EU Commission Consultation on a Retail Payments Strategy for the EU
DCC Forum Position Paper
25 June 2020

Summary

The DCC Forum is made up of a membership of eight international companies who are all providers of alternative payment card cross-border currency conversion services (known as "dynamic currency conversion" or "DCC" services). DCC was an early innovative technology introduced by DCC Forum members in the 1990's to the card payments market, offering an alternative currency conversion service to the service otherwise provided by the cardholders' card issuing bank in conjunction with the global payment card schemes, Mastercard and Visa. DCC provides the international cardholder with real-time cost and final price transparency at the point-of-sale.

DCC therefore represents an innovative, diverse offering providing both increased transparency to the consumer and reduced EU dependency on global players, such as international card schemes and large banks, by providing an alternative currency conversion process on cross-border transactions.

However, whilst DCC competes against the global payment card schemes, Mastercard and Visa operate the network through which international card transactions are processed, setting the fees, rules and processes concerning the operation of dynamic currency conversion services on their payment platforms.

In the DCC Forum's view, such fees, rules, and practices discriminate against dynamic currency conversion providers by "self-preferencing" the card schemes' and banks' own highly profitable cross-border payment services, at direct cost to consumers and to the detriment of merchants of all sizes and across all verticals that derive substantial cost savings from operating DCC services. The card scheme rules and fees have the object or effect of neutralising DCC as a competitive alternative to the card schemes' (and banks') own cross-border currency conversion services. The chief effect of this is to raise the costs of offering DCC considerably, with the object or effect either of discouraging acquirers, merchants, or ATM operators from offering DCC services to their customers and/or of discouraging consumer and business cardholders from using DCC services. The fees and rules also limit competition between Mastercard and Visa – as well as with alternative providers – for such cross-border payment services and further ensure that the card schemes control all aspects of cross-border payment card activity.

The EU's recent Regulation on cross-border payments and currency conversion charges (2019/518) seeks to address the existing lack of comparability between the options available to consumers at point of sale but fails to address the fundamental anomalies in the market structure. The competition rules under Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) alone appear insufficient to address the lack of competition in the payment card market. Only a comprehensive and independent regulation of the market can counter these distortions and ensure a fair, transparent and competitive market.

Background: Cross-border card payments are Mastercard's and Visa's most profitable product.

Mastercard and Visa operate global payment card schemes that enable consumers and businesses in almost every country in the world to make payments (and/or cash withdrawals) at almost every merchant point-of-sale or online merchant, and/or at almost any automated teller machine (ATM), in their home country and in almost every other country in the world.

Together, Mastercard and Visa are the world's largest payment firms and largest payment firms operating in the EU and most Member States. Visa is the world's largest payments operator (at 43% of global payment card transaction volume[1]) and Europe's largest payments operator (60% of Europe purchase card volume[2]). Mastercard is the world's second largest payments operators[3] (at 24% of global payment card transaction volume[4]) and Europe's largest payments operator (36% of Europe purchase card volume[5]).

Mastercard and Visa are also highly profitable businesses, with average net margins of 45%, compared, for example, to the average net margins of the five largest US tech firms – Amazon, Apple, Facebook, Google, and Microsoft – of 19%. Like the five largest tech firms, Visa is within the top-10 largest firms in the world (by market capitalisation) and Mastercard the top-15.

Furthermore, Mastercard and Visa, make approx. one third of their revenues and profits from cross-border payments – a combination of "currency conversion" and other "cross-border transaction" fees – while such transactions represent less than 5% of their total card transaction volumes. Accordingly, cross-border payments typically generate ten times greater revenue and profit margins for the card schemes (revenue of around 2.0%-2.5% of payment transaction value) compared to domestic card payments (of around 0.20%-0.25% of transaction value).

