INVESTIGATION INTO PAYMENT CARDS

[CCM/INV/020]

FINAL REPORT

12/12/2016
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Glossary

‘Acquirer’ refers to the financial institution that contracts out merchants for accepting a certain payment card via a Point of Sales terminal.

‘Authorisation’ refers to the approval of a payment card transaction by or on behalf of an issuer according to defined operations regulations. The merchant receives, via telephone or authorisation terminal, this approval to process the transaction.

‘Automatic Teller Machine’ (ATM) refers to an electronic banking outlet, which allows cardholders to complete basic banking transactions (such as cash withdrawal, bank deposits, balance inquiries) without the aid of a branch representative or teller.

‘Cardholder fee’ refers to the yearly flat fee paid by a cardholder to the issuer for use of a payment card.

‘Cardholder’ refers to a consumer in possession of a payment card.

‘Clearing’ refers to the process of exchanging financial transaction details between an acquirer and an issuer to facilitate posting of a cardholder’s account and reconciliation of a merchant’s settlement position. This process is intermediate between authorisation and settlement of a payment transaction.

‘Credit card’ refers to a type of payment card with a certain amount of credit which allows the cardholder to effect purchases electronically and where the transaction value can either be settled in full by the end of a specified (usually, interest-free) period or settled in part, with the outstanding balance taken as credit and charged with interest.

‘Debit card’ refers to a type of payment card which enables the cardholder to effect purchases electronically by charging same directly and individually to an account maintained with the issuer. The debit card may also be used to withdraw cash from ATM terminals.

‘Domestic (payment card) transaction’ refers to a payment card transaction that occurs between an issuer and an acquirer, both of which are located in Mauritius.

‘Honour All Cards Rule’ (HACR) refers to a rule (applicable by virtue of membership to respective card scheme owner’s network) by virtue of which merchants need to accept all valid cards (bearing the respective card scheme owner’s brand) presented to them, without discrimination and regardless of the issuer and the type of card, within the respective brand.

‘Issuer’ refers to the financial institution that issues payment card to cardholders, allowing the cardholder to use his/her payment card.

‘Issuer Interchange Fee’ (IIF) refers to the fee paid by an acquirer to an issuer for each POS transaction settled by a payment card issued by the latter. The IIF is usually set as a percentage of the transaction value.

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1 General Disclaimer: This list provides a list of general definitions of some common terms and concepts used in the payment cards system terminology. This list is neither comprehensive nor intended to cover the technical aspects but has been included in this Report for information purposes only in view of facilitating the reader in better understanding some associated key within the context of the investigation.
‘Merchant Service Commission’ (MSC) (also referred to as ‘Merchant Service Charge’ and/or ‘Merchant Discount’) refers to the fee per transaction that acquirers charge merchants for processing card payments.

‘Merchant’ refers to any retail point and includes entities such as petrol stations, airlines, etc.

‘No Surcharge Rule’ refers to a rule (applicable by virtue of membership to respective card scheme owner’s network) which prevents merchants from adding surcharges to payment card transactions effected with the card scheme owner’s branded card.

‘Off-Us transaction’ refers to a payment card transaction effected using a payment card issued by an issuer ‘A’ and acquired at a POS terminal belonging to an acquirer ‘B’, where A and B are two distinct and separate entities.

‘On-Us transaction’ refers to a payment card transaction effected using a payment card issued by issuer ‘A’ and acquired at a POS terminal belonging to acquirer ‘A’ itself, i.e. the issuer and acquirer are the same entity.

‘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.

‘Payment card scheme’ (also referred to as ‘Payment card system’ or ‘Payment card network’) refers to a technical and commercial infrastructure set up to serve one or more particular brand of cards for enabling electronic payments (at Point of Sale or through online platforms).

‘Payment card’ refers to the plastic card that enable cardholders to effect payment for goods and services electronically (either at POS or online) and/or to withdraw cash from ATMs. The most common types of payment cards issued in Mauritius are debit, credit and prepaid cards.

‘Point-of-Sales’ (POS) refers to the place where a transaction takes place.

‘Point-of-Sales terminal’ refers to the electronic equipment/system available at a retail selling location, which is equipped for accepting payment card transactions.

‘Prepaid card’ refers to a type of card that is preloaded with funds that can be used to pay for goods or services.

‘Pure acquirer’, for the purposes of this investigation, refers to a financial institution that offer payment card acquiring services to merchants but does not issue payment cards to cardholders.

‘Pure issuer’, for the purposes of this investigation, refers to a financial institution that only issues payment cards to cardholders but does not offer card acquiring services to merchants.

‘Integrated issuer-acquirer’, for the purposes of this investigation, refers to a financial institution that issues payment cards to cardholders and also offers payment card acquiring services to merchants.

‘Settlement’ refers to the process of deducting and crediting funds on accounts of banks after clearing. Typically, each member of a card scheme owner maintains an overseas account with the card scheme owner’s settlement bank wherein all card transactions during a certain period are netted and settled.
1. Executive Summary

1.1 This Report of Investigation contains the findings of the Executive Director of the Competition Commission (the ‘Executive Director’) further to his investigation (INV020- Payment cards) into the payment cards industry in Mauritius, more specifically into the level of issuer interchange fee (‘IIF’) set by Visa and MasterCard for certain categories of debit and credit cards used at point of sale (‘POS’) terminals in Mauritius.

1.2 The Executive Director had launched the investigation in May 2012 having reasonable grounds to believe that the current rates set for the IIF on payment cards carrying the Visa and MasterCard brands could potentially be restricting, preventing or distorting competition in the four-party payment cards industry in Mauritius.

1.3 There are fifteen main parties to the investigation:

(i) two four-party payment card scheme owners, namely Visa and MasterCard;

(ii) nine pure issuers of payment cards, ABC Banking Corporation Ltd, AfrAsia Bank Limited, Bank of Baroda, Bank One Limited, Banque des Mascareignes Ltée, Habib Bank Limited, MauBank Ltd, SBI (Mauritius) Ltd, The Hongkong and Shanghai Banking Corporation Limited; and

(iii) four integrated issuers-acquirers, Barclays Bank Mauritian Ltd, CIM FINANCE LTD, SBM Bank (Mauritius) Ltd, and The Mauritius Commercial Bank Ltd.

1.4 Payment cards can be presented by a cardholder for payment at a retailer (on premise or online) and/or used at automatic teller machines for cash withdrawals. There are two main fees associated with card transactions at Point of Sales (‘POS’):

(i) Issuer Interchange Fee (‘IIF’) - 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; and

(ii) Merchant Service Commission (‘MSC’) – 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.

1.5 The Executive Director has carried out his assessment of the current default IIF rates set by Visa and MasterCard for POS transactions in Mauritius, pursuant to their respective Visa and/or MasterCard Membership License Agreements and Network Rules or Standards, as applicable, under the provisions of Section 45 of the Competition Act 2007 (the ‘Act’) in relation to a vertical agreement not involving resale price maintenance. An assessment under Section 45 of the Act in turn requires the Commission to review the agreement under Section 46 of the Act, which requires, inter alia, that one of the parties...
to the agreement be in a monopoly situation and that it be engaged in conduct which is resulting or has resulted in a prevention, restriction or distortion of competition in a relevant market.

1.6 Three distinct relevant markets have been identified for the purposes of this investigation, namely (i) an upstream four-party payment card market for the provision of network services in Mauritius, (ii) a downstream four-party payment card market for issuing services in Mauritius, and (iii) a downstream four-party payment card market for acquiring services in Mauritius.

1.7 The Executive Director has found that Visa and MasterCard are both likely to be in a dominant position with a combined market share of nearly 100% in the upstream four-party payment card network services market in Mauritius. With an estimated market share of less than $<$2 in 2015, the entry of UnionPay International (formerly China UnionPay) since 2009 has not materially changed Visa and MasterCard’s combined share of the market. In the downstream local four-party payment card markets, The Mauritius Commercial Bank Ltd and the SBM Bank (Mauritius) Ltd are both in a monopoly situation, with a combined market share above 70% in the market for card issuing services and the market for provision of merchant acquiring services respectively.

1.8 The Executive Director is concerned that the current level of IIF for certain types of payment cards could be restricting competition in the acquiring market by inflating the base on which acquirers set the MSC, effectively creating a floor to the MSC. 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 IIF represents a cost for acquirers but a revenue source for integrated issuers-acquirers. In Mauritius, CIM FINANCE LTD is a pure acquirer of debit cards while Barclays Bank Mauritius Ltd, SBM Bank (Mauritius) Ltd, and The Mauritius Commercial Bank Ltd are integrated issuers-acquirers of debit and credit cards.

1.9 The Executive Director has further found that the current level of IIF in Mauritius can account for between 47% and 79% of the MSC on $<$ transactions and between 37% and 72% of the MSC on $>$ transactions. This is resulting in 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. Because of the latter’s larger cardholder base, the majority of card transactions processed at their local POS terminals are effected using cards issued by them (for instance, 71% for $>$ and 42% for the $<$ in 2015. On these transactions, integrated issuers-acquirers recover a significant proportion of the IIF (paid as acquirers) through their issuing business. Thus, large integrated players can absorb part of the IIF and are in a position to offer lower MSC than an equally efficient pure acquirer. The current level of IIF is therefore limiting competition among existing acquirers as well as foreclosing the entry of potential acquirer.

1.10 The Executive Director has taken the view that the extent to which IIF acts as a balancing mechanism is also questionable given the relative size of the acquiring market compared to that of the issuing market. On one hand, the number of cards in circulation has increased on average by 6.5% annually since 2012 to reach nearly 1.7 million as at December 2015, for a total population of around 1.2

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2 $<$ - Indicates that confidential and/or commercially sensitive information has been redacted.

[Confidential Document] – COMPETITION COMMISSION OF MAURITIUS
million. On the other hand, there are only four players in the acquiring market, out of which The Mauritius Commercial Bank Ltd and the SBM Bank (Mauritius) Ltd together control more than 70% of the market, compared to some 13 players in the issuing business. A large number of merchants do not offer card acceptance at the Point of Sales; only 48% of merchants according to CCM’s Merchant Survey. The total number of merchants accepting cards in 2015 was more or less similar to the figure in 2012, though an increase in the number of POS terminals was noted. Although, the number and value of POS transactions increased significantly over the period 2012-2015; however, the estimated share of the total final consumption expenditure effected through payment cards remained below 10%\(^3\) in 2015.

1.11 It was found that the introduction of a lower IIF of 0.5% by Visa for the petrol segment has enabled smaller acquirers such as \(\times\) and \(\times\) to offer more competitive merchant rates (0.87%) than those of larger integrated issuers-acquirers (1.36% for \(\times\)) for this segment. A reduction in IIF could therefore potentially lead to more attractive merchant fees being offered by competing acquirers. Lower merchant fees could increase the level of card acceptance by merchants in Mauritius, which is currently relatively low at 48%, further enhancing the scope for growth in the acquiring market.

1.12 In light of information gathered, the assessment of competitive harm carried out and the findings of possible breach of Sections 45 and 46 of the Act, the Executive Director has proposed a series of behavioural and informational remedies to the Commission, which the Executive Director believes are necessary, reasonable and practicable, in order to at least mitigate the detrimental effects on users and consumers resulting from the adverse effects on competition in the acquiring market as identified in the Report. The Executive Director has, \textit{inter alia}, recommended that:

(a) the default IIFs on Visa Classic, Gold and Electron debit and credit cards and on MasterCard Standard, Gold and Maestro-Cirrus debit and credit cards be capped at 0.5% for card-present POS transactions effected in Mauritius for a period of five years;

(b) Visa and MasterCard on the one hand and each issuer of Visa and/or MasterCard card products in Mauritius be required to publish, on their respective websites, any revision brought to existing IIFs for domestic card transactions and any introduction of new IIFs applicable in Mauritius; and

(c) each acquirer of Visa and/or MasterCard card products in Mauritius be 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-proposed IIF cap of 0.5%.

1.13 Upon receipt of a report of investigation, the Commission may, if the party under investigation so requests or where the Commission intends to give a direction, it shall convene a hearing at which the Commissioners can hear the views of any person they consider to have a relevant interest in the case. It is up to the Commission to determine, in light of the Executive Director’s Report of Investigation and views presented to the Commissioners during hearing proceedings, as the case may be, whether a

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\(^3\) According to National Accounts of Mauritius 2015, total final consumer expenditure amounted to Rs 365.7 billion while the estimated value of POS transactions effected through payment cards amounted to Rs 44.3 billion (based on submission of Acquiring banks).
restrictive business practice is occurring or has occurred and to impose any remedy it thinks fit to impose in response to any identified anti-competitive practice.
2. Investigation Background

A. The Procedure

2.1 On 23rd May 2012, the Executive Director, having reasonable grounds to believe that a restrictive business practice is occurring within the payment cards market in Mauritius, launched an investigation in accordance with Section 51 of the Act. The investigation has been conducted in light of the provisions of Section 45 of the Act relating to other vertical agreements\(^4\).

2.2 This investigation follows an enquiry, carried out under Rule 5 of the Competition Commission Rules of Procedure 2009 (‘Rules of Procedure’), into a complaint from a merchant that one of the local commercial banks was, inter alia, abusing of its monopoly situation by increasing the monthly fixed rental of its POS terminals from Rs100 to Rs500 without any justification. While the Executive Director did not find any substance into part of the allegation relating to the increase in the monthly rental of the POS terminal under the Act, the Executive Director however 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.

2.3 The Executive Director has investigated 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.

2.4 The main parties to the investigation were individually notified of the launch of the investigation and the potential competition concerns identified on 18th May 2012. The administrative timetable for the investigation, drawn up in accordance with the Rules of Procedure, has had to be revised on different occasions to cater for inter alia, (i) the extended information gathering process from several parties, the issuance of different sets of Information Requests (‘IRs’), (ii) extended deadlines granted to main parties, upon request, for complying with IRs and providing their comments to the Statement of Issues (‘SOI’) and the Provisional Report of Investigation, and (iii) the administration of a ‘Consumer Payment Choice Survey’ (the ‘CCM Consumer Survey’); and a ‘Merchant Payment Choice and Costs of Acceptance Survey’ (the ‘CCM Merchant Survey’).

2.5 During the course of this investigation and as part of its information gathering process, the Executive Director conducted procedural and factual meetings with the main parties to the investigation and has obtained, through the issuance of IRs under Section 52(1)(b) of the Act, written submissions, from the main parties. Following this initial information gathering process, the Executive Director issued a SOI to each of the main parties to the investigation on 15th February 2013. The SOI was intended to give main

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\(^4\) Section 45 of the Act provides for the review of vertical agreement (not involving resale price maintenance) 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.
parties the opportunity to comment and provide their submissions on the preliminary competition concerns identified therein.

2.6 In their respective responses to the SOI, some main parties submitted that the Executive Director has erred in the identification of the relevant markets and the theory of harm arising from the conduct under review. Specifically, some main parties submitted that card payment services ought to be assessed within the payment system as a whole, contrasting the view taken by the Executive Director that payment cards constitute a distinct product market from non-card payment instruments (including cash and cheques). The Executive Director also received representations that the geographic product market should be broader than the national market, as identified in the SOI. Several parties also queried about the theory of harm arising from the conduct in question, stressing on the role of the interchange fee as a balancing mechanism.

2.7 Taking into consideration the comments and submissions received from the main parties on the SOI, especially with regard to the relevant markets, and in the presence of limited empirical information on consumer and merchant behaviour relative to the use and acceptance of payment instruments for POS transactions in Mauritius, the Executive Director continued his information gathering process through further information requests from the main parties. The Executive Director has also commissioned two independent surveys: the CCM Consumer Survey and the CCM Merchant Survey.

2.8 The Surveys, which have been administered by Analysis Co. Ltd (TNS Analysis or TNS), an independent survey company, over the period December 2014 to July 2015, aimed at collecting comprehensive and detailed information on the use, acceptance and costs of payment instruments for POS transactions in Mauritius. The information generated by the surveys served to complement the evidence provided by the main parties to this investigation in the assessment of the conduct under review.

2.9 On 30th November 2015, the Executive Director, in accordance with Rule 14 of the Rules of Procedure, issued his Provisional Report of Investigation to each of the main parties under investigation. The Executive Director invited the views of the main parties on the Executive Director’s provisional findings relating to the alleged restrictive business practice investigated and the potential remedies which the Executive Director intended to recommend to the Commission before the Report is finalised.

2.10 At the time the Provisional Report was issued, the main parties were also notified of the Executive Director’s intent to share a copy of the Provisional Report of Investigation, inclusive of all confidential and/or commercially-sensitive information, to the Bank of Mauritius (BoM) for its views and comments. The consent of each main party was accordingly sought pursuant to Section 70(1)(a)(i) of the Act prior to submitting the Provisional Report to the BoM on 30th December 2015.

2.11 Out of the 15 main parties, 9 provided written submissions, 2 main parties informed, in writing, that they did not have any comments on the contents of the Provisional Report and 4 main parties did not respond to the Provisional Report. The BoM submitted its views on 17th February 2016 (reproduced in

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5 At the time the SOI was issued, the investigation concerned sixteen main parties including two four-party payment card scheme owners (Visa and MasterCard), four integrated issuers-acquirers and ten pure issuers of payment cards. Out of the sixteen main parties, only 14 main parties had responded in writing to the SOI.

6 The response of each main party, as applicable, in relation to the SOI has been reproduced in its entirety at Annex A of the Report.
its entirety at Annex B of the Report) and meetings were subsequently held with officers of the BoM on 05th May 2016 and 05th July 2016 for the purposes of further discussing *inter alia* the BoM’s submissions, the findings of the Provisional Report of Investigation and the remedies proposed.

2.12 Having had regard to submissions received following the issuance of the Provisional Report, the Executive Director has proceeded with finalising the Report. Where relevant, parties’ comments have been incorporated in the Final Report of Investigation (the ‘Report’) and each party’s submissions has been reproduced in its entirety at Annex C of this Report. The Executive Director has, where relevant, also addressed key comments of main parties relative to the findings of the Provisional Report and the Surveys and these are contained at Chapter 10 of this Report.

2.13 The Report has been submitted to the Commission by the Executive Director pursuant to Section 51(2) of the Act and Rule 15 of the Rules of Procedure and contains the conclusive findings of the Executive Director relating to this Investigation together with proposed remedies for the Commission’s determination. The Executive Director has produced a non-confidential version of the Report, excised of all commercially sensitive and confidential information contained therein for the purposes of publication pursuant to Rule 15 of the Rules of Procedure

2.14 The Executive Director wishes to highlight the continued collaboration of the main parties and the BoM, throughout the course of the investigation.

**B. The Main Parties**

2.15 The main parties to this investigation include:

(i) two card scheme owners, namely Visa International Service Association and MasterCard International Incorporated;

(ii) nine pure issuers of payment cards operating in Mauritius; and

(iii) four integrated issuers-acquirers operating in both the issuing and acquiring markets in Mauritius.

2.16 The Executive Director had in the SOI identified ten pure issuers of payment cards in Mauritius as main parties to the investigation. However one of these pure issuers, namely Bramer Banking Corporation Ltd is no more operational. On 02nd April 2015, the banking license of Bramer Banking Corporation Ltd was revoked by the banking regulator, the BoM, under section 17 of the Banking Act 2004. Given that the Bramer Banking Corporation Ltd no longer had a juridical personality, it was no longer considered as a main party to this investigation. On 10th April 2015, the BoM granted a banking licence to National Commercial Bank Ltd (‘NCB’), a new entity which had taken over part of the banking operations of Bramer Banking Corporation Ltd. At the time of the finalisation of the Provisional Report, NCB was yet to start with card issuing in Mauritius and as such, was not considered as a main party to this investigation. Following the completion of the merger of the operations of the NCB and the Mauritius

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7 In a public notice (dated 17 April 2015) issued by the Bank of Mauritius, the said banking licence stands revoked following representations made by the said bank. The Public Notice may be accessed at: https://www.bom.mu/pdf/Communique/Communique_20150417_2.pdf
Post and Cooperative Bank Ltd (‘MPCB’) on 04th January 2016, the two banks now operate as a single bank known as MauBank Ltd. Given that MauBank has taken over ex-MPCB’s card issuing business, MauBank is, as a card issuer and for the purposes of the investigation, a main party to this investigation.

**Card Scheme Owners**

**MasterCard Incorporated and MasterCard International Incorporated**

2.17 Incorporated in 1966 under the name ‘Interbankard Inc.’, MasterCard International Incorporated is the principal operating subsidiary of MasterCard Incorporated (or MasterCard Worldwide), (together referred to as ‘MasterCard’). Incorporated in 2001, MasterCard Incorporated has been a publicly traded company since 2006. Prior to its initial public offering, MasterCard Incorporated was a cooperative owned by the financial institutions that issue its branded cards. MasterCard describes itself as a ‘technology company in the global payments industry that connects consumers, financial institutions, merchants, governments and businesses worldwide, enabling them to use electronic forms of payment instead of cash and cheques’.

2.18 MasterCard is organized geographically into the following regions: Asia Pacific, Middle East and Africa; Europe; Latin America & Caribbean; and North America (Canada and the United States). MasterCard’s portfolio of brands includes MasterCard, Maestro and Cirrus. MasterCard operates the MasterCard network in view of facilitating the processing of transactions, including authorization, clearing and settlement, as well as delivering related products and services.

**Visa Inc. and Visa International Service Association**

2.19 Founded in 1970 as National BankAmericard Inc, Visa Inc. was incorporated in 2007 following the company’s corporate reorganization. Visa Inc. describes itself as a ‘global payments technology company that connects consumers, businesses, banks and governments in more than 200 countries and territories worldwide’. Visa International Service Association, formerly known as The International Bankcard Company, was set up in 1974 to administer the Visa programme internationally and operates as a subsidiary of Visa Inc (together ‘Visa’).

2.20 The company’s operations are spread across six independent regions, namely Central and Eastern Europe, Middle East and Africa (CEMEA); Asia Pacific; Canada; Europe; Latin America and Caribbean; and the United States. The company’s portfolio of brands include Visa, Visa Electron, PLUS and Interlink, which it licenses to its clients for use in their payment programmes.

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8 Where information submitted by ex-MPCB during the period 2012-2015 has been used in this Report, such information has been attributed to and/or referenced as ‘MPCB’ given that MPCB was the relevant legal entity during the said period.

9 [http://www.sec.gov/Archives/edgar/data/1141391/000119312505223344/dex32a.htm](http://www.sec.gov/Archives/edgar/data/1141391/000119312505223344/dex32a.htm)


12 Visa Europe is a separate membership entity that is an exclusive licensee of Visa Inc.’s trademarks and technology in the European region.

I. Pure Issuers

ABC Banking Corporation Ltd

2.21 Originally a leasing company, ABC Finance & Leasing Ltd was converted into ABC Banking Corporation Ltd (‘ABC’) and started operations as a full-fledged commercial bank on 9th December 2010. ABC’s banking business is based on three main pillars: domestic banking, international banking and treasury operations.14 ABC entered the card issuing business in 2011 and issues MasterCard magnetic PIN-based debit cards, which are issued to the retail and corporate segments as well as to offshore clients.

AfrAsia Bank Limited

2.22 Incorporated in 2007, AfrAsia Bank Limited (‘AfrAsia’) has four core divisions: private banking and wealth management; corporate and investment banking; global business and treasury. AfrAsia entered the card issuing market in 2008. AfrAsia, an affiliate member of MasterCard, issues both PIN-based and signature based credit cards, under the sponsorship of CIM FINANCE LTD which is the principal issuer.

Bank of Baroda


Bank One Limited

2.24 Incorporated in 2008, Bank One Limited (‘Bank One’) caters both for domestic and international markets. Bank One operates with sixteen branches throughout Mauritius. Bank One entered the issuing market with MasterCard credit cards but switched to issuing Visa debit and credit card products in 2010. Bank One has recently added the provision of e-commerce acquiring services to its range of offers.

Banque des Mascareignes Ltée

2.25 Banque des Mascareignes Ltée (‘BM’) started its operations in Mauritius in 2004. It subsequently merged with Mascareignes International Bank Ltd, which was set up in 1991 as a global business bank. BM issues Visa branded debit cards to its customers in Mauritius.

Habib Bank Limited


MauBank Ltd

2.27 MauBank Ltd (‘MauBank’) resulted from the merger of the operations of two banks, the Mauritius Post and Cooperative Bank Ltd (‘MPCB’) and the National Commercial Bank Ltd (‘NCB’) (which in turn, took over the operations of Bramer Banking Corporation Ltd). The merger was successfully completed on 04th January 201615. MauBank services its clients through a network of 36 branches and 50 ATMs.

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MauBank took over the respective payment cards businesses of MPCB and NCB and issues both debit and credit cards bearing the Maestro, MasterCard and Visa brands.

SBI (Mauritius) Ltd

2.28 SBI (Mauritius) Ltd (‘SBI’), a foreign subsidiary of the State Bank of India, was formed after the amalgamation of Indian Ocean International Bank Ltd with SBI International (Mauritius) Ltd. The bank’s network include 15 branches across Mauritius and Rodrigues, and 19 ATMs. SBI started issuing the Maestro-Cirrus international debit card in 2008.

