



# Decision of the Competition Commission

## INV020 - Investigation into Payment Cards

**CCM/DS/0024**

**Non-Confidential version**

*✂ represents excised confidential information*

14 June 2019

## Decision of the Commissioners of the Competition Commission of 14 June 2019 (CCM/DS/0024)

### INV020 Investigation into the payment cards industry in Mauritius

#### THE COMMISSION

<b>Mr. D. P. A. Mariette</b>	-	<b>Chairperson,</b>
<b>Mr. C. Seebaluck</b>	-	<b>Commissioner,</b>
<b>Mrs. M. B. Rajabally</b>	-	<b>Commissioner,</b>
<b>Mrs. V. Bikhoo</b>	-	<b>Commissioner,</b>

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to a report of the Executive Director dated 12<sup>th</sup> December 2016 under Section 51 of the Competition Act 2007 upon completion of his investigation into the payment cards industry in Mauritius, referenced as INV020,

Having regard to the Public Hearing convened by the Commissioners on 25 July 2018,

Having regard to the written submissions made by the main parties,

Having regard to the oral submissions made by Senior Counsels for MasterCard International Incorporated (MasterCard) and Visa Worldwide Pte Limited (Visa) at the Public Hearing,

The Commissioners state the following:

#### **WHEREAS:**

##### **I. Introduction**

- 1.1 This is the Decision of the Commission further to the public hearing held on 25 July 2018 following the report of the Executive Director dated 12<sup>th</sup> December 2016 under Section 51 of the Competition Act 2007 upon completion of his investigation into the payment cards industry in Mauritius, referenced as INV020 and the submissions made by MasterCard International Incorporated (MasterCard) and Visa Worldwide Pte Limited (Visa) at the hearing, parties response to the Provisional Findings Report, the written submissions made by SBM Bank (Mauritius) Ltd and The Mauritius Commercial Bank Ltd and additional submissions made by MasterCard and Visa and Banque des Mascareignes (now BCP Bank (Mauritius) Ltd) on possible solutions for the recalibration and rebalancing of the interchange rate(s) in the card payment system.

- 1.2 The focus of the current matter is the current level of Issuer of Interchange Fee (IIF) for certain types of payment cards which may have the object or effect of restricting competition in the acquiring market by inflating the base on which acquirers set the Merchant Service Commission (MSC), effectively creating a floor to the MSC.
- 1.3 Owing to the fact that the acquiring market in Mauritius consists of two types of acquirers: (i) pure acquirer which is involved in card acquiring services only; and (ii) integrated issuer-acquirer which provides both card acquiring services to merchants and card issuing services to cardholders, the main competition concerns arising from the current default IIF rates set by MasterCard and Visa respectively is that the IIFs:
- a. creates a floor on the price acquirers charge to merchants, i.e. the MSC, as supported by the Visa Decision of 2002<sup>1</sup> as well as the US Court of Appeal decision in *USA v VISA and MasterCard*<sup>2</sup>;
  - b. constitutes a restriction of price competition in the acquiring market by potentially restricting the ability of both existing and potential acquirers to compete in the acquiring market, thereby leading to foreclosure, at the expense of merchants and subsequent consumers, as supported by the Visa decision of 2010<sup>3</sup>.
- 1.4 In his Report of the investigation, the Executive Director concluded that the setting of the IIF of around 1% on card-present domestic Point of Sales (POS) transactions restricts competition in the acquiring market. The IIF of 1% inflates the base on which acquirers set the MSC, effectively creating a floor to the MSC. The Executive Director found that the current level of the IIF of 1% is harming competition in the acquiring market, which is characterized by asymmetry in market shares.

## II. Investigation Background

- 1.5 Following an enquiry under Rule 5 of the Competition Commission Rules of Procedure 2009, an investigation was launched by the Executive Director 23 May 2012, upon having reasonable grounds to believe that a restrictive business practice is occurring within the payment cards market in Mauritius. The Executive Director found reasonable grounds to believe that the current rates set for the IIF could potentially be restricting, preventing or distorting competition related to payment cards market in Mauritius.

---

<sup>1</sup> European Commission Decision of 24 July 2002 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case No COMP/29.373 - Visa International - Multilateral Interchange Fee (hereinafter 'Visa Decision of 2002')), para. 68

<sup>2</sup> *United States of America, Plaintiff-appellee, v. Visa U.S.A., Inc., Visa International Corp., and MasterCard International, Incorporated, Defendants-appellants*, 344 F.3d 229 (2d Cir. 2003).

<sup>3</sup> See Commission Decision of 8.12.2010 addressed to Visa Europe Limited relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement (Case AT.39398 – VISA MIF), para. 21