For example, Visa Inc. reported 8% growth in international transaction revenues in 2019, to $7.8bn, out of $23.0bn total net revenues. Visa defines such revenues as cross-border transaction processing and currency conversion activities. It emphasises that such revenues represent a significant part of Visa's business and important part of Visa's growth strategy. Visa nevertheless warns its investors of *"differing rules and regulations in matters [including] currency conversion" and associated regulatory and/or litigation risks to related revenues"*.[6]

Correspondingly, Mastercard Inc reported 16% growth in cross-border volume fees in 2019, of $5.6bn in 2018, out of $16.9bn total net revenue, a *"significant amount of revenue"*, albeit which Mastercard notes *"typically [represent] a small portion of overall transaction volume"*. Mastercard defines such fees as *"revenue from switching cross-border and currency conversion transactions"*, and reports that such fees are charged to issuers and acquirers

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[1] Source: The Nilson Report, May 2019.
[2] Source: The Nilson Report, June 2019.
[3] Excluding China.
[4] Source: The Nilson Report, May 2019.
[5] Source: The Nilson Report, June 2019.
[6] See Visa 2019 Annual Report (Form 10-K).

based on the volume of activity on cards and other devices that carry Mastercard brands where the acquirer country and the issuer country are different. Mastercard reports that such fees fluctuate with the levels and destinations of cross-border travel and its customers' need for transactions to be converted into their base currency. Mastercard likewise advises that increased regulation and oversight of payment systems could reduce the volume of Mastercard cross-border transaction revenues, and thereby that any developments in either of these could have a material adverse impact on Mastercard's business and financial results.[7]

Such high pricing and profitability of cross-border payments reflects the considerable market power of the global payment card schemes and the distinct features of cross-border card payments, compared for example to domestic card payments and domestic-only national card schemes, as highlighted recently by the European Central Bank[8]:

> *"The European cards market is characterised by two separate and markedly different markets: the market for national payments and the market for cross-border payments. In national markets both national and international card schemes may compete for transactions through co-badged and single-branded cards. The cross-border payments market, conversely, is dominated by international card schemes, which capitalise on the lack of European-wide acceptance of national card schemes and guarantee cross-border acceptance of their brand.*
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> *Today, international card schemes are present in all Member States with respect to issuance and acceptance. Whilst they were once mostly confined to the relatively small cross-border market, international card schemes have now also gained traction in national markets and are steadily increasing their share of the cards market at EU level […] At the end of 2016, the share of transactions made with international card schemes on payment cards issued in the EU was 67.5%.*
>
> *[…] with the aim of achieving cross-border acceptance, new banks opted to issue cards with only an international card scheme, even in countries where a national card scheme was available. […] Several national card schemes have been replaced by international card schemes and more schemes may face the risk of extinction. Thus, competition in the European cards market (not only cross-border but also national) might be reduced and, in an extreme scenario, end up in a duopoly of international card schemes."*

In addition, cross-border card payments are also one of European retail banks' most profitable services. For example, the UK Financial Conduct Authority recently reported that the major UK banks generate almost 25% of their retail transaction revenue from foreign exchange fees and commissions, that such fees typically represent 3%-6% of the value of overseas card-based payments (and other retail currency services), comprising transaction

[7] See Mastercard 2019 Annual Report (Form 10-K).
[8] "Card payments in Europe Current landscape and future prospects: a Eurosystem perspective", European Central Bank, 2019.

fees plus margin/spread on the exchange rate, and that such charges are not always transparent to consumers[9].

Furthermore, the European Commission has highlighted and complained that charges on cross-border payments between non-euro and euro Member States remain excessively high, creating an obstacle to the internal market, owing to lack of transparency and comparability of such charges to consumers and businesses:

> *"Cross-border payments in euro from non-euro area Member States however account for around 80 % of all cross-border payments from non-euro area Member States. The charges for such cross-border payments remain excessively high in most non-euro area Member States, even though payment service providers that are located in non-euro area Member States have access to the same efficient infrastructures to process those transactions at very low costs as payment service providers that are located in the euro area.*
>
> *High charges for cross-border payments remain a barrier to the full integration of businesses and citizens in non- euro area Member States into the internal market, affecting their competitiveness. Those high charges perpetuate the existence of two categories of payment service users in the Union: payment service users that benefit from the single euro payments area (SEPA), and payment service users that pay high costs for their cross-border payments in euro."*[10]

Background: DCC Forum members offer alternative payment card cross-border currency conversion services that deliver enhanced value to EU merchants and their international customers.

