

COMPETITION LAW UPDATE

30 September 2013

CCS CLEARS VISA'S MULTILATERAL INTERCHANGE FEE SYSTEM

On 3 September 2013, the Competition Commission of Singapore (“**CCS**”) issued its decision in respect of Visa Worldwide Pte Ltd’s (“**Visa**”) long standing notification regarding their multilateral interchange fee (“**MIF**”) system. In a landmark decision, CCS determined that Visa’s MIF system was not contrary to Singapore competition law.

Visa’s notification, filed on 1 January 2006 (the day competition law first took effect in Singapore), was the longest standing notification on CCS’s books. Visa also undertook a significant, global, restructuring in 2008, which fundamentally changed the role and level of involvement of its member banks.

The use of a MIF system is common to credit card payment systems, such as Visa and MasterCard. The MIF is essentially a fee that is paid from the merchant’s bank to the cardholder’s bank in respect of any given transaction. These fees are commonly thought to be passed on, to some degree and in some form to merchants themselves, usually through a “merchant service fee” charged by the merchant’s bank, or simply through being bundled with other fees charged to the merchant.

MIFs have attracted competition law scrutiny worldwide, especially in Europe, where the European Commission, MasterCard and Visa have been involved in lengthy battles over their legitimacy. On the one hand, and from the perspective of the credit card companies, the MIF

is designed to address the fact that the system is a two-sided platform, relying equally on cards being issued to cardholders, and merchants accepting such cards for payment. On the other hand, and from the perspective of competition authorities, the relevant question is whether the setting of the MIF gives rise to co-ordination between banks (who were involved at a governance level of the major credit card companies until recent significant global restructurings).

International approaches to the MIF issue have varied, and are somewhat dependent on the local competition laws. The European Commission has granted time-based exemption subject to certain conditions, usually involving a cap being placed on certain interchange fee rates, and more recently has sought reductions in interchange fee rates. The Reserve Bank of Australia took the controversial step of directly regulating interchange fee rates, and the New Zealand Commerce Commission settled theirs with the payment networks subject to the payment of incurred legal costs and acceptance of certain conditions.

In granting a positive clearance to Visa’s MIF system, CCS analysed potential effects in three markets, being:

- (a) the provision of issuing services of card payments in Singapore (“**Issuing Market**”);
- (b) the provision of acquiring services for Visa card payments in Singapore (“**Acquiring Market**”); and
- (c) the provision of card scheme administration services in Singapore (“**Card Scheme Market**”).

In continuing to assess the competitive effects of the MIF system, CCS employed a counterfactual analysis, which involves a with and without comparison of the relevant conduct, in order to consider its effects more closely. In respect of the Card Scheme Market, CCS’s view was that there would likely be less competition between card schemes in the MIF system, and that transaction volumes and values would also likely be lower. Similarly, in relation to the Issuing Market, CCS found that there would likely be less competition in a scenario without the MIF system, and that cardholder fees would likely increase (and

cardholder rewards reduced). Finally in the Acquiring Market, CCS considered the likelihood of bilateral arrangements between banks arising in a scenario without the MIF system, and concluded that the evidence did not suggest that the degree of competition was lower with the MIF system in place.

Based on the above analysis, CCS concluded that the MIF system is not contrary to Singapore competition law. CCS's decision is a landmark decision in so far as it takes a pragmatic, and non-interventionist view of the MIF, and its importance in stabilising a credit card payment network. In its decision CCS considered that there are net economic benefits to the MIF system, and in this regard the MIF system qualified for an exemption under Singapore competition law.

Visa was advised on the notification process by Lim Chong Kin, Ng Ee-Kia and Scott Clements of the Drew & Napier Competition Law Group.



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