- 1.6 During the investigation, the Executive Director sought to assess whether the IIF on locally issued payment cards, applicable for POS transactions in Mauritius, is or is likely to restrict, prevent or distort competition within the payment cards acquiring market in Mauritius by foreclosing actual and/or potential entry within the said market; thereby, negatively impacting on the costs of acceptance of cards by merchants and depriving cardholders of the benefits of using their cards.
- 1.7 The Executive Director identified fifteen subject/main parties of the investigation categorised as:
- a. two four-party payment card scheme owners<sup>4</sup>, namely Visa and MasterCard;
  - b. nine pure issuers of payment cards<sup>5</sup>, ABC Banking Corporation Ltd, AfrAsia Bank Limited, Bank of Baroda, Bank One Limited, Banque des Mascareignes Ltée (now BCP Bank (Mauritius) Ltd, Habib Bank Limited, MauBank Ltd, SBI (Mauritius) Ltd, The Hongkong and Shanghai Banking Corporation Limited; and
  - c. four integrated issuers-acquirers<sup>6</sup>, Barclays Bank Mauritius Ltd (Barclays), CIM Finance Ltd, SBM Bank (Mauritius) Ltd (SBM), and The Mauritius Commercial Bank Ltd (MCB).
- 1.8 Two main fees are associated with card transactions at Point of Sales ('POS'), namely:
- a. The IIF which is a fee paid by the acquirer (i.e. the merchant's bank or financial institution) to the issuer (i.e. the cardholder's bank or financial institution) for each transaction effected at a POS terminal using a payment card issued by the latter. The IIFs applicable in Mauritius have been respectively set by Visa and MasterCard for their individual card network pursuant to their respective Visa and/or MasterCard Membership License Agreements and Network Rules or Standards; and
  - b. A Merchant Service Commission ('MSC') which is a fee per transaction paid by the merchant to its acquirer for processing of card payments. The MSC typically consists of three main components, including the IIF, network costs payable to Visa or MasterCard, and the acquirer's own costs and mark-up.

---

<sup>4</sup> As defined in the Report of the Executive Director, a 'payment card scheme owner' refers to the payment card brand owner which provides the electronic platform, commercial and technical infrastructure for routing and settling commercial electronic payments between buyers and suppliers.

<sup>5</sup> As defined in the Report of the Executive Director, a 'pure issuer', refers to a financial institution that only issues payment cards to cardholders but does not offer card acquiring services to merchants.

<sup>6</sup> As defined in the Report of the Executive Director, an 'integrated issuer-acquirer', refers to a financial institution that issues payment cards to cardholders and also offers payment card acquiring services to merchants.

### III. Legal Framework

1.9 The Executive Director assessed the current default IIF rates set by Visa and MasterCard for POS transactions in Mauritius under the provisions of Section 45 of the Competition Act 2007 (the 'Act') in relation to a vertical agreement not involving resale price maintenance.

1.10 An assessment under Section 45 of the Act requires the Commission to review the agreement under Section 46 of the Act. The provisions of Sections 45 and 46 of the Act are reproduced below.

1.11 Section 45 of the Act provides that:

*'A vertical agreement that does not involve resale price maintenance may be reviewed where the Commission has reasonable grounds to believe that one or more parties to the agreement is or are in a monopoly situation that is subject to review under section 46.'*

1.12 In turn, Section 46 of the Act provides that:

*'(1) A monopoly situation shall exist in relation to the supply of goods or services of any description where -*

*a) 30 per cent or more of those goods or services are supplied, or acquired on the market, by one enterprise; or*

*b) 70 per cent or more of those goods or services are supplied, or acquired on the market, by 3 or fewer enterprises.'*

*(2) A monopoly situation shall be subject to review by the Commission where the Commission has reasonable grounds to believe that an enterprise in the monopoly situation is engaging in conduct that -*

*a) has the object or effect of preventing, restricting or distorting competition; or*

*b) in any other way constitutes exploitation of the monopoly situation.*

*(3) In reviewing a monopoly situation, the Commission shall take into account -*

*a) the extent to which an enterprise enjoys or a group of enterprises enjoy, such a position of dominance in the market as to make it possible for that enterprise or those enterprises to operate in that market, and to adjust prices or output, without effective constraint from competitors or potential competitors;*

*b) the availability or non-availability of substitutable goods or services to consumers in the short term;*

*c) the availability or non-availability of nearby competitors to whom consumers could turn in the short term; and*

*d) evidence of actions or behaviour by an enterprise that is, or a group of enterprises that are, a party to the monopoly situation where such actions or behaviour that have or are likely to have an adverse effect on the efficiency, adaptability and competitiveness of the economy of Mauritius, or are or are likely to be detrimental to the interests of consumers.'*

1.13 Based on the above provisions of the Act therefore, the following elements need to be established in the present case:

- a. that the main parties to the investigation amount to 'enterprises' as defined under the Act;
- b. the existence of a vertical agreement;
- c. that the vertical agreement does not involve resale price maintenance;
- d. that one or more parties to the agreement is in a monopoly situation; and
- e. the monopoly situation is reviewable under Section 46 of the Act.

#### **IV. Assessment: Are Card scheme owners and their members enterprises?**

1.14 In Chapter two at section B of his report, the Executive Director formed the view that the following main parties to the investigation qualify as enterprises for the purposes of section 2 of the Act –

- a. Visa and MasterCard as card scheme owners providing payment card network services and deriving revenue therefrom;
- b. ABC, AfrAsia, Baroda, Bank One, Banque des Mascareignes (now BCP Bank (Mauritius) Ltd) , Habib, MauBank, SBI, and HSBC which are banks operating as payment card issuers and deriving revenues from the IIF perceived from each payment card transaction involving the use of payment cards issued by them at inter alia ATM and POS terminals; and
- c. Barclays, SBM and MCB which are banks and Cim Finance which is a non-bank financial institute, operating as integrated issuers-acquirers and deriving revenues

1.15 The Commission agrees that the assessment carried out under Section 2 of the Act by the Executive Director is correct in law and in fact.

