PRICING POLICY (PAYMENT CARDS): THE VISA CASE

Subject: Pricing policy
Discrimination

Industry: Payment cards (debit and credit cards)

Parties: VISA International

Source: Commission Statement IP/01/1198, dated 10 August 2001

(Note. Two aspects of the Visa case are considered here. The first is the formal decision on the "no-discrimination" rule, explained below, and the rules on cross-border services; the second is the forthcoming decision on the multilateral interchange fee. A curious omission from the Commission's otherwise sensible decision on the no-discrimination rule is any mention of the interests of the consumer. Most consumers using cards find the practice of surcharging by the merchant thoroughly vexatious and would regard the benefit of the rule as greatly outweighing the slightly artificial concept - in this context - of allowing the merchant greater freedom to compete.)

The "no-discrimination" rule and the modified rules on cross-border services

After a thorough investigation, the Commission has taken a favourable view, in the light of the European Community's rules on competition, of certain provisions in the Visa International payment card scheme, which had been notified for formal clearance. (This is the first Commission anti-trust decision in the field of international payment cards.) One of these provisions is the so-called no-discrimination rule which prohibits merchants from charging customers a fee for paying with a Visa card, or offering discounts for cash payments. Although it had originally objected to this rule, the Commission has concluded that its abolition would not substantially increase competition. This conclusion has been reached in the light of the results of market surveys carried out in Sweden and in the Netherlands, where the no-discrimination rule was abolished following the intervention of national competition authorities. Those studies revealed that the abolition of the rule in those countries had not had an appreciable effect.

Apart from the no-discrimination rule, the favourable Commission decision also covers some other provisions in the Visa international rules, such as the modified Visa rules on cross-border services. Initially, the Visa rules did not allow Visa member banks to issue cards to cardholders outside their country of establishment or to sign up merchants in other Member States, except in very limited circumstances. However, Visa International has now significantly increased the possibilities for cross-border issuing and acquiring of Visa cards. Following the latest amendments, Visa International allows cross-border issuing and acquiring

without the prior establishment of a branch or subsidiary in the country concerned.

Moreover, the decision clears the "Honour All Cards Rule" in the Visa scheme, which obliges merchants to accept all valid Visa-branded cards, irrespective of the identity of the issuer, the nature of the transaction and the type of card being issued. This rule is held to promote the universal acceptance of Visa cards. The decision also clears the territorial licensing policy of Visa International and the "no acquiring without issuing rule", which is held to promote the development of the system by ensuring a large card base, thereby making the system more attractive for merchants.

In a comment on the decision, the Competition Commissioner Mario Monti said that, although the Commission considered that the no-discrimination rule restricted the freedom of merchants to pass on a component of their costs to cardholders and might be restrictive of competition, empirical evidence had shown that the abolition of the rule at stake would not have appreciably increased competition.

Multilateral interchange fee

Separately from the decision mentioned above, the Commission will also shortly publish a Notice seeking comments on its intention to adopt a favourable position on Visa's so-called inter-regional multilateral interchange fee (or MIF). The Commission had sent Visa a Statement of Objections on this; but Visa has proposed changes which involve a reduction of the level of the fees, the introduction of objective criteria to set the level of the fees, and transparency on the level and the relative percentage of the cost categories vis-à-vis merchants.

In the light of the proposed amendments, the Commission provisionally intends to take a favourable view on the modified Visa MIF in a separate decision, to be adopted later this year. Before taking a final position, the Commission will publish a notice in the Official Journal, describing the proposed changes and inviting interested third parties to provide their comments within one month. ■

German Book Prices

This case, which was the subject of an "understanding" in 2000 between the Commission and German publishers and booksellers about the system of fixed book prices, has been re-opened. The Commission considers that, contrary to the understanding, direct cross-border sales of books to final consumers via the Internet at a price other than the fixed price for Germany have been systematically regarded as a circumvention of the system; and that refusals by certain German publishers and book-wholesalers to supply Internet booksellers established outside Germany to prevent direct cross-border sales of books to consumers at a price other than the fixed price for Germany were based on illegal collusion. (Source: Commission Statement IP/01/1035, dated 19 July 2001.)