0//EN

http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0280+0+DOC+XML+V0//EN

<u>Council</u>:

IF Regulation - General approach reached under Italian Presidency on 6.11
http://data.consilium.europa.eu/doc/document/ST-14773-2014-INIT/en/pdf

PSD II – General approach awaited soon –latest public text:

http://data.consilium.europa.eu/doc/document/ST-14971-2014-INIT/en/pdf

Interchange Fee Regulation: what does the Commission propose?

- Regulating fees of 'must take (consumer) cards'
  - Cap for cross-border transactions and cross-border acquired transactions: 0.2% (debit cards) and 0.3% (credit cards)
  - After two years, cap fees for domestic transactions

- Provisions leading to more competition, more effective pricing signals and empowerment of retailers and consumers
  - allowing merchants to refuse cards
  - allowing surcharging if MIF not regulated
  - easy identification of expensive cards
  - for co-branded cards: choice of brand with consumer and retailer
  - separation of processing and scheme management

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Main issues: Scope Interchange Fees (Art 1)

COM	EP	Council
Excluded:	Excluded:	Excluded:
Commercial cards		Commercial cards
'Pure' three party schemes	'Pure' three party schemes only where volume of transactions is below threshold to be defined.	'Pure' three party schemes
		Domestic transactions made under three party scheme with licensees if lower than 5% of the value of all transactions made in the Member State.

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Level of caps

	COM	EP	Council
Cross border cons. credit cards	Max. 0,3%	Max. 0,3%	Max. 0,3%
Domestic cons. credit cards	Max. 0,3%	Max. 0,3%	Max. 0,3%
Cross border cons. debit cards	Max. 0,2%	The lower of 0,2% of 7 cents	Max. 0,2%
Domestic cons. debit cards	Max. 0,2%	The lower of 0,2% or 7 cents	Weighted average max of 0,2%, absolute cap of 0,2% or any lower max established by MS
'Universal cons. cards'	_	_	Max. 0,2%
Cross border transactions for *all* cards	_	Fee of acquiring country	_

Third Party Service Providers in internet payments ('TPPs') – what does the Commission propose?

PSD II

- Open market for TPPs provided they are secure
- Conditions
  - Supervision and licensing
  - Identification of TPPs if used in transaction
  - Limited access (receipt of payment order and adequate funds)
  - No storage of confidential data or credentials
  - 'Strong authentication'

Debate: right balance between detailed rules and flexibility in terms of authentication and identification to accommodate different business models

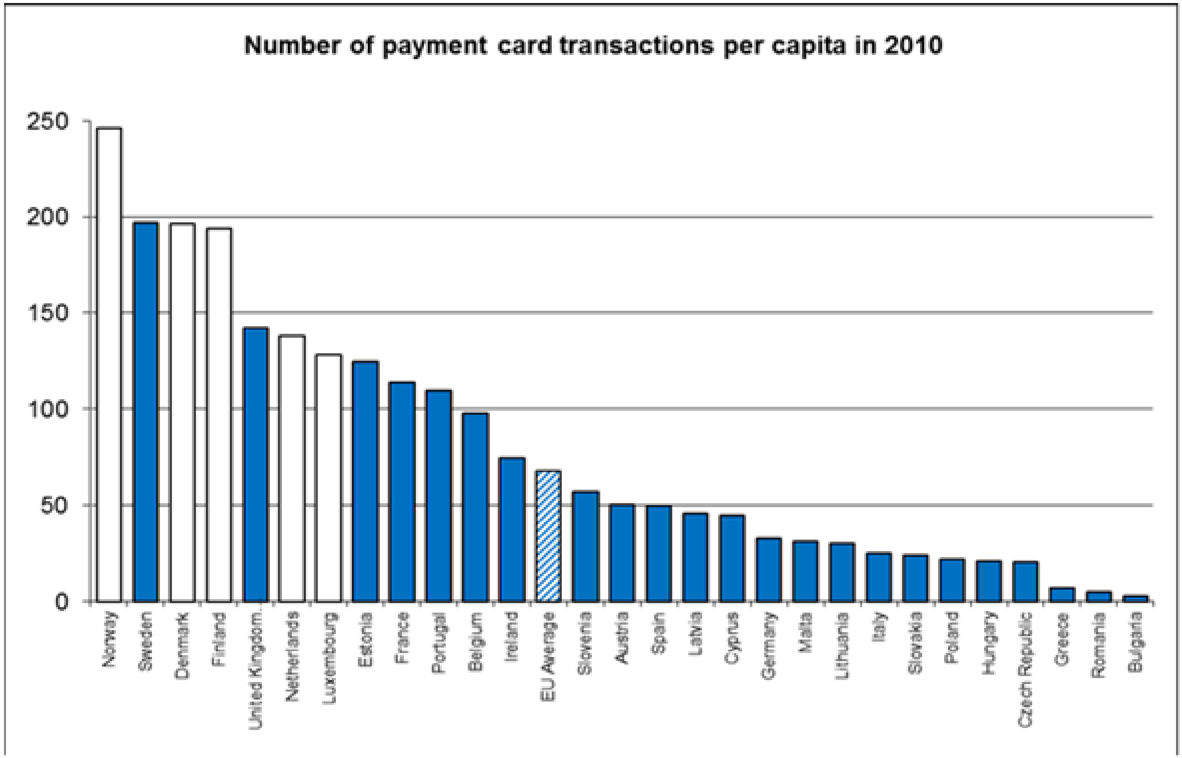
What do we expect? the debate

- Will retailers keep all the savings for themselves?
  - Consumers already pay through the incorporation of IF in the retail prices, and banks are less likely to pass on the benefits of the IF to their account holders than merchants to their clients.
  - Some evidence of pass on of savings – even if analysis of pricing trends tricky
- Will small retailers suffer while big ones gain?
  - Small retailers benefit from caps on IFs. Increased transparency will help small merchants negotiate better prices for MSC.
- Will innovation be stifled?
  - IFs prevent new players and business models from entering the market.
  - Different interchange fees = fragmentation of the EU market into 28 national markets. This makes it difficult for successful innovations to spread throughout the EU.

What do we expect II?

- Will decreasing IFs call into question cash displacement and the fight against fraud/the black economy?
  - A decrease of high interchange fees seems to lead to a higher <u>acceptance</u> of cards, e.g. in Spain
  - In countries with low MIFs cards <u>usage</u> is higher, e.g. Denmark and the Netherlands
- Will banks suffer from decreased IFs and find other sources of revenues?
  - Impact likely to be mixed: increased card usage + cost savings (cash handling, lower IFs to be paid for ATM cash withdrawals)
- Will TPPs be safe? And how will they impact the market?
  - The conditions in PSD should be sufficient to ensure safety equivalent to banks
  - Cannot predict impact on market, but good for competition and innovation and expect good for consumers

Effect of Limiting Excessive Interchange Fees



Questions?