One of the core products of DCC Forum members is the provision of alternative currency conversion solutions for payment card transactions. Ordinarily, when a consumer or business payment card user makes a cross-border point of sale purchase, online purchase, or ATM cash withdrawal – in a different currency from their normal card account currency – conversion between currencies is made by the relevant payment card scheme and/or cardholder's card issuer. However acquirers, merchants, and ATM operators also have the option to offer alternative competing currency conversion services to their customers. Such services offer a transparent and guaranteed purchase price in the cardholder's home currency at the time of transaction. DCC providers enable such "dynamic currency conversion" (DCC) services on behalf of acquirers, merchants and ATM operators.

Figure 1 below shows the participants and flows of funds and fees in "open" payment card schemes[11], such as Mastercard, Visa, or domestic payment card schemes, and the role of DCC providers.

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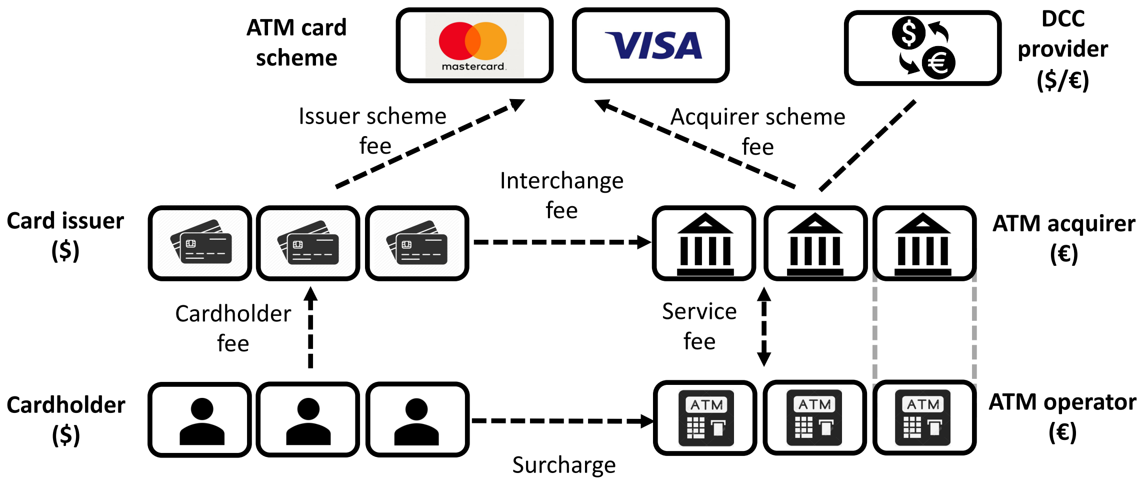
[9] "Strategic Review of Retail Banking Business Models: Final report", Financial Conduct Authority, December 2018.
[10] See revised Cross-Border Payments Regulation (EU) 2019/518 ("CBPR2"), Recitals 2-3.
[11] Also known as "four party" payment schemes.

Figure 1: Open payment card schemes comprise multiple participants.



In particular, Figure 1 illustrates that for a typical point of sale or online purchase:

- after authorisation of the transaction, the merchant provides the goods or services to the cardholder;
- the cardholder subsequently pays the card issuer the price of the goods, plus any cardholder charges;
- the card issuer pays the payment card scheme the price of the goods, plus an issuer scheme fee, less an interchange fee;
- the payment card scheme pays the merchant acquirer the price of the goods, less an acquirer scheme fee, less an interchange fee; and
- the merchant acquirer pays the price of the goods to the merchant less a merchant service charge.

The issuer scheme fee, acquirer scheme fee, and interchange fee are all set by the payment card scheme (and accordingly, such interchange fees are known as "multilateral interchange fees"). Cardholder charges are set by the card issuer. Merchant service charges are set by the merchant acquirer.