The Hongkong and Shanghai Banking Corporation Limited

2.29 The Hongkong and Shanghai Banking Corporation Limited (‘HSBC’) was initially set up in Mauritius in 1991 as an Offshore Banking Unit. HSBC operates 11 retail branches offering a full-fledged range of retail banking, cards and wealth management products. HSBC started issuing Visa-branded and MasterCard-branded credit cards in 1994.

II. Integrated issuers-acquirers

Barclays Bank Mauritius Ltd

2.30 Set up in 1919, Barclays operated as a branch of Barclays Bank PLC Bank until it became Barclays Bank Mauritius Limited (‘Barclays’) in June 2013. Barclays has been involved in both card issuing and card acquiring businesses in Mauritius. Card brands issued by Barclays include Visa credit (since 1990) and debit cards (since 2001).

CIM FINANCE LTD

2.31 CIM FINANCE LTD (‘Cim Finance’), operating under the CIM Group, is the only non-bank financial institution that offers card issuing and card acquiring services in Mauritius. Cim Finance issues both Visa and MasterCard PIN-based credit cards. Cim Finance started acquiring MasterCard cards in 2008 and Visa cards in 2011. Since July 2014, Cim Finance also issues UnionPay International (formerly China UnionPay) (‘UPI’) Classic, Gold and Business credit cards in local currency.

SBM Bank (Mauritius) Ltd

2.32 Incorporated in 1973, the State Bank of Mauritius Ltd, now renamed as SBM Bank (Mauritius) Ltd (‘SBM’), services over 340,000 customers through its network of 51 service units/branches in Mauritius, 4 branches in India and 4 branches in Madagascar and 120 ATMs. SBM is the second largest bank in Mauritius with a market share in the domestic retail banking landscape estimated at over 30%. Cards issued by SBM include Visa and MasterCard debit and credit cards as well as UPI Renminbi (RMB) debit

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16 (Ex-)MPCB started issuing Maestro branded cards in 2005, and MasterCard branded credit cards in 2010.
17 When it started operations on 13 April 2015, NCB took over part of the credit card portfolio from Bramer Banking Corporation Ltd (in receivership). The latter had started issuing Visa debit cards as from 2005 and Visa branded credit cards since 2011.
18 http://www.sbmauritius.com/new/files/about.php
cards and UPI prepaid cards in local currency. SBM is also the second largest acquiring institution in Mauritius.

The Mauritius Commercial Bank Ltd

2.33 Incorporated in 1838, The Mauritius Commercial Bank Ltd ('MCB') is the oldest and largest banking institution in Mauritius, with around 942,800 individual and institutional customers and a network of 40 branches and 174 ATM terminals\(^2\). MCB was the first bank to issue MasterCard cards in Mauritius. The bank’s card portfolio now includes MasterCard debit and credit cards and Visa credit cards, UPI prepaid cards in RMB and local currency (since July 2009) as well as American Express (Amex) cards.

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3. Market Background

A. Payment Industry

3.1 The set of payment options available to the consumer has expanded over the years. Payment instruments include coins, banknotes, cards, cheques and more recently, mobile payments. These payment instruments vary considerably in their characteristics and functionalities.

3.2 While there is no official measurement of the number cash transactions effected in Mauritius, it appears that the majority of payments continues to be settled through the use of cash. Banknotes and coins in circulation in Mauritius amounted to Rs 31.4 billion in August 2016\(^2\) compared to Rs 29.0 billion in August 2015, corresponding to an increase of 8.3%. Innovation in payment systems have nonetheless brought significant changes to the payment landscape, with non-cash payments gradually shifting from paper to electronic form. Whilst cheques remain a common type of non-cash payment instrument, the number of cheque payments effected have stagnated over time as compared to the number of electronic transactions processed. Approximately 6.03 million electronic transactions\(^3\) were processed in August 2016 amounting to a total value of Rs 13.05 billion, corresponding to increases of 5.4% and 6.8% respectively compared to August 2015\(^4\). In value terms, cheque transactions continue to exceed electronic transactions. This mainly stems from the fact that many establishments require payments by cheques for high transaction values, particularly in the Government sector.

*Figure 1: Volume and value of electronic transactions*

*Figure 2: Volume and value of cheque transactions*


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\(^3\) Involving the use of credit cards, debit cards, ATMs and Merchant Points of Sale.

\(^4\) Bank of Mauritius, Monthly Statistical Bulletin – September 2015, Table S2a.
B. Payment Card Market

3.3 Payment cards can be classified into three main types, according to their main functions and repayment method:

- **Debit card** - A debit card is a payment instrument associated with a savings account, checking account or other account with accessible funds, permitting cash withdrawals, payments, bank transfers, etc. When a debit card is used, there is an immediate and equivalent reduction in the associated payment account balance.

- **Credit card** - A credit card is a card associated with a ‘card account’ which allows access to a predetermined maximum credit line granted by the card-issuing institution to the cardholder. The cardholder benefits from this credit whenever he/she makes payments or withdraws money as a cash advance up to the amount of the card credit line. Credit cardholders benefit from cashbacks and rewards programmes and a typical 30-day interest-free credit for consumers who pay their bills in full and on-time. Credit cards, however, also attract annual fees and interest penalties on late repayments.

- **Prepaid card** - A prepaid card is a payment instrument with an available amount of money paid in advance by the cardholder to the card issuing institution. In most cases, it allows the same type of payment transactions and cash withdrawals as a debit card.

3.4 Figure 3 below illustrates the various card products offered under the Visa and MasterCard schemes. These cards differ in terms of the rewards/benefits offered to cardholders, cardholder fees, interest rates for late payments, interchange rates, amongst others.

*Figure 3: MasterCard and Visa Card Products*
3.5 There are two main business models for the provision of card payments:

(i) *three-party schemes*, such as models operated by American Express and Diners Club. In three-party schemes, the card scheme owner takes the role of issuer (the entity that issues the card to the cardholder) and acquirer (the entity that enables the merchant to accept card payments). The card scheme typically appoints an agent for each geographic market. There is no competition within the brand but with other brands; and

(ii) *four-party schemes*, such as models operated by Visa and MasterCard. In four-party schemes, the card scheme owners licenses the use of their platform to financial institutions who can serve either one or both sides of the issuing and/or acquiring market (i.e. an acquirer can also be an issuer and vice versa). The focus of this investigation is the four-party system in which Visa and MasterCard operate.

I. Players within a four-party system

*Card scheme owners*

3.6 Card scheme owners (also referred to as network operators), issuers and acquirers perform inter-related but distinct functions within the card payment system. 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. Card scheme owners earn revenue through the following streams: (i) service revenues from financial institutions (issuers and acquirers) for their participation in card programmes; (ii) data processing revenues for authorization, clearing, and settlement services; and (iii) international revenues from transactions where the cardholder issuer country is different from the merchant’s country.

3.7 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.

3.8 There are three four-party card scheme owners operating in Mauritius, namely Visa, MasterCard and UnionPay International. Visa and MasterCard brands have been present in Mauritius since the late 1980s while UPI/CUP has been present in the local cards market since 2009. The two major card scheme owners in Mauritius, both in terms of number of cards in circulation and volume of payments effected, are Visa and MasterCard. As at end December 2015, the total number of cards in circulation on the Visa and MasterCard network in Mauritius reached nearly 1.67 million while the corresponding figure for UPI/CUP cards in circulation in Mauritius was \( \times \), of which \( \times \) cards were issued in RMB and USD, with CUP/UPI holding only around \( \times \% \) share of the market for cards issued. There were an estimated \( \times \) MasterCard and Maestro-Cirrus debit and credit branded cards in circulation; of these, around \( \times \) are debit cards and the remaining \( \times \) are credit cards. Visa had an estimated \( \times \) cards, of which \( \times \) debit cards, were in circulation in Mauritius as at end December 2015. Debit cards account, on average, for 80% of the total cards in circulation in Mauritius.
3.9 As seen from Figure 5 below, in 2015 MasterCard’s network processed around \(< 1\) POS transactions\(^{25}\) in Mauritius, corresponding to a total transaction value of Rs \(< 1\). Around \(< 1\) % of the total number of transactions were effected with locally issued MasterCard cards. Over the same period, Visa’s network processed around \(< 1\) POS transactions in Mauritius, corresponding to Rs \(< 1\) \(^{26}\), out of which \(< 1\) % were effected with locally issued Visa cards.

**Figure 4: Cards in circulation in Mauritius, by type and brand**

![Card circulation chart](chart)

Source: Compiled from Visa and MasterCard Submissions

**Figure 5: Number of MasterCard and Visa transactions at local POS terminals**

![Transaction chart](chart)

Source: Compiled from Acquiring Banks Submissions

\(^{25}\) See Submission by acquiring banks and MasterCard Submission dated 06\(^{th}\) August 2015 and 25\(^{th}\) October 2016.

\(^{26}\) See Visa’s Submission dated 25\(^{th}\) October 2016.
Issuers

3.10 Issuers provide cardholders access to different services including the issuance of personalized 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.

3.11 Issuers compete in terms of credit limits, reward schemes (e.g. frequent-flyer miles, spending points and cash back), annual fees, and ATM network services. Issuers derive revenue from two sources, namely (i) cardholders in terms of annual fees, interest on cash advances and late payments penalties; and (ii) acquirers in terms of the IIF. The card issuing business involves various costs in terms of investment in infrastructure and marketing. Applications for cards, in particular credit cards, are also subject to a number of background checks, such as credit, income and asset checks, which require significant investment in labour force.

3.12 The local card issuing market is served by thirteen issuers. Table 1 below shows the different brands and type of debit and credit cards issued in Mauritius.

Table 1: Type and brand of cards issued in Mauritius

<table>
<thead>
<tr>
<th>Issuer</th>
<th>MasterCard</th>
<th>Visa</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Debit</td>
<td>Credit</td>
</tr>
<tr>
<td>SBM</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>MCB</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Cim Finance</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>HSBC</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>MauBank (ex-MPCB)</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>AfrAsia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ABC</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>SBI</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Barclays</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Bank One</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Bank of Baroda</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Habib Bank</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banque des Mascareignes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Compiled from issuers’ submissions. Information correct as at September 2016.
3.13 Out of the thirteen issuers, only three (Cim Finance, HSBC and AfrAsia) do not issue debit cards and five (ABC, SBI, Bank of Baroda, Habib Bank and BM) do not issue credit cards. As illustrated in Figure 6 below, MCB and SBM have, based on the number of cards in circulation, maintained their position as the two largest issuers in Mauritius since at least 2012.

*Figure 6: Number of cards in circulation, by issuer and card type*

Acquirers

3.14 The economics of the issuing versus the acquiring sides of the card business are very different. Merchant acquiring has its roots in the promotion of payment cards as a method of payment by consumers at POS. Acquirers generally perform four key functions: (1) signing up and underwriting merchants to accept network-branded cards; (2) providing the means to authorize 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.

3.15 Acquirers earn most of their revenue from payment processing functions27. In exchange for providing card acceptance facilities, the acquirer charges the merchant a fee per transaction, known as the MSC or discount rate. Local acquirers in Mauritius include three banks, namely MCB, SBM, and Barclays and one non-bank financial institution, Cim Finance. These four institutions also have an issuing business28.

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27 Some acquirers also earn revenue from POS terminal rental while others provide the POS terminals free of charge conditional upon the merchant achieving a pre-agreed target transaction volume. In addition to the MSC, acquirers also compete by offering vaue-added services to their customers and investing in technology to make card transactions more secure, faster, and easier to process. There are different acquiring business models, with some acquirers preferring to outsource part of their operations to third party processors.

28 Financial institutions having both an issuing and acquiring business are commonly referred to as integrated issuers-acquirers.
3.16  Figures 7, 8 and 9 below show the evolution in the acquiring market for the period 2012 - 2015, in terms of merchant base, volume and value of POS transactions. The merchant base of ☐, ☐ and ☐ increased respectively from ☐, ☐, and ☐ in 2012 to ☐, ☐ and ☐ in 2015. The number of merchants having ☐ POS terminal increased from ☐ in 2012 to ☐ in 2014, but then fell to ☐ or by ☐% in 2015 due to a cleansing [closing of inactive merchants] in that year. The total volume and value of POS transactions increased respectively from 20.1 million and Rs 32.7 billion in 2012 to 27.2 million and Rs 46.0 billion in 2015, representing an average increase of around 12% and 14% annually. Over the period 2012-2015, ☐ and ☐ have collectively maintained nearly 90% of the share of POS transactions, both in terms of volume and value of POS transactions acquired. The remaining 10% or so was shared by ☐ and ☐, with latter being the smallest player in the acquiring market with less than ☐% market share.

*Figure 7: Evolution of Merchant Base in Mauritius*

*Source: Compiled from acquirers’ submissions*
Other players

3.17 The local payment card industry also includes third party processors such as Payment Express Ltd (‘PEX’) and International Cards Processing Services Ltd (‘ICPS’) that process transactions and provide services on behalf of issuers or acquirers.

3.18 Established in 2008, PEX’s business activities can be broken down into (i) card issuing services – which involve processing and management of credit, prepaid and debit cards and private label cards (including settlement reports detailing all relevant fees and charges); (ii) card personalisation – the management of in-house personalisation of magnetic-stripe cards as well as data preparation and personalisation of chip cards (as per EMV standards29); (iii) acquiring services for ATM, POS (including provision of daily reports of POS network activities, merchant payment files and settlement reports) e-commerce and m-commerce; and other consultancy services including fraud management30.

3.19 ICPS was established in 2008 as a subsidiary of The Mauritius Commercial Bank Group (‘MCB Group’). ICPS is a joint venture of the MCB Group and Hightech Payment Services (HPS). ICPS offers card personalisation services (printing, embossing of magnetic stripe, EMV (chip) cards for VISA, MasterCard, UPI brands and loyalty cards), card processing services for both issuing and acquiring (assistance for daily operations, statistics reporting), provision of reconciliation, settlement fraud/chargeback services, and other security and consultancy services.

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29 Originally developed by Europay, MasterCard and Visa, EMV standard (also referred to as: "chip and PIN" or "chip and signature") is becoming the global standard for credit card and debit card payments. This technology features payment instruments with embedded microprocessor chips that store and protect cardholder data. See https://www.chasepaymentech.com/faq_emv_chip_card_technology.html

II. Transaction Flow in a four-party payment system

3.20 Figure 10 below illustrates a simplified transaction flow in a four-party system:

1. a cardholder presents a card for payment to a merchant in exchange for the provision of goods/services;
2. the merchant POS terminal captures the customer’s account information and sends it to the acquirer;
3. the acquirer contacts the card scheme to get authorisation from the issuer;
4. the card scheme submits the transaction to the issuer for authorisation;
5. the issuer makes the necessary checks (for instance, whether the card number is valid or is reported as stolen, and whether the cardholder has sufficient funds or credit available). Where the checks are satisfied, the card issuer sends its authorisation to the card scheme, who sends it to the acquirer;
6. the acquirer sends the authorisation to the merchant’s terminal;
7. the merchant confirms acceptance of the card as a means of payment and hands goods/services to the cardholder; and
8. the issuer bills the customer (in the case of a credit card, the customer is billed at the end of the interest free period) and routes the transaction value to the acquirer, who (after clearing and settling the transaction) deposits the transaction value into the merchant’s account.

Figure 10: Simplified example of transaction flow in a four-party payment system

Note:
- Black arrows represent the communication and authorisation process between the various players.
- Red arrows represent the flow of the transaction value from the cardholder’s account to the merchant’s account.
- Blue arrows represent the flow of the various fees applied in a four party scheme.

Source: Adapted from Swiss National Bank, 2009\(^{31}\).

\(^{31}\) Swiss National Bank, July 2009. An examination of the economics of payment card systems.
3.21 The acquirer, issuer and card scheme are each remunerated when a card is used for payment. In exchange for offering its platform, the card scheme charges both the issuer and the acquirer a network fee per transaction. At the end of each transaction day, the card scheme nets-off amounts it considers are due to/from it from each issuer/acquirer.

3.22 The acquirer charges a MSC to the merchant, which is deducted from the transaction value. The MSC is made up of three main components: the IIF, the acquirer own costs and mark-up, and network fee.

3.23 The acquirer in turn remits the IIF to the issuer. Table 2 below illustrates how the transaction value of a POS purchase is shared among the different players in the four-party system. Consider a POS transaction of Rs1,000, for which a customer pays by card. The merchant will receive Rs1000 minus the MSC. Suppose that the MSC is 3% of the transaction value (amounting to Rs30), thus the merchant effectively receives Rs970. The acquirer receives the MSC i.e. Rs30 but has to remit a network fee to the card scheme and an IIF to the issuer. Suppose that the network fee and the IIF are 0.2% and 1%, respectively, of the transaction value. Thus the acquirer pays Rs2 as network fee to the card scheme and Rs10 as IIF to the issuer respectively. Assuming further that the issuing network fee is similar to the acquiring network fee, the issuer in turn remits Rs2 to the card scheme.

Table 2: Share of transaction value received by each party in a four-party system

<table>
<thead>
<tr>
<th>Cardholder</th>
<th>Merchant</th>
<th>Acquirer</th>
<th>Issuer</th>
<th>Card scheme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net revenue</td>
<td>(Rs1,000)</td>
<td>Rs970</td>
<td>Rs18</td>
<td>Rs8</td>
</tr>
</tbody>
</table>

III. Fees and Operating Rules in a four-party payment system

Issuer Interchange Fees

3.24 An IIF is remitted by the acquirer to the issuer for each transaction effected at a merchant outlet with a payment card. There is no universally accepted interpretation of the interchange fee. In their response to the Statement of Issues, Visa submitted that it \(\geq\) \(^{33}\).

3.25 According to MasterCard, ‘\(\geq\)’

(...)
3.26 The IIF can be determined through (i) bilateral agreements between the issuer and acquirer or (ii) multilateral agreements between all the participating financial institutions (issuers and acquirers) in a country. In the absence of a bilateral or multilateral agreement, the IIF is set by the card scheme owner on a mandatory basis for the participating financial institutions. This is commonly referred to as the default IIF rate.

A. **IIFs in Mauritius**

3.27 The IIF varies by geographical region and can be classified as follows:

(i) **domestic IIF** – used when the payment takes place in the country in which the card was issued;

(ii) **regional IIF** (also referred to as ‘intra-regional IIF’) – used when the cardholder uses a card issued in one country for payment at a merchant terminal in a different country, but within the same region; and

(iii) **inter-regional IIF** – used when the cardholder uses his card in a country that is in a different region than the country in which the card was issued.

3.28 IIFs also vary by type of cards. For instance, consumer cards typically have the lowest cost and are the basic cards in the market. Premium and Elite cards are cards usually with high spending limits and are carried by individuals with higher purchasing power. Corporate/commercial cards typically have a higher cost due to the higher risk associated with a company going bankrupt. This investigation is concerned with the IIF rates applicable on basic cards, which include Visa’s Classic, Gold and Electron cards; and MasterCard’s Consumer Maestro-Cirrus, Standard and Gold cards. This investigation is not concerned with the IIFs applicable on premium cards and commercial cards which carry higher IIFs as these cards provide greater benefits to cardholders that entail additional costs to issuers.

3.29 For instance, Visa submits that while the ‘Visa Rewards’ card (which carry an IIF of ) provides the same core benefits as Visa Gold cards (which carry significantly lower IIFs as shown in Table 3 below), Visa further submits , with a low spender having an estimated annual spend of up to USD compared to an annual spend of between USD and USD for a high spender.

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34 See paragraph 3.3.5 of MasterCard Response to Statement of Issues, dated 05th April 2013.
35 MasterCard has submitted that .
36 See Visa submission VISA-CCM-00002279, page 5. Refer to Annex M.
37 See Visa submission VISA-CCM-00002279, page 6. Refer to Annex M.
3.30 Visa’s premium cards (Visa Platinum cards\(^{38}\) which carry an IIF of \(\geq\%\) and Visa Infinite cards which carry an IIF of \(\geq\%\)) also entail significant benefits\(^{39}\), particularly in the ‘travel and lifestyle’ segment, with services such as ‘YQ Meet & Assist’, ‘Priority Pass Airport Lounge Access’, ‘Visa Luxury Hotels’ and ‘Visa Hotel Club’; and the ‘protection and assistance’ segment with services such as ‘Medical and Legal Referral’, ‘Purchase Protection Insurance’, ‘Extended Warranty Insurance’, ‘Comprehensive Travel Insurance’ and ‘Visa Concierge Service’.

3.31 MasterCard also offers premium benefits on its Platinum, Titanium and World cards, which carry higher IIFs, such as enhanced insurance cover\(^{40}\), ‘MasterCard Global Service’, ‘purchase protection and extended warranty’, ‘International Concierge’ and ‘Zero Liability’ protection from unauthorized purchases\(^{41}\), amongst others.

3.32 Different IIFs also apply according to the methodology used to process a card payment. The term ‘electronic’ is generally used to refer to a card-present transaction in which the card is electronically swiped. The term ‘standard’ refers to a card-not-present transaction in which the card is not electronically processed. These transactions are common in ecommerce or MOTO (Mail Order/Telephone Order) manually keyed transactions. Because the card and cardholder are not present, there is a greater risk of fraud, and thus, a higher IIF typically applies. **This investigation is concerned only with IIFs applicable on card-present transactions.** This investigation is not concerned with the IIFs applicable on card-not-present transactions given these entail greater processing costs.

3.33 Table 3 below shows the evolution of domestic default IIF rates applicable in Mauritius for Visa Classic, Gold and Electron cards\(^{42}\). For chip card\(^{43}\) transactions, the IIFs range from \(\leq\%\) to \(\geq\%\). Visa’s IIF on \(\geq\) programme has increased from \(\leq\%\) to \(\geq\%\) over the period 2007 to 2012. For card-not-present transactions, the IIFs range from \(\leq\%\) for e-commerce fee programme to \(\geq\%\) for standard fee programme. Visa introduced new interchange programmes on petrol, utilities and government transactions, with IIF rates ranging from 0.50% to 0.60%.

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\(^{38}\) Visa Platinum cards are targeted to consumers with an annual spend of USD \(\leq\) to USD \(\geq\) while Visa Infinite cards are targeted to consumers with an annual spend of more than USD \(\leq\).

\(^{39}\) See Visa submission VISA-CCM-00002279 (pages 8-23) and VISA-CCM-00002311. Refer to Annex M.


\(^{41}\) [http://worldcard.mastercard.com/content/world/mea/en.html](http://worldcard.mastercard.com/content/world/mea/en.html)

\(^{42}\) See Annex E for list of interchange rates applicable for all Visa products in Mauritius as well as CEMEA region.

\(^{43}\) A chip card is an embedded microchip that encrypts cardmember information into a unique code that increases transaction and account data security when used at a chip-enabled terminal, and makes card cloning and fraud more difficult. In addition to the static data contained on traditional magnetic-striped cards (i.e. the card account number, expiration date and security code), chip cards also generate dynamic or unique data every time a purchase or transaction is made that is encoded in a safe mode. Chips cards are not swiped, but inserted into or tapped against a card reader. The technology used in these cards is commonly known as being EMV-enabled, which stands for Europay, MasterCard and Visa, which uphold the chip technology.
## Table 3: Visa domestic IIFs for Mauritius on Classic, Gold and Electron cards, 2007 - 2016

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Feb-07</th>
<th>Jul-12</th>
<th>Jul-15</th>
<th>Jul-16</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
<td>✔️</td>
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</table>

Source: Extract from Visa’s submissions dated 05.08.2015 and 25.10.2016

### 3.34

Tables 4 and 5 below show respective Visa CEMEA intra-regional and inter-regional IIF rates on Visa Classic, Gold and Electron cards. As shown below, Visa’s CEMEA intraregional rates within its ✔️ and ✔️ Programs have respectively increased on both Visa ✔️ and ✔️ cards between July 2015 to July 2016.

## Table 4: Visa CEMEA Intraregional IIFs, July 2016

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Feb-07</th>
<th>Jul-12</th>
<th>Jul-15</th>
<th>Jul-16</th>
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<tbody>
<tr>
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</tbody>
</table>

Source: Extract from Visa’s submissions dated 25.10.2016
Table 5: Visa CEMEA Inter-regional IIFs, July 2016

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Feb-07</th>
<th>Jul-12</th>
<th>Jul-15</th>
<th>Jul-16</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

Source: Extract from Visa’s submissions dated 25.10.2016

3.35 Table 6 below illustrates the IIFs applicable on MasterCard Consumer Standard and Gold cards. It has been submitted that MasterCard introduced new IIF programmes for government and petrol transactions in 2015 at 0.5%.

Table 6: MasterCard domestic IIFs for Mauritius on consumer Standard and Gold cards, July 2016

<table>
<thead>
<tr>
<th>Product</th>
<th>Interchange Program</th>
<th>General</th>
<th>Government</th>
<th>Petrol</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
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</tbody>
</table>


44 MasterCard’s Titanium, World and World Elite brands offer greater benefits to their cardholders and thus carry significantly higher IIFs. See Annex E for a detailed list of IIFs applicable on all MasterCard products in Mauritius.
3.36 Table 7 below shows MasterCard’s Interregional and intraregional IIF rates for its Consumer Standard, Consumer Gold And Electronic Consumer Programs respectively. For instance a locally issued MasterCard Consumer Standard which is used to effect payment at a POS terminal in Botswana, for instance, would carry an IIF of \(\times \%\) (for Consumer Electronic transaction) while that same transaction, if it involves a merchant located in a different MasterCard region would carry an interregional IIF of \(\times \%\).

