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1. French Anti-trust Authority decision on MIF

The French Autorité de la Concurrence has finally made a decision with respect to the fees applicable to French card transactions.¹ Most notable, it has lowered the multi-lateral interchange fee for card payments (CIP) from an average of 0.47% to an average of 0.30 per cent. The interbank fee for cash-withdrawals (CIR) has been lowered from 0.72 EUR to 0.57 EUR. Likewise, some other fees have been lowered.

Table 1 The Commitments proposed by Groupement des Cartes Bancaires and accepted by the Autorité de la Concurrence

Inter-bank fee	Amount of fees prior to the procedure before the Autorité	Final commitments accepted by the Autorité	% reduction in relation to amounts before the procedure
Inter-bank payment fee (CIP)*	0.47 % of the transaction on average	0.30 % of the transaction on average	-36 %
Inter-bank withdrawal fee(CIR)	€0.72	€0.57	-21 %
Card withholding service**	€38	€18.76 (withdrawal) €21.34 € (payment)	-51 % (withdrawal) -44 % (payment)

*: Including TICO/TBTB; **: applies when a card is withheld at the ATM or POS, paid by the issuer
Source: http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=389&id_article=1657

Formally, the French Anti-trust watch-dog has accepted proposals made by Groupement des Cartes Bancaires (CB) and made these mandatory. CB has proposed a uniform percentage of 0.28% plus a bilateral fraud related component. This component was formerly known as TICO and amounted to an average of about 0.04%. CB has renamed this component TBTB

¹ See Press release: The Autorité de la concurrence has obtained a substantial reduction in the two main fees associated with payments and withdrawals from the Groupement des Cartes Bancaires (CB Bank Cards Group), 7 July 2011 (http://www.autoritedelaconcurrence.fr/user/standard.php?id_rub=389&id_article=1657)

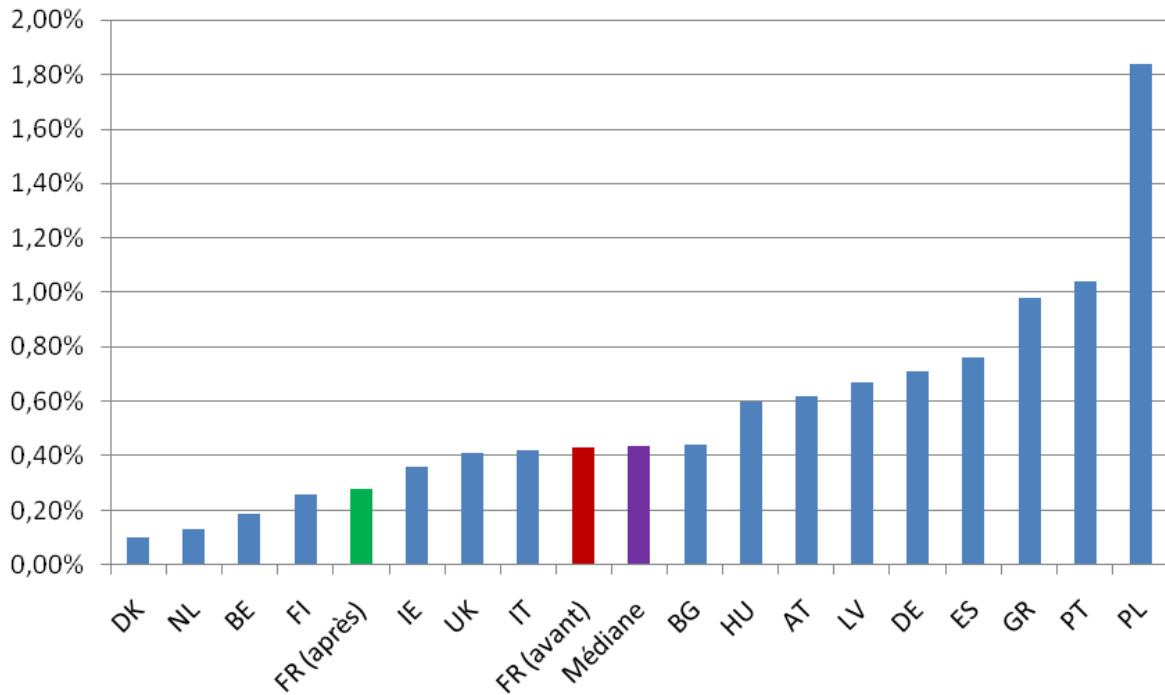
(Taux Bilatéral des Transactions Bloquées) and introduced a new methodology that will roughly cut the value of this bilateral component in half. Thus, the average value will be no larger than 0,3%. Implementation will begin on 1 October 2011. As reported in our May newsletter, CB had proposed a lower fee level this spring. Subsequently, the French Anti-trust Authority invited comments from market participants and CB made a revised proposal in June 15th. This proposal has now been accepted and made mandatory.