For domestic (or intra-euro) transactions, all transfers of funds occur in the same currency. In comparison, for a typical cross-border payment not using DCC:

- the cardholder makes the purchase in the merchant's currency (for example, in €), while not knowing how much the cardholder will subsequently need to pay in the cardholder's billing currency (for example, in $);
- the payment card scheme (e.g. Mastercard or Visa) converts from the merchant's to the cardholder's currency (e.g. € to $) and pays the merchant acquirer in the merchant's home currency (i.e. €);

- such cross-border card payments can be subject to much higher card scheme interchange fees and acquirer scheme fees than corresponding domestic or intra-€ payments (of up to ten times greater); and
- the cardholder (and card issuer) make payment in their home currency (i.e. $), subject to currency conversion rate set by the card scheme after the date of the transaction, plus in most cases, an additional card issuer cross-border transaction fees.

In contrast, for a cross-border payment using a DCC service provider, the corresponding arrangements are that:

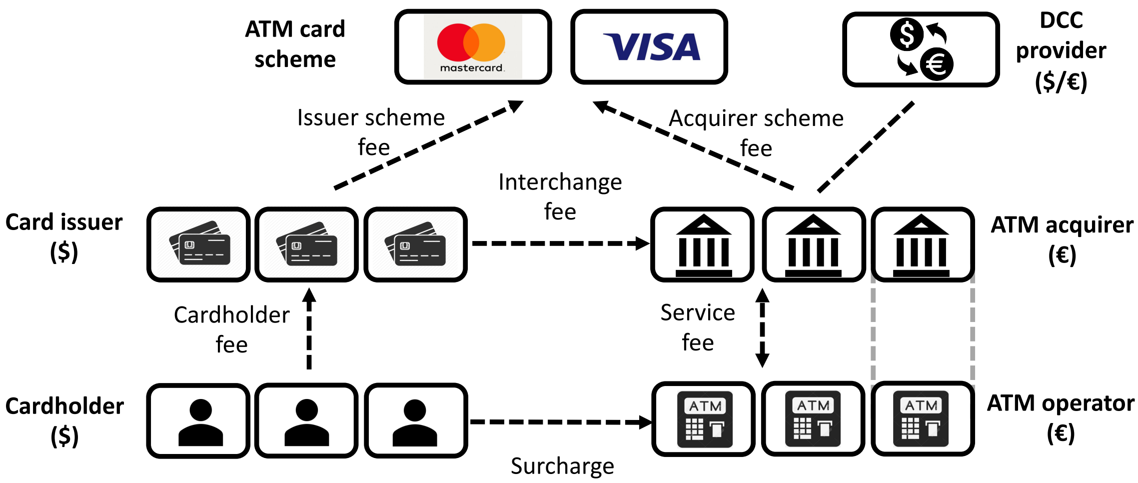
- the merchant acquirer (or in some cases the merchant) contracts a DCC provider to offer a rate to the cardholder in the cardholder's currency at the time of purchase (e.g. in $);
- if the cardholder opts to use DCC, the transaction is converted to the cardholder's billing currency using the DCC rate and authorized at the time of purchase in the cardholder's currency with the transaction settled to Visa and MasterCard in the cardholder billing currency as well (i.e. in $);
- Mastercard and Visa pay the merchant acquirer in the cardholder's currency (i.e. in $), i.e. in the same way as a domestic transaction and without need for currency conversion;
- Mastercard and Visa nevertheless continue to treat such same-currency DCC transactions as if still in multiple currencies, applying the same generally higher interchange fees and acquirer scheme fees as for multiple-currency transactions;
- furthermore, Mastercard and Visa impose additional fees, costs, and processes on the merchant acquirer and merchant for using DCC services, or prohibit DCC altogether for certain types of card transaction including contactless; and
- card issuers also continue to treat same-currency DCC transactions the same as multiple-currency cross-border transactions, namely, imposing similar cross-border fees[12] and often receiving higher interchange rates for such transactions.

ATM cash withdrawals operate in a similar (but slightly different) way compared to purchase transactions.

In particular, Figure 2 shows the corresponding participants and fees in open ATM card schemes, such as Mastercard, Visa, or domestic ATM card schemes.