## **V. Assessment: Existence of agreement between Card Scheme Owners and their members and the vertical nature of the agreement**

- 1.16 The Executive Director's finding is that the Membership Agreement between Visa and its members in Mauritius, and the Licence Membership Agreement between MasterCard and its Members in Mauritius, constitute the basis of their agreement relating to, and subsequent implementation of, IIF rates applicable in Mauritius; thus covering the first element (presence of an agreement) in establishing the applicability of Section 45 of the Act.
- 1.17 The Executive Director, having reference to established case-law of the European Courts and the European Commission's Notice 'Guidelines on Vertical Restraints', takes the view that the existence of a [vertical] agreement relating to default IIF rates can be established based on the acquiescence by one party, whether explicit or tacit, to the apparent unilateral policy of the other party. Relying on EU case law on agreement by acquiescence, namely the Bayer AG v. Commission<sup>7</sup> and Commission v Volkswagen<sup>8</sup>, the Executive Director found that scheme's Network Rules authorise MasterCard and Visa to unilaterally adopt/modify default IIF rates, MasterCard and/or Visa Members are informed, in one way or another, of all interchange fees established. Although Members are bound by the payment schemes' decisions to set / modify default IIF rates; Members' acquiescence to MasterCard and/or Visa's decisions setting/modifying default IIF rates for Mauritius can be deduced from their continuing commercial relations with MasterCard and/or Visa governed by the respective Membership Agreements, their continued participation in the MasterCard and/or Visa payment system and fulfilling their settlement obligations vis a vis respective issuers/acquirers in Mauritius at the applicable IIF rates.
- 1.18 Due regard had to the submissions of the parties to the investigation, the Commission agrees that the assessment carried out by the Executive Director to show the existence of agreements between the Card Scheme Owners and the banks and financial institutions operating as issuer and acquirers in Mauritius, is correct in law and in fact.
- 1.19 For an agreement to be reviewed under Section 45, the economic relationship between the parties must be such that each of the parties to the agreement operates at a different level of the production or distribution chain for the purposes of the agreement.

---

<sup>7</sup> Case T-41/96, Bayer AG v. Commission, Judgment of the Court of First Instance (Fifth Chamber, Extended Composition), 26 October 2000 at paras. 64, 66, 71-72, 111.

<sup>8</sup> Case C-74/04P Commission v Volkswagen AG [2006] ECR I-6585.

1.20 In that respect, the investigation found that:

- a. Visa's Licence Membership Trademark Agreements are vertical agreements to the extent that Visa and its individual members are operating at a different level of the supply chain: Visa as the supplier of its payment platform and use of its brand name in Mauritius whereas members (issuers and acquirers) use the royalty-free Visa trademarks to issue or acquire cards.
- b. MasterCard's License Membership agreements are vertical licence agreements to the extent that MasterCard and its individual members are operating at a different level of the supply chain: MasterCard as the supplier of its payment platform and use of its brand name in Mauritius whereas members (issuers and acquirers) use the royalty-free MasterCard trademarks to issue or acquire cards.

1.21 It is gathered that Card Scheme Owners, issuers and acquirers perform inter-related but distinct functions within the card payment system.

- a. Card Scheme Owners do not acquire merchants nor do they issue cards; rather they provide a platform for cardholders and merchants to interact by licensing the use of their processing network and branded products to banks and financial institutions to provide electronic payment facilities to their consumers. The card scheme owner is responsible for granting licenses (and membership status) to independent financial institutions for the use of a card logo and for performing issuing and/or acquiring services within the network. It usually sets the network rules and it implements these network rules through Membership Agreements signed with its member institutions.
- b. Issuers provide cardholders access to different services including the issuance of personalised and secure Visa or MasterCard branded cards (in conformity with the required Visa or MasterCard standards which in turn guarantees global interoperability and entitles cardholders to make purchases of goods and services and to obtain cash disbursements), the provision of card activation services, card replacement services, maintenance of hotline services/call centres to attend to cardholder inquiries, maintenance of ATMs network, provision of membership rewards programme and other complimentary services attached to premium cards such as worldwide travel insurance covers and discount offers at selected merchant outlets. Issuers also compete in terms of credit limits, reward schemes (e.g. frequent-flyer miles, spending points and cash back), annual fees, and ATM network services.
- c. Acquirers generally perform four key functions: (1) signing up and underwriting merchants to accept network-branded cards; (2) providing the means to authorise valid card transactions at client merchant locations; (3) facilitating the clearing and settlement of the transactions through the payment network; and (4) providing other relevant services, such as producing merchant statements, etc.



- 1.22 Due regard had to the submissions of the parties to the investigation, the Commission agrees that the assessment carried out by the Executive Director to show that the business relationship between the two card scheme owners (VISA and MasterCard) and the banks and financial institutions operating as issuer and acquirers in Mauritius, amount to agreements which are vertical in nature wherein the Card Scheme Owners are upstream operators vis-à-vis the issuers and acquirers which operate at another level, is correct in law and in fact.
- 1.23 The Commission further agrees that the agreements between the Card Scheme Owners and their respective issuing and acquiring institutions in Mauritius which incorporate the Card Scheme Owners' respective Visa Operating Regulations and MasterCard Network Rules, are binding on the issuing and acquiring institutions. The Commission agrees that the agreements, therefore, relate to the conditions under which issuers and acquirers in Mauritius may provide their issuing and/or acquiring services in Mauritius.