This decision applies to all types of cards (debit, charge, credit, even including corporate cards). Thus, the French authorities do not follow DG Competition in making a distinction between credit and debit cards. The Anti-trust Authority expects that issuers' interchange income will fall from about 1.5 to about 1 billion EUR.

Our Comment

It does not come as a surprise. Following decisions in many countries, the French Anti-trust Authority has substantially lowered interchange fees in France. For issuers, this implies substantial loss of revenues. Merchants will be delighted but it remains to be seen whether, on balance, consumers will benefit, as well.

Chart 1 Weighted interchange fees for payment cards



Source: Autorité de la concurrence: FILE 4: Comparison of interchange fees for card transactions (http://www.autoritedelaconcurrence.fr/doc/fiche4_banks_en.pdf)

What makes the French decision particularly interesting is the uniform treatment of all types of cards. In this respect the authorities follow CB that has never made a distinction between debit and credit – at least not on the merchant side of the transaction. If the view is accepted that the payment mode is basically an issue between issuers and card holders, such an approach does make sense. Such an approach has interesting implications. While many experts would compare the new French interchange level to interchange fees of national debit card system, like for instance ec cash/girocard in Germany. On this count, France would now have almost the same level as Germany. The French Anti-trust Authorities, however, make a different calculation. They are calculating weighted average card interchange fees. When using this metric, the French interchange level is relatively low compared to other European countries. Thus, interchange may not be a big stepping stone on the way towards a European scheme any more. Meanwhile, the French Anti-trust Authority has announced that it will also look into interbank fees of Visa and MasterCard. Given the low share of domestic MasterCard or Visa transactions in France, this is somewhat surprising.

2. The Fed issues final interchange rules for debit cards

June 29, 2011, the Federal Reserve Board has published regulations regarding debit card interchange fees and other aspects of debit cards payment systems that will come into effect, starting October 1st.² The maximum applicable interchange fee is set to 21 cents per transaction plus 0.05% of the transaction value. An issuer that meets certain fraud prevention standards may add another cent on top. Thus, an average transaction of 38 USD would provide an issuer with an interchange income of about 24 cents (or 0.63% of the transaction value). Issuers with assets of less than \$10 billion are exempt from this debit card interchange regulation.³

Apart from interchange regulations the new standard contains the rule that issuers have to use at least two unaffiliated debit networks. This amounts to a kind of mandated co-badging. Moreover, issuers and networks may not restrict the ability of merchants to direct the transaction to any of the networks that the issuer has enabled.

² See <http://www.federalreserve.gov/newsevents/press/bcreg/20110629a.htm>

³ The Federal Reserve Board will publish annually a list of institutions that are above and below this threshold.

Our Comment

The maximum interchange rate set in the final standard is substantially higher than in the first draft published last year.⁴ However, it still implies a hefty reduction of average fees. Thus, it is likely to come under fire from both sides, merchants and banks. The Fed, which has not been seeking its current role of interchange setter, may derive some comfort from this symmetry.