[12] Note that CBPR2 applied from 19 April 2020, requiring that "charges for cross-border payments within the Union are the same as those for payments in the same currency within a Member State […as applying] to national and cross-border payments that are denominated either in euro or in a national currency of a Member State other than the euro and that involve a currency conversion service".

Figure 2: ATM card schemes involve similar participants and fees as purchase card schemes.



ATM card schemes include many of the same participants as purchase card schemes, such as the cardholder, card issuer, card scheme operator, and currency conversion provider.

The chief differences nevertheless between an ATM card scheme and purchase card scheme comprise:

- an ATM operator instead of a merchant[13];
- an ATM acquirer instead of a merchant acquirer (the ATM acquirer and ATM operator may be different organisations[14] or part of the same organisation[15]);
- the interchange fee is typically paid by the card issuer to the acquirer (rather than from acquirer to card issuer, as for purchase card transactions) who typically shares such interchange with an ATM operator in the form of a service fee;
- for some types of ATM, the cardholder pays a "surcharge" (also known as a "direct charge") to the ATM operator (which is known as a "pay-to-use" ATM) – the surcharge is set by the ATM operator and for Visa, there is typically a lower or no interchange fee for such transactions; and
- for other types of ATM, there is no surcharge payable by the cardholder (known as a "free-to-use" ATM), and the card issuer pays an interchange fee to the ATM acquirer, set by the ATM card scheme.

Cross-border ATM withdrawals not using DCC also operate in a similar way as purchase card transactions, namely:

[13] An ATM operator can be considered as a specialised type of merchant.
[14] For example, where the ATM acquirer is a financial institution licensee of the ATM scheme and the ATM operator a non-financial institution contracted to the ATM acquirer.
[15] For example, where the ATM acquirer/operator is a both financial institution licensee of the ATM card scheme and operator of the physical ATMs.

- the cardholder makes a cash withdrawal in the ATM operator's currency (for example, in €), albeit not knowing how much the cardholder will need to pay in the cardholder's currency (for example, in $);
- the ATM card scheme converts from the ATM operator to the cardholder's currency (e.g. € to $) and pays the ATM acquirer in the ATM operator's home currency (i.e. in €);
- such cross-border ATM cash withdrawals are typically subject to lower interchange fees and higher scheme fees than corresponding domestic cash withdrawals; and
- the cardholder (and card issuer) subsequently make payment in their home currency (i.e. in $), subject to currency conversion rate set after the date of the transaction, plus additional card issuer ATM withdrawal and international transaction fees.

For cash withdrawals using a DCC service provider, the corresponding arrangements are:

- the ATM acquirer/ATM operator contract a DCC provider to offer a rate to the cardholder in the cardholder's currency at the time of cash withdrawal (e.g. in $);
- if the cardholder opts to use the DCC service, then the cardholder subsequently pays the card issuer the amount for the ATM cash withdrawal in the cardholder's currency (i.e. in $) offered at the time of cash withdrawal;
- Mastercard and Visa pay the ATM acquirer in the cardholder's currency (i.e. in $), namely in the same way as a domestic transaction and without need for currency conversion;
- like purchase transactions, Mastercard and Visa continue to treat such same-currency DCC transactions as if in multiple currencies, applying the same ATM interchange fees and greater scheme fees as for multiple-currency transactions;
- Mastercard and Visa also impose additional fees and costs on the ATM acquirer/ATM operator for using DCC services, or prohibits DCC altogether for certain types of cash withdrawals; and
- card issuers also continue to treat same-currency DCC transactions as multiple-currency cross-border transactions, imposing similar cross-border cash withdrawal fees and paying lower interchange fees.

Analysis: Mastercard and Visa DCC rules, fees, and processes "self-preference" their own cross-border payment services.