*Table 7: MasterCard Inter-regional and Intraregional IIFs, July 2016*

<table>
<thead>
<tr>
<th>Product</th>
<th>Interchange Program</th>
<th>Interregional</th>
<th>Intraregional</th>
</tr>
</thead>
<tbody>
<tr>
<td>(\times)</td>
<td>(\times)</td>
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<td>(\times)</td>
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<td>(\times)</td>
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</tbody>
</table>

*Source: Extract from MasterCard’s submissions dated 25.10.2016.*

**Domestic IIFs in Selected countries**

**Sub-Saharan Africa**

3.37 With the exception of South Africa\(^{45}\), interchange fee arrangements in the sub-saharan Africa region have not undergone significant regulatory development. Tables 8 and 9 below show the relevant Visa and MasterCard domestic interchange rates across 5 sub-saharan countries. In general, the Visa IIF rates for each fee programme do not significantly differ across the 5 countries except for \(\times\) which has the lowest IIF rates for the Visa Petrol (\(\times \%\)). With the exception of \(\times\) (where for example MasterCard has introduced an interchange program at \(\times \%\) for low-value payments), MasterCard has similar IIF rates on its \(\times\), \(\times\) and \(\times\) cards across \(\times\), \(\times\) and \(\times\).

\(^{45}\) Further to the report of the Panel of the Banking Enquiry (established by the Competition Commission of South Africa in August 2006 to examine certain aspects of competition in retail banking in South Africa) which called for a new objective and transparent regulatory process to set card interchange, the South African Reserve Bank (in consultation with the National Treasury, the Department of Trade and Industry and the Competition Commission of South Africa) launched the ‘Interchange Determination Project’ to address interchange fees as applicable to each of the payment streams officially recognised and registered within the South African National Payment System. The project has until now centered on two payment streams, ATM and card-related streams. The project has resulted in the determination of ATM interchange fees in December 2013 and the publication of the results of the card phase, encompassing traditional cards (debit, credit and hybrid), self-service devices, over the counter transactions and cash-back at point-of-sale, in March 2014. The new card interchange rates, effective as from 17\(^{th}\) March 2015, have been revised downwards to range between 0.43\% - 0.53 \% for *debit card transactions* (previously set at 0.55\%). The interchange rates for credit card transactions, previously set at 1.71\%, now range between 1.41\% - 1.89\%.
### Table 8: Visa Domestic POS IIF Rates in Selected Sub-Saharan Countries, July 2016

<table>
<thead>
<tr>
<th>Category of Fee Program</th>
<th>$</th>
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</tbody>
</table>


### Table 9: MasterCard Domestic POS IIF Rates in Selected Sub-Saharan Countries, July 2016

<table>
<thead>
<tr>
<th>Product</th>
<th>Interchange Program</th>
<th>$</th>
<th>$</th>
<th>$</th>
<th>$</th>
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<tbody>
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</tr>
</tbody>
</table>

United States

3.38 The Durbin Amendment to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Durbin Amendment') instructed the Federal Reserve Board to prescribe regulations to establish ‘standards for assessing’ whether debit card interchange fees received by issuers for card transactions are ‘reasonable and proportional to the cost incurred by the issuer with respect to the transaction.’ The statute exempts small issuers from the interchange fee restrictions. Under the regulation, on October 1, 2011, interchange fees for issuers with assets greater than $10 billion were capped at 22 cents plus 0.05 percent of the transaction value. This cap implies a maximum interchange fee of 24 cents for a $38 debit card transaction, a decline of 45 percent from the average value of 44 cents for the same transaction in 2009 prior to the Durbin Amendment.

Europe

3.39 On 29th April 2015, the European Parliament and the Council of the European Union adopted Regulation (EU) 2015/751 (‘Interchange Fee Regulation’) harmonising, for the first time, cross-border and domestic interchange fees for certain card-based payment transactions within the EU, where the merchant-acquiring institution and the issuing institution are both located within the EU. The EU Regulation was introduced as a measure to, inter alia, address the problem of high and divergent interchange fees, avoid fragmentation of the internal market and to allow payment card schemes to provide their services on a cross-border basis while enabling consumers and merchants to use cross-border services.

3.40 The EU Regulation inter alia, in essence, provides that payment service providers (issuers and/or acquirers) operating within four party payment card schemes ‘shall not offer or request a per transaction interchange fee of more than than 0.3% of the value of the transaction for any credit card transaction (...) [and of] not more than 0.2% of the value of the transaction for any debit card transaction’.

49 Articles 3(1) and 4 of the Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions.
50 Article 3 of the Interchange Fee Regulation. For instance, Member States may allow the application of a fixed interchange fee of no more than 5 eurocents per transaction, possibly in combination with a maximum percentage fee, provided that on average the interchange fees are below 0.2%. Member States may also generally define a lower cap than the 0.2% for per transaction for debit cards and the 0.3% per transaction for credit cards.

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providers tend to keep merchants and consumers ignorant about fee differences and reduce market transparency, for instance by ‘blending’ fees or prohibiting merchants from choosing a cheaper card brand on co-badged cards or steering consumers to the use of such cheaper cards\textsuperscript{51}. In light of Article 9\textsuperscript{52} of the Interchange Fee Regulation, merchants are now in a position to know, for each category and brand of payment card, the level of MSC paid and to have an individual breakdown of the components that make up the MSC; therefore allowing them to check if the benefit of the capped IIFs has been passed to them.

3.41 The above examples of legislative intervention depict key developments relating to the introduction of regulatory caps on interchange fees in advanced jurisdictions having experienced an increasing importance of credit and debit cards in their overall payments systems. However, different countries exhibit many differences in terms of the level of maturity of their payment cards market, the regulatory framework, and the manner in which interchange and related fees and rules operate in the markets, amongst others.

B. Merchant Service Commission (MSC)

3.42 In exchange for providing card acceptance facilities, the acquirer charges the merchant a fee per transaction, known as the Merchant Service Commission (‘MSC’)\textsuperscript{53}. The main components of the MSC are: the IIF, network fees for the use of the Visa/MasterCard infrastructure, and the acquirer’s costs and mark-up.

3.43 An analysis of the revenue of the acquirers indicates that the main source of income for acquirers is the MSC. Other elements, including rental from POS terminals have an insignificant contribution to the revenue of the acquirers. Between 2012 - 2015, MSC has, on average, accounted for around 97% of total acquiring revenue across all acquirers. In 2015, the share of MSC out of total acquiring revenue was 100% for \( \checkmark \), 99.8% for \( \checkmark \), 95.0% for \( \checkmark \) and 92.5% for \( \checkmark \) (as shown in Table 10 below).

<table>
<thead>
<tr>
<th>Acquirer</th>
<th>MSC as % of Total Acquiring Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
</tr>
<tr>
<td>MCB</td>
<td>( \checkmark )</td>
</tr>
<tr>
<td>SBM</td>
<td>( \checkmark )</td>
</tr>
<tr>
<td>CIM Finance</td>
<td>( \checkmark )</td>
</tr>
<tr>
<td>Barclays</td>
<td>( \checkmark )</td>
</tr>
</tbody>
</table>

\textit{Table 10: MSC as a % of Total Acquiring Revenue}

Source: Compiled from acquirers’ submissions\textsuperscript{54}

\textsuperscript{51} Para. 34 of the Interchange Fee Regulation.

\textsuperscript{52} Article 9(1) of the Interchange Fee Regulation now requires each acquirer to offer and charge its payee (i.e. merchant) MSCs individually specified for different categories and different brands of payment cards with different interchange fee levels unless the payees request the acquirer, in writing, to charge blended MSCs. Article 9(2) also imposes upon acquirers the obligation to include in their agreements with (merchants) individually specified information on the amount of the MSCs, interchange fees and scheme fees applicable with respect to each category and brand of payment cards, unless the (merchant) subsequently makes a different request in writing.

\textsuperscript{53} Also commonly referred to as the merchant discount rate or merchant service fee.

\textsuperscript{54} Revenue figures for \( \checkmark \) for the year 2014 and for \( \checkmark \) for the year 2012 include MSC revenue only. The two banks reported negative figures on their other revenue components for these years, which would further inflate the percentage accounted for by their MSC out of their total acquiring revenue.
3.44 The main element of costs for acquirers is the IIF paid to issuers on POS transactions. For instance, IIF represented around 84% of the total acquiring costs for \( \times \) in 2015 and 76% of the MSC. For \( \times \) and \( \times \) respectively, IIF represented around 53% and 57% of their total acquiring costs, and 54% and 55% of their MSC, respectively in 2015. For \( \times \), IIF represented around 43% of both total acquiring costs and the MSC (as illustrated in Table 11 below).

### Table 11: Breakdown of costs in acquiring market, 2015

<table>
<thead>
<tr>
<th></th>
<th>MCB</th>
<th>SBM</th>
<th>CIM</th>
<th>Barclays</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Costs (Rs.)</strong></td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
</tr>
<tr>
<td><strong>Share of Total Costs (%)</strong></td>
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<td></td>
</tr>
<tr>
<td>Network costs</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
</tr>
<tr>
<td>POS terminals</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
</tr>
<tr>
<td>IIF</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
</tr>
<tr>
<td>Other Costs</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
</tr>
<tr>
<td><strong>IIF as a % of acquiring revenue</strong></td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
</tr>
<tr>
<td><strong>IIF as a % of MSC</strong></td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
<td>( \times )</td>
</tr>
</tbody>
</table>

*Source: Compiled from acquirers’ submissions*

3.45 The MSC\(^55\) is determined by the acquirer and depends on many factors such as type of merchant business, merchant’s credit standing, size of transaction, type and technology of card used. As seen from Tables 12 and 13 below, following the revised IIF rates on petrol transactions, Cim Finance, Barclays and SBM have introduced lower MSC rates on this segment at \( \times \% \) per transaction. MCB’s MSC on petrol transactions is relatively higher, ranging between \( \times \% \) and \( \times \% \) for Visa transactions and between \( \times \% \) and \( \times \% \) on MasterCard transactions. \( \times \) offers different MSCs based on the type of transaction: \( \times \) offers lower rates for ‘on-us’ transactions, i.e. for transactions acquired at local \( \times \) POS terminals effected with a \( \times \)-issued card, compared to off-us transactions (where the card used to effect payment at an \( \times \) POS terminal was issued by another issuer).

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\(^{55}\)Merchant acquiring services in Mauritius are also subject to value added tax of 15% of the MSC on each card transaction. It has been submitted by a large retailer that acquirers pass on the cost of the tax to the merchants.
### Table 12: Average MSC (%) on Visa transactions, by acquirer and merchant category (2015)

<table>
<thead>
<tr>
<th>Merchant Segment</th>
<th>On-Us Transactions</th>
<th>Off-Us Transactions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filling Station</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Government</td>
<td>✗</td>
<td>✗</td>
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<tr>
<td>Hotels</td>
<td>✗</td>
<td>✗</td>
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<tr>
<td>Services</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Travel</td>
<td>✗</td>
<td>✗</td>
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<tr>
<td>Clothing</td>
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<td>✗</td>
</tr>
<tr>
<td>Motor</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Entertainment</td>
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<td>✗</td>
</tr>
<tr>
<td>Food and Drink</td>
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<td>✗</td>
</tr>
<tr>
<td>Supermarket</td>
<td>✗</td>
<td>✗</td>
</tr>
</tbody>
</table>

Source: Compiled from acquirers’ submissions

### Table 13: Average MSC (%) on MasterCard transactions, by acquirer and merchant category (2015)

<table>
<thead>
<tr>
<th>Merchant Segment</th>
<th>On-Us Transactions</th>
<th>Off-Us Transactions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filling Station</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Government</td>
<td>✗</td>
<td>✗</td>
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<tr>
<td>Hotels</td>
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<td>Entertainment</td>
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<td>✗</td>
</tr>
<tr>
<td>Food and Drink</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Supermarket</td>
<td>✗</td>
<td>✗</td>
</tr>
</tbody>
</table>

Source: Compiled from acquirers’ submissions
C. The Honour All Cards Rule

3.46 When merchants accept a card, they are bound by rules imposed by the card scheme owner governing how merchants must behave with respect to the card. In particular, certain rules have the effect of limiting the retailers’ ability to influence the choice of payment mechanism by the customer. These rules can make merchants less sensitive to merchant fees, by making their demand for card services more inelastic. One of the main rules of concern is the ‘Honour All Cards’ rule (‘HACR’).

3.47 Visa’s Network Rules that:

‘Visa merchants may not refuse to accept a Visa product that is properly presented for payment, for example, on the basis that the card is foreign-issued,[1] or co-branded with the Merchant’s competitor’s mark. Merchants may attempt to steer customers who initially present a Visa card to an alternative method of payment, such as by providing discounts for cash, but may not do so in a confusing manner that denies consumer choice. (…)

Merchants may also consider whether present circumstances create undue risk, for example if the sale involves high-value electronics, but the card signature panel is not signed, and the cardholder does not have any other identification.

[1] In the Canada Region, US Region, and Australia, a Merchant may decline to accept certain categories of Visa products for domestically issued Cards. In the Europe Region, a Merchant in the European Economic Area (EEA) may decline to accept certain Product Categories.


3.48 Similarly, MasterCard’s Network Rules state that:

‘A Merchant must honor all valid Cards without discrimination when properly presented for payment. A Merchant must maintain a policy that does not discriminate among customers seeking to make purchases with a Card. A Merchant that does not deal with the public at large (for example, a private club) is considered to comply with this Rule if it honors all valid and properly presented Cards of Cardholders that have purchasing privileges with the Merchant’57.

3.49 Pursuant to the HACR applicable to merchants in Mauritius, if a Visa or MasterCard card is accepted, all cards issued under that brand must be accepted, irrespective of the issuing institution, level of merchant fee and, therefore, the interchange fee. For example, merchants accepting Visa and/or MasterCard cards have to accept all Visa and/or MasterCard cards, whether they are issued as credit or

56 Visa Network Rules, Rule 1.5.4.2 ‘Honoring All Visa Cards’, CR-52. The US variance permits merchants to opt for limited acceptance (for which they must register) but they are still obliged to accept Visa cards issued outside the US. The US limited acceptance permit the cardholder to choose whether to pay for a transaction with a Visa Card (that is accepted by the merchant) or with some other means of payment accepted by the Merchant. The Merchant may request or encourage a Cardholder to use a means of payment other than a Visa Card. The Canada variance allows merchants to opt out of accepting Canadian-issued Visa Debit or Visa Credit but still requires merchants to accept all Visa cards issued outside Canada.

57 MasterCard Network Rules, Rule 5.10.1 Honor All Cards, p.93. The MasterCard Network Rules contain modifications to the HACR relevant for the “Asia/Pacific Region,” “Europe Region,” “Middle East/Africa Region” (in South Africa), and “United States Region”. For instance in South Africa (pursuant to Rule 5.10 of the MasterCard Network Rules), merchants may choose to accept Debit MasterCard Cards only, Other MasterCard Cards only, or both Debit MasterCard Cards and Other MasterCard Cards. Where a merchant chooses to accept Debit MasterCard Cards for instance, he must honor all valid Debit MasterCard Cards without discrimination when properly presented for payment.
debit cards or whether they are issued as, for example, classic Visa (or MasterCard) cards or platinum Visa (or MasterCard) cards. There are two relevant aspects to the HACR:

- ‘honour all issuers’ element which requires merchants to accept Visa or MasterCard cards regardless of which bank or financial institution issued the card (e.g. if a merchant accepts Visa or MasterCard cards issued by local banks, it should also accept Visa or MasterCard cards issued by foreign banks); and
- ‘honour all products’ element which requires merchants to accept all products issued under the Visa or MasterCard brands (for example, if a merchant accepts classic credit cards, it must also accept more expensive cards such as Platinum credit cards).

IV. Rewards Programmes/Promotional Campaigns

3.50 In order to encourage card usage, issuers run promotional campaigns, through reward programmes, for both debit and credit cards. The costs associated with running promotional campaigns and offering rewards to cardholders form part of the costs of operating an issuing business, which also include, among others, card production, card personalisation, and network costs.

3.51 Seven issuers, namely X, X, X, X, X, and X, have submitted that they offer rewards programmes and run promotional campaigns. According to the submissions, X has been the most active issuer offering 37 rewards programmes and promotional campaigns for the period 2012 to December 2015, followed by X and X with 11 each, X (10), X (3) and X (1). The rewards programmes offered included, inter alia, cash-back (refund) for a minimum purchase threshold, hotels discount offers, participation in lucky draws for international trips and football matches.

3.52 Based on data submitted by issuers, the cost of offering reward programmes does not appear to be significant for most issuers. Table 14 below provides a breakdown of the main costs incurred by issuers in Mauritius as a percentage of their total issuing costs in 2015. For most issuers, network costs constitute the bulk of their issuing costs, accounting for up to 92.4%; while for other select issuers, the main cost elements have been regrouped under ‘other costs’ (which include costs such as salaries, marketing, among others).
Table 14: Breakdown of main cost components as % of total issuing costs in 2015

<table>
<thead>
<tr>
<th>Category</th>
<th>Issuer</th>
<th>Total Costs (Rs)</th>
<th>Card Production as % of Total Costs</th>
<th>Card Personalisation as % of Total Costs</th>
<th>Network Fees as % of Total Costs</th>
<th>Rewards as % of Total Costs</th>
<th>Other Costs as % of Total Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuers of debit cards only</td>
<td>ABC</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td></td>
<td>Baroda</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
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<tr>
<td></td>
<td>BDM</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
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<tr>
<td></td>
<td>Habib</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td></td>
<td>SBI</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Issuers of credit cards only</td>
<td>AfrAsia</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td></td>
<td>Cim Finance</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
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<tr>
<td></td>
<td>HSBC</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Issuers of debit and credit cards</td>
<td>Bank One</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td></td>
<td>Barclays</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
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<tr>
<td></td>
<td>MCB 58</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
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<tr>
<td></td>
<td>MPCB</td>
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<td>✗</td>
<td>✗</td>
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<tr>
<td></td>
<td>SBM</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
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</tr>
</tbody>
</table>

Source: Compiled from issuers’ submissions.

3.53 Reward programmes are typically financed by the issuer’s own revenue from its card issuing activities (the IIF being one source) and by marketing support provided by Visa and MasterCard. As per the issuers’ submissions, five issuers benefited from marketing support from card-scheme operators, namely ✗, ✗, ✗, ✗ and ✗, over the period 2009 to December 2015.

3.54 As seen in Table 15 below, the amount spent by issuers 59 on rewards programmes as a fraction of the interchange revenue is insignificant for most issuers, except for ✗ (32%), ✗ (7%), ✗ (5%) and ✗ (3%).

58 ✗.

59 Ibid.
Table 15: Cost of Rewards Programmes as % of Issuing Revenue in 2015

<table>
<thead>
<tr>
<th>Category</th>
<th>Issuer</th>
<th>Cost of Rewards (Rs)</th>
<th>Rewards as % of Total Issuing Revenue</th>
<th>Rewards as % of IIF and Marketing Support</th>
<th>Rewards as % of IIF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuer of debit cards only</td>
<td>ABC</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td></td>
<td>Baroda</td>
<td>☒</td>
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<td>BDM</td>
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<td></td>
<td>Habib</td>
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<td></td>
<td>SBI</td>
<td>☒</td>
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<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td>Issuer of credit cards only</td>
<td>AfrAsia</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td></td>
<td>Cim Finance</td>
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<td></td>
<td>HSBC</td>
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<td>☒</td>
<td>☒</td>
</tr>
<tr>
<td>Issuer of debit and credit cards</td>
<td>Bank One</td>
<td>☒</td>
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<td>Barclays</td>
<td>☒</td>
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<td></td>
<td>MCB</td>
<td>☒</td>
<td>☒</td>
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<tr>
<td></td>
<td>MPCB</td>
<td>☒</td>
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<tr>
<td></td>
<td>SBM</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
<td>☒</td>
</tr>
</tbody>
</table>

Source: Compiled from issuers’ submissions.

V. The CCM Consumer Survey and CCM Merchant Survey

3.55 As previously noted, the Executive Director had, for the purposes of this investigation, commissioned a Consumer Survey and a Merchant Survey, which were independently administered by TNS Analysis in view of collecting comprehensive and detailed information on the use, acceptance and costs of payment instruments for POS transactions in Mauritius. The payment instruments considered within the scope of the two surveys are: cash, cheques, debit cards, credit cards, prepaid cards and mobile payments.

Survey Objectives and Methodology

3.56 The objectives of the CCM Consumer Survey were to collect information in relation to:
   a) the different modes of payment used by consumers in Mauritius by category, level and frequency of expenditure;
   b) the preferred mode of payment for the various categories, levels and frequencies of expenditure;
   c) the constraints, if any, faced by consumers in using their preferred mode of payment;
   d) the current level of card usage by card types, for example debit, credit, and prepaid cards;
   e) the reasons motivating consumers to use or not to use their cards;
   f) the costs and benefits to consumers for using their cards; and
   g) the level of substitution between payment cards and other forms of payment instruments.
3.57 For the purposes of the CCM Consumer Survey, face-to-face, pen and paper, home interviews were conducted with 400 respondents (aged 18 years and above). In view of ensuring the representativeness of the sample, respondents were randomly selected but stratified according to the national demographic features such as geographic location, gender, socio-economic group, age group and ethnic group. The fieldwork was conducted between 19th of December 2014 to the end of February 2015.

3.58 The objectives of the **CCM Merchant Survey** were to collect information in relation to:
   a) the current level of acceptance or non-acceptance of the various types of payment cards;
   b) the reasons for acceptance and non-acceptance of the various types of payments cards; and
   c) the costs and benefits of accepting payment cards and other payment instruments.

3.59 The merchants under consideration were those operating in the retail trade and services sectors where businesses are in a face-to-face payment relationship with consumers. As such, the sample was selected from merchants operating in any of the following four sectors: ‘motor vehicles, spare parts and automotive fuel’; ‘foodstuff and non-foodstuff’; ‘other retailers’; and ‘hotel & restaurants’.

3.60 The sample of merchants surveyed was selected using a combination of stratified and convenience sampling methodology. Convenience sampling implies that the respondents are selected because of their convenient accessibility and proximity to the interviewer, while stratified sampling was used to ensure representativeness of the sample in terms of above-identified sectors and business size.

**Main Findings of CCM Consumer Survey**

3.61 **Card ownership:** About 77% of the consumers surveyed own at least one debit card, while 23% own at least one credit card. Out of those who own a debit card, 20% own 2 cards whereas corresponding proportion for credit card holders is 16%.

3.62 **Brand ownership:** The most common brand of card owned in the debit category is Maestro, representing 55% of card users surveyed, followed by MasterCard debit cards (24%) and Visa (21%). As regards credit cards, 71% owned a MasterCard branded card followed by Visa (27%), and American Express (2%).

3.63 **General perception of payment instruments:** Debit cards are considered to be the ‘most secure’ payment instrument, followed by cash and credit cards. Cash is the payment method ‘most accepted by merchants’ and ‘most convenient’, while credit cards and cheques are perceived as payment instruments that are ‘most costly to use’.

3.64 **Usage of payment instruments:** Cash remains the common payment instrument for all the respondents interviewed (100%), followed by debit card (77%), credit card (24%), cheque (4%) and prepaid card (2%). Only 22% of the population sampled use cash as the only form of payment while the rest (78%) of the population are multi-payment instruments users. Cash and debit card remains the most common combination of payment instruments used (53%), followed by the combination of cash, debit card and

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60 See Annex F for the full report of the CCM Consumer Survey.
64 CCM Consumer Survey Report, pp. 16.

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credit card (20%). An analysis by demographics shows that those using cash only are more common amongst the lower class while the lower middle class are more prone to using both cash and debit. The upper and upper middle class tend to favour cash, debit and credit cards.

3.65 **Card usage**: Debit card is more frequently used as compared to credit card. On average a debit cardholder could use the card 7 times in a month for ATM withdrawals and 6.2 times for payments at counter/till. The corresponding figures for credit cardholders are 2.4 times for ATM withdrawals and 2.2 times for payments. Online purchase through credit card is on average 1.8 times in a month.

3.66 **Payment instrument by transaction value**: When asked to identify the most commonly used payment instrument for purchases of certain transaction values/ranges, 99% of those using both cash and debit card prefer cash to debit cards when it comes to low-value purchases up to Rs250. Although the majority of consumers surveyed still prefers cash over debit cards for payments ranging between Rs250 and Rs500, the proportion of those preferring debit cards increases to 11%. For payments between Rs500 and Rs5,000, 53% prefer debit card to cash. For higher value purchases above Rs5,000, the preference for debit cards increases to 60% on average.

3.67 Among multipayment users of cash, debit and credit cards, cash remains the preferred payment instrument over debit and credit for purchases up to Rs500. For transactions above Rs500, 66% of respondents on average prefer debit over cash and credit card. However, the preference for credit card over cash increases for payments above Rs 10,000.

3.68 **Place of use of various payment instruments**: Both cash and debit card are most commonly used when buying food for household consumption (38% amongst cash users and 29% amongst debit card users). Credit card is most appropriate when purchasing household equipment/furniture (29%) while cheque becomes more useful when paying for insurance.