## **VI. Assessment: The relevant market**

- 1.24 A monopoly situation is conditioned under the Act to market shares. In order to determine the existence of a monopoly situation therefore, it is imperative that the relevant markets be identified. Paragraph 2.1 of 'Guidelines – CCM 2: Market Definition and the Calculation of Market Shares' provides that 'the 'relevant market' is a defined set of products, and a defined geographic area, within which competition occurs. There are therefore two dimensions of the relevant market: the product market and the geographic market.
- 1.25 The Hypothetical Monopoly Test (HMT) is used to identify the focal product based on demand and supply side substitution. The HMT establishes the smallest product group such that a hypothetical monopolist could profitably sustain a small but significant non-transitory increase in price (e.g. 5 to 10 per cent) of the focal product above competitive prices. The Commission is satisfied that the HMT cannot be relied on to identify the focal product in the case at hand because:
- a. of the so-called cellophane fallacy because the prices being charged may already be a monopoly price(s) resulting from the exercise of a dominant position thus above competition level. The Commission makes reference to the decision of the European Commission, COMP/34.579 MasterCard COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards) (hereinafter MasterCard Decision of 2007, whereby the European Commission posited that relying on the HMT on the single price charged by acquirers to merchants may not produce results that are sufficiently reliable for measuring acquirer's collective market power vis-à-vis is inappropriate merchants because the HMT test in the acquiring business faces the problem of the so-called cellophane fallacy; and
  - b. coupled with the fact that the HMT is inappropriate for the purposes of defining the relevant market(s) in industries with two-sided demand and network effects

and the payment card market being a classic example of a 'two-sided' market. The Commissioners endorse the view of the Executive Director that the payment card market is characterised by a two-sided market structure where the payment networks facilitate interaction (in this case card transactions) between two distinct groups of users, namely cardholders and merchants.

- 1.26 The Commission is therefore of the view that to identify products that could be considered as effective substitutes to payment cards, it is necessary to study the product characteristics and customer behaviour rather than relying on the results of the HMT.
- 1.27 Due regard had to the submissions of the parties, the Commissioners agree that payment cards have two main characteristics; firstly their usage depends on the customers' willingness to use payment cards on one hand and merchants' willingness to accept payment cards on the other hand; and secondly that payment cards exhibit network externalities, namely the more cards in circulation, the more likely will be acceptance on the part of merchants. The Commissioners agree with the view of the Executive Director that in view of the differences in characteristics, functionalities and pricing of other payment instruments, such as cash and cheques, which can also be used to effect payment at POS terminals, and the differences in terms of benefits and costs to both cardholders and merchants, the latter instruments are unlikely to be in the same relevant product market as payment cards.
- 1.28 Regarding the functional level at which competition take place within the payment card market, the Commissioners endorse the finding that there exists:
- a. a distinct upstream market for the provision of network services;
  - b. a downstream acquiring market whereby acquirers provide merchants with terminals and card readers, process transaction information, obtain money from issuers and pay retailers, and acquirers compete with each other to attract merchants wishing to accept payment cards;
  - c. a downstream issuing market whereby issuers compete with each other to attract customers in view of the fact that acquiring services are unlikely to be readily produced by suppliers of other card services in response to a small but significant increase in the price of issuing services, given the significant costs involved with the issuance of cards and the fact that a sustainable issuing business would require significant cardholder base and card usage.
- 1.29 The Commission further agrees that three-party cards system would differ from four-party systems in that within a three-party card payment system the scheme itself or a financial institution appointed by the scheme directly serves both sides of the market: cardholders and merchants coupled with the fact that three-party schemes are primarily credit card schemes while four-party schemes include both debit and credit card schemes; the pricing structure of the two schemes and the network differentiation.

1.30 Due regard had to the submissions of parties, the Commission endorses the findings of the Executive Director that the relevant product markets are:

- a. an upstream four-party payment card market in which card scheme owners provide network services to financial institutions (i.e. issuers and acquirers);
- b. a downstream four-party payment card market for the provision of card acquiring services; and
- c. a downstream four-party payment card market for the provision of card issuing services.

1.31 The Commissioners also agree with the view of the Executive Director that the relevant geographic market is national in scope because final consumers, namely cardholders and merchants, have limited access to services supplied by financial institutions based abroad; players in the local card market are unlikely to be constrained by competitive forces from abroad; and the Membership Agreement signed between the card scheme owners and issuers/acquirers generally allow issuers and acquirers to operate in one country only.

1.32 Based on the foregoing therefore and due regard had to the submissions of parties, the Commission is of the view that the relevant markets to the case at hand are:

- a. an upstream four-party payment card market in which card scheme owners provide network services to financial institutions (issuers and acquirers) in Mauritius ('upstream network market');
- b. a downstream four-party payment card market for the provision of card acquiring services in Mauritius ('downstream acquiring market'); and
- c. a downstream four-party payment card market for the provision of card issuing services in Mauritius ('downstream issuing market').

## **VII. Assessment: Market Power and dominance**

1.33 The relevant markets having been defined, the next questions to be assessed are the market shares of the parties in the identified markets and based on factors including their market shares, whether the parties are in a dominant position in the identified markets.

### **The upstream network market**

1.34 In the upstream network market, the Commissioners agree with the finding of the Executive Director that Visa and MasterCard do not face significant competitive constraints either from other types of payment instruments or other type of card schemes, such as Amex and UnionPay International in view of the popularity of Visa and MasterCard as evidenced by both the customer and merchant surveys and

compared to the fact that the Amex and UnionPay International have significantly lower cardholder base and volume of card transactions effected at domestic POS. The Commissioners further endorse the findings of the Executive Director in relation to the market shares of Visa of ~~XX~~% and MasterCard of ~~XX~~% in the upstream acquiring market calculated based on the number of cards in circulation in 2015. The Commission further agrees that because a payment network is characterised by network economies, the market position of a card scheme owner cannot be assessed in terms of a single set of market shares solely but should also be assessed in terms of transaction growth. The Commission endorses the analysis of the Executive Director in relation to the transaction volume and value of POS transactions of each network which confirms that Visa and MasterCard respectively meet the market share thresholds laid out at section 46 the Act in the upstream network market.

