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Recent developments in the European Payment Cards Market:
The Commission's view

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The views expressed are purely those of the author and may not be regarded as stating an official position of the European Commission.

Outline

- Competition law enforcement cases
- Interchange Fee Regulation and PSD II: State of Play
- Interchange Fee Regulation: what was agreed?
- PSD II: E-Payments discussion in Trilogues

Competition law enforcement cases

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

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MasterCard and Visa proceedings

Visa Europe and Visa Inc.

- February 2014: Commitments Decision regarding Visa Europe:
- Investigation of Visa Inc.'s **inter-regional fees** continues.

MasterCard II

- Proceedings opened in 2013 for **inter-regional MIFs** and **cross-border acquiring**, investigation continues.

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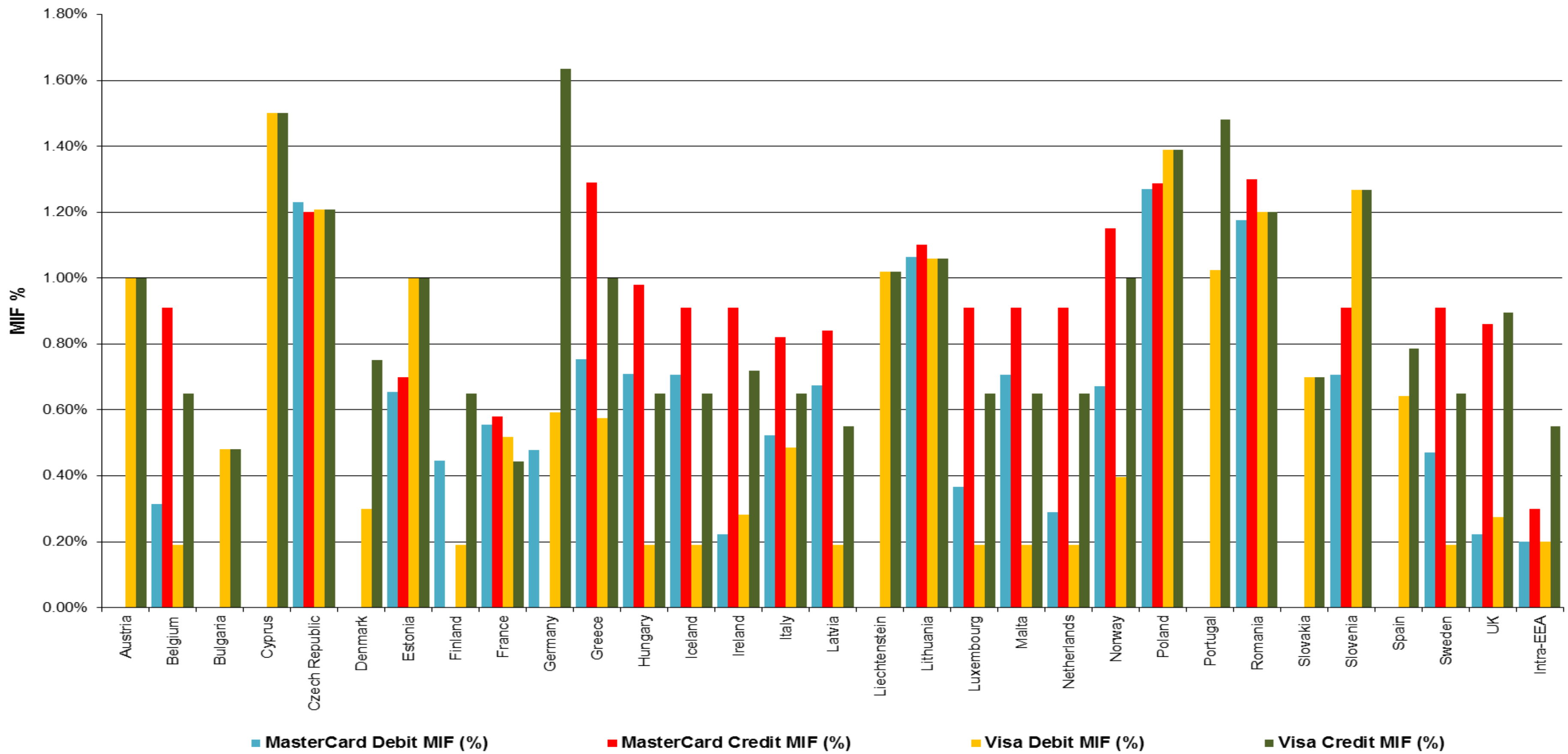
Effects on Internal Market

2013 (Estimated) Weighted average domestic MIF of Visa and MasterCard by country - Consumer Cards



Interchange Fee Regulation and PSD II State of Play

Interchange Fee Regulation:

- Agreed 17 December, confirmed End January
- Adopted by EP 10 March
- Publication (possibly April/May?)