3.69 **Motivations vs. Barriers towards card usage**: With regards to card usage, debit card is preferred over credit card. This form of payment is considered to be a fastest way to make purchase, is accepted everywhere and is convenient. The use of credit card is more selective in nature, being perceived as more appropriate for online shopping or when purchasing expensive products. Constraints with regards to card usage is more pronounced for credit cards, with interest payments cited as a major disincentive for using credit cards. Furthermore, 25% of credit card users had experienced a situation where they were charged more than the displayed price, mostly at fuel stations and some retail stores.

3.70 **Cardholder behaviour to card fee increases**: An increase in annual card fee is unlikely to change consumer behaviour. 78% of the credit card users will continue using this form payment, 14% would consider switching to another payment instrument and 9% will definitely switch. In the case of debit

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65 CCM Consumer Survey Report, pp. 23.
67 Ibid.
68 CCM Consumer Survey Report, pp. 32.
69 CCM Consumer Survey Report, pp. 33.
70 CCM Consumer Survey Report, pp. 36.
71 CCM Consumer Survey Report, pp. 37.
72 CCM Consumer Survey Report, pp. 43.
card, 73% are most likely to remain loyal to this form of payment while 18% would probably switch and 8% would definitely switch.

**Main Findings of CCM Merchant Survey**

3.71 *General perception of payment instruments:* As regards merchant perception of different payment instruments, cash is considered to be the most reliable, the cheapest, most practical and most convenient payment instrument. While both debit and credit cards are considered as the least risky payment instruments, they are also perceived as the most costly payment methods74.

3.72 *Preferred payment instrument of merchants:* Merchants seem to have higher preference for cash compared to card payments and even cheque. Cash achieves a preference share of 31% followed by cheque with 23%, debit card 20%, credit card 17%, prepaid card 6% and mobile payment 3%. When asked about merchants’ perception of customer preference for a particular payment instruments, the results demonstrate that that customers prefer to pay by cash (representing a preference share of 32%), followed by debit cards with a share of 27%. With the exception of the motor segment, cash is generally the most common preferred payment instrument across all the other merchant segments considered76. A higher preference for cheques is noted amongst merchants in hotels & restaurants, followed by the general retailer in the non-foodstuff category. Merchants operating in the motor sector tend to have a higher preference for debit card as compared to the other segments.

3.73 *Preferred payment instrument by transaction value:* For purchases up to Rs500, there is a high merchant preference for cash with 93% share for purchases below Rs250 and 77% for purchases between Rs250 and Rs50077. For purchases between Rs500 to Rs5,000, the preference for cash drops to 42% while that of cheque increases from 9% to 33% and that for debit card moves up from 11% to 16%. The higher the transactional value, the more merchants tend to prefer cheque over other payment instruments. For purchases between Rs5,000 and Rs10,000, the preference for cheque is at 45% against 26% for cash and 15% for debit card. For purchases exceeding Rs10,000, the preference for cheque is at 53% against 21% for cash and 16% for debit card. An analysis of the preferences by business activities show that preference for cheque is at 71% amongst the general retailer in the non-foodstuff category for transactional value above Rs10,00078.

3.74 *Merchant Acceptance:* 97% of the merchants declared that they accept cash payment followed by 63% for cheque, 47% for credit card, 46% for debit card, 6% for prepaid card and 4% for mobile payment79. An analysis by business sector denotes that cash is almost accepted everywhere (90% of the cases and above across segments). A higher acceptance for cheque is noted amongst merchants in the retail sector, representing 69% within this segment. With regards to debit and credit cards, we note a higher

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73 See Annex G for the full report of the CCM Merchant Survey.
74 CCM Merchant Survey Report, pp. 15.
75 CCM Merchant Survey Report, pp. 16.
76 CCM Merchant Survey Report, pp. 17.
77 CCM Merchant Survey Report, pp. 18.
78 CCM Merchant Survey Report, pp. 19.
acceptance amongst merchants in the hotels & restaurants activities: acceptance for debit and credit cards stands at 65% and 71% respectively.

3.75 **Card acquiring institutions:** 48% of the total sample interviewed owned at least one POS terminal\(^80\). Ownership for POS terminal is highest in the hotels & restaurant sectors, representing 71% within this segment followed by motor (57%) and retail sectors (53%). MCB is the main acquiring institution, accounting for 63% of the POS terminal owners, followed by SBM with 39% and Barclays with 8%. Amongst POS terminal owners in the hotels & restaurants sector, MCB tops the list with 76%\(^81\).

3.76 **Reasons for accepting card payments:** The two most common reasons for accepting card payments are related to ‘risk of losing sales’ and ‘increase frequency sales’, representing 23% and 22% respectively of the card acquiring merchants\(^82\). ‘Increased competitiveness’, ‘lower risk of theft & counterfeit’ and ‘lower risk of human error during exchange’ are likely to be the secondary reasons (these are not seen to exceed 12% of the sub-sample). For the 52% of surveyed merchants that do not accept card payments, 22% of them spontaneously cited a decrease in bank charges as the main factor that would motivate them to accept card payments, while 9% cited a zero commission payable to the acquiring institution\(^83\). 14% of these merchants stated that they could consider accepting card payments if there is a substantial demand from the customers.

3.77 **Costs of accepting cards:** Most merchants do not seem to know what the MSC is made up of. 25% of the merchants accepting card payments have submitted that they know what the MSC is about, however, when asked to describe the components of MSC, 46% mentioned about acquirer fees while 54% could not relate clearly to a particular component\(^84\).

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\(^80\) CCM Merchant Survey Report, pp. 22.  
\(^81\) CCM Merchant Survey Report, pp. 24.  
\(^82\) CCM Merchant Survey Report, pp. 30.  
\(^83\) CCM Merchant Survey Report, pp. 35.  
\(^84\) CCM Merchant Survey Report, pp. 37.
4. Legal Framework

A. Legal Background

4.1 This Chapter sets out the legal framework against which the Executive Director has considered the information and evidence received in the course of the investigation in order to assess whether the alleged conduct on the part of Visa and/or MasterCard breaches the Act.

4.2 The investigation is being conducted under Section 45 provisions of the Act in relation to ‘other (non-collusive) vertical agreements’. Section 45 of the Act states 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.’

4.3 Section 46 of the Act further states 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.’
4.4 From the above quoted provisions, the following elements need to be established in order to trigger the application of Section 45 of the Act in the present case:

(a) application of the Act to ‘enterprises’;
(b) existence of a vertical agreement;
(c) the vertical agreement does not involve resale price maintenance;
(d) one or more parties to the agreement is in a monopoly situation and the monopoly situation is reviewable under Section 46 of the Act.

B. Legal Assessment

I. Application to Enterprises

4.5 The Act applies to every economic activity within, or having an effect within, Mauritius or a part of Mauritius. In turn, Part III of the Act in relation to ‘restrictive business practice’ qualifies each category of restrictive business practice with reference to conduct on the part of ‘enterprise(s)’.

4.6 Section 2 of the Act defines ‘enterprise’ as ‘any (...) corporation, company, association or other juridical person, engaged in commercial activities for gain or reward, and includes their branches, subsidiaries, affiliates or other entities directly or indirectly controlled by them.’ [Emphasis added]

Visa

4.7 Visa carries on commercial activities in Mauritius by providing payment card processing services (namely, routing of payment information to facilitate authorization, clearing and settlement of transactions between issuers and acquirers) through ‘VisaNet’, its payment processing network. Visa derives revenue primarily from fees paid by its financial institution clients based on payments volume, transactions that Visa processes and other related services provided. Visa’s operating revenues comprise mainly of service revenues, data processing revenues and international transaction revenues.

MasterCard

4.8 MasterCard International Incorporated (hereinafter ‘MasterCard’)) carries on commercial activities in Mauritius through its subsidiary and trading entity MasterCard Asia/Pacific Pte Ltd, a company incorporated in Singapore. MasterCard provides payment card network services through its proprietary global payments network, MasterCard Network. MasterCard’s business primarily consists in facilitating the processing of payment transactions to its members across the globe (including issuers

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85 Section 3(2) of the Act.
86 See Visa Response to Information request dated July 22, 2015.
and acquirers of MasterCard products in Mauritius), by providing authorization, clearing, settlement services and delivering related products and services. As a payment card scheme owner, MasterCard generates revenue by charging fees (license fees, transaction processing fees, settlement fees, and connectivity fees) for providing transaction processing and other payment-related services to customers issuing and acquiring MasterCard products and by assessing the customers based primarily on the dollar volume of activity, or gross dollar volume (‘GDV’), on the cards and other devices that carry MasterCard brands.\(^90\)

**Pure Issuers**

4.9 The payment card issuers concerned by the Investigation include 9 banks (as defined under the Banking Act 2004\(^91\)). Payment card issuers derive their 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.

**Integrated Issuers-Acquirers**

4.10 The payment card acquirers in Mauritius are all financial institutions (3 banks and one non-banking financial institution) whose main source of income arises out of the MSC charged to merchants sourcing their payment acquiring facilities from those card acquirers.

4.11 The card scheme owners, pure issuers and integrated issuers-acquirers identified at Section B of Chapter 2 of this Report are thus engaged in commercial activities for gain or reward and as such qualify as ‘enterprises’ under the Act.

**II. Existence of a vertical agreement under the Act**

4.12 The Act defines ‘vertical agreement’ as meaning an ‘agreement’ between enterprises each of which operates, for the purposes of the agreement, ‘at a different level of the production or distribution chain’ and ‘relates to the conditions’ under which the parties may purchase, sell or resell certain goods or services’.

4.13 From the above definition given in the Act, there are three elements to consider namely:

(a) the existence of an agreement between enterprises;

(b) the economic relationship between parties to the agreement; and

(c) the provisions of the agreement.

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\(^{91}\) Under the Banking Act 2004, a ‘bank’ is defined as a company incorporated under the Companies Act, or a branch of a company incorporated abroad, which is licensed by the central bank to carry on any or all of the following –

(a) banking business;

(b) Islamic banking business;

(c) private banking business;

(d) investment banking business.
The existence of an agreement between enterprises

4.13.1 Under the Act, ‘agreement’ is given a wide definition covering ‘any form of agreement, whether or not legally enforceable, between enterprises which is implemented or intended to be implemented in Mauritius or in a part of Mauritius, and includes an oral agreement, a decision by an association of enterprises, and any concerted practice’.

Visa

4.13.2 Visa has established the ‘Visa Core Rules and Visa Product and Service Rules (last updated on 15 October 2016)’ (hereinafter referred to as ‘Visa Rules or Visa Network Rules’)\(^{92}\) which govern the relationship between Visa and its Members and their agents and represent a binding contract between Visa and each Member\(^{93}\). The Visa Rules contain fundamental rules which apply to all Visa system participants and specify the minimum requirements applicable to all Members to uphold *inter alia* the safety, security and interoperability of the Visa system. Chapter 1 of the Visa Network Rules (previously Chapter 10 of the then Visa International Operating Regulations and other Bylaws of Visa entities\(^{94}\)) contain rules relating to *inter alia* the IIF (referred to as Interchange Reimbursement Fees in the Visa Core Rules).

4.13.3 As specified in the Membership Trademark License Agreement between Members in Mauritius and Visa (the ‘Membership Agreement’), a Member must comply with the Visa International Certificate of Incorporation and Bylaws and the Visa [Network] Rules in so far as each Member to Visa ‘[is] fully aware of its rights, duties and obligations as stated and *agrees to be bound* by and perform in a safe and sound manner all requirements of the By-Laws and Operating Regulations applicable to members of [Visa] as may be in effect from time to time’\(^{95}\). [Emphasis added]

4.13.4 As such, issuers and acquirers in Mauritius, as parties to the Membership Agreement, agree to operate in accordance with the Visa Network Rules and agree to the applicable fees, including the IIF. For the purposes of this investigation, therefore, the Membership Agreement between Visa and its members in Mauritius constitute the basis of their agreement relating to, and subsequent implementation of, IIF rates applicable on Visa products for Mauritius; thus covering the first element (presence of an agreement) in establishing a Section 45 review.

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\(^{92}\) The Visa Network Rules were previously contained in the Visa International Operating Regulations and Bylaws of various Visa entities. Under Chapter 1 of Visa Network Rules, Visa specifies as follows –

“The Visa Rules represent modifications and amendments to such existing Visa rules and requirements, which continue in substance and effect except as expressly modified in the Visa Rules. By reorganizing and renaming this body of requirements, Visa does not intend to modify the meaning or enforceability of any Visa published documents, forms, or contracts to which Visa is a party, or any contracts that are required by Visa to include provisions to comply with Visa’s certificate of incorporation or bylaws, operating regulations, or other Visa requirements. Regardless of whether this document or other documents refer to these requirements as the Visa International Operating Regulations or by other prior naming conventions, such references are deemed to refer to and incorporate the Visa Rules”.


\(^{94}\) See ‘Visa International Regulations’ submitted as part of Visa International’s response to the Information Request Notice dated 22 November 2012 bearing reference CCMDN0005318A. Confidential Document.

\(^{95}\) Ibid. page 59.
MasterCard

4.13.5 Financial institutions wishing to operate a particular MasterCard card programme in a particular country/territory, have to apply for membership with MasterCard. Once the application is approved by MasterCard, the institution has to enter into a written License Membership Agreement before being able to issue and/or acquire MasterCard products and operate a particular MasterCard programme in its country. The License Membership Agreement stipulates that the licensed member has an obligation to observe all Rules adopted in connection with authorized MasterCard Marks and further highlight that such Rules are incorporated by reference and made a part of the License Agreement. The MasterCard Rules (last updated 7 July 2016)\(^\text{96}\) (‘MasterCard Network Rules’) forms part of the ‘MasterCard Standards’\(^\text{97}\) which have been developed under a set of principles to guide the activities within the MasterCard system and provide a framework under which to operate, whilst ensuring the integrity and reliability of the system. Chapter 8 of the MasterCard Network Rules contain rules relating to IIF and the establishment of intracountry IIFs as part of MasterCard Members Settlement and Related Obligations.

4.13.6 Having regard to the binding nature of the MasterCard Network Rules, MasterCard submitted that ‘[i]n order for the [MasterCard] System to operate efficiently and for the legitimate expectations of all participants in the System to be met it is necessary for rules to be established in advance, as pre-conditions of participation. (...) These rules constitute the minimum set of obligations owed by each participant by virtue of its licence with MasterCard’\(^\text{98}\). In its submission, MasterCard had further stated that rules relating to the ‘amount of the payment, including whether the acquirer should pay the issuer an ‘interchange fee’ and the amount of such interchange fee’ are among the essential default terms of dealing, required for a four-party system to operate.

4.13.7 These Rules are made part and parcel of the Licence Membership Agreement signed by the issuers and/or acquirers in Mauritius. As members of MasterCard, issuers and acquirers in Mauritius agree to the IIF rates, as and when revised by MasterCard, by virtue of their acceptance of the MasterCard Membership Agreement. Additionally, Rule 1.6 of the MasterCard Network Rules states that ‘[e]ach Customer agrees, and by use of any one or more of the Marks agrees, to comply with all provisions of the License pertaining to use of the Marks and with the [MasterCard] Standards as may be in effect from time to time’\(^\text{99}\). [Emphasis added]

4.13.8 As such, the Licence Membership Agreement between MasterCard and its Members in Mauritius constitute the basis of their agreement relating to, and subsequent implementation


\(^{97}\) The Standards include the information contained in the MasterCard Rules manual (of 7 July 2016) and other manuals, along with guides, bulletins and policies that may be updated from time to time.


\(^{99}\) MasterCard Network Rules, Rule 1.6 ‘The License’, p. 33.
of, IIF rates applicable on MasterCard products for Mauritius; thus covering the first element (presence of an agreement) in establishing a Section 45 review.

4.13.9 In their responses to the Provisional Report of Investigation, some main parties have disputed the existence of an agreement relating to the IIFs on account of the fact that inter alia the default IIF rates applicable in Mauritius are unilaterally established by the payment card schemes alone. Members in Mauritius merely comply to the Visa and/or MasterCard Network Rules and such adherence does not establish an agreement with regards to either the IIF or any agreement to charge default set by payment card scheme operators. 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. In Bayer AG v. Commission, the Court of First Instance had stated:

“Apparently unilateral conduct by an undertaking, adopted in the context of its contractual relations with its commercial partners, may in reality form the basis of an agreement between undertakings (...) if the acquiescence of those partners, express or implied, with the attitude adopted by the undertaking is established.

In order for there to be an agreement (...) it is sufficient that the undertakings in question should have expressed their joint intention to conduct themselves on the market in a specific way. As regards the form in which that common intention is expressed, it is sufficient for a stipulation to be the expression of the parties’ intention to behave on the market in accordance with its terms, without its having to constitute a valid and binding contract under national law”.

4.13.10 From the European Court of Justice’s appeal decision in Commission v Volkswagen AG, it has also been established that acquiescence can be deduced from the powers conferred upon the parties in a general agreement drawn up in advance. If the clauses of the agreement drawn up in advance provide for (or authorise) a party to adopt subsequently a specific unilateral policy which will be binding on the other party, the acquiescence of that policy by the other party can be established on the basis thereof.

4.13.11 The MasterCard Network Rules (made part and parcel of the License Membership Agreement between MasterCard and its Members in Mauritius), by virtue of Rule 8.3, confers upon MasterCard the right to establish default interchange fees, it being understood that all such fees

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100 2010 OJ C 1 30/1.
101 Case T-41/96, Bayer AG v. Commission, Judgment of the Court of First Instance (Fifth Chamber, Extended Composition), 26 October 2000.
102 Ibid, para 64, 66, 71-72, 111.
set by [MasterCard] apply only if there is no applicable bilateral interchange fee agreement between two [Members] in place. In the same vein, the Visa Network Rules provides that the ‘[Visa] Interchange Reimbursement Fee rates (IIF rates) are available to Members through regional online resources or Visa account executives. Interchange requirements are contained in the Visa Rules and the applicable domestic or regional Interchange Qualification Guide. In addition, there are many other types of Visa transactions, such as ATM inquiries, etc., that are detailed in the Visa Rules’. In an internal Visa document:

“” (Emphasis added)

4.13.12 Each payment 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.

4.13.13 Submissions of Members in Mauritius go in line with the Executive Director’s understanding of Visa and MasterCard’s IIF policy in Mauritius:

i. noted during a factual meeting that ‘the interchange fee is decided by Visa’; and added as an example, ‘that Visa advised the banks that it had reviewed the interchange fee for petrol stations which came down to 0.5% - 0.75%’ [Emphasis added];

ii. stated that ‘as far as the issuing bank is concerned, there is a set of fees that are provided to by MasterCard or VISA and this is what receives as income depending

105 MasterCard Network Rules, ‘Rule 8.3 Interchange and Service Fees’ provides that:

“The Corporation [i.e. MasterCard] will inform Customers, as applicable, of all fees it establishes and may periodically publish fee tables. Unless an applicable bilateral interchange fee or service fee agreement between two Customers is in place, any intraregional or interregional fees established by the Corporation are binding on all Customers.”


107 See Visa’s Response to Information Request dated July 22nd 2015: ‘’ VISA-CCM-00002305 – VISA-CCM-00002309, pg. 5. Refer to Annex M.

108 Filenote of Factual meeting held with on 02 Aug 2012, para 24.

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on the transactions (...) does not negotiate with VISA or MasterCard but simply adopts the fees set by them\textsuperscript{109} [Emphasis added];

iii. \textsuperscript{\textasteriskcentered} stated that \textsuperscript{\textasteriskcentered} Ltd does not decide upon the rates but are set at higher level ... there is no agreement as such on the rates to be applied but the license agreement, signed at the time \textsuperscript{\textasteriskcentered} became a principal member [of MasterCard], provided a whole package. [It was further submitted that] \textsuperscript{\textasteriskcentered} may apply for license as issuer and acquirer but the rules are set by the scheme owners\textsuperscript{110}[Emphasis added].

ii. The economic relationship between parties to the agreement

4.13.14 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.

\textbf{Visa}

4.13.15 Visa’s business primarily consists in providing a platform for the processing of electronic payments for its members through VisaNet, a centralized and modular payments network providing three essential functions: transaction processing services (authorization, clearing and settlement), risk management services and information services. The Visa brand, owned and managed by Visa International, provides the assurance of acceptance at merchants and ATMs worldwide. Visa does not issue or acquire cards.

4.13.16 Upon entering into a Licence Membership Trademark Agreement with Visa, members including issuing institutions in Mauritius are authorized to issue Visa branded cards in Mauritius while local card acquirers are authorized to acquire Visa branded cards. For the purposes of this investigation therefore, Visa’s Licence Membership Trademark Agreement 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.

\textbf{MasterCard}

4.13.17 MasterCard’s business primarily consists in providing a platform for the processing of electronic payments through the MasterCard Network, from which licensed and certified financial institutions and other entities can compete in providing payment services to consumers by enabling these financial institutions to connect to complete payment transactions.\textsuperscript{111} Additionally, MasterCard manages the MasterCard, Maestro and Cirrus payment brands which licensed members use in their payment programmes and solutions.

\textsuperscript{109} FGenote of Factual meeting held with \textsuperscript{\textasteriskcentered} on 21 Aug 2012, para 12.
\textsuperscript{110} FGenote of Factual meeting held with \textsuperscript{\textasteriskcentered} on 26 Jul 2012, para 23.
\textsuperscript{111} MasterCard’s ‘Preliminary written response to the Competition Commission of Mauritius’s Agenda for Factual meeting dated 1 August 2012 regarding the investigation into payment cards (INV020)’ dated 11 September 2012, p. 1.
4.13.18 Upon entering into a Licence Membership Agreement with MasterCard, members including issuing institutions in Mauritius are authorized to issue MasterCard branded cards in Mauritius while local card acquirers are authorized to acquire MasterCard cards. For the purposes of this investigation therefore, MasterCard’s License Membership agreement is a vertical licence agreement 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.

4.13.19 Additionally, X has submitted in its response dated 13th December 2012 that ‘in order to conduct its payment cards business X has entered into vertical license agreements (none of which involve resale price maintenance) with (...) MasterCard and Visa’. [Emphasis added]

iii. The provisions of the agreement

4.13.20 The last element characterizing a vertical agreement for the purposes of the Act is that ‘the agreement must relate to the conditions under which the parties to the agreement may purchase, sell or resell certain goods or services’.

Visa

4.13.21 Visa’s Network Rules ‘contain fundamental rules that apply to all Visa system participants and specify the minimum requirements applicable to all Members (and thus the issuing and acquiring institutions in Mauritius) to uphold the safety, security, soundness, integrity, and interoperability of the Visa system. The Visa Product and Service Rules contain rules that apply to Visa system participants based on use of a product, service, the Visa-Owned Marks, VisaNet, the dispute resolution process, and other aspects of the Visa payment system. The Visa Product and Service Rules also include operational requirements related to the Visa Core Rules.’ The Visa Rules, in particular, –

- outlines (...) a member’s requirement to comply with the Rules and general fines for non-compliance (e.g. Rule 1.12, Rule 11.2.3, Chapter 12, among others);
- specifies minimum requirements for members including liability and indemnification provisions (Rule 1.1.9, Rule 8.6.1.3, among others);
- specifies member requirements for reproduction of the Visa-Owned marks, including card production, promotions, sponsorships and responsibilities for non-Card use of the Visa-Owned marks (Rule 1.3, Chapter 3, among others);
- specifies both Issuer requirements for participation in the Visa (...) programs, and Acquirers with respect to Acquirer-Merchant contracts, terminal requirements,

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113 Visa Network Rules, p.9.
Electronic Commerce and participation in the Visa Global ATM Network (Chapters 4 - 6); [Emphasis added]

- specifies member requirements for transaction processing, including authorization, clearing and settlement (Chapters 7-8); [Emphasis added]
- specifies general security requirements, the rights and responsibilities of Visa and members related to risk and fraud management and security (Chapter 10);
- specifies fees applicable to members, including Interchange reimbursement Fees (Chapters 9 and 12).

4.13.22 Accordingly, by signing the Licence Membership Trademark Agreement with Visa International, issuing and acquiring institutions in Mauritius become equally bound by the Visa Operating Regulations, which in effect relate to the conditions under which issuers and acquirers in Mauritius - parties to their individual agreements with Visa - may provide their issuing and/or acquiring services within the CEMEA Region which includes Mauritius.

MasterCard

4.13.23 As previously stated, the Licence Agreement between MasterCard and its members (issuers or acquirers) governs the use of the MasterCard Marks, trademarks, service marks and also relates to the conditions of the membership including the members’ acknowledgement of ownership by MasterCard of all MasterCard marks and more importantly, acceptance of membership subject to member’s observance with Bylaws, Rules, and policies, and the operating regulations and procedures of MasterCard ('MasterCard Standards').\(^{114}\) The MasterCard Network Rules in turn contains information about inter alia conditions of participation related to licensed activity of the member (Chapter 1); standards and conduct of activity and digital activity (Chapter 2), obligations related to issuing and acquiring (Chapters 5-6); settlement procedures (Chapter 8), and contains specific rules (in Chapter 14) that apply to the Middle East/Africa (the specific classification to which MasterCard member issuers and acquirers in Mauritius belong), among others.

4.13.24 Accordingly, by signing the Licence Agreement with MasterCard, issuing and acquiring institutions in Mauritius become equally bound by the MasterCard Network Rules which in effect relate to the conditions under which issuers and acquirers in Mauritius - parties to their individual agreements with MasterCard may 'provide their issuing and/or acquiring services the SAMEA region which includes Mauritius.