Visa and MasterCard operate the network through which all international transactions are processed. As a result, the DCC providers are reliant on Visa and MasterCard to process the payments transactions and effect the settlement of funds to the merchants' financial institutions. As a network, Visa and MasterCard promulgate and enforce the rules and regulations which apply to all parties to the transaction as well as establish the fees and costs which apply to the processing of transactions through the networks. In the DCC Forum's view, the Mastercard and Visa scheme rules, fees, and processes associated with using DCC limit the availability of alternative currency conversion services and effectively ensure reliance on the incumbent Visa and MasterCard currency conversion process and networks.

Hence, the chief effect of Mastercard's and Visa's DCC rules and fees is to raise the costs of offering DCC considerably, with the object or effect either of discouraging acquirers, merchants, or ATM operators from offering DCC services to their customers and/or of discouraging consumer and business cardholders from using DCC services. The fees and rules also limit competition between Mastercard and Visa – as well as with alternative providers – for such cross-border payment services. The card scheme practices applicable to DCC can be summarized broadly into the following categories:

- imposition of higher fees and costs on transactions converted through a Dynamic Currency Conversion service;
- imposition of substantial recurring registration and compliance fees and costs for providing DCC;
- prohibitions on offering DCC for certain types of card transactions;
- promulgation of complex point-of-sale technical procedures and disclosures designed to complicate the implementation of new solutions and dissuade cardholder participation in the DCC service; and
- overly burdensome and punitive audit processes and fines.

Separately, Card Scheme practices have contributed to criticism of DCC services by consumer groups (and regulators), as representing a high cost service that consumers should avoid and that should be subject to greater regulation, for example:

> *"When paying or withdrawing money in a foreign currency, consumers are often offered the option to pay the transaction amount in their home currency – this service is called Dynamic Currency Conversion (DCC). When choosing the DCC option in card payments and ATM withdrawals, the consumer is financially worse off in practically every single case. It is almost impossible for a consumer to make an informed decision when presented with the DCC option, because of various nudging strategies put in place by the DCC service providers and merchants. BEUC calls for an EU level ban on DCC."*[16]

The DCC Forum disagrees that consumers are generally worse off when choosing the DCC option for card payments or ATM withdrawals. We note though that the apparently high cost of the DCC option reflects a combination of:

1. the high costs imposed on DCC transactions as a result of Mastercard's and Visa's payment card scheme fees, rules, and processes for DCC transactions; and
2. the lack of transparency of cost of non-DCC cross-border payments.

Such calls did not lead to an EU level ban on DCC, but instead to requirements for greater transparency of both DCC and non-DCC payment methods, which the DCC Forum strongly

[16] "DYNAMIC CURRENCY CONVERSION: When paying abroad costs you more than it should", BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS (BEUC): The European Consumer Organisation, 2017.

supported[17]. Regrettably though, such regulation is likely to have little if any impact at increasing the transparency of non-DCC transactions and no impact at addressing the market distorting effect of card scheme fees and rules. The regulation only imposes real-time transaction specific fee disclosure on DCC providers while card issuers are able to comply by including general fee disclosures in standard terms and conditions and periodic communication of transaction specific fees to the cardholder only after the transaction has taken place thereby limiting any improvement to transparency at the time of transaction. Additionally, the regulation fails to address any of the underlying systemic policies and procedures imposed by Visa and MasterCard which contribute the overall cost of a DCC transaction and which, if resolved, could allow for a more competitive currency conversion market and facilitate a more transparent and efficient cross-border transaction model.

Analysis: The current regulatory regime and competition law has proven ineffective in ensuring a fair and level playing field for payment currency conversion services.

At the highest level, the EU has repeatedly found that Visa's and Mastercard's business practices have harmed competition, for example:

> *"The [European] Commission and EU Courts have consistently found that rules providing for default [multilateral interchange fees (MIFs)] in 4- party payment card schemes harm competition in the [payment card] acquiring market by impeding the ability of merchants to negotiate the fees charged by acquirers below the threshold imposed by the MIF. […]*
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> *The specific characteristics of four party payment systems, and the two-sided markets involved, merit particular scrutiny under [competition law] because normal pricing constraints do not apply. Those features facilitate the imposition of high costs on merchants, through coordinated behaviour by the banks, the impact of which is further exacerbated by the significant upward pressure on MIFs arising out of inter-system competition between card schemes and the appetite of card-holders for rewards and other benefits. Unlike price signals in conventional markets, higher MIFs make a scheme more attractive to issuers and card-holders, but draw increasing amounts of revenue away from merchants, to the detriment of their customers."*[18]

