

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

ROUNDTABLE ON COMPETITION AND PAYMENT SYSTEMS

-- Note by the Delegation of Hungary --

This note is submitted by the delegation of Hungary to the Competition Committee FOR DISCUSSION under Item VI at its forthcoming meeting to be held on 24-25 October 2012.

JT03327986

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

ROUNDTABLE ON COMPETITION AND PAYMENT SYSTEMS

-- Note by Hungary --

1. This contribution discusses the developments experienced since the 2006 OECD roundtable in relation to payment systems in Hungary. The focal point of the contribution is the payment card market as major developments have occurred in this area in Hungary, and the Hungarian Competition Authority's (GVH) relevant experience stems from these developments.

2. The development of payment systems in Hungary has led to payment cards being the most important and widespread alternative to cash, with e-payments and mobile payments being underdeveloped in contrast. Market problems and competition issues have therefore been talked about mostly in relation to payment cards, with interchange fees and card acceptance being the hottest topics. As a result, the market was subject to an enforcement action (competition investigation) initiated by the GVH, a failed price regulation, and several studies performed by the Hungarian National Bank (MNB). While the competition investigation was in line with similar European practices, the European Commission's proceedings on interchange fees resulted in a unique market situation in Hungary, creating a lack of a level playing field for the major market players. These developments prompted further debates over interchange fees and lead to a new competition investigation, with a looming possibility of regulation.

1. Payment systems in Hungary¹

3. While Hungary's payment systems have experienced major developments since 2006, the majority of payments are, still performed using cash. Research performed by the national bank established that in 2009 3.7 billion payments were made in the Hungarian economy, 84.4% of which were related to cash. Hungarian society could save up to 106 billion Hungarian Forints a year (24 billion of which is related to payments made by the state) if electronic payment means replaced cash at a rate similar to that witnessed in Northern-European countries. In 2010 the national bank published a cost-of-cash study. The results show that the marginal costs of electronic payments are significantly lower than those of cash-based payments.

4. In previous years the number of payment accounts and debit cards has increased slowly but steadily, but there still remains much room for improvement. There are two major obstacles to the widespread dominance of efficient electronic payment methods. The first one is the limited availability of basic payment systems in certain regions and for certain groups of society. The second one is related to choices on payments instruments and methods not being made based on their relative efficiency, as the real costs remain hidden to consumers. The accessibility of basic payment methods could improve through the market entry of new service providers, while the spread of internet and mobile technology may contribute to a greater use of account based electronic payment means. While in 2006 only 40% of current accounts were accessible via the internet, today the rate is more than 60%. Currently, basic wire transfer is the prevailing account based electronic payment method, while direct debits are slowly gaining ground.

¹ Report on the payment system 2012, Hungarian National Bank (MNB), 2012.

5. Pricing of various payment means should drive their usage towards efficiency, if the market signals provided by pricing are appropriate. However, in the case of non-cash payment instruments, pricing usually does not fulfill this role therefore – according to the national bank – measures need to be taken in order to correct these distorted price signals. In addition to tackling the aforementioned infrastructural barriers, the national bank has also proposed that all regular salaries should be transferred to payment accounts, a stepwise introduction of obligatory card acceptance and a progressive limitation of cash usage. Adding to the problem is the fact that every third transaction in which the state is involved is done with cash. As a result of this, payments to or from the state need to be directly targeted by these measures. Furthermore, it is a problem that the costs of the payment methods are usually included in the price of the services or goods, as this means that the true costs of payment remain invisible to consumers. Moreover, these costs are mostly included in the price in an undifferentiated way, so a consumer using a less costly, electronic payment instrument is likely to pay for the more expensive, cash-based instrument as well.

6. In the payment card market card acceptance has significantly increased in recent years. However, card issuance, when compared on a European level, is still underdeveloped. While the number of POS terminals per one million inhabitants is 17 561 in the EU, the same number is only 7844 in Hungary. According to the national bank, the expansion of card acceptance is of high importance as it is currently only possible to make payments using cards in 30% of retail outlets.

7. Card usage patterns have also shown signs of improvement in recent years as more and more purchases are being made using payment cards. In late 2011 the rate of purchase transactions was almost the double of that of cash withdrawals. The majority of purchases by households are, however, still being made using cash and the average amount of a cash withdrawal is three times the average amount of a card-based purchase.