III. The absence of resale price maintenance (Visa and MasterCard)

4.14 The Section 45 review of a vertical agreement also requires that the vertical agreement does not involve resale price maintenance.

4.15 Section 2 of the Act defines ‘resale price maintenance’ as an agreement between a supplier and a dealer with the object or effect of directly or indirectly establishing a fixed or minimum price or price level to be observed by the dealer when reselling a product or service to his customers. [Emphasis added]

4.16 This definition requires that there be an agreement between a supplier of a particular product or service and a dealer, the object or effect of the agreement is to establish a pricing element binding upon the dealer when reselling that product/service to his customers.

4.17 For the purposes of operating their respective four-party payment cards’ networks, Visa and MasterCard enter into agreements with:

(i) issuing institutions authorizing them to enter into agreements with cardholders in Mauritius for the use of payment cards bearing the Visa or MasterCard brand; and

(ii) acquiring institutions authorizing them to enter into agreements with merchants in Mauritius for the purposes of enrolling merchants to accept Visa or MasterCard branded payment cards.

4.18 As submitted by Visa and MasterCard themselves, Visa and MasterCard are not involved in the issuing and acquiring business but rather operate their respective networks by which card transactions occur. Visa and MasterCard respectively provide issuers and acquirers with direct access to their payment system networks so as to enable their members (issuers and acquirers) to authorize, clear and settle payment card transactions (in other words, issuers authorize the card transaction, acquirers collect the value of the transactions from the issuer, and reimburse the merchant for the transaction conducted using a Visa or MasterCard branded card).

4.19 Each set of services supplied by the different operators within the four-party payment system is different and neither issuers nor acquirers resell either Visa or MasterCard card network services. In the respective vertical agreements binding Visa and its members on the one hand and MasterCard and its members on the other hand, resale price maintenance is absent such that issuers and acquirers cannot be said to be ‘reselling’ the services purchased by them from Visa or MasterCard’s service to their respective customers.

4.20 The fact that the nature of services provided by acquirers to their customers does not qualify as resale of the services sold by electronic payment cards networks such as Visa and MasterCard was established in the 2013 decision handed by the Canadian Competition Tribunal in the case of The Commissioner of Competition v. Visa Canada Corporation and MasterCard International Incorporated et al. The Commissioner of the Canadian Competition Bureau had filed an application under section 76 of the Canadian Competition Act relating to price maintenance, challenging the Visa and MasterCard set of rules referred to as ‘No Surcharge’, ‘Honour All Cards’ and ‘The No Discrimination’ rules.

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116 In its application, the Commissioner alleged that the agreements entered into by Visa and MasterCard with acquirers, which require acquirers to impose the contested rules on Merchants, influenced upward or discouraged the reduction of the card acceptance fees. The parties disagreed on the interpretation to be given to Section 76. Visa and MasterCard submitted that in order for Section 76 to apply, the Commissioner ought to establish the resale of a product. The Commissioner disagreed.
4.21 The Competition Tribunal subsequently dismissed the Commissioner’s application and found that the requirement that a product comes for resale to a customer had not been established. The Tribunal, in its decision, stated that –

(...) the products sold by the Visa and MasterCard to acquirers are different from those sold by acquirers to merchants such that acquirers do not resell either Visa or MasterCard credit (credit) card network services.

[Electronic payment] networks facilitate connections between Merchants, payment card networks such as Visa and MasterCard and the Issuers around the globe who ultimately provide authorization for individual transactions. Merchants do not connect or interface with the Visa and MasterCard networks. Clearing and settlement between Issuers and Acquirers and between Acquirers and Merchants are separate activities. Acquirers communicate with Issuers over the Respondents’ networks. Merchants communicate only with their respective Acquirers.¹¹⁷

IV. Monopoly Situation reviewable under the Act

4.22 The last element qualifying a Section 45 review of the agreement relating to the setting of the IIF by Visa / MasterCard is that one or more of the parties to the agreement is in a monopoly situation that is subject to review under Section 46 of the Act.

4.23 Section 46(1) of the Act states the criteria for existence of a monopoly situation and Section 46(2) of the Act describes the conduct of an enterprise in a monopoly situation that may be subject to review.

4.24 The determination of whether sections 46(1) and 46(2) are applicable thus require the following assessment:

a) identification of the relevant product and geographic market(s);

b) existence of monopoly situation (in terms of prescribed market shares) and position of dominance (dominance means the enterprise(s) have some market power, that by virtue of their position in the market they can act to some extent free of the constraints that competition would normally be expected to provide); and

c) whether the conduct under review restricts, prevents or distorts competition or otherwise exploits the monopoly situation.

4.25 The Act, in relation to the assessment of restrictive business practices, further provides in Section 50(3) that, where the review of a restrictive agreement falling within Sub-Part II of Part II of the Act (including a review carried out under Section 45 of the Act) leads to a finding by the Commission that there are adverse effects for competition in a particular case, it shall, before deciding on any appropriate remedial action to be taken (...), consider whether (i) any of the offsetting public benefits defined under Section 50(4)¹¹⁸ of the Act are present and (ii) to what extent the benefits, if present, should be taken into account in determining the remedial action to be taken.

¹¹⁷ See 2013 Comp. Trib. 10, paragraphs 147 and 151.
¹¹⁸ Section 50(4) of the Act provides as follows:
4.26 Having established the requirements for a review of the alleged conduct under Sections 45 and 46 of the Act in this chapter, the Executive Director’s competition assessment is structured as follows: Chapter 5 identifies the likely relevant markets while Chapter 6 establishes whether the main parties may be in a monopoly situation in the likely relevant markets. Chapter 7 presents the candidate theory of harm to competition from the conduct under review and the counterfactual scenario. Chapter 8 presents the Executive Director’s assessment of harm to competition while Chapter 9 summarises the main findings of the investigation. Chapter 10 embodies the Executive Director’s responses, where relevant, to key comments/submissions of main parties relative to the firstly, findings of the investigation together and secondly, the CCM Consumer and Merchant Surveys. Chapter 11 contains the Executive Director’s recommendations to the Commission as regards the possible remedies proposed for the purposes of addressing the competition concerns identified in this Provisional Report. Chapter 12 concludes on the next steps following the submission of the Report to the Commission.

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‘A benefit shall be considered for the purposes of subsection (3)(a) if it is shown that the effects of any absence, prevention, restriction or distortion of competition are outweighed by specific gains in respect of -
(a) the safety of goods and services;
(b) the efficiency with which goods are produced, supplied or distributed or services are supplied or made available;
(c) the development and use of new and improved goods and services and in the means of production and distribution; or
(d) the promotion of technological and economic progress, and the benefits have been or are likely to be shared by consumers and business in general.’

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5. Market Definition

5.1 As explained above, Sections 45 and 46 of the Act enables the Commission to review monopoly situations and vertical arrangements that may have the object or effect of preventing, restricting or distorting competition. In order to assess the existence of a monopoly situation, which is in relation to market shares, it is therefore imperative to define the ‘relevant market’.

5.2 The Executive Director’s approach to identifying the relevant market(s) for the purposes of assessing a potential breach of the Act is set out in the ‘Guidelines – CCM 2: Market Definition and the Calculation of Market Shares’ (hereinafter ‘CCM Guidelines 2’), which *inter alia* state that ‘the ‘relevant market’ (the terms ‘market’ or ‘economic market’ are also used) has a precise meaning in competition policy. It is a defined set of products, and a defined geographic area, within which competition occurs.’\(^{119}\) There are, therefore, two main dimensions that must be considered in defining the relevant market, namely: (i) product market, which includes the set of products which act as competitive constraint to the focal product; and (ii) geographic market - the geographic area within which competition and substitution occurs.

5.3 In some cases, it is also necessary to distinguish the functional levels at which competition occurs when defining the relevant market. This will particularly be the case when market participants operate at more than one level. For instance, in the present case where the focal product under consideration is payment cards, services are offered at the upstream level by card scheme owners and at downstream levels by acquirers and issuers as illustrated earlier in Figure 8.

A Product Market

5.4 A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products’ characteristics, their prices and their intended use. The concept of the relevant product market thus implies that there can be effective competition between the products which form part of the same relevant market. The product under investigation (the ‘focal product’) are payment cards issued and acquired within the four-party payment system.

5.5 The relevant product market is usually defined on the basis of:
   (i) demand-side substitution – which seeks to assess the ability of consumers to switch to substitute products; and
   (ii) supply-side substitution – which seeks to assess the ability of suppliers of substitute products to switch to supplying the focal product.

Inappropriateness of Hypothetical Monopolist Test

5.6 Product substitution is typically assessed under the ‘hypothetical monopolist test’ (‘HMT’) framework. The test essentially seeks to establish 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. From a demand-side perspective, if in response to the

\(^{119}\) CCM Guidelines 2, para 2.1.
increase in price of the focal product, a significant number of customers switch to other readily available substitute products such that the increase in price is unprofitable for the monopolist, then these substitute products form part of the relevant market as they pose sufficient competitive constraints on the focal product. The product group is expanded until there is a product group for which it is profitable for the hypothetical monopolist to sustain a 5 to 10 per cent price increase. In assessing supply side substitution, the hypothetical monopolist test assesses whether other suppliers are able and willing to switch to producing the focal product without incurring significant additional costs or risks in a short time period if there were an increase in the price of the product.

5.7 The Executive Director however considers that the execution of the hypothetical monopolist test for the purposes of its substitutability analysis is conceptually inappropriate in this market because of the so-called cellophane fallacy\textsuperscript{120}. The latter problem refers to a situation where products may appear as close substitutes, because enterprises providing these products already exercised market power to raise prices above competition level\textsuperscript{121}. The fallacy arises from the fact that the hypothetical monopolist test cannot identify whether the prevailing market price(s) is/are already a monopoly price(s) resulting from the exercise of a dominant position. If a hypothetical monopolist test is applied between the monopolized product and another product, it might suggest a high degree of substitutability, since consumers are already at the point where they will cease to buy from the monopolist. In such cases, the hypothetical monopolist test may not give satisfactory results for the purposes of market definition, because substitution may occur even between products that are not substitutes in a more competitive situation. The ‘CCM Guidelines 2’ in effect recognises the problem posed by ‘cellophane fallacy’ and states ‘\textit{when considering abuse of monopoly, (...), it will often be more appropriate to consider [a hypothetical] increase compared to prices that would prevail under competitive conditions. Monopoly power might result in prices that are so high that customers switch to quite unsatisfactory alternatives but to regard these substitutes as ‘competitors’ merely accepts and legitimizes monopoly power}’\textsuperscript{122}.

5.8 The inappropriateness of the hypothetical monopolist test for the purposes of defining the relevant market(s) in industries with two-sided demand and network effects has been extensively discussed, both in the academic and antitrust community, because of its perceived inability to capture the impact of a price increase for one group of consumers on demand from the other group of consumers. The EC in the MasterCard decision of 2007 also took the view that the execution of the SSNIP test (or the hypothetical monopolist test) 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

\textsuperscript{120} In United States v. E. I. du Pont de Nemours & Co., 351 U.S. 377 (1956), Du Pont (a cellophane producer) argued that cellophane was not a separate relevant market since it competed with flexible packing materials such as aluminium foil, wax paper and polyethylene. Du pont, the only producer of cellophane had set prices at the monopoly level, and it was at this level that consumers viewed those other products as substitutes. At the competitive level, consumers viewed cellophane as a unique relevant market (a small but significant increase in prices would not have them switching to goods like wax or the others). In this case, the Supreme Court failed to recognise that a high own-price elasticity may mean that a firm is already exercising monopoly power.


\textsuperscript{122} CCM Guidelines 2, para. 2.20 and footnotes 8-9.
merchants due to a MIF (...) because a SSNIP test in the acquiring business faces the problem of the so-called cellophane fallacy.

5.9 The payment card market is a classic example of a ‘two-sided’ market. A market is characterised as two-sided if (i) there are two (or more) distinct groups of customers; (ii) the value obtained by one group of customers increases with the number of the other group of customers; and (iii) an intermediary (often referred to as a platform) is needed to facilitate interactions between the different groups and internalize the externalities created by one group for the other(s).

5.10 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. Visa and MasterCard act as intermediaries by providing the platform for cardholders and merchants to interact through the issuers and acquirers. On one side, cardholders, who are the customers of issuers, derive greater value from using a card that is widely accepted by merchants. On the other side, merchants, who are customers of acquirers, derive greater value from accepting a card that is widely used by customers.

5.11 Two-sided markets are distinct from standard markets due to the existence of ‘network’ externalities between the different groups of users. The value of participating in a platform for one group of users depends directly on the amount of participation of the other group. Rochet and Tirole (2003) submit that ‘[c]ardholders benefit from their holding a card only if their cards are accepted by a wide range of merchants, and merchants benefit from the card only if a sufficient number of consumers use it. Therefore a payment card network can only function effectively if sufficient numbers of both cardholders and merchants participate in the network’. 

5.12 Rochet and Tirole (2004) further define a two-sided market as one ‘if the platform can affect the volume of transaction by charging more to one side of the market and reducing the price paid by the other by an equal amount; in other words, the price structure matters and platforms must design it so as to bring both sides on board’.

5.13 Visa and MasterCard derive their revenue largely from transaction-based network fees charged to issuers and acquirers. In order to enhance the value of their payment card networks, Visa and MasterCard encourage cardholders to hold and use their cards and merchants to accept their cards through the issuers and acquirers, respectively. The IIF is an important means through which issuers and acquirers are respectively encouraged to set the cardholder fees and the MSC to enhance the value of the overall network.

5.14 Changes in IIFs can affect the volume of transactions that goes through a network. For instance, an increase in IIF would imply more revenue per transaction for the issuer but less revenue for the acquirer by the same amount. The effect on the volume of POS transactions is unlikely to remain unchanged. This because the effect on consumers and merchants are not the same. For instance, an increase in IIF

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123 MasterCard Decision of 2007, paragraph 286-287. The EC, relying on recitals 733 – 737 of the Statement of Objections, agreed that the execution of the SSNIP test on the sum of prices charged to cardholders and merchants is also conceptually inappropriate.


would incentivise issuers to promote card issuance and card usage, through for instance lower cardholder fees and higher rewards. On the acquiring side, acquirers may pass on the increase in IIF to their customers, i.e. merchants, through higher MSCs, which could have as effect to reduce card acceptance by merchants. Therefore, one also needs to take into account the two-sidedness of the payment cards market, where the demand of consumers and merchants is interrelated, when defining relevant markets. In other words, demand substitution and supply substitution cannot be applied from the perspective of the consumer or merchant only. As a third party with sufficient interest, Visa was admitted to intervene and be heard in the context of the European Commission’s proceedings against MasterCard (2007). On the issue of market definition, Visa _inter alia_ submitted that it ‘does not think it appropriate to apply a SSNIP test to a [Multilateral Interchange Fee] given the interdependence of cardholder and merchant demand’\textsuperscript{126}.

5.15 For the reasons stated above and in order to identify products that could be considered as effective substitutes to payment cards, the Executive Director has based its assessment on evidence derived from product characteristics and customer behaviour rather than the results of the hypothetical monopolist test.

**Limited substitutability with other Payment Instruments**

5.16 From the above explanation, it follows that payment cards have two key characteristics: first, 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 second, payment cards may exhibit network externalities. The more cards in circulation, the more likely will be acceptance on the part of merchants. Similarly, the more merchants are accepting payment cards, the more likely consumers will be using payment cards to effect payment.

5.17 While other payment instruments, such as cash and cheques, can also be used to effect payment at POS terminals, these instruments are unlikely to be in the same relevant market as payment cards because of differences in characteristics, functionalities and pricing. As submitted by MasterCard,

\textsuperscript{127}

\textit{(...)}

\textsuperscript{128}

\textit{(...)}

\textsuperscript{126} MasterCard Decision of 2007, paragraph 218.

\textsuperscript{127} See MasterCard’s submission dated 12 September 2012, pg. 1.

\textsuperscript{128} See MasterCard’s submission dated 12 September 2012, pg. 3
(Please refer to Annex H for MasterCard’s full submission of on *inter alia* ‘Costs and Benefits to cardholders and merchants of using payment cards).

5.18 Indeed, the actual usage of a payment instrument depends on its characteristics both from the consumers’ and the merchant’s perspectives. From a consumer point of view, payment instruments may be different in terms of convenience, costs, security and likely acceptance by merchants. The CCM Consumer Survey provides evidence in this regard; debit cards are considered to be the ‘most secured’ payment instrument, followed by cash and credit cards. Cash is considered as the payment method ‘most accepted by merchants’ and ‘most convenient’, while credit cards and cheques are perceived as payment instruments that are ‘most costly to use’. These differences from the consumers’ perspective therefore potentially affect the demand for the payment instruments and thus the level of substitutability between the various payment methods.

5.19 Similarly, cheques may not be a substitute for payment cards in certain cases. For instance, not all customers are entrusted with a chequebook and therefore they may not have the option of substituting cards for cheques. Chequebooks are typically offered to holders of current accounts to facilitate payment and some current accounts may limit the number of cheques the account holder can clear on a periodic basis before a fee applies. An overview of banking products advertised by local banks has shown that most local issuers do not generally offer a chequebook to customers holding a savings account. Moreover, cheques are often not accepted by merchants for small value payments. According to the CCM Merchant Survey, merchant preference for cheques for transaction value below Rs250 is only 3%. In other cases, payment by cheque may be required while payment by cash or cards may not be practical, often for high-value purchases. For instance, according to the CCM Merchant Survey, merchant preference for cheques for transaction value above Rs10,000 is approximately 53%. In such circumstances, cheques are unlikely to be substitutable with payment cards.

5.20 Consumers’ perception of payment instruments also differ with the level of transaction value. According to the CCM Consumer Survey, for low value purchases up to Rs500, consumers prefer cash to other payment methods. For payments between Rs500 and Rs5,000, there is a slightly greater preference for debit cards compared to cash, while for higher value purchases above Rs5,000, there is a clear preference for debit cards compared to cash. The CCM Consumer Survey also shows that both cash and debit card are most commonly used when buying food for household consumption (38% amongst cash users and 29% amongst debit card users). Credit card is most appropriate when purchasing household equipment/furniture (29%) while cheque becomes more useful when paying insurance.

5.21 The substitutability of a particular payment method from a demand perspective will depend upon the likelihood of its acceptance at the point of purchase. Cards would constitute a substitute to other payment methods only if the card facility was available to the consumer to start with where for instance, merchants do not offer card acceptance. The CCM Merchant Survey shows that only 48% of the merchants interviewed accept payment by cards while 97% of them accept cash. Also, POS transactions

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129 *ibid.*
settled by cheques accounts for only 2% of total transactions. In such instances where there is no or low acceptance of cards by merchants, the consumer has no other option than to use a different payment instrument. Hence, there is limited substitution between cards and other payment instruments.

5.22 According to the CCM Merchant Survey, cheques are accepted by 63% of the respondents, 47% for credit card, 46% for debit card, 6% for prepaid card and 4% for mobile payment. The general acceptance of payment instruments further differ according to merchant segments. A higher acceptance for cheque is noted amongst merchants in the retail sector, representing 69% within this segment. With regards to debit and credit cards, a higher acceptance level is noted amongst merchants in the retail and hotels & restaurants activities: acceptance for debit and credit cards in the retail sector is at 53% respectively, while in the hotels & restaurants sector, it is at 65% and 71% respectively.

5.23 From the merchant’s perspective, preference for the various payment instruments also varies according to the transaction value and perceived costs in accepting a payment instrument, which influences the merchant’s acceptance of a particular payment instruments and thus the level of substitution between these payment instruments.

5.24 According to CCM Merchant Survey, for low value transactions up to Rs250, 93% of merchants prefer cash to other payment methods. For purchases between Rs250 and Rs500, 77% of merchants prefer cash, followed by debit cards (11%). For purchases between Rs500 to Rs5000, the preference for cash falls to 42% while that of debit cards increases to 16%. As noted previously, the higher the transactional value, the more merchants tend to prefer cheque over other payment instruments; with the preference share increasing from 9% for purchases between Rs250 and Rs500 to 53% for purchases above Rs10000.

5.25 Payment cards are also different in terms of their functionalities. For instance, payment cards are used to effect payments at POS terminals but can also be used for cash withdrawal, cash deposit, checking account’s details and transferring of cash from one account to another. Other payment instruments, such as cash or cheques, do not provide such a range of functionalities.

5.26 For merchants, payment cards also present distinct characteristics compared to other payment instrument. The CCM Merchant Survey revealed that cash is the preferred payment instrument for 31% of the merchant sample interviewed. Cash is viewed as the most reliable, convenient, practical and cheapest payment instrument. Payment cards on the other hand are considered to be relatively more expensive than cash while cheques are considered to be the most costly payment instrument. Payment card costs for merchants are very different from those related to other payment instruments. For instance, banks typically do not charge merchants for depositing cheques or cash. On the other hand, acceptance of payment cards entails costs such as merchant fee per transaction, connectivity costs and rental of POS terminals (for some merchants).

5.27 In addition, it appears that some merchants are compelled to accept payment cards due to competitive pressure as they may lose sales if they reject card payments (Hayashi, 2006). The CCM Merchant Survey has likewise showed that for merchants accepting card payments, an essential factor was the

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consumers’ preference for them and that, therefore, to refuse that form of payment or to discriminate against it could have a negative impact on their sales.

5.28 The pricing of cards and other payment methods such as cash and cheques to bank customers also differ significantly. Cheques, for example, typically bear an issuance fee (whether as part of a package of services or on an individual basis). Cash is usually considered to be free of charge, although some banks charge their customers if cash is withdrawn from another bank’s ATMs. Debit cards are usually offered to banking clients free of charge, and no cost is charged by transaction. Credit cards, on the other hand, imply a cost to the cardholders in the form of annual cardholder fees and interests payable on ATM withdrawals, overdrafts and late payments.

5.29 Credit cards further differentiate from other payment instruments as it allows cardholders to access funds now and defer payments. In addition, issuers usually offer to the cardholders some reward programmes based on the frequency and/or value of transactions carried out by means of credit cards. This kind of programme, together with the interest rate-free period offered to the cardholders, decreases the level of substitutability between credit cards and other payment instruments.

5.30 Payment cards and non-card payment instruments also differ in terms of their supply. Cash collection for instance involve transport costs and risks of theft whereas card acquiring and/or issuing involves use of sophisticated IT equipment and financial risks (e.g. merchant default, card fraud, etc.).

5.31 The differences in terms of benefits and costs to both cardholders and merchants suggest there is limited substitutability between payment cards and other payment instruments, thus supporting the non-inclusion of other payment instruments in the same relevant market. For example, following an annual increase in the annual card fee, 78% of the credit card users and 73% of debit card users replied that they would not switch while only 9% and 8% respectively would definitely switch to other payment instrument. The rest 14% and 18% respectively would consider switching to another payment instrument.

5.32 Based on their specific characteristics, it also appears that the market could be further narrowed according to the type of payment cards. From a consumer’s perspective, interest-free credit and the existence of reward programmes make difficult or, at least, inconvenient the substitution between credit cards and other payment cards. For the purposes of this investigation, however, the Executive Director does not believe that a narrower market definition is unlikely to substantially affect the competitive assessment and the discussion of whether separate product markets for debit cards and credit cards should be defined can be left open.

Upstream and downstream markets

5.33 Having established that payment cards are not in the same relevant product market as other payment instruments, including cash and cheques, the Executive Director has also considered the level at which competition take place with the payment card market. As explained earlier in Chapter 3, in a four-party payment card network, distinct groups of services can be identified, namely

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131 See CCM Customer Survey Report, pg. 43.
(i) services provided by the payment card scheme owner to the issuers and acquirers\(^{132}\), where competition between different payment card scheme owners (‘upstream market’ competition) takes place;

(ii) services provided by the issuers to cardholders where competition between individual financial issuers takes place (‘downstream issuing market’ competition); and

(iii) services provided by the acquirers to merchants, where competition between individual acquiring institutions takes place (‘downstream acquiring markets’ competition).

**Upstream network market**

5.34 The card scheme owner licenses the use of its brand and platform to its members and provides services such as clearing and settlement. The card scheme owner charges particular fees for these services which are distinct from issuing and acquiring services. The card scheme owner does not issue or acquire cards and competes with other card scheme owners to persuade financial institutions to join its card network.

5.35 From a supply perspective, issuers and/or acquirers would not have the resources and technology to quickly start offering network services in response to a small but significant increase in network fees and on a sufficiently large enough scale to represent a competitive constraint to the existing card scheme owners.

5.36 Similarly, from a demand-side, members of individual networks (i.e. the financial institutions offering card issuing services and card acquiring services for cardholders and merchants) are unlikely to switch to other service providers if there were a small but significant increase in network fees. A card scheme owner licenses the use of its platform and brand name to its members, without which the members’ respective services cannot be provided to their end-customers. The Executive Director therefore considers it appropriate to identify a distinct upstream market for the provision of network services.

**Downstream acquiring market**

5.37 Acquirers enter into contracts with merchants to offer card payment facilities. Acquirers provide merchants with terminals and card readers, process transaction information, obtain money from issuers and pay retailers. They are also liable to issuers for outstanding payments, if a merchant goes out of business.