Such findings have led to a combination of the card schemes committing to revise their interchange fees and scheme rules, prohibition of certain interchange fees, and ultimately to the IFR. The IFR was a response in particular to calls for:

> *"more competition […to] mitigate the current domination of the European payment cards market by the two existing international card schemes [Mastercard and Visa] [including…] more choice and transparency for consumers [among other things, by addressing the…] hidden fees imposed on retailers for accepting payment cards*

[17] See the revised Cross-Border Payments Regulation (EU) 2019/518 ("CBPR2").

[18] See European Commission observations (Amicus curiae observations to national courts) in Visa and MasterCard MIFs (several cases under appeal) in the England & Wales Court of Appeal, 21 February 2018.

> *[…which] retailers in turn pass on to consumers in higher prices […and which] neither retailers nor consumers can influence".*[19]

The IFR regrettably does not regulate interchange fees for cross-border card payments between non-EU and EU currencies (known as "inter-regional" interchange fees), nor acquirer scheme fees, nor ATM interchange fees. This is despite:

1. Mastercard and Visa having even greater market power over merchants for cross-border payments and merchants therefore having even less ability to negotiate fees;
2. Acquirer scheme fees having the same object or effect as interchange fees in similarly impeding the ability of merchants to negotiate fees below the combined sum of interchange fees and acquirer scheme fees; and
3. ATM MIFs having a similar object or effect as purchase card MIFs, by impeding the ability of ATM operators to negotiate fees above the ceiling set by the ATM MIF.

The DCC Forum is of the view that Mastercard's and Visa's DCC fees and rules are contrary to the IFR's general objectives to promote greater competition, choice, and transparency for consumers, and to reduce the dominance of the global payment card schemes. Therefore, in order for the IFR to achieve its objectives it is necessary to extend its scope to cover such DCC rules and fees.

The IFR is itself currently subject to review, as per IFR Article 17, which requires the European Commission to submit a report to the European Parliament and the European Council on whether the IFR has achieved its intended objectives, in particular, as to the appropriateness of the levels of interchange fees allowed by the regulation, of the effect of "steering mechanisms", and of the level of entry of new players and innovative business models on the market.

The Commission has recently published a study on the application of the IFR[20] which finds, among other things, that:

> *"The IFR has facilitated entry into and competition on several payment markets, most notably on the acquiring market, but consumers and merchants do not seem yet to have reaped the full potential of the benefits."*

The Commission Study notes that the IFR introduces several provisions to stimulate the use of co-badging (Article 8) (1-4) and choice of application and brand (Article 8) (5,6), and that *"the IFR stipulates that card schemes, issuers, acquirer and processing entities are prohibited from taking any measure that limits the choice of payment brand or application"*, but that *"the effectiveness of these measures to increase competition depends on merchants' and consumers' ability and incentives to make use of their choice"*.

Overall, the DCC Forum has various concerns with the Commission Study.

[19] European Commission.
[20] "Study on the application of the Interchange Fee Regulation: Final report", for the European Commission, prepared by EY and Copenhagen Economics, March 2020.

First, the Study says that it has not addressed the impact of the IFR Steering Rules (Article 11), but without saying why[21].

Second, the Study contains limited specific attention to cross-border payment transactions, except for noting *"particularly steep increases in scheme fees for cross-border transactions by the international card schemes"*, that *"card payments are increasingly relevant for cross-border payments"*, and (therefore) that *"card payments are essential for the development of the internal market"*.

Third, the Study does not address the general question of compliance with and enforcement of the regulation, especially considering various reported complaints of infringements of the regulation and insufficient enforcement[22]. The DCC Forum is concerned in particular that enforcement of the IFR falls to Member States, rather than to the Commission or another central EU body[23]. This means that there is not an efficient or straightforward means of bringing complaints about common Union-wide concerns – such as payment card scheme regional or global rules and fee structures – and therefore complainants may need to bring complaints about the same issue in all or almost all Member States. This is a defect in the IFR which itself should be a subject of the Commission's review.