- 1.35 The Commissioners agree that the fact that the IIF applicable for Visa and/or MasterCard products in Mauritius are unilaterally set by Visa or MasterCard evidences that Visa and MasterCard do not face competitive constraints from issuers and acquirers in Mauritius in the upstream network market. In the same line, the Commission agrees that Visa and MasterCard do not face significant constraints from merchants who themselves feel bound to accept payments by cards and this confers on Visa and MasterCard the ability to independently and at least to some extent, determine the level of the IIF.
- 1.36 The Commissioners agree that in view of the characteristics of this market, namely the network effects, Visa and MasterCard having high growth rates and high sunk costs would need be incurred before any new card network is able to compete viably against existing ones, entry in this market will not be timely, likely, and sufficient to preclude the exercise of market power of firms already in the market.
- 1.37 The Commissioners therefore conclude, based on the above and due regard had to the submissions of the parties, that both Visa and MasterCard enjoy a dominant position in the upstream network market.

#### **The downstream issuing market**

- 1.38 The Executive Director states in his report that the four largest players in the issuing market, in terms of number of cards issued in 2015 are MCB, with a market share of ~~XX~~%, ~~XX~~ SBM (~~XX~~%), MPCB (~~XX~~%), and Barclays (~~XX~~%).
- 1.39 Due regard had to the submissions of parties, the Commission endorses that finding of the Executive Director based on an analysis of cards used for POS transactions that MCB and SBM hold over 70% of the issuing market and there does not exist a competitive fringe in view of the switching and search costs existing in the retail banking sector which help to entrench the market power of MCB and SBM.

**The downstream acquiring market**

1.40 The Executive Director states in his report that there are four players operating in the acquiring market, namely MCB, SBM, Barclays and Cim Finance. The Executive Director has calculated the market shares of the players based on the number of POS terminals in the market. Due regard had to the submissions of parties, the Commission endorses the finding of the Executive Director that in 2015 MCB had an estimated market share of around ~~XX~~%, ~~XX~~ SBM with ~~XX~~%, Cim Finance ~~XX~~%, and Barclays ~~XX~~% in this relevant market and that in addition to being the two largest issuers of payment cards in Mauritius, MCB and SBM also accounted for more than 70% of the acquiring market in 2015.

**VIII. Assessment: Competition harm**

1.41 The case made by the Executive Director is that the level of IIF which emanates from the above determined agreements between the network operators (Visa and MasterCard) is harmful to competition in the downstream acquiring market on the basis that –

- a. The IIF rate currently being applied, effectively acts as a minimum price floor and determine to a large extent the price charged to merchants for card acceptance;
- b. in particular, owing to the high market share of MCB and SBM which are integrated issuers-acquirers which benefit from high 'on-us' transactions and therefore at an economic advantage as compared to pure acquirers and even issuers-acquirers with low share of 'on-us' transaction; and
- c. In addition to raising the costs of existing acquirers and their competitiveness in setting MSC, the current level of the IIFs also raise the cost of potential entrants into the acquiring market. Existing acquirers and pure-acquirers other than MCB and SBM are not able to absorb the IIF (other than by factoring it in their charge to merchants) and they are thus restrained in their capacity to offer more competitive MSC due to high share of 'off-us' transactions.

1.42 The facts and arguments relied on by the Executive Director is well recorded in his report of investigation especially at chapters 7 and 8 which contained the following information amongst others none-less important:

- a. While the Card Scheme Owners do not determine the MSC, they do, however, determine the fee that acquirers pay to issuers which is expressed as a percentage of each POS transaction. The weight of the IIF in the MSC matters as it represents an important element of acquiring costs. Data submitted by the acquirers show that in 2015 the IIF accounted for up to ~~XX~~% of the MSC on Visa transactions and up to ~~XX~~% on MasterCard transactions for Cim Finance (as shown in Figures 16 and 17 in the Report of investigation). For MCB and SBM, the IIF accounted for more than ~~XX~~% of the MSC they

respectively charge on Visa and MasterCard transactions. For Barclays, the IIF accounts for roughly ~~XX~~% of the MSC on Visa transactions and ~~XX~~% on MasterCard transactions.