5.38 From a supply perspective, the characteristics of acquiring services differs from those of issuing services. Acquirers compete with other acquirers to attract merchants wishing to accept payment cards. The pricing of acquiring services is structurally different from that of issuing services: merchants are charged a MSC which is a per transaction fee, whereas cardholders typically pay lump sum annual card fees. Given the technical and financial nature of services provided in the acquiring market, it is doubtful that following a hypothetical small but significant increase in the price of acquiring services, an issuer would be able to switch to offering card acquiring services within a reasonable time period and in a manner to constitute an effective competitor to existing acquirers.

\(^{132}\) Those services include authorization, routing, currency conversion, clearing, risk management and settlement enablement, as well as the creation and maintenance of the network brand and associated marks, the development of products, and the establishment of network rules covering the different aspects of operating the network, including those governing membership of the network.
5.39 From a demand perspective, merchants that offer, or wish to offer, card acceptance facilities have no other alternative than to deal with the card acquirers as they are the only financial institutions authorized to offer card acquiring services.

**Downstream issuing market**

5.40 Services offered by issuers include card production, marketing, credit evaluation, transaction and payment processing, credit risk and fraud risk management. Issuers compete with other issuers to attract customers. From a supply perspective, it is unlikely that these services could be readily produced by suppliers of other card services (for instance, card acquirers) if there were a small but significant increase in the price of issuing services. There are significant costs involved with the issuance of cards and a sustainable issuing business would require significant cardholder base and card usage, which would increase the time for an acquirer to achieve a reasonable scale so as to represent an effective constraint on existing suppliers.

5.41 The rules governing membership of the network also serve to demarcate issuing and acquiring services, as they may, for example, impose restrictions preventing potential entrants from issuing cards and/or acquiring merchants.

5.42 From a demand perspective, consumers wishing to pay by cards have no alternative than to deal with card issuers as they are the only financial institutions authorized to offer card issuing services.

**Exclusion of three party systems**

5.43 It should be noted that three-party credit card schemes, namely American Express and Diners, have not been considered within the scope of the investigation. Three-party card systems 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. Three-party schemes are primarily credit card schemes while four-party schemes include both debit and credit card schemes, with debit function often being the most dominant.

5.44 The pricing structure between these two types of card schemes also differs: under a three-party scheme, the card scheme sets the fee for both the cardholder and the merchant, while under a four-party scheme, the card scheme only sets a default interchange fee. There is also some network differentiation. American Express tends to target higher income consumers whose average purchases are larger, and as a result, merchants are willing to accept a higher merchant discount.

5.45 Results of the CCM Merchant Survey confirmed the low participation of three-party card schemes in Mauritius. While Visa and MasterCard credit cards could be substitutes to three-party credit cards from an issuing perspective, the inverse is likely to occur on a limited scale. For these reasons, the Executive Director consider that three-party payment systems should be excluded from the relevant markets.

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133 The limited substitution between three-party card schemes and four-party card schemes was explored in the EC’s case against MasterCard. The EC noted that the substantial reduction in the MasterCard system’s interchange fees imposed by the Reserve Bank of Australia had no notable impact on the system’s viability and, in particular, did not lead to a move towards three-party schemes, even though such schemes were not affected by the regulations adopted by the Reserve Bank of Australia. The ‘combined market share of American Express and Diners Club in Australia therefore increased only slightly from 15% to 17% and then remained stable’.
Approach of Overseas Authorities

5.46 In its investigations against Visa (2001) and MasterCard (2007), the European Commission determined that payment cards constitute a distinct market from other types of payment instruments.

5.47 The European Commission argued that cash can be excluded from the relevant market, for several reasons. ‘For merchants, cash is legal tender, and they are obliged to accept it wherever possible. The costs of accepting cash are largely administrative costs, and hard to compare with the cost of accepting cards. From the customer's point of view, cash is inconvenient and dangerous to carry in large amounts, and unsuitable for expensive purchases. It frequently runs out and must be renewed (normally by means of a cash withdrawal card). In all Member States, the average amount of a cash purchase is far lower than the average amount of a card purchase, and although for some medium-value payments either cash or cards are used, there is a clearly discernible distinction in the use of cash and cards by the amount of the operation. It is therefore unlikely that a small but significant price increase of either cards or cash (for either merchants or their customers) would lead to a significant shift in usage from one to the other’.

5.48 According to the European Commission, cheques can also be excluded from the relevant market. ‘In most Member States, cheques are hardly ever used for over-the-counter purchases (being reserved for distance payments) […] and in any case, cheques have significantly different characteristics compared with cards (a chequebook frequently runs out, a cheque is often only accepted in conjunction with either a cheques guarantee card or an identity card, and a cheque must be filled in, thus losing time)’.

5.49 In the case MasterCard vs European Commission, the General Court upheld the European Commission’s findings that card network services, card issuing services and card acquiring services constitute three distinct product markets:

‘It is indeed the case that there are certain forms of interaction between the ‘issuing’ and ‘acquiring’ sides, such as the complementary nature of issuing and acquiring services, and the presence of indirect network effects, since the extent of merchants’ acceptance of cards and the number of cards in circulation each affects the other’.

However, it must be pointed out that despite such complementarity, services provided to cardholders and those provided to merchants can be distinguished, and, moreover, cardholders and merchants exert separate competitive pressure on issuing and acquiring banks respectively.’

5.50 The General Court further stated that:

The Commission further noted not a reduction of activity in the MasterCard system but, on the contrary, an increase in its market share as well as its turnover. Whilst it is evident that market conditions in Australia and Mauritius are clearly different and care should be taken in drawing parallels from the Australian experience, it is interesting to note that following the reduction in MasterCard’s interchange fees, there was no migration of member banks to third party schemes and the gap in market shares between three-party and four-party schemes hardly changed (See Decision of the Commission of 19 December 2007, COMP/34.579 — MasterCard, paragraphs 634 to 644).

135 Ibis. paragraph 39.
136 See Judgement of the General Court (Seventh Chamber) issued on 24 May 2012, Case T-111/08, MasterCard, Inc.
137 Ibis. paragraphs 176-177.
‘Admittedly, the competitive pressure of other methods of payment affects the amount of the [Multilateral Interchange Fee] in that it is neither in the applicants’ nor in the banks’ interest that the MIF be set at a level that would result in merchants favouring other methods of payment. However, (…) the Commission was entitled, without thereby making a manifest error of assessment, to find (…) that the effect of that pressure was insufficient, having regard to consumers’ preference for card payments and to the risk of losing transactions that discrimination in favour of other methods of payment might entail’\(^{138}\)

5.51 In its notification decision on Visa’s multilateral interchange fee, the Competition Commission of Singapore determined that ‘issuers, acquirers and scheme administrators have distinct features with respect to the customer group served, the nature of the services provided and the operational infrastructure’\(^{139}\), and concluded that ‘the provision of the following services can be considered to be separate markets:

(i) card scheme administration services;
(ii) card issuing services; and
(iii) merchant acquiring services.’\(^{140}\)

Conclusion on product market

5.52 On the basis of the analysis carried out above and taking into consideration the approach adopted by foreign antitrust authorities, the relevant product markets for the purposes of this investigation are defined as:

a) upstream four-party payment card market in which card scheme owners provide network services to financial institutions (i.e. issuers and acquirers);

b) downstream four-party payment card market for the provision of card acquiring services; and

c) downstream four-party payment card market for the provision of card issuing services.

B Geographic Market

5.53 The Executive Director considers that the relevant geographic market is national in scope, for reasons explained below:

(i) Final consumers, namely cardholders and merchants, have limited access to services supplied by financial institutions based abroad. For merchants, this restriction is due to infrastructure issues. They can only hire acquiring and processing terminals and services from providers located in the same country in which they are located. Most cardholders would likewise, hold cards issued by national issuers since they would need to maintain a bank account with the issuer. Cardholders are likely to incur additional costs when effecting payment at a local POS with a foreign issued card.

\(^{138}\) Ibid. paragraph 180.
\(^{139}\) See Competition Commission of Singapore Notice of Decision issued on 03 September 2013, Case Number 400/001/06, paragraph 9.8
\(^{140}\) Ibid. paragraph 9.15
(ii) Players in the local card market are unlikely to be constrained by competitive forces from abroad. For instance, it is unlikely that card issuers from abroad are competing with the local issuers because of the costs, convenience and administrative process involved in obtaining a card.

(iii) The Membership Agreement signed between the card scheme owners and issuers/acquirers generally allow issuers and acquirers to act only in a limited territory, usually a country. The rules and commercial terms applying to issuers and acquirers vary from country to country. Decisions pertaining to price, promotional campaigns and network expansion also tend to be based on a national level, further limiting the competitive constraints from international markets.

C Conclusion on Relevant Market

5.54 For the purpose of this investigation, the relevant markets are thus considered to be:

(a) 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) downstream four-party payment card market for the provision of card acquiring services in Mauritius (‘downstream acquiring market’); and

(c) downstream four-party payment card market for the provision of card issuing services in Mauritius (‘downstream issuing market’).
6. Assessment of Market Power and Dominance

6.1 A key element in the evaluation of whether there is a restriction, distorting or prevention of competition in the relevant markets is the determination of whether a firm possesses dominance/substantial market power. Market shares are generally used as the starting point for assessing market power but the Executive Director will also consider other factors including buyer power and entry barriers in determining dominance/substantial market power.

Upstream network market

6.2 In the upstream network market, Visa and MasterCard compete with each other for the promotion of their respective network and wider usage of their cards through greater merchant acceptance and increased cardholder base. The analysis of relevant product market revealed 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 UPI. In particular, these schemes have significantly lower cardholder base and volume of card transactions effected at domestic POS. As at 2015, the total number of Amex cards issued by MCB stood at \(\times\) while \(\times\) CUP/UPI cards had been issued.

6.3 The CCM Consumer Survey also shows that MasterCard (both the MasterCard and Maestro brands) is the most popular brand of card owned by cardholders, both for debit and credit cards followed by Visa (as illustrated in Figure 11 below).

![Figure 11: Card ownership by brand](image)

Source: CCM Consumer Survey, 2015

6.4 The CCM Merchant Survey (as seen in Figure 12 below) confirmed the popularity of Visa and MasterCard across all merchant outlets, with 100% of card-accepting merchants accepting Visa and MasterCard, while acceptance for Amex and CUP were highest among merchants in the hotel and restaurant segments. Based on information submitted by local acquirers, the level of merchant acceptance of UPI cards (out of their merchant base) in 2015 stood at 99% for \(\times\), 100% for \(\times\) and \(\times\) respectively. However, as shown in the Tables 16 and 17 below, actual usage of CUP/UPI cards at domestic POS terminals remains low.
6.5 MasterCard enjoys a greater presence on the market in terms of total number of cards in circulation, with an estimated > cards in 2015 compared to > Visa cards. As seen from Table 16 below, MasterCard has maintained a market share above 60% since 2007 in terms of number of cards issued, with an estimated market share of >% in 2015, with the remaining >% going to Visa. By contrast, although CUP/UPI have been present in Mauritius since 2009, its market share stood at >% as at 2015 and only marginally increased by >% as at August 2016.

Table 16: Card schemes market shares by cards in circulation

<table>
<thead>
<tr>
<th>Year</th>
<th>MasterCard and Maestro-Cirrus Cards</th>
<th>Visa</th>
<th>UnionPay International</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>N/A</td>
</tr>
<tr>
<td>2008</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>N/A</td>
</tr>
<tr>
<td>2009</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>N/A</td>
</tr>
<tr>
<td>2010</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>N/A</td>
</tr>
<tr>
<td>2011</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>N/A</td>
</tr>
<tr>
<td>2012</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>N/A</td>
</tr>
<tr>
<td>2013</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>N/A</td>
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<tr>
<td>2014</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>N/A</td>
</tr>
<tr>
<td>2015</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>[0% - 5%]</td>
</tr>
<tr>
<td>Aug 2016</td>
<td>[60% – 70%]</td>
<td>[30% - 40%]</td>
<td>[0% - 5%]</td>
</tr>
</tbody>
</table>

Source: Compiled from submissions of Visa, MasterCard and issuers of UPI

6.6 A payment network is characterised by network economies. As such the market position of a card scheme cannot be assessed in terms of a single set of market shares. The Executive Director has also assessed Visa and MasterCard respective networks in terms of transaction growth. As illustrated in Table 17 below, an analysis of the transaction volume and value of POS transactions of each network confirms the monopoly position enjoyed by Visa and MasterCard respectively, in terms of the market share thresholds laid out in the Act, of both MasterCard and Visa in the upstream network market. By
contrast, CUP has an insignificant market share of <1% both in terms of the number and value of transactions acquired on CUP cards. In addition, only <1% of transactions acquired on CUP cards were effected using locally issued cards while the rest was effected with foreign-issued CUP cards.

<table>
<thead>
<tr>
<th>Market Shares by number of POS transactions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brand</td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td>Visa</td>
</tr>
<tr>
<td>MasterCard</td>
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<tr>
<td>UPI</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Market Shares by value of POS transactions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brand</td>
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<tr>
<td>-------</td>
</tr>
<tr>
<td>Visa</td>
</tr>
<tr>
<td>MasterCard</td>
</tr>
<tr>
<td>UPI</td>
</tr>
</tbody>
</table>

Source: Compiled from Acquirers’ submissions

6.7 The EU Interchange Fee Regulation recognises that ‘[c]ompetition between payment card schemes to convince payment service providers to issue their cards leads to higher rather than lower interchange fees on the market, in contrast with the usual price-disciplining effect of competition in a market economy’\(^{141}\). Based on evidence gathered, it appears that a similar situation prevails within the domestic payment cards market. Visa and MasterCard are not constrained in their ability to increase IIF rates; rather it appears that it is the competition between the card schemes that is the source of upwards pressure on IIF rates.

6.8 For instance, in its ‘\(\times\), December 2014’ document\(^{142}\), Visa submits that ‘\(\times\)

\(\times\)^{143}

6.9 Visa further submits that:

‘\(\times\)

\(\times\)^{144}

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\(^{141}\) Interchange Fee Regulation, para. 10.
\(^{142}\) See Response of Visa to Information Request Dated July 22, 2015
\(^{143}\) See Visa Document: VISA-CCM-00002273. Refer to Annex L.
\(^{144}\) See Visa Document: VISA-CCM-00002277. Refer to Annex L.
6.10 Visa ✗.

6.11 In addition to MasterCard consistently maintaining high market shares over the last four years, the exercise of dominance by MasterCard can be further evidenced from an internal MasterCard document entitled ‘✗’ (November 2014)\(^{145}\) discussing ✗. According to MasterCard, ✗\(^{146}\):

<table>
<thead>
<tr>
<th>Table 18: MasterCard proposed blend (bps), November 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>✗</td>
</tr>
<tr>
<td><strong>Source:</strong> MasterCard submission dated 18.09.2015</td>
</tr>
</tbody>
</table>

**Insufficient constraints from issuers/acquirers**

6.12 As supported by submissions of the below-referred main parties to the investigation, the IIF applicable for Visa and/or MasterCard products in Mauritius are unilaterally set by Visa\(^ {147}\) or MasterCard in the absence of a multilateral agreement or bilateral agreements having been reached amongst/between issuers and acquirers in Mauritius:

i. ✗ submitted that the [IIF] rate is set by Visa\(^ {148}\).

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\(^{146}\) ibid.

\(^{147}\) See Visa response to Para. 10(a) of Information Request Notice dated 22 Nov 2012, contained at pgs. 8-9.

\(^{148}\) Filenote of Factual meeting held with ✗ on 22 July 2012, para 22.
ii. \(\times\) noted during a factual meeting that ‘the interchange fee is decided by Visa’; and added as an example, ‘that Visa advised the banks that it had reviewed the interchange fee for petrol stations which came down to 0.5% - 0.75%. \(\times\) has not been involved in the latter initiative\(^{149}\).

iii. \(\times\) submitted that the rates are set [respectively] by MasterCard and Visa and these are applied on \(\times\) when the former perform the settlement. [It was further submitted that] that the local institutions do not negotiate the rates\(^{150}\).

iv. \(\times\) stated that ‘as far as the issuing bank is concerned, there is a set of fees that are provided to \(\times\) by MasterCard or VISA and this is what \(\times\) receives as income depending on the transactions (...) \(\times\) does not negotiate with VISA or MasterCard but simply adopts the fees set by them’.\(^{151}\)

v. \(\times\) stated that ‘\(\times\) does not decide upon the rates but are set at higher level ... there is no agreement as such on the rates to be applied but the license agreement, signed at the time \(\times\) became a principal member [of MasterCard], provided a whole package. [It was further submitted that] \(\times\) may apply for license as issuer and acquirer but the rules are set by the scheme owners’.\(^{152}\)

vi. According to \(\times\), [t]he main ‘revenue’ derived from debit cards is in respect of the interchange fee when \(\times\) cards are swiped through another bank’s POS. The interchange fee is approximately 1% of the transaction amount ... \textit{MasterCard sets the interchange fee}\(^{153}\).

vii. In respect of revenues generated from the interchange fee, \(\times\) submitted that ‘\textit{MasterCard set the rates which are standard rates by region and merchant type... Rates are not detailed in agreement but in MasterCard manual and not all manuals are available online}\(^{154}\)...’

\textit{Insufficient constraints from merchants}

6.13 Merchants’ willingness to pay for cards depends to a large extent on their competitive desire to accept cards to offer customers a good service. Some merchants may feel obliged to accept card payments out of a fear that if they do not their customers will go to other merchants. In their investigation into MasterCard’s multilateral interchange rates, the EC found that ‘\textit{the two most important reasons to accept cards [...] were that a large number of merchant customers carry cards and the merchants wish to offer good customer service}’\(^{155}\). The CCM Merchant Survey likewise shows that, among the sample of merchants surveyed who accept card payments, the two most common reasons for accepting card payments are related to ‘risk of losing sales’ and ‘increase in frequency sales’. Hence, for these merchants, it is often a commercial imperative to accept payment cards even if they are more expensive

\(^{149}\) Filenote of Factual meeting held with \(\times\) on 02 Aug 2012, para 24.
\(^{150}\) Filenote of Factual meeting held with \(\times\) on 31 July 2012, para 09.
\(^{151}\) Filenote of Factual meeting held with \(\times\) on 21 Aug 2012, para 12.
\(^{152}\) Filenote of Factual meeting held with \(\times\) on 26 Jul 2012, para 23.
\(^{153}\) Filenote of meeting held with \(\times\) dated 10\textsuperscript{th} August 2012, Para 12 & 13.
\(^{154}\) Filenote of meeting held with \(\times\) dated 27\textsuperscript{th} August 2012, Para 16.
than other means of payment—unless the merchant is willing to take the risk to lose a substantial number of sales to competing outlets. This lack of sufficient constraint from retail buyers, in this case merchants, affords Visa and MasterCard the ability to independently, at least to some extent, determine the level of the IIF.

**Entry Analysis**

6.14 Entry barriers are important in the assessment of potential competition and whether entry is timely, likely, and sufficient to preclude the exercise of market power of firms already in the market. The lower the entry barriers, the more likely it is that potential competition will prevent undertakings already within a market from profitably sustaining prices above competitive levels. If barriers would substantially delay entry, the impact of entry may not be sufficiently *timely* to affect the incumbent’s conduct. Expansion or entry must also be *sufficient* to defeat the exercise of market power, i.e., it ‘must be large enough, and of a character, to constrain the firm alleged to be dominant or in possession of substantial market power to a sufficient extent.’

6.15 An undertaking even with a large market share in a market with very low entry barriers would be unlikely to have market power. However, an undertaking with a large market share in a market protected by significant entry barriers is likely to have market power.

6.16 Card network markets are characterized by important network effects. As demonstrated above, Visa and MasterCard have high growth rates and high sunk costs would need be incurred before any new card network is able to compete viably against existing ones.

6.17 A study on banking services in the United Kingdom confirmed that ‘[P]ayment schemes demonstrate the benefit that each user gains from the addition of further users; these are called network effects. [...] card holders gain value as more retail outlets join their particular scheme, as do retailers in relation to growing numbers of customers holding cards belonging to the scheme. [...]’

6.18 Network effects also have profound implications for competition, efficiency and innovation in markets where they arise. Establishing critical mass is the first hurdle, as the benefits to customers and businesses of a network arise only gradually with increasing use. It is possible to imagine a world in which electronic cash is widely held and used, for example, but much harder to see how to get there.

6.19 Once a network is well established, it can be extremely difficult to create a new network in direct competition. [...] Where network effects are strong, the number of competing networks is likely to be small and the entry barriers facing new networks will be high.’

6.20 It is clear that creating a new card network necessarily takes considerable time and the importance of network effects favour large networks compared to smaller ones. It is thus unlikely that potential entrants in the network market could in fact pose a credible competitive constraint on Visa and MasterCard.

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156 [CN Unilateral Conduct Workbook, paragraph 71.]
6.21 Although UPI/CUP has been acquired in Mauritius since 2009 but the impact of its entry within the local four-party payment cards market has been insignificant to pose sufficient competitive constraints on either Visa or MasterCard. Out of the 1.67 million cards in circulation, only \(<\) cards are UPI/CUP cards had been issued as at December 2015, accounting for only around \(<\)% of the market. Moreover, although the percentage of merchants and POS terminal accepting CUP cards were \(<\)% and \(<\)% respectively, it is found that CUP has gained an insignificant market share of less than \(<\)% in the cards market in Mauritius as at 2015.

6.22 Consistent high market shares, limited constraints from issuers, acquirers and merchants and insufficiency entry and lack of competitive constraints from competitors thus all point to a likely dominant position enjoyed by both MasterCard and Visa in the upstream network market.

**Downstream issuing market**

6.23 Issuers compete for new and existing cardholders via cardholder fees and rewards programmes. This competition takes the form of consumer solicitations, offering more advantageous terms (e.g., with respect to annual fees, rewards, and rebates), and introducing new products. Competition has increased over the years as issuers try to differentiate their cards by offering such benefits as frequent flier miles, rebates on purchases, low annual fees, purchase protection/security, discounted introductory interest rates, and travel insurance.

6.24 The four largest players in the issuing market, in terms of number of cards issued in 2015 are MCB, with a market share of \(<\)%, followed by SBM (\(<\)%), MPCB (\(<\)%), and Barclays (\(<\)%). MCB benefits from a first-mover advantage in the issuing market. Incorporated in 1838, MCB is the oldest and largest institution in the banking sector, with around 920,000 individual and institutional customers and a network of 40 branches and 174 ATMs (representing around 38% of national network)\(^{158}\). In its annual report 2016, the MCB itself submits that it holds around 50% market share of cards issued with ‘nearly one in every two cards issued in Mauritius is MCB-branded’\(^{159}\).


\(^{159}\) Ibid. See pages 18 and 34 of the MCB Annual Report 2016.
Figure 13: Issuers’ market shares, by number of cards in circulation

Source: Compiled from issuers’ submissions

Figure 14: Issuers’ market shares, by number of POS transactions effected on cards issued

Source: Compiled from issuers’ submissions

6.25 An analysis of cards used for POS transactions confirms the market power enjoyed by MCB and SBM. The two largest issuers account for more than 70% of the issuing market and there is doubt as to the existence of a competitive fringe. The retail banking industry is characterized by high ‘switching costs’ that may limit the ability of consumers to leave their current bank. Switching costs are costs that existing consumers have to incur (in terms of time, effort or money) when changing suppliers.
6.26 One category of switching costs in retail banking are those relating to direct-debit payments from a customer's bank account for utilities and other bills, for example telephone, credit cards, and so forth. A similar consideration applies to credit transfer operations into the account, such as the payment of salaries or other remunerations, dividends, and so forth. On closing a bank account, the customer would have to transfer all the aforementioned credit and debit operations to his new account and notify his employer and other concerned entities. There are also other ‘inconvenience’ costs in terms of the necessary paperwork and for example, of having to temporarily return card(s) and wait for new one(s) to be issued.

6.27 There are, additionally, search costs associated with the information that consumers need to collect when deciding to open an account. Switching costs also include ‘informational’ costs associated with the bank's direct knowledge of the customer and, conversely, the latter's familiarity with the bank. This makes many operations quicker and easier, because the bank staff are directly acquainted with customer and his history of solvency/insolvency etc. In the transfer to a new bank, all this accumulated background information will be lost. The bank customer, on his part, is likewise facilitated by familiarity with the procedures and staff, making it more convenient to continue with the existing bank rather than have to get used to a new one.

6.28 Taken individually, each of these switching costs, can be relatively small; however, the cumulative effect of various costs can help to create market power.

**Downstream acquiring market**

6.29 There are four enterprises operating in the acquiring market, namely MCB, SBM, Barclays and Cim Finance. In terms of number of POS terminals, MCB’s market share has consistently remained above % since 2012. As at December 2015, MCB has an estimated market share of around %, followed by SBM with %, Cim Finance %, and Barclays %.

*Figure 15: Acquirers' market share, by number of POS terminals*

![Graph showing market share of acquirers by number of POS terminals]

*Source: Compiled from acquirers’ submissions*
6.30 The number of transactions acquired at POS terminals likewise reflect the strong market position of 
MCB and SBM compared to Barclays and Cim Finance. A total of 27.3 million transactions were acquired 
at POS terminals in 2015, out of which ≈% were acquired by MCB terminals. Despite the entry of Cim 
Finance in 2008, MCB and SBM have maintained high market shares. In addition to being the two largest 
issuers of payment cards in Mauritius, MCB and SBM combined account for more than 70% of the 
acquiring market (approximately ≈%) in 2015.