8. The number of payment cards has witnessed an increase of around 1 million since 2006, but the growth has slowed down considerably. There is, however, a shift inside the market, as the rate of credit cards is constantly decreasing in comparison to debit cards, a major factor being the economic crisis of recent years. The vast majority of domestic payment cards are issued by two major international card schemes, Visa and MasterCard. In the last couple of years MasterCard has gained a significant market share from Visa, predominantly due to a big interchange fee differential between the two companies.²

9. Mobile payments are still considered to be a rather exotic instrument of payment in Hungary. While the total amount of wire transfer transactions reached 200 000 billion HUF, and the amount of payment card transactions topped the 3500 billion HUF mark in 2011, mobile transactions amounted to a mere 12 billion HUF, 75% of which were purchases related to the mobile phone itself. There is, however, significant potential for growth, as both the number and the amount of mobile purchases increased by more than 40% in 2011, as compared to 2010.³

2. MIF cases in Hungary

10. Payment cards have developed into being an important instrument in domestic payments in recent years. The Hungarian market has faced problems which are both similar and unique to the problems faced in other European markets. This section provides a summary of the major market developments from a competition perspective, with an emphasis on competition law cases and their effects.

² Domestic payments in numbers, Hungarian National Bank (MNB), November 2011.

³ Domestic payments in numbers, Hungarian National Bank (MNB), November 2011.

2.1 *The first Hungarian MIF case*⁴

11. On 31 January 2008 the Hungarian Competition Authority initiated an enforcement action ('competition supervision proceeding') against twenty-three commercial banks and payment card schemes Visa and MasterCard, as the GVH presumed that the MIF agreement concluded between the Hungarian banks was capable of restricting competition within the Hungarian market. The GVH investigated payment card (debit and credit cards) transactions. The decision did not explicitly distinguish between consumer or commercial cards and referred to 'payment card transactions' due to the relatively limited number of commercial cards in Hungary.

12. The GVH found that the banks had infringed competition rules by setting uniform interchange fees for Visa and MasterCard payment card transactions. The practice of the payment card schemes was also found to be contrary to competition rules because it facilitated the conclusion of the anticompetitive agreement by the banks. The banks admitted that the two payment card schemes facilitated the conclusion of the agreement.

13. The Competition Council decided that the agreement restricted competition in the Hungarian market by its effects and also by its object. The object was established by the GVH with respect to the fact that uniform price setting regarding the two payment card schemes eliminated one of the most important factors of competition between the two schemes. Moreover, the agreement reduced competition between acquiring banks regarding merchant service charges. The GVH established that the agreement on uniform interchange fees concluded between the banks indirectly influenced the commissions paid by merchants accepting payment cards.

14. Even though the parties offered commitments, they were rejected by the Council as they were considered inappropriate for remedying the infringement. The commitments were aimed at improving the functioning of the acquiring market in Hungary. In its September 2009 decision the GVH imposed a fine on all the undertakings that were actively involved in the conclusion of the agreement. The agreement was concluded between competitors with the explicit aim of restricting competition and had a lasting impact. Seven banks were fined a total of 968 million HUF (approx. 3.57 million EUR), while the two payment card schemes, Visa and MasterCard were each fined 477 million HUF (1.76 million EUR each).

15. The parties fined by the GVH lodged an appeal with the Budapest Metropolitan Court after the final decision. The parties argued that the agreement was not contrary to competition rules and claimed that the GVH had not looked into the actual effects of the MIF agreement.

16. According to the parties the decision of the GVH should be amended or annulled. The judicial proceeding was suspended by the Budapest Metropolitan Court because the MasterCard case (T-111/08) was still pending at the CJEU.

2.2 *Impact of the European Commission's cases*⁵

17. Due to the GVH's decision in the case described above the domestic commercial banks abandoned the interbank agreement on interchange fees, and Visa and MasterCard introduced new domestic interchange fees, which were set by the card schemes themselves.

⁴ Vj-18/2008, Decision of the Competition Council, 24 September 2009.

⁵ Keszy-Harmath – Kóczán – Kováts – Martinovic – Takács: The role of the interchange fee in payment card systems, Hungarian National Bank – Hungarian Competition Authority, MNB Studies, 2011.