- b. Acquirers are required to pay a default IIF to issuers on each card transaction accepted by their merchants. Acquirers will likely reflect the level of the IIF, along with other costs incurred in providing acquiring services to merchants, in determining their respective MSCs to remain profitable, such that the IIF effectively acts as a floor on the MSC. This has the effect of restricting the ability of acquirers to offer competitive MSCs to merchants. The fear of losing customers to rival merchants may further restrain the bargaining power of merchants offering card payment facilities to negotiate lower MSCs, which in turn weakens the incentives for Card Scheme Owners to set lower IIFs.
- c. Data submitted by the acquiring institutions show that larger merchants are able to negotiate relatively better rates than smaller merchants. However, it is noted that even large merchants are unable to negotiate an MSC below the level of the IIF (as shown in Figures 20-23 of the Report of Investigation), which further confirms the fact that the IIF acts as a *de facto* floor to the MSC.
- d. In that respect, the current level of IIFs may also put pure acquirers at a significant disadvantage to integrated issuers-acquirers. Large integrated issuers-acquirers, on account of their large cardholder base, enjoy a high proportion of 'on-us' transactions, such that a significant share of the IIFs paid from their acquiring business can be recovered through their issuing business. Thus, an integrated issuer-acquirer can absorb part of the IIF and offer a relatively lower MSC than a pure acquirer to obtain market power in the acquiring market.
- e. The high share of on-us transactions for MCB and SBM imply that a significant proportion of IIFs paid by MCB and SBM as acquirers can be recovered through their issuing business. An analysis of the IIF revenue derived by these two banks on their issuing business confirms the above argument (as illustrated in Table 20 in the Executive Director's Report), with MCB and SBM earning ~~XX~~% and ~~XX~~% of total revenue generated in the issuing market on POS transactions in 2015. On the other hand, the respective share of IIF revenue for Cim Finance and Barclays, the two other acquirers, were only ~~XX~~% and ~~XX~~% in 2015.
- f. The IIF not only represents a high share of acquiring costs but also a high share of the acquiring revenue. IIF paid to issuers represented around ~~XX~~% of the total acquiring revenue of Cim Finance and more than 50% of the acquiring revenue for MCB (~~XX~~%) and SBM (~~XX~~%). While MCB and SBM could effectively recover a significant proportion of this cost from the issuing side of the card business (given their large share of on-us transactions), that is not the case for Cim Finance which has only around ~~XX~~% of on-us transactions.

## IX. Assessment: Off-Setting Public benefits

- 1.43 The Executive Director has also made an assessment of offsetting public benefits by acknowledging that although it is important to create incentives for issuers to issue and promote innovative card products it is equally important to incentivise card acceptance and promote competition in the acquiring market to optimise the benefits of a payment card system. The Executive Director has relied on the fact that the IIF is not the only source of revenue incentive. The finding that the prevailing level of IIFs in Mauritius does not demonstrate any such public benefits as required under Section 50(4) of the Act that would outweigh the loss of competition in the acquiring market, is substantiated on the basis that there are alternative sources of revenues streams for issuers other than pure issuers of debit cards.
- 1.44 They derive revenue from annual cardholder fees, and interests on advances, as evidenced below –
- a. Interest payment on credit cards account for more 50% of revenue for issuers of credit cards only and 28% for issuers of both debit and credit cards.
  - b. Revenue is also derived from cardholder fees which can account for up to 32% and 18% of total revenue respectively, and
  - c. For issuers of credit cards only and issuers of both credit and debit cards, IIF accounts for around 15% and 33% of their revenue from card issuing.
- 1.45 Therefore, a reduction in the IIF might not necessarily adversely impact their issuing business, if it brings about an increase in payment volume that could offset, or at least mitigate the impact of a lower IIF per transaction. Thus, any potential reduction in the IIF need not negatively impact issuers' incentive to promote cards, as averred by several main parties.
- 1.46 Due regard had to the submissions of the parties to the investigation, the Commission approves the finding of the Executive Director that:
- a. the current level of IIFs imposes an artificial cost disadvantage for acquiring transactions on pure acquirers or small integrated acquirers who cannot or are limited in their ability to recoup the IIF, thus effectively reducing the ability of such acquirers to compete with the bigger integrated acquirers. The latter thus, benefits from a large share of on-us transactions, which allows them to offer more attractive MSC rates than Cim Finance and Barclays on selected merchant segments;
  - b. the current IIF policy focus of the Card Scheme Owners seems to lean heavily towards promoting one side of the platform, namely card issuance, at the expense of card acquiring;

- c. it does not appear that the prevailing level of IIFs in Mauritius demonstrates any such public benefits as required under Section 50(4) of the Act that would outweigh the loss of competition in the acquiring market; and
- d. therefore, the default IIF rates applicable on POS transactions in Mauritius have not been objectively and reasonably set taking into account the specificities of local payment cards market amounting to a prevention, restriction, or distortion of competition in the acquiring market by limiting the ability of pure acquirers or small integrated ones to offer competitive merchant fees and compete more effectively with the two larger integrated issuers-acquirers.

## **X. Assessment: Remedies**

- 1.47 Having recommended a finding of breach, the Executive Director proceeded to make recommendations on proposed remedies to at least mitigate the detrimental effects on users and consumers resulting from the prevention, restriction or distortion of competition in the acquiring market in Mauritius caused by the current level of IIF.
- 1.48 The relevant statutory provision on directions relating to distortion, prevention or restriction of competition is found in Section 60(1) of the Act which provides that where the Commission, after reviewing a restrictive agreement falling within the terms of Section 45, determines that the said agreement has the object or effect of preventing, restricting or distorting competition; the Commission may give the enterprise (party to the agreement) such directions including termination or amendment of the agreement, as the Commission considers necessary, reasonable and practicable to remedy, mitigate or prevent –
- a. the adverse effects on competition that the Commission has identified; or
  - b. any detrimental effects on users and consumers so far as they have resulted from, or are likely to result from, the adverse effects on, or the absence of, competition.
- 1.49 The matter to be remedied is therefore the level of IIF currently being applied by issuers as per their respective Membership Agreement with Visa, and Licence Membership Agreement with MasterCard. The aim being to remedy, mitigate or prevent the identified prevention of competition in the acquiring market emanating from the current level of IIF.
- 1.50 As reported by the Executive Director, the determination of the 'optimal' IIF is not an easy task as it requires complex data (such as merchants' and cardholders' elasticities) which is not readily available.
- 1.51 In that respect, it is observed that the Merchant Indifference Test (MIT) has been developed as a benchmark for determining a 'socially optimum' IIF. This approach has been adopted by the European Commission ('EC') in its separate investigations on Visa's and MasterCard's multilateral interchange fees. However, the Executive was not able to make a computation of the MIT-compliant IIF because the test requires extensive





- d. Thus, based on data submitted by the Card Scheme Owners, it appears that a reduction of the IIF is necessary to incentivise card acceptance ~~XXXX~~.
- e. Visa and MasterCard have failed, both during the investigation and at the hearing stage, to provide a detailed and robust methodology or other strong evidence to support their claims that the current default IIFs are in effect maximizing their respective system output or acting as a balancing mechanism. Although, Visa has submitted that the
- i. ~~XXXX~~”.
- ii. ~~XXXX~~”.

it still failed to justify the current level of IIF or to present any workings evidencing its averments.