However, once the dust settles, market participants may come to realize that the second part of the new debit card standard could be more important than interchange regulation. The US is conducting an interesting experiment. Market participants on this side of the Atlantic should watch out how this part of the regulation will affect the US debit card market in the future. They may well conclude that routing rules (or “application selection”) combined with mandatory co-badging may be more important than interchange regulation (see also our January edition of this newsletter).

3. Surcharging rules included in Consumer Protection Directive

On 23 June 2011, the European Parliament adopted a new consumer protection directive.⁵ Since the Council has already approved the compromise proposal from the Hungarian Presidency it is likely to be also officially adopted by the Council in September. This directive seeks to consolidate the rules contained in a number of older directives and thus clarify and harmonise consumer protection in the EU. One of the elements included in the (draft) directive is the rule that merchants may not charge consumers more for paying by payment card than what it actually costs them to offer these kinds of payment.

Our Comment

When it comes to card payments, there are a number of controversial issues and surcharging is one of them.⁶ As reported in the May edition of this newsletter, in the UK there is an official (“super”) complaint of a consumer protection organisation against the current

⁴ The Fed first proposed an interchange fee of 12 cents (plus a non-specified add-on for fraud prevention). See our January 2011 newsletter.

⁵ See

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/450&format=HTML&aged=0&language=EN&guiLanguage=en>

⁶ Interchange fees and application selection are the other two. See also the article 1 in this newsletter.

practice of surcharging. The organisation demands, inter alia, that surcharges should be cost-based. If passed and implemented, the current draft directive would provide just that. Such a regulation may make surcharging more acceptable. This is important because surcharging can also provide a kind of “safety valve”. If merchants feel that card fees are too high they may start surcharging. If this is possible, the case for regulating interchange fees becomes weaker. This may not be a bad thing because it seems an almost impossible task for regulators to find the “correct” level of interchange fees.

4. EBA Clearing plans move into internet payments

The EBA Clearing, a large SEPA clearing house, announced that it wants to enter internet payments.⁷ It plans to offer an online authorisation service for SEPA credit transfers and direct debits. EBA Clearing wants to create a pilot group and have a live pilot in summer 2012. With respect to the business case for banks the EBA states that “benefits of launching an e-services solution - for both the Buyer Bank and the Seller Bank - do not rely a priori on a Multilateral Interchange Fee”. Thus, this new service will probably be launched with a zero interchange fee.

Our Comment

The announcement of the EBA comes only a few weeks after DG Competition began investigations into the EPC activities in the field of internet payments. The co-ordinated effort of the Dutch scheme (iDeal) the Austrian scheme (eps) and the German scheme (giropay) to move towards interconnection and to ultimately provide a European bank-based internet payment scheme has been seen as potential breach of anti-trust law. The outcome of the investigation is uncertain but likely to further delay the efforts of the three partners.

EBA as a single player cannot be accused of forming a cartel. At the same time it is sufficiently close to European banks. Thus, the proposal of EBA may be interesting for European banks. If successful, EBA would be threat to market players such as iDeal, eps or giropay – in particular if they lose the support of the banks that founded them. Also under threat are players like Sofortüberweisung.de. Sofortüberweisung.de could compete heads on with EBA or might contemplate to join “the enemy” and become a payment institution. After

⁷ <https://www.ebaclearing.eu/Repository.aspx?ID=f89ddaaa-d066-4611-83cc-f145ecdb500>

all, if EBA wants to act as a payment scheme, it has to be open for access of banks and payments institutions.

It is also not clear how banks will react. If the interchange fee is set to zero there may be little enthusiasm to join on the issuing side. That brings anti-trust authorities back into the game. If banks do not participate on the issuing side would they see a breach of anti-trust law? After all, in Germany, the Bundeskartellamt has been critical of attempts of German banks to restrict the use of their online banking solutions for Sofortüberweisung.de-payments.⁸

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⁸ See Matthias Hell: Gerichtsstreit zwischen Giropay und Sofortüberweisung.de: Kartellamt gibt Sofortüberweisung.de Rückenwind, <http://www.crn.de/etail/artikel-89316-2.html>, 09.03.2011.