Table 19: Acquirers’ market shares by number and value of POS transactions acquired

<table>
<thead>
<tr>
<th>Acquirer</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Market Shares by number of POS transactions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MCB</td>
<td>[50% - 60%]</td>
<td>[50% - 60%]</td>
<td>[50% - 60%]</td>
<td>[50% - 60%]</td>
</tr>
<tr>
<td>SBM</td>
<td>[30% - 40%]</td>
<td>[30% - 40%]</td>
<td>[30% - 40%]</td>
<td>[30% - 40%]</td>
</tr>
<tr>
<td>Cim Finance</td>
<td>[5% - 15%]</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
</tr>
<tr>
<td>Barclays</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
</tr>
<tr>
<td><strong>Market Shares by value of POS transactions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MCB</td>
<td>[50% - 60%]</td>
<td>[50% - 60%]</td>
<td>[50% - 60%]</td>
<td>[50% - 60%]</td>
</tr>
<tr>
<td>SBM</td>
<td>[30% - 40%]</td>
<td>[20% - 30%]</td>
<td>[20% - 30%]</td>
<td>[20% - 30%]</td>
</tr>
<tr>
<td>Cim Finance</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
</tr>
<tr>
<td>Barclays</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
<td>[0% - 10%]</td>
</tr>
</tbody>
</table>

Source: Compiled from acquirers’ submissions
7. **Counterfactual and Theory of Harm**

**A. Counterfactual**

7.1 A counterfactual provides an analytical framework to assess whether the conduct under review restricts, distorts or prevents competition in the relevant market(s) by considering whether an alternative realistic scenario without the said conduct would be more competitive. In pursuing a case of exclusionary conduct, the European Commission (EC) submits that:

‘This assessment [of abuse of dominance] will usually be made by comparing the actual or likely future situation in the relevant market (with the dominant undertaking’s conduct in place) with an appropriate counterfactual, such as the simple absence of the conduct in question or with another realistic alternative scenario, having regard to established business practices.’

7.2 The conduct under review relates to the default IIF rates set by Visa and MasterCard respectively. Visa and MasterCard have both submitted that the default interchange rates apply only when issuers and acquirers fail to reach a bilateral agreement. The Executive Director thus considers that the appropriate counterfactual scenario would be one where the default rates do not exist, thus requiring the existence of bilateral agreements between each issuer and acquirer.

7.3 To avoid the possibility of merchants discriminating between cards across different issuers, card schemes have imposed the ‘honour all cards’ rule, that requires that a merchant that accept a card of a certain brand must accept all cards under the same brand, irrespective of the issuing institution. This rule puts acquirers at a disadvantage when negotiating with issuers as their merchants are compelled to accept all cards under a brand. Issuers and acquirers have opposing interests; issuers will typically ask for high interchange fees, while acquirers will negotiate for lower IIF as this represent a cost for them. Thus, with the ‘honour all cards’ rule requirement, an issuer would be in a position to refuse to reach a bilateral agreement with an acquirer unless the acquirer accept its demands for a particularly high interchange fee.

7.4 The successful negotiation of a bilateral agreement will depend on the incentives of the different players (pure issuers, pure acquirers, and integrated issuers-acquirers) as well as the cardholder base and merchant base of each player. Bilateral negotiations would also likely increase barriers to entry in the acquiring market as it would require the acquirer to enter into agreements with each issuing institution; moreover some of these issuers might also be competing with the acquirer in the acquiring market, further affecting the negotiation process.

7.5 In the situation where no bilateral agreement is reached, no IIF would apply on the card transaction. The issuer cannot refuse to process a payment transaction from an acquiring institution and the acquiring institution does not require a bilateral agreement in order to acquire cards.

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160 See Communication from the Commission — Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C 45/02), paragraph 21.
Bilateral agreement between Pure Acquirer and Pure Issuers

7.6 A pure issuer would have an incentive to negotiate a bilateral agreement with a pure acquirer to obtain a high IIF. However, given the low cardholder base of pure issuers in Mauritius, it is unlikely that the pure issuer will be able to impose a positive IIF on a pure acquirer. It is in the commercial interest of a pure acquirer not to reach any bilateral agreement with a pure issuer, in which case no IIF would be payable to the issuer. As a result, the pure acquirer would avoid incurring incremental costs.

Bilateral agreement between Pure Acquirers and Integrated Issuer-Acquirer

7.7 It is most likely that pure acquirers would not negotiate bilateral agreements with small integrated issuers-acquirers as well, in which case the applicable interchange fee would be zero and the pure acquirer would avoid incurring incremental costs in relation to the IIF. In the current context, it would be in the financial interest of Cim Finance not to finalise any bilateral agreement with a small integrated issuer-acquirer, such as Barclays.

7.8 However, a pure acquirer may seek to enter in bilateral negotiations with integrated issuers-acquirers with larger cardholder base; by doing so, a pure acquirer can increase its MSC revenue through an increase in the volume of transactions. For instance, if Cim Finance, the only pure acquirer of debit cards in the acquiring market, reaches a bilateral agreement with a large integrated player such as MCB or SBM, the latter’s high customer base could lead to increased transactions at Cim Finance’s merchant terminals and hence increased MSC revenue for Cim Finance.

7.9 However, whether an integrated issuer-acquirer would want to reach a bilateral agreement with a pure acquirer would depend on the degree on competition between the two players in the acquiring market. An integrated player might be willing to enter into a bilateral agreement with a low interchange fee with a small pure acquirer that does not constitute a serious competitive threat in the acquiring market. However, given Cim Finance’s progression in the acquiring market, it is likely that any of the other integrated players would want to impose a high interchange fee so as to limit Cim Finance’s competitiveness in the acquiring market. It is doubtful that a bilateral agreement could be reached between a pure acquirer and an integrated issuer-acquirer in Mauritius.

Bilateral agreement between Integrated Issuer-Acquirer and Pure Issuers

7.10 The negotiation of a bilateral agreement between a pure issuer and an integrated issuer-acquirer will also depend on the degree of competition in the issuing market. A pure issuer will want to negotiate a high IIF. It is likely that integrated issuer-acquire will not attempt to reach any bilateral negotiation with pure issuers, as this will imply higher revenues for the pure issuer which can be passed on to cardholders, thus affecting the attractiveness of the integrated issuer-acquirer’s own card products.

Bilateral agreement between two integrated Issuer-Acquirer

7.11 Two large integrated issuer-acquirers could have as incentive to reach a bilateral agreement with a positive IIF rate given their large cardholder base and merchant base. However the likelihood of a successful negotiation depends on the relative bargaining power of each party. We note that in Mauritius, MCB’s market share is nearly twice that of its closest competitor both in the acquiring and
in the issuing markets. It is thus uncertain that integrated issuers-acquirers will be able to reach an agreement establishing a non-zero positive IIF.

7.12 Thus it seems that bilateral negotiations between issuers and acquirers in Mauritius would not provide a more competitive outcome than the current system whereby the IIF rates are set by the card schemes. Failure to reach a bilateral negotiation would result, in most cases, in a situation of ‘zero’ IIF prevailing. Given the two-sidedness of the payment market, the impact of a zero IIF should be considered on both the issuing and acquiring sides of the market. A zero IIF could be beneficial for acquirers who would not face an additional cost for offering acquiring services to merchants. However, by eliminating a key source of revenue for issuers, a zero IIF may negatively impact on the incentives of issuers to promote and issue innovative card products. It has been established that a positive IIF that allocates some of the costs incurred by issuers to acquirers can help to ‘balance’ card issuance and card acceptance so as to increase the efficiency of the system. The focus on the investigation is thus on the level at which domestic IIFs for Mauritius have been set by card schemes.

7.13 The Executive Director has next sought to identify candidate theories of harm that could result from the current level of IIFs.

B. Theory of Harm

7.14 Pursuant to Section 46(2) of the Act, a monopoly situation is reviewable by the Commission where the enterprise in the monopoly situation is engaging in conduct that either has the object or effect of preventing, restricting or distorting competition; or in any other way constitutes exploitation of the monopoly situation. The main competition concern arising from the current default IIFs set by MasterCard and Visa respectively is that the latter creates a floor on the price acquirers charge to merchants, i.e. the MSC, thus effectively constituting a restriction of price competition in the acquiring market.

7.15 MasterCard realizes that IIF affect to some extent the rate of the MSC charged to acquirers in so far as, when describing how IIF rates are determined, MasterCard explains that ‘[i]nterchange fees are one component of the Merchant Discount Rate (MDR) established by acquirers, which is paid by merchants to acquirers in consideration for card acceptance services (…) Interchange rates are only one of many cost components included in a MDR and are a necessary and efficient method by which Mastercard maintains a strong and vibrant payments network (…)’161. MasterCard also submits that:

In the Visa Network Rules describing ‘Interchange’, Visa similarly states that ‘[m]erchants pay what is known as a merchant discount fee or merchant service fee negotiated with their acquirer which may take into account the interchange fee, processing costs, fees for terminal rental, customer services, and other financial services’\(^{163}\).

7.16 To the extent that the respective Visa and MasterCard default IIF rates typically determine a floor for the price that merchants must pay for offering card acceptance services indicates that the respective rates may, by their very nature, have the object of restricting competition between acquirers even if neither card scheme operator ‘intended’ to restrict, prevent or distort competition. The concept of restriction by object does not presuppose that the parties to an agreement have the subjective intention of restricting competition. An agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim but also pursues other legitimate objectives\(^ {164}\). Whereas in proceedings against Visa’s MIF (2002), it was stated that the MIF is not a restriction of competition by object as its aim is to increase the stability and efficiency of a four-party payment scheme\(^ {165}\); the MasterCard Decision of 2007 took the opposite view that ‘[t]he fact that the MIF typically determines a floor for the price which merchants must pay for accepting payment cards is indeed an indication that MasterCard’s MIF may by its very nature have the potential of fixing prices’\(^ {166}\).

7.17 However, to the extent that the remaining assessment establishes that the current levels at which the default IIF rates have been set has the effect of preventing, restricting or distorting competition to the detriment of consumers(merchants) in the acquiring markets and ultimately cardholders, the Executive Director has not deemed it necessary to reach a definite conclusion as to whether the default IIF rates are a restriction of competition by object within the meaning of Section 46\(^2\)(2) of the Act.

7.18 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 schemes to set lower IIFs.

7.19 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

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\(^{162}\) MasterCard’s submission dated 12 September 2012, pg. 9.

\(^{163}\) Visa Network Rules, Rule 9.1.1.2 ‘What is Interchange’, PSR-489.

\(^{164}\) Case C-551/03 P General Motors BV, formerly General Motors Nederland BV and Opel Nederland BV v Commission of the European Communities, para. 64.


\(^{166}\) MasterCard Decision of 2007, para. 402-404.
absorb part of the IIF and offer a relatively lower MSC than a pure acquirer to obtain market power in the acquiring market.

7.20 Potential entry on the acquiring market could also likely be harmed as entrants would similarly need to offer competitive MSCs to match the lower MSCs offered by the integrated issuers-acquirers. It seems unlikely that new or potential competitors would be able to charge lower MSC in comparison to the existing market players given the high set-up costs in terms of infrastructure costs, network costs and the acquirer’s own costs and mark-up. Therefore, the current level of IIFs, by creating a floor to the MSC, may restrict 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.

7.21 In the Visa Decision of 2002, the EC concluded that the ‘MIF [multilateral interchange fee] moreover has as its effect to distort the behaviour of acquiring banks vis-à-vis their customers (at resale level), because it creates an important cost element (according to EuroCommerce on average approximately 80 % of the merchant fee) which is likely to constitute a de facto floor for the fees charged to the merchants they acquire, since otherwise the acquiring bank would make a loss on its acquiring activity’\(^{167}\). The EC further referred to the USA proceedings where Visa’s economic experts, David Evans and Richard Schmalensee, acknowledged that ‘interchange fee place a floor under the price that merchants pay their acquirers for processing card transactions ... the only significant price the system sets is the interchange fee... since the acquirer has to pay the issuer an interchange fee for each transaction, that fee sets a floor under the merchant discounts’ [in their book ‘Paying with plastic’, pp. 113 and 155].

7.22 In the 2010 Visa decision\(^{168}\), the EC, in its Statement of Objections, ‘expressed a concern that the MIFs have as their object and they also have as their effect an appreciable restriction of competition in the acquiring markets to the detriment of merchants and, indirectly, their customers. The MIFs appeared to inflate the base on which acquirers set the MSCs by creating an important cost element common to all acquirers. According to the Commission’s Preliminary Assessment, Visa Europe’s MIFs are not objectively necessary.’\(^{169}\)

7.23 In the 2014 MasterCard appeal case\(^{170}\), the European Court of Justice (‘Court’) upheld the EC’s findings that that MasterCard’s inter-bank fees for cross-border payment transactions in the European Economic Area restrict competition in the Internal Market. ‘The Court holds in particular that MIFs are a restriction of competition since they limit the pressure which merchants can exert on acquiring banks when negotiating the costs charged by those banks and that MIFs are not objectively necessary to operate the MasterCard system... Finally, the Court confirms that MasterCard produced insufficient evidence that MIFs create efficiencies that are passed on to consumers and that any advantages flowing from the MIFs to cardholders cannot compensate their disadvantages’\(^{171}\).

\(^{167}\) Visa Decision of 2002, para. 68.
\(^{169}\) Ibid. paragraph 21.
\(^{170}\) See Judgement of the Court (Third Chamber) issued on 11 September 2014, Case C-382/12 P.
7.24 The Judgement of the Court further states that\textsuperscript{172}: ‘the General Court did not regard the MIF, by their very nature, as being injurious to the proper functioning of normal competition, but analysed the competitive effects of those fees... In particular, while the General Court clearly explained (...) that the MIF had restrictive effects in that they “[limit] the pressure which merchants can exert on acquiring banks when negotiating the MSC by reducing the possibility of prices dropping below a certain threshold”, in contrast with “an acquiring market operating without them”, the General Court did not merely presume that the MIF set a floor for the MSC but, on the contrary, proceeded to carry out a detailed examination (...) in order to determine whether that was in fact the case’.\textsuperscript{173}

Reinforcing effect of HACR on harm in acquiring market

7.25 There is a general acceptance that ‘honour all issuers’ element does not raise anti-competitive issues\textsuperscript{174}. This ensures universal acceptance of all Visa cards, irrespective of the identity of the issuer, which is necessary for the proper functioning of a four party payment system. The development of a payment system depends on issuers being able to be sure that their cards will be accepted by merchants contracted to other acquirers. Without such assurance, a brand or logo on a payment card loses most of its meaning and utility, especially where an international card is concerned, and cards are often relied upon by travellers for foreign payments\textsuperscript{175}. Selective refusal could generate a need for bilateral negotiation between issuers and acquirers and, potentially, merchants; raising the costs of participating in the system. This rule is also essential for consumers as it provides confidence as to whether cards issued by their financial institution would be accepted at the point-of-sale.

7.26 By contrast, different jurisdictions have taken very different approaches in relation to the competitive impact of ‘honour all products’ aspect. In the US, for example, both Visa and MasterCard have modified their HACR following a legal settlement with merchants in 2003, allowing merchants to accept debit cards without having to accept credit cards or accept credit cards without having to accept debit cards\textsuperscript{176}. In the EU, it was held that card scheme owners can only impose an obligation that payees [merchants] accepting a card-based payment instrument of a particular card scheme owner have to accept all cards belonging to that card scheme owner, provided the cards belong to the same brand and of the same category of prepaid card, debit card or credit card subject to regulated interchange fees\textsuperscript{177}.

7.27 The ‘honour all products’ element has the effect of tying the acceptance of more expensive card products to that of low-cost card products, thus potentially contributing towards entrenching the effect of the IIF as a minimum floor to the MSC.

\textsuperscript{172} See Judgement of the Court (Third Chamber) issued on 11 September 2014, Case C-382/12 P.
\textsuperscript{173} Ibid., paragraphs 192 - 193.
\textsuperscript{174} See section 4.2.3, European Commission Green Paper, —Towards an integrated European market for card, internet and mobile payments, 11 January 2012.
\textsuperscript{175} See paragraph 67 of the Commission Decision of 9 August 2001 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)
\textsuperscript{176} The other aspects of honour all products and the honour all issuers requirement were however maintained, for instance, a merchant accepting Visa Gold debit cards has to accept all debit cards under the Visa brand. See Settlement Agreement dated June 4 2003, in the United States District Court Eastern District of New York, in RE Visa Check/MasterMoney Antitrust Litigation, No. CV-96-5238
8. Assessment of Harm to Competition

8.1 Having established the applicability of a review of default IIF rates set by Visa and MasterCard under Section 46(2) of the Act, this Chapter assesses whether there is any restriction to competition as set out in Chapter 7 above.

8.2 Visa and MasterCard set default domestic IIF rates which apply in the absence of a bilateral agreement between an issuer and an acquirer. The determination of the level of the IIF requires a careful ‘balance’. If interchange rates are set too high, merchants’ desire and demand for accepting cards will drop. On the other hand, if IIF rates are set too low, card issuers’ willingness to issue cards will drop. In any case, optimal level of payment by cards would not take place and would be at the detriment either of cardholders or merchants or both.

8.3 The default IIFs set by Visa and MasterCard can thus be seen as a mechanism to allocate the costs of the card payment system between the different set of users. The conduct under review for the purpose of this investigation is not the establishment of a default IIF by Visa or MasterCard; rather the Executive Director is concerned with the level at which the card schemes set their respective default IIFs.

Restriction of competition in acquiring market

IIF acts as a floor on MSC

8.4 While the card schemes 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 72% of the MSC on \( \times \) transactions and up to 79% on \( \times \) transactions for \( \times \) (as shown in Figures 16 and 17 below). For \( \times \) and \( \times \), the IIF accounted for more than 50% of the MSC they respectively charge on \( \times \) and \( \times \) transactions. For \( \times \), the IIF accounts for roughly 37% of the MSC on \( \times \) transactions and 47% on \( \times \) transactions.
8.5 The IIF effectively acts as a minimum price floor and determine to a large extent the price charged to merchants for card acceptance. In USA v VISA and MasterCard (2003)\textsuperscript{180}, the US Courts of Appeal for the 2\textsuperscript{nd} Circuit determined that ‘the price merchants pay for acceptance of payment cards (the merchant

\textsuperscript{178} The bar chart of $\times$ is above 100% because it had a negative acquirer margin of 1\% in 2015 (see $\times$ submission dated 25.10.2016). The other costs components relate to other costs incurred by $\times$ in providing acquiring services, such as staff, system, marketing, etc.

\textsuperscript{179} The bar chart of $\times$ and $\times$ are above 100\% because they both had a negative acquirer’s margin of 8\% and 7\% respectively (see $\times$ and $\times$ submission dated 25.10.2016). The other cost components relate to other costs incurred by $\times$ in providing acquiring services, such as staff, system, marketing, etc.

discount) is affected by the size of the interchange fee, which is set by the network'. Higher IIFs thus typically translate into higher costs of doing business for merchants.

8.6 The MSC charged by acquirers to merchants typically reflect the IIF. To break even, at a minimum, acquirers set MSC at the cost of IIFs, plus the cost of processing transactions. For integrated acquirers, who provide both card issuing and card acquiring services, the IIF constitutes both a cost as well as a source of revenue. Big integrated issuers-acquirers such as MCB or SBM are not affected in the same way as pure acquirers or small integrated issuers-acquirers by the same level IIF. As the majority of card transactions effected at MCB’s and SBM’s respective POS terminals are ‘on-us’ transactions, i.e. card transactions where the acquirer and the issuer are the same entity, the major part of the IIF costs of the acquiring side represents a source of revenue for their issuing business. As such, the net effect is that these banks do not have to actually transfer money to issuers.

8.7 As illustrated in Figure 18 below, out of 15.6 million POS transactions acquired by $\star$ in 2015, 71% were effected using an $\star$-issued card, with transactions effected with other locally issued cards and foreign-issued cards accounting for 20.7% and 8.2%, respectively. By contrast, out of the 1.9 million transactions acquired by $\star$ in 2015, only 2.5% were on-us transactions, with off-us local and off-us foreign transactions accounting for 94.1% and 3.4%, respectively. Similarly, the share of on-us transactions out of total transactions acquired at POS terminals for $\star$ is significantly low at only 2.1%. $\star$ has a much larger share of off-us foreign transactions compared to $\star$, which supports $\star$’s submission that they are involved mostly in the hotel segment in Mauritius where the clients are mostly foreigners. However, in 2015 (which coincides with the introduction of lower IIF of 0.5% on petrol and government transactions and $\star$’ introduction of lower MSC for petrol at 0.87%) $\star$’s share of off-us transactions significantly increased from 6% in 2014 to 64% in 2015.

*Figure 18: Percentage of POS transactions acquired, by acquirer and type of transactions*

Source: Compiled from acquirers’ submissions
8.8 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 below), with \( \times \) and \( \times \) earning 51.2% and 19.7% of total revenue generated in the issuing market on POS transactions in 2015. On the other hand, the respective share of IIF revenue for \( \times \) and \( \times \), the two other acquirers, were only 2.4% and 7.0% in 2015.

**Table 20: Share of total interchange revenue by category of issuer**

<table>
<thead>
<tr>
<th>Category</th>
<th>Issuer</th>
<th>Share of Interchange Revenue by issuer (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2012</td>
</tr>
<tr>
<td>Issuers of debit cards only</td>
<td>ABC ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Baroda ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>BDM ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Habib ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SBI ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td>Issuers of credit cards only</td>
<td>AfrAsia ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cim Finance ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>HSBC ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td>Issuers of debit and credit cards</td>
<td>Bank One ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Barclays ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>MCB ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>MPCB ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td></td>
<td>SBM ( \times ) ( \times ) ( \times ) ( \times )</td>
<td></td>
</tr>
<tr>
<td>Total Interchange Revenue (Rs)</td>
<td>266,037,368</td>
<td>322,065,941</td>
</tr>
</tbody>
</table>

Source: Computed from Issuers’ submissions

8.9 As previously shown in Table 11, 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 75% of the total acquiring revenue of \( \times \) and more than 50% of the acquiring revenue for \( \times \) (50.2%) and \( \times \) (53.7%). 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 \( \times \) of on-us transactions.

8.10 The current level of IIFs thus 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. MCB has been able to maintain significant market power over the years, despite the entry of a new player, namely Cim Finance, on the market, reflecting the limited competitive constraints faced by the largest integrated acquirer in the acquiring market.

*Foreclosure of equally-efficient competitors*

8.11 The current level of IIFs thus has the potential to exclude, eliminate, or weaken the competitiveness of equally efficient competitors. Any acquiring firm, existing or potential, would need to charge at least
1% per transaction to cover the cost of the effective domestic interchange rate applicable in Mauritius. Coupled with the network costs and the acquirer’s own processing costs, it is unlikely that an acquiring firm would be able to offer a similar or lower MSC than those offered by MCB or SBM, even though it might have a similar cost structure.

8.12 This is reflected in the MSC rates charged by the different players in the acquiring market, as previously shown in Tables 12 and 13. On Visa transactions for instance, $’s MSC rates range from 1.85% (on petrol transactions) to 2.61% (on travel transactions) for off-us transactions. While $ and $ are able to offer lower MSC rates on petrol transactions (at 0.87% each), for other merchant segments, the rates offered by these two smaller acquirers are significantly larger than $’s on-us rates, which are on average 1.2 times lower than its ‘off-us’ transactions.

8.13 In addition to raising the costs of existing acquirers, the current level of the IIFs also raise the cost of potential entrants into the acquiring market. The restriction of potential entry is evidenced by the reluctance of $ to enter the acquiring market despite having obtained a license from Visa since September 2012 for acquiring transactions. $ submitted that ‘fixed costs associated with the business are not recoupable for $ given that already there are four players in the market. Although a player on the market might be able to attain the same level of service, it would nevertheless have to be able to offer very competitive rate.’

IIF as a ‘necessary’ revenue source for incentivising card usage

8.14 Both the card scheme operators and several issuers have submitted that interchange revenue contributes towards recovering part of the high fixed costs associated with card issuance and promoting card usage by cardholders by financing rewards and benefits to cardholders. As such a reduction in the level of IIFs could have a negative impact in the issuing market. According to Visa, ‘if interchange didn’t exist… [the cardholder’s bank] would not be able to cover the costs it incurs in operating [its] card services, such as fraud prevention and customer call centres. If this were the case, [the cardholder’s bank] may not choose to issue cards or might charge [the cardholder] for them.’

8.15 While the IIF is an element of revenue for card issuers, it should be noted that card issuers, particularly, those that issue credit cards, also derive revenue from other sources, including annual cardholder fees, and interests on advances, as illustrated in Table 21 below. It should also be highlighted that the provision of card products and associated services in Mauritius cannot be viewed as a totally independent banking activity but rather constitutes a complementary product on which banks compete to attract and retain customers for the broader banking products that they provide. The attractiveness of a bank’s card products will, at least to some extent, affect the banks’ overall attractiveness and contribute to the revenue derived on other banking products, such as interest payments on bank loans, commission fees, etc, which can be re-invested to finance cardholder benefits.