- f. In the absence of objective methodologies to support the existing default IIF rates for local POS transactions, it cannot be assumed from the outset that maintaining the current IIF rates is necessary to increase or continue providing the claimed benefits of the payment cards system.
- g. The absence of empirical evidence justifying the need for higher IIFs for the Mauritian payment cards market and considering the positive impact of a lower IIF of 0.5% on card acceptance in Mauritius, as submitted by the Card Scheme Owners themselves.
- h. The absence of demonstrable off-setting public benefit accruing from the current levels of IIF as already propounded on above under subtitle of *Offsetting Public Benefits* at paragraphs 1.43 – 1. 46.

*Proposal of MasterCard on new reduced IIF*

- 1.55 In its submissions during the hearing stage MasterCard made the following proposal to address the competition concern –
- a. First, lower IIFs for lower value transactions; and
  - b. Second, provide information and training to consumers and merchants on payment cards and bank accounts through focussed initiatives.
- 1.56 MasterCard submits that they welcome a constructive partnership with Government to grow the use of electronic payments, including leveraging innovation in small merchant acceptance and low-value payments (e.g. digital and QR payments solution). MasterCard recommends a more focussed approach in collaboration with the Government to:
- a. identify other specific cash-dominant merchant segments to grow the use of electronic payments; and
  - b. consider setting lower interchange for the specific merchant segments.
- 1.57 MasterCard's proposal to remedy the IIF rate are -
- a. the introduction of Low Value Payments (LVP) domestic interchange rate of 0.5% for transactions below \$ 10; and
  - b. a reduction in Standard Debit domestic interchange rate to 0.8%.
- 1.58 The Commission is of the view that the proposals of MasterCard do not address the competition concerns identified in the acquiring market. The issue is not that of promoting electronic payments, which falls outside the scope of the matter before the Commission. The issue is that of restriction of competition in the acquiring market from the current level of IIF set by VISA and MasterCard given the structure of the local acquiring market.
- 1.59 The Commission acknowledges that the proposal of MasterCard of reducing IIF to 0.5% on LVP goes in line with the remedy proposed by the Executive Director. However, it is limitative in so far as it only relates to LVP whereas the harm to competition to be addressed by the Commission is in respect of the entire acquiring market.
- 1.60 Similarly, the proposed reduction of the IIF to 0.8% on Standard Debit cards only is limitative in so far as it concerns only one category of cards and excludes other categories of debit cards as well as credit cards. The more so, it has been noted that the two major issuing banks are moving customers from standard to premium debit cards. As such, the reduction of IIF on Standard Debit to 0.8% is unlikely to be effective in mitigating the harm to competition in the acquiring market.

*Proposal of VISA on new reduced IIF*

1.61 In its submissions during the hearing stage, VISA has proposed to adopt a multi-faceted approach with the support of the Competition Commission and collaboration among industry players to address the issue of low electronic payment acceptance in Mauritius, namely –

- a. adopt IIF rates in specific targeted segments which are currently underpenetrated;
- b. introduce of new mobile solutions and QR code payment; and
- c. invest or co-fund educational and promotional campaigns to sensitize and educate merchants and consumers on the use and benefits derived from electronic payments.

1.62 In addition to the above general proposals, VISA is more specifically proposing different IIF rates for 8 merchant segments, based on its experience in other jurisdictions like the UAE and Canada. These are as follows:

- a. 0.5% for Utilities; and Public Transport, as is the current rate for Government and Petrol segments.
- b. 0.6% for Education; Small Retail; and Quick Service Restaurants. VISA expects that this rate will bring down MSC to 1%.
- c. Grocery – to maintain 1%, to provide cost certainty to acquirers in this segment.

1.63 The Commission is of the view that the general proposals of VISA for increasing electronic payment acceptance in Mauritius do not address the restriction and prevention of competition identified in the investigation, in as much that the proposals do not fit the scope of the powers and functions of the Commission under the Competition Act.

1.64 The Commission further considers that some of the specific proposals of VISA in relation to the IIF could be considered by the Commission, as these are in line with the proposed remedy by the Executive Director.

- a. The proposed IIF of 0.5% for Utilities, Public Transport and Government is in line with the recommendation of the Executive Director.
- b. That of 0.6% for the Education, Small Retail and QSR, though not ideally what the Executive Director is proposing, would contribute to a large extent to mitigate the adverse effect on competition. (0.6% is relatively close to the proposed rate of 0.5%).