PSD II:

- Trilogues started 4 February
- Completed by end of Latvian mandate?

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Interchange Fee Regulation: what was agreed?

Outcome of the Trilogue negotiations:

- Implementation: 6 months for caps, 12 months rest

- Scope:
  - Commercial cards excluded from caps but definition tightened
    - […] for payments charged *directly* to company's or public entity's account
  - 'Pure' three-party schemes excluded from caps
  - Three party schemes with licensees: MS option to exclude from caps for 3 years up to 3% market share

- Caps:
  - Consumer credit: 0.3% per transaction
  - Consumer debit: 0.2% per transaction
  - Domestic consumer debit: **MS options** to
    - allow lower percentage than 0,2% per transaction and/ or fixed fee of max. 5 cents, provided that total fees of a scheme do not exceed 0,2% of annual transaction value
    - *for 5 years only*: allow 0.2% weighted average per scheme.

Interchange Fee Regulation: what was agreed?

- Business Rules:
  - Independence of scheme and processor:
    - Independence in terms of accounting, organisation and decision making process;
    - No price bundling and cross subsidization;
    - No discrimination between users and group companies, no tying of services.
  - Licensing: no territorial restrictions
  - Interoperability: obligation
    - on processing entities to ensure technical interoperability
    - and schemes to refrain from restricting interoperability
  - Co-branding:
    - Must be allowed by schemes
    - Non-discriminatory treatment by schemes
    - No pre-conditioning of choice by issuers, acquirers, schemes, processors
    - Payees may install priority selection but payer can override
  - Unblending in statements of fees and contracts
  - No HACR except within same category + if MIF is the same
    - Information obligation on merchants in case they do not accept all cards of a scheme

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PSD II – State of Play before Trilogues

TPPs - broad agreement between Parliament and Council:

- TPPs will be licenced and supervised as Payment Institutions;
- *All* payment services providers, including TPPs, will be subject to *stronger security rules*, in particular the use of **Strong Customer Authentication**;
- TPPs shall be required to identify themselves to banks;
- TPPs shall not store any sensitive data and ensure that information about the payer is kept secure;
- Payments carried out with involvement of TPPs will not be discriminated by bank;
- All actors shall assume liability for issues occurred in their sphere of responsibility but payer's bank will remain first port of call.
- For remote payments **Strong Customer Authentication** means a dynamically generated code providing **Strong Transaction Authentication** ('TAN'), specific to amount and payee and therefore *only usable for the initiation of that specific payment*;
- Other methods (redirection of payer to banks' web-site) possible, too, but banks cannot insist on it;
- TPPs will only get '*yes/no*' answer to question *'Are there sufficient funds on the account (EP) or 'Has the transaction been initiated'(Council)?*'

Issues in Trilogues

- Strong Customer Authentication extended to *all* electronic payments – not only remote- *ie* also proximity mobile payments and contactless card payments?
- Right balance between detailed rules and flexibility in terms of authentication and identification to accommodate different business models – specific rules based on risk, amount or recurrence of the transaction, payment channel used?
- Account Information Service providers (AIS) to be covered by a '*light régime*' in supervision and/or no need for Strong Customer Authentication for every individual connection?
- Need for specific rules for other PSPs holding deposit accounts who usually provide their own credentials (*eg* telecom companies)? Should they also be able to receive a yes/no answer from the bank?

Finally, on *surcharging*: how to take into account relationship between Interchange Fee Regulation and PSD II??

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Conclusion

- New framework with many opportunities for all market players;
- Abolishment of anti-competitive 'legacy' business models;
- Possibility to roll out state-of-the-art services in mobile, contactless, e-payments on the basis of level playing field in terms of fee levels and business rules;
- Transparency of fees and conditions; consumer choice and efficiency as key driving forces.