18. After the Commission's December 2010 decision to accept the commitments presented by Visa in the case brought against it in relation to cross-border multilateral interchange fees for debit card transactions, Visa had to introduce a limit to the weighted average of its domestic debit interchange fees in countries where interchange fees set by Visa itself were in force. In Hungary, one of the countries concerned, a lack of a level playing field arose within the Hungarian payment card market as Visa's main competitor, MasterCard, did not have to cap its domestic debit interchange fees.

19. In the MasterCard case the Commission decided the cross-border multilateral interchange fees of MasterCard were anticompetitive and ordered the card scheme to abolish them. The December 2007 decision, however, did not rule out the possibility of having an interchange regime which passes all the exemption criteria based on Article 101 (3) of the TFEU. As of April 2009 MasterCard unilaterally committed to capping its cross-border interchange fees, the cap, however, did not cover domestic interchange fees set by MasterCard – as is the case with Visa – but only those in force for cross-border transactions. The European Commission decided not to engage in further legal action against MasterCard for a violation of antitrust rules or for non-compliance with its 2007 decision.

20. The lack of a level playing field in relation to domestic debit interchange fees resulted in an interchange differential of around 0.5-0.8 percentage points in favour of MasterCard. Due to the fact that the Hungarian payment card market is run by universal banks where card acquirers are also card issuers, and the fact that banks expect and realise much higher revenues and profits from card issuance than card acquiring, it is safe to presume that domestic banks favour higher interchange fees. In this respect MasterCard has a major advantage on the market and this may be one of the reasons why MasterCard has been gaining market from Visa since the end of 2010.

21. These market dynamics and developments arising from the lack of a level playing field, and the fact that MasterCard has a market share above 75% in Hungary, led the GVH to initiate an enforcement action against MasterCard in June 2012 on the presumption that the company was using its dominant position within the Hungarian market to abusively foreclose the market through its interchange fees (Case number: Vj-46/2012., ECN Case number: 2691.).

3. Regulatory initiatives⁶

22. In 2009-2010 several regulatory initiatives were introduced regarding payments made with cards. The subject of the initiatives was the interchange fee and the merchant service charge on the one hand, and surcharging on the other hand.

23. At the end of 2009 Parliament adopted a modification to the already existing law on payments. The amendment was aimed at capping both the interchange fee and the merchant service charge. The law should have entered into force in March 2010 and would have capped the interchange fee at 0.75% for credit cards, 0.3% for debit cards and 0.8% for all other cards. However, before it entered into force, Parliament amended the regulation and completely left out caps on interchange fees. In May 2010 only a cap of 2% for the merchant service charge was introduced.

24. Experts on the subject and authorities involved in the pre-regulation discussions expressed their concerns as the regulation lacked economic reasoning and effects analysis. The regulation ended up being a failure as several market players already had lower merchant service charges and those with higher charges were able to circumvent the new rules by applying so called "administrative fees" for services such

⁶ Keszy-Harmath – Kóczán – Kováts – Martinovic – Takács: The role of the interchange fee in payment card systems, Hungarian National Bank – Hungarian Competition Authority, MNB Studies, 2011.

as POS maintenance and rental, which were previously included in the merchant service charge. The regulation was finally abolished in December 2010.

25. Surcharging was another regulatory issue that was dealt with between 2009-2010. In accordance with an EU directive, Hungarian national law on payments allowed for surcharging/discounting of non-cash payments when it was introduced in 2009. However, as of January 2011, an amendment to the law annulled the right of merchants to use surcharging/discounting practices in case of cashless payments.

26. In 2011 the Hungarian National Bank became increasingly interested in the payment card market and aware of some problems that it faced. Based on the research it had undertaken, the national bank came to the conclusion that card acceptance is rather underdeveloped, quite possibly due to the high level of interchange fees. As the aforementioned lack of a level playing field in the market also highlights a problem related to the level of interchange fees, the national bank approached the regulator with a proposal to cap interchange fees. The MNB worked out a regulatory package of three elements with the aim of improving card acceptance and solving the lack of a level playing field issue. The three elements are (i) to cap and decrease interchange fees; (ii) provide state aid for the improvement of the POS infrastructure; (iii) introduce obligatory card acceptance in certain sectors of the economy. The proposals are currently under evaluation by the regulator.