- 1.65 However, the proposed IIF of 1% for Grocery, for the reason put forth by VISA of providing cost certainty to acquirers, is not justified and will not remedy the harm to competition in the acquiring market. Instead of cost certainty, a 1% IIF rate would instead provide revenue certainty to the issuers. Given the asymmetry in the distribution of the market shares in both the issuing and the acquiring markets, the proposed IIF of 1% for Grocery would only help to maintain or consolidate the market position of the two major integrated acquiring banks. As the grocery sector absorbs a high proportion of the recurrent consumer expenditure and thus may represent a significant proportion of the acquiring business, the harm to competition identified from the current IIF rate of 1% is likely to be higher in the grocery sector. Therefore, the Commission is of the view that the proposed rate of 1% would not will not remedy the restriction and prevention of competition in the downstream acquiring market caused by the current IIF level.
- 1.66 The Commission, nevertheless, finds a major issue with the proposals of VISA in so far as these are limited to 8 targeted segments whereas the harm to competition relates to the entire acquiring market. In the submissions of VISA, there is no information on the various merchant segments and the proportion of the acquiring business that is concerned with the rates proposed for the 8 targeted segments.

## **XI. Remedies imposed by the Commission in relation to IIF RATE**

- 1.67 In the light of the need to reduce the level of IIF so as to remedy the restriction of competition in the downstream acquiring market, in light of the recommendation of the Executive Director to cap the rate of IIF at a maximum of 0.5% and taking into consideration the proposals from VISA and MasterCard, the Commission has formed the view that the segmentation proposed by VISA and MasterCard will not serve to eliminate the lack of competition in the downstream acquiring market due to their limited effect. The limited effect means that the segmentations for which reduced IIF have been proposed by VISA and MasterCard do not cover enough of the total acquiring market so that the reduced IIF as proposed will not capture enough transactions (both volume and value) so as to remove the identified impediment to competition in the downstream acquiring market.
- 1.68 In that respect, the Commission, basing itself on the analysis of the Executive Director in his report, is of the view that an effective remedy would cover all payment transactions by card and the appropriate rate of IIF to open up the downstream to competition is a maximum of 0.5%.
- 1.69 The remedy being imposed by the Commission is a flat rate for IIF capped at a maximum of 0.5% for all transactions effected by payment cards in Mauritius for a period of five years.
- 1.70 This will require VISA and MasterCard and their respective member issuer banks to apply IIF rates at a maximum of 0.5%.

- 1.71 The reduced IIF will therefore, enable actual and potential acquirers to be able to offer better MSC rates to merchants and therefore to be able to penetrate the market in the downstream acquiring market, thereby increasing competition. The reduced IIF as imposed by the Commission is also going to enable both integrated issuers-acquirers and others to target and promote payment by cards in the low value payments.
- 1.72 The reduced IIF rate to a maximum of 0.5% will as per the assessment of the Executive Director, increase merchant's acceptance in providing payment card settlement at POS, ultimately benefiting consumers in using their payment cards as a medium of settlement for transactions.

## **XII. The Direction of the Commission under section 60 of the Act**

- 1.73 Therefore, in order to at least mitigate the detrimental effects on users and consumers which have resulted from the prevention, restriction or distortion of competition in the acquiring market in Mauritius, and having regard to the Report of the Executive Director and the submissions of parties to the investigation, the Commissioners decide to impose the following Directions –
- a. the legal entities representing the Visa payment organisation are directed to cap the default IIFs on Visa Classic, Gold and Electron debit and credit cards at 0.5% for all card-present POS transactions, effected in Mauritius for a period of five years;
  - b. the legal entities representing the MasterCard payment organisation are directed to cap the default IIFs on Standard, Gold and Maestro-Cirrus debit and credit cards at 0.5% for all card-present POS transactions, effected in Mauritius for a period of five years;
  - c. the legal entities representing the Visa and MasterCard payment organisations respectively are given a maximum period of six months starting from the date of notification of the Commission's decision to implement the above-proposed IIF cap of 0.5%, on their respective card products and to communicate the effective date of implementation of the directions to the Commission;
  - d. the legal entities representing Visa and MasterCard payment organisations are directed to inform, within a reasonable delay, their respective member institutions in Mauritius of any revision brought to their existing IIFs for domestic card transactions and any introduction of new IIFs applicable in Mauritius, through all reasonably available means at their disposal including but not limited to publication on their respective websites and through dissemination of IIF bulletins to individual members in Mauritius, as appropriate;
  - e. the legal entities representing Visa and MasterCard payment organisations are directed to modify their respective network rules, as may be required, to reflect these directions and to accordingly communicate the amended rules to their respective member institutions in Mauritius, through all reasonably available

means at their disposal including but not limited to publication of the amended network rules on their respective websites. A copy of any such correspondence together with a copy of the amended network rules should also be communicated to the Commission within six months starting from the date of notification of this decision;

- f. Visa and MasterCard payment organisations and the respective legal entities representing them are directed to refrain from engaging in any act or conduct, in particular through the setting of IIFs for domestic card transactions, which have the same or equivalent restrictive object or effect as identified in the Report;
- g. each issuer of Visa and/or MasterCard card products in Mauritius is directed to publish, within a reasonable delay, any revision brought to the applicable IIFs for card transactions effected in Mauritius and any introduction of new IIFs applicable in Mauritius on its respective website; and
- h. each acquirer of Visa and/or MasterCard card products in Mauritius is directed to communicate its prevailing MSC rates, in the manner and format required, to the Commission and the Executive Director respectively on a six months' basis for a period of five years starting from the effective date of implementation of the above-imposed IIF cap of 0.5%.

Done at Port-Louis this 14 June 2019.

Mr. D. P. A. Mariette  
(Chairperson)

Mr. C. Seebaluck  
(Commissioner)

Mrs. M. B. Rajabally  
(Commissioner)

Mrs. V. Bikhoo  
(Commissioner)