Last, the Commission does not appear to be undertaking any formal consultation of the Commission's Study, or its prospective recommendations to the Parliament and Council, as part of its review.

Furthermore, the DCC Forum strongly believes that a case by case application of the current competition rules of Articles 101 and 102 TFEU will not remove either direct and indirect obstacles to the proper functioning and completion of an integrated payments market or distortions of competition in the market.

The DCC Forum notes in particular the European Commission's recent Special Advisers' report on "Competition policy for the digital era"[24], which addresses how competition policy should evolve to continue to promote pro-consumer innovation in the digital age, and in particular, the application of competition rules to platform businesses characterised by combination of extreme returns to scale, network effects, and/or data-driven services.

The report highlights especially that *"large incumbent digital players are very difficult to dislodge"*, that *"there is reasonable concern that such firms have strong incentives to engage in anti-competitive behaviour, thereby requiring vigorous competition policy enforcement"*, and that *"dominant platforms have 'regulatory power' and have a responsibility to use that*

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[21] See Executive Summary, page 13.
[22] See for example "EuroCommerce submission to the EU Interchange Fee Regulation Review", February 2020, at https://www.eurocommerce.eu/media/174634/2020.03.13_-_ifr_review_pr.pdf.
[23] IFR Articles 13-15 requires Member States to designate national competent authorities empowered to ensure enforcement of the regulation, including necessary investigation and enforcement powers; for Member States to lay down penalties for infringements of the regulation; and for Member States to ensure adequate and effective complaint and redress procedures.
[24] "Competition Policy for the digital era", A report by Jacques Crémer, Yves-Alexandre de Montjoye, Heike Schweitzer, for the European Commission, April 2019.

power in a pro-competitive manner"[25]. A particular concern identified in the report is the problem of "self-preferencing": situations where a dominant platform business leverages its market power to give preferential treatment to its own products or services when such products or services are in competition with products and services provided by other entities using their platforms.

The Commission's report highlights how such self-preferencing by dominant platforms is likely to result in substantial distortion of competition in relevant downstream consumer markets and disproportionate rewards to such platform operators. The report recommends that, at minimum, dominant platforms must bear the burden of proving that self-preferencing has no long-run exclusionary effects and notes how competition law enforcement and regulation of such firms should go hand in hand.

The DCC Forum believes that input from all stakeholders is imperative to the formulation of the Commission's Retail Payment Strategy since the implementation of new technologies or market approaches can have detrimental and unintended consequences to EU businesses and their customers. As an example, the Commission highlighted contactless payments as a response to the COVID pandemic. However, without proper oversight by the Commission, the implementation of higher contactless limits could be used as pretext to unfairly limit the availability of Dynamic Currency Conversion services to EU merchants and their international cardholders. The current consultation process is therefore critical to ensure, to the extent possible, that any Retail Payment Strategy fairly represents the interests of all market participants.

Conclusion

The DCC Forum advocates for the extension of existing regulation and/or additional regulatory oversight of Visa and MasterCard fees, rules and policies on cross border transactions to ensure that alternative currency conversion solutions are available to international consumers within the European Union. Eliminating the prohibitive Visa and MasterCard cost structure and overly burdensome policies and procedures that apply to DCC transactions will ensure a level playing field for all cross-border currency solutions, allowing consumers to benefit from greater choice and more transparency at a more competitive cost.

Given the current distorted structure and control of the card payment market in which the global payment card schemes are able to self-preference by setting the fees and rules which apply to providers of services that compete with their services, only a comprehensive and independent regulation of the market can ensure an innovative, fair, transparent and competitive market.

Gino Ravaioli
Non-Executive Chairman
DCC Forum

[25] European Commission Executive Vice-President Margrethe Vestager has strenuously repeated the same concerns, for example at the European Parliament Hearing of Executive Vice-President-Designate Vestager on 8 October 2019.