181 See paragraph 13 of Filenote of meeting with representative of $, dated 07th August 2013.
182 http://www.visaeurope.com/about-us/interchange/
Table 21: Breakdown of revenue on card issuing activities

<table>
<thead>
<tr>
<th>Type of Revenue</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Rs)</td>
<td>(%)</td>
<td>(Rs)</td>
<td>(%)</td>
</tr>
<tr>
<td>IIF</td>
<td>266,037,368</td>
<td>25</td>
<td>322,065,941</td>
<td>27</td>
</tr>
<tr>
<td>Cardholder Fees</td>
<td>248,587,343</td>
<td>23</td>
<td>253,277,637</td>
<td>22</td>
</tr>
<tr>
<td>Interest</td>
<td>383,623,138</td>
<td>36</td>
<td>401,449,267</td>
<td>34</td>
</tr>
<tr>
<td>Other</td>
<td>168,696,549</td>
<td>16</td>
<td>198,735,010</td>
<td>17</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>1,066,944,397</td>
<td>100%</td>
<td>1,175,527,855</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Compiled from issuers’ submissions

8.16 As illustrated in Figure 20 below, an analysis by type of card issuer further reveals that the IIF represents the main source of revenue for issuers of debit cards only (which include \(\neg\), \(\neg\), \(\neg\), \(\neg\), and \(\neg\)), accounting for nearly 90% of total revenue between 2012 and 2015.

8.17 By contrast, for issuers of credit cards only (which include \(\neg\), \(\neg\), and \(\neg\)), the main source of revenue is interest payments, representing 47% of the total issuing revenue in 2015, followed by cardholder fees which account for around 33% and the IIF with 16%.

8.18 For issuers of both debit and credit cards (which include \(\neg\), \(\neg\), \(\neg\), \(\neg\), and \(\neg\)), IIF and interest payments are the major sources of income, accounting for around 37% and 27%, respectively in 2015.

Figure 19: Breakdown of revenue components as % of total issuing revenue

Source: Computed from Issuers’ Submission
8.19 While interchange revenue can contribute towards promoting card issuance and card usage, the figures above suggest that financial institutions that issue credit cards can rely on other fees as means of revenue to finance rewards and benefits to cardholders. Thus, any potential reduction in the IIF need not negatively impact issuers’ incentive to promote cards, as averred by several main parties.

8.20 As demonstrated above, while the IIF represents the main revenue source for issuers of debit cards only, 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. As contemplated by Visa, the proposed reduction in interchange rates in the petrol segment was predicted to result in increase in revenue as payment volume grows, that would benefit both issuers and acquirers.\footnote{See Visa Response to Information Request dated 22 July 2015, document entitled ‘\textgreater \textless’}.  

8.21 Even at the current level of IIFs, the five issuers of debit cards only combined receive a considerably small share of the total interchange revenue generated by card issuing activities in Mauritius, which amounted to 6% in 2014 and only 4% in 2015 (as shown in Table 20 above). This trend may be explained by the relatively low cardholder base and consequently low volume of card transactions at POS for these issuers. The two main beneficiaries of interchange revenue are MCB and SBM, the two largest issuers of debit and credit cards in Mauritius, earning \textgreater \textless\% and \textless\textless\% of total interchange revenue generated in 2015.

8.22 An assessment of the overall profitability of issuers in Mauritius reveals that most issuers realised profits on their issuing business in 2015, the exception being four issuers of debit cards only and \textlesss. MCB and SBM together share around 70\% of profits realized by issuers and, together with Cim Finance, share more than 80\% of the total profits.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|c|}
\hline
Category & Issuer & 2012 & 2013 & 2014 & 2015 \\
\hline
Issuer of debit cards only & ABC & \textless & \textless & \textless & \textless \\
 & Baroda & \textless & \textless & \textless & \textless \\
 & BDM & \textless & \textless & \textless & \textless \\
 & Habib & \textless & \textless & \textless & \textless \\
 & SBI & \textless & \textless & \textless & \textless \\
\hline
Issuer of credit cards only & AfrAsia & \textless & \textless & \textless & \textless \\
 & Cim Finance & \textless & \textless & \textless & \textless \\
 & HSBC & \textless & \textless & \textless & \textless \\
\hline
Issuer of debit & & \textless & \textless & \textless & \textless \\
& credit cards & Bank One & \textless & \textless & \textless \\
& & Barclays & \textless & \textless & \textless \\
& & MCB & \textless & \textless & \textless \\
& & MPCB & \textless & \textless & \textless \\
& & SBM & \textless & \textless & \textless \\
\hline
\end{tabular}
\caption{Issuers’ profits as % of their total issuing revenue}
\end{table}

\textit{Source: Computed from Issuers’ submissions}

\footnote{See Visa Response to Information Request dated 22 July 2015, document entitled ‘\textgreater \textless’. Refer to Annex K.}
IIF as a ‘balancing mechanism’

8.23 Visa has submitted that ‘X’.184

8.24 MasterCard has likewise submitted that ‘X’.185 On the other hand, the internal MasterCard document entitled ‘<’, does not tend to support MasterCard’s averments regarding any particular methodology followed by MasterCard in setting default IIFs for POS transactions Mauritius in so far as the said document states ‘<’.186

8.25 As at date, neither Visa nor MasterCard have provided detailed methodologies to illustrate how the prevailing IIFs ‘maximise’ card usage by cardholders and acceptance by merchants and to what extent they operate as a ‘balancing mechanism’. In the absence of detailed economic and empirical analysis, the Executive Director cannot accept Visa’s and MasterCard’s claims that their respective methodologies favour the setting of IIFs at an efficient level, especially considering their restrictive effects of the existing default IIF rates in the local acquiring market as explained above.

8.26 Moreover, MasterCard submits that its starting point for setting default IIFs in Mauritius is the ‘<’. The ‘<’ region consists of markets covering the ‘<’, ‘<’ and ‘<’. Countries within the ‘<’ region (including ‘<’, ‘<’ and ‘<’) are at diverse stages of development and have specific economic, demographic, and infrastructural systems on account of which MasterCard’s practice of using ‘<’ as a benchmark for domestic IIF rates in Mauritius does not appear to be appropriate. MasterCard, in its response to the SOI and the Provisional Report of Investigation, recognises that ‘<’.187

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184 See Visa Response dated 10th September 2015 to Information Request Dated September 3, 2015. Refer to Annex M.
186 ibid, Annexure A ‘<’.
8.27 The IIF policy focus of the card schemes seems to lean heavily towards promoting one side of the platform, namely card issuance, at the expense of card acquiring. Visa, for instance, has submitted that ‘\[emphasis added\]’. Thus, Visa considers the impact on merchants in setting the IIF only as far as it tries to estimate the merchants’ maximum willingness to ‘maintain acceptance’, rather than the merchants’ benefits.

8.28 Moreover, it appears that there is an upwards pressure in IIF rates as a result of competition between MasterCard and Visa to attract issuers, rather than as a result of market forces. Visa’s methodology for setting interchange rates takes into account the ‘\[emphasis added\]’. This is supported by submissions received from \[emphasis added\] that ‘\[emphasis added\]’.

8.29 The relatively limited size and maturity of the acquiring market compared to that of the issuing market further questions the extent to which the prevailing default IIFs act as a ‘balancing mechanism’. The acquiring market contains only four players, out of which MCB and SBM control more than 70% of the market, compared to some 13 players in the issuing business. As seen from Table 23 below, although the total number of POS terminals deployed has increased by 32.0% between 2012 and 2015, the network of card-accepting merchants has declined by 18.9% from 6,883 to 5,580 merchants in 2015. The drop in the total number of merchants is in part due to a cleansing [closing of inactive merchants] of \[emphasis added\]’s Merchant database during the last semester of 2015\[190\], declining from 4,382 in 2014 to 2,766 as at 2015.

\[188\] See Visa’s Response to Information Request dated July 22\textsuperscript{nd} 2015: ‘\[emphasis added\]’, page 2 [VISA-CCM-00002305]. Refer to Annex M.
\[189\] See Visa’s Response to Information Request dated July 22\textsuperscript{nd} 2015: ‘Sub-Saharan Africa: Introduce Acceptance Interchange Rates; Align Product Interchange Rates’. Refer to Annex M.
\[190\] Submission of \[emphasis added\], Email of \[emphasis added\], dated October 2016.
Table 23: Merchant base and POS terminals by acquirer

<table>
<thead>
<tr>
<th>Acquirer</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of</td>
<td>No. of</td>
<td>No. of</td>
<td>No. of</td>
<td>No. of</td>
</tr>
<tr>
<td>acquiring</td>
<td>POS</td>
<td>acquiring</td>
<td>POS</td>
<td>acquiring</td>
</tr>
<tr>
<td>merchants</td>
<td>terminals</td>
<td>merchants</td>
<td>terminals</td>
<td>merchants</td>
</tr>
<tr>
<td>MCB</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>SBM</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Cim Finance</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Barclays</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Total</td>
<td>5,887</td>
<td>9,222</td>
<td>6,392</td>
<td>11,113</td>
</tr>
</tbody>
</table>

Source: Compiled from acquirers’ submissions

8.30 With the number of cards in circulation in Mauritius increasing on average by 6.5% annually since 2012 to reach nearly 1.7 million as at December 2015, for a total population of around 1.2 million; the number of merchants offering card acceptance services remains low. Additionally, although the number and value of POS transactions increased significantly over the period 2012-2015; the estimated share of the total final consumption expenditure effected through payment cards remained below 10%191 in 2015.

*Insufficient constraints from merchants*

8.31 In evaluating the restricting effects in the acquiring market, the MSC charged to different groups of retailers was also analyzed to determine the capacity of each merchant group to exert countervailing buyer power on acquirers to absorb the IIF cost element.

8.32 As discussed earlier, it is often a commercial imperative for retailers to accept payment cards even if they are more expensive than other means of payment—unless a retailer accepts to take the risk to lose a substantial number of sales to competing outlets, which constraints their bargaining power with acquirers. Data submitted by the acquiring institutions show that larger merchants are able to negotiate relatively better rates that 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), which further confirms the fact that the IIF acts as a *de facto* floor to the MSC.

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191 According to National Accounts of Mauritius 2015, total final consumer expenditure amounted to Rs 365.7 billion while the estimated value of POS transactions effected through payment cards amounted to Rs 44.3 billion (based on submission of Acquiring banks).
Figure 20: Average MSC (%) by merchant size on Visa debit cards

Source: Compiled from acquirers’ submissions

Figure 21: Average MSC (%) by merchant size on Visa credit cards

Source: Compiled from acquirers’ submissions

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192 Submissions dated 25th October 2016.
193 Ibid.
Figure 22: Average MSC (%) by merchant size on MasterCard debit cards

Source: Compiled from acquirers’ submissions\textsuperscript{194}

Figure 23: Average MSC (%) by merchant size on MasterCard credit cards

Source: Compiled from acquirers’ submissions\textsuperscript{195}

\textsuperscript{194} Ibid.
\textsuperscript{195} Ibid.
Effects of ‘Honour All Cards’ Rule

8.33 As noted previously, certain aspects of the HACR could reinforce the restrictive effects of the current level of IIFs in the acquiring market. Acquirers in Mauritius typically charge the same MSC across all card products within the same card brand and merchant category. IIFs, on the other hand, vary significantly across various card products; for instance, on general transactions, ™’s interchange rates range from 0.9% to 1.60%, while ¶’s interchange rates range from 1.06% to 2.12%. In determining the extent to which the IIF constitutes a floor to the MSC, the Executive Director has restricted his analysis to cards carrying an average IIF of 1%. The HACR, by requiring merchants, and consequently acquirers to accept all cards irrespective of their cost (in terms of IIF), thus implies the acceptance of cards with considerable higher IIFs, which strengthens the point of the IIF as an effective floor to the MSC. This rule could potentially reduce the incentive of card schemes to drive down IIF rates by forcing the acceptance of a product irrespective of market forces. Large integrated issuers-acquirers may be in a better position to absorb the cost of high-IIF cards relative to small integrated acquirers or pure acquirers who may need to pass on the cost of high-IIF cards to their merchants, further distorting competition in the acquiring market.

Effects in downstream issuing market and upstream network market

8.34 For issuers, the IIF represents a revenue which they collect, irrespective of their individual cost structure. There is a commercial incentive for each individual issuer to promote cards that carry higher IIFs. Even if overall payment volume were to grow more slowly due to limited merchant acceptance, an individual issuer would continue to promote cards with higher IIFs as long as its individual profits were increasing, even if these cards were not as efficient (e.g. in terms of technology used) as cards carrying lower IIF. This has the effect of increasing the cost of card acceptance in the acquiring market, leading to reduced card acceptance, thus depriving consumers of the choice of using a more innovative and efficient payment method.

8.35 In the upstream market, card schemes compete for issuers by offering attractive IIFs to promote the issuance of their respective card brands. As noted previously, the inter-system competition between Visa and MasterCard does not appear to sufficiently constrain either player in its determination of its respective interchange fees. For instance, while Visa introduced lower IIF rates on petrol transactions in 2011, MasterCard only adjusted its IIF on petrol transactions four years later in 2015. There has been no further revisions to MasterCard’s IIF rates since 2007 despite a relatively low card acceptance in the country.

8.36 The competition between MasterCard and Visa even appears to exert an upwards pressure on the level of IIF. For instance, between 2007 and 2012, Visa’s increased the IIF on its ™ programme from ¶% to ¶%, bringing it closer to MasterCard’s ¶% on ™ transactions. It was further found that Visa considers ™ and ¶.

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196 See Visa’s Response to Information Request dated July 22nd 2015: ‘¶’. Refer to Annex L.
**Offsetting Public Benefits**

8.37 The Executive Director has considered (a) if any of the offsetting public benefits as described under Section 50(4) of the Act, in terms of safety, efficiency, development and technological progress in relation to payment card services are present; and (b) whether and to what extent the benefits, if they are present, should be taken into account in determining the proposed remedies.

8.38 The Executive Director recognizes that a positive interchange fee can help in the promotion of payment cards as an innovative, secure and efficient means of payment. By shifting some of the revenue from the acquiring side to the issuing side, an optimal IIF may act as a balancing mechanism to address network externalities present in the payment cards market. However, while it is important to create incentives for issuers to issue and promote innovative card products, it is equally important to incentivize card acceptance and promote competition in the acquiring market to optimize the benefits of a payment card system. As illustrated earlier, the current level of IIFs does not seem to promote optimal usage of the payment network and appear to disproportionately favour issuers and the card schemes, at the expense of acquirers and consequently merchants and consumers. The level of card acceptance by merchants in Mauritius is relatively low at 48%, despite having around 1.5 million cards in circulation in the country for a population of around 1.3 million. As submitted by ï», the ï», its base of card-accepting merchants has seen a significant decrease (around 37%) between 2014 and 2015 as a result of a cleansing of inactive merchants.

8.39 Several main parties to the investigation have submitted that the IIF is an important source of revenue for issuers and the prevailing level of IIFs contributes toward card issuance and promotion of card usage. While the IIF represents the main source of income for pure issuers of debit cards, accounting for around 90%, it has been observed that other issuers have alternative sources of revenues for card issuance and promoting card usage. For instance, 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. In addition, these issuers also derive revenue from cardholder fees which can account for up to 32% and 18% of total revenue respectively. 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.

8.40 Based on information provided by the main parties to the investigation, 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.

8.41 In relation to the HACR, the Executive Director considers that, while the rule could potentially further contribute towards the creation of a floor on the MSC (as described at paragraph 8.33 above), there are other associated benefits to the HACR in so far as it promotes product development and provides certainty to cardholders by imposing an obligation that prevents merchants from discriminating between cards and issuers. An important requirement for any successful payment network is that the means of payment be widely accepted. The HACR guarantees the acceptance of any card cardholders choose to use when making purchases. Absent the HACR, consumers would likely face greater search costs because they would need to ascertain
that the merchants that they are planning on transacting with accept their particular cards. The HACR also also fosters a greater choice of card products for consumers to choose from making payments. Without prejudice to the statutory right of the Executive Director to investigate the HACR or any other Network Rules established by Visa or MasterCard pursuant to Section 51 of the Act at a later stage, the Executive Director, based on information available as at date and the assessment carried out, takes the view that that the benefits of the HACR are likely to outweigh the potential restrictive effects it may have on the acquiring market. The Executive Director therefore recommends that no modification be required to be brought to the ‘honour all products’ aspect of the HACR at this stage.

Determination of ‘optimal’ level of IIF

8.42 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. The Merchant Indifference Test (MIT)\(^\text{197}\) 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\(^\text{198}\).

8.43 The MIT aims at calculating a level of interchange fee that makes merchants, on average, indifferent between a transaction by cash or by card. According to the MIT, interchange fees should be such that the cost of accepting cards for merchants (i.e. the MSC) does not exceed the transactional benefits that merchants derive from accepting cards. Transactional benefits are direct cost savings that accrue to a merchant when a card payment takes place (net of interchange fee) relative to a payment with an alternative payment method\(^\text{199}\). For instance, merchants can derive such transactional benefits if card payments are faster to process at the check-out counter, or if they are associated with lower fraud levels than other payment means.

8.44 According to the MIT, an MSC passes the test if the merchant is willing to allow a non-repeat customer (who has both cash and card to pay for his purchases) to pay by card, or equivalently if accepting the card does not increase the merchant’s operating costs. If the IIF is set above the MIT-compliant level, it inflates merchants’ costs of acceptance without enhancing the efficiency of the system.


\(^\text{198}\) In 2010, Visa Europe committed to reduce the maximum weighted average MIF for consumer debit cards for cross-border transactions and national transactions in those EEA countries where it sets the MIF directly to 0.20%. Following the 2010 Visa decision, in 2014 the EC adopted a decision making binding additional commitments from Visa Europe. Under these commitments, ‘Visa Europe agreed to reduce to 0.3% the maximum weighted average MIF for consumer credit cards for Intra-EEA transactions, national transactions in those EEA countries where Visa Europe sets consumer credit MIF rates directly and for transactions with merchants located in the EEA with Visa credit cards issued outside the EEA but within the Visa Europe territory. In addition Visa Europe committed to apply the debit 0.2% cap to all MIFs set by Visa Europe for transactions with merchants located in the EEA with Visa debit cards issued outside the EEA but within the Visa Europe territory.’ See http://ec.europa.eu/competition/sectors/financial_services/enforcement_en.html.

\(^\text{199}\) Applications of the MIT have typically focused on cash as the alternative payment instrument against which to assess transactional benefits on account of cash being legal tender, universally used and the most common alternative to cards that does not involve an interchange fee.

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The computation of the MIT-compliant IIF requires the identification and quantification of the transactional benefits of card payments compared to cash payments. The MIT relies on the ‘avoidable costs’ principle, i.e., the focus is on costs that would not be incurred by the merchant if he did not accept cards or cash. The main costs categories associated with retail payments can be broadly classified as follows:

a. **labour costs** incurred in processing payment transactions at the counter (front office) and in the back office;

b. **costs of equipment** used in processing payments, such as cash registers (POS system), cash counters, safes, or dedicated card processing software;

c. **bank charges** - the acquiring charges for cards;

d. **costs of outsourcing**, e.g. transporting and depositing of cash at the bank, obtaining and transporting of change; and

e. **losses** associated with the use of certain payment instruments, such as the costs of fraud and theft, and the opportunity cost of lost interest on money collected at the till but not immediately transferred to the merchant’s bank account.

Information on these categories of costs is not generally available from public sources. The Executive Director had, as part of the CCM Merchant Survey, sought to capture, inter alia, the various costs data necessary for estimating the merchants’ cost functions.

The response rate on the ‘cost of card acceptance’ component of the CCM Merchant Survey has been relatively low. Only merchants that offer card payment facilities to their customers were interviewed for the survey on costs, which corresponded to 48% of the merchant sample population. Moreover, most merchants experienced difficulties to provide details of all the different cost categories. Many merchants lack information on the different components of the MSC and acquirers do not always provide such information to this level of granularity to merchants, which further raises questions on the ability of merchants to negotiate with acquirers. The survey revealed that ‘25% of the merchants accepting card payments declare that they know what the MSC is about. When they are asked to describe the components of MSC, 46% mentioned about acquirer fees while 54% could not relate clearly to a particular component.’

The computation of the MIT-compliant IIF has not been possible as the test requires extensive and detailed cost data which merchants have not been able to provide. As an alternative approach to determining the ‘optimal’ IIF, the Executive Director has considered the evolution of IIF rates in recent years and the impact on market dynamics.

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200 Back office labour costs relate to all other tasks carried out in relation to the processing of payments, outside the time taken to process them at the counter. For instance, back office cash handling costs mainly relate to transporting of cash to and from the tills, cash counting, preparation of cash for the tills, cash reconciliation and identifying counterfeit notes. Back office labour costs for cards are costs related to card reconciliation, checking card terminals for security, or dealing with card fraud reimbursement applications.

201 See CCM Merchant Survey, pp 37.
Reduced IIFs on petrol and Government transactions

8.49 In November 2011, Visa introduced new IIF rates for petrol and utilities payments of 0.5% and 0.6%, respectively. Visa submitted that ‘<’."^{202} ‘<’.^{203}

8.50 Visa further submitted that ‘<’.^{204}

8.51 Visa submitted that the proposed reduction in interchange rates would result in increase in revenue as payment volume grows. Issuers and acquirers would also be expected to benefit from the reduced rates: for instance, ‘<’ was expected to obtain an incremental payment volume of $‘<’ from its issuing business and $‘<’ from its acquiring business, while ‘<’ was expected to obtain an incremental payment volume of $‘<’ from its acquiring business."^{205}

8.52 In January 2014, Visa established a reduced interchange rate of 0.5% applicable to all payment types (i.e. consumer, premium, and commercial credit cards) for government payments, including taxes, fines, penalties, and fees. Visa ‘<’.^{206}

8.53 It further appears that Visa’s decision to lower interchange fees for the government segment occurred as a response to the possibility of being excluded as a payment option from the government payment portal ‘<’ [emphasis added].^{207} ‘<’.^{208}

8.54 Visa further submitted that ‘<’.^{208}

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203 Visa Response to Information Request dated 22 July 2015, question (vii). Refer to Annex K.
205 Ibid. VISA-CCM-00002267. Refer to Annex K.
206 See Visa Response to Information Request dated 22 July 2015, question (vii). Refer to Annex K.
208 Ibid. VISA-CCM-00002270. Refer to Annex K.
8.55 In February 2015, MasterCard similarly introduced lower interchange rates for petrol and
government transactions of 0.5%. ‘MasterCard concluded that ‘$\text{\textgreater}$.’\textsuperscript{209} MasterCard further
submitted that $\text{\textless}$.\textsuperscript{210} MasterCard also submitted, ‘$\text{\textless}$.\textsuperscript{211}

8.56 Based on data submitted by the card schemes, it appears that a reduction of the IIF is necessary to
incentivize card acceptance in some merchant segments. In particular, Visa’s and MasterCard’s
submissions both point to a positive reaction on volume of card transactions from reducing the IIF
rate to 0.5%; their respective analysis on the impact of the reduced IIF on key stakeholders indicate
that both issuers and acquirers stand to benefit from significant incremental revenue.

\textsuperscript{209} See MasterCard Response dated 18\textsuperscript{th} September 2015 to Information Request Dated September 3, 2015 – MasterCard
Internal Draft Document/Proposal identifier # C000000292.

\textsuperscript{210} ibid. Annexures A – E, page 1.

\textsuperscript{211} ibid. Annexure A, page 2

[Confidential Document] – COMPETITION COMMISSION OF MAURITIUS
9. Findings of Investigation

9.1 It has been established, in accordance with Section 45 of the Act, that Visa and MasterCard have each entered into vertical agreements (not involving resale price maintenance) with local issuers and acquirers by virtue of their respective Membership agreements, which lay down the rules for participation in the respective networks, including rules relating to the setting of default IIFs for POS transactions in Mauritius.

9.2 A review of a vertical agreement under Section 45 requires the establishment that one or more of the parties to the agreement is in a monopoly situation that is subject to review under Section 46 of the Act.

9.3 For the purposes of assessing whether the main parties are in a monopoly situation, three distinct relevant markets have been identified, namely; (i) an upstream four-party payment card market for the provision of network services in Mauritius, (ii) a downstream four-party payment card market for issuing services in Mauritius and (iii) a downstream four-party payment card market for acquiring services in Mauritius.

9.4 In identifying the above relevant markets, the Executive Director has, in the first instance, determined that non-card payment instruments, such as cash and cheques, do not fall in the same product market as payment cards as, by virtue of their distinct characteristics and functionalities, they do not impose sufficient constraints on payment cards, both from a demand-side and supply-side perspective. The limited substitutability between payment cards and other payment instruments is supported by the results of the CCM Consumer Survey and the CCM Merchant Survey which revealed significant differences in the characteristics attributed by respondents (both consumers and merchants) to each payment instrument.

9.5 It has been further determined that despite the inter-relatedness of demand by the different groups of users in the payment system, there exists three distinct group of services within the payment system, each of which constitute a relevant product market of its own on account of limited demand side and supply side substitutability.

9.6 In relation to the assessment of monopoly situation under Section 46(3) of the Act, it has been established, in the upstream network market, that by virtue of Visa’s and MasterCard’s high market shares in terms of cards in circulation and POS transactions volume, combined with the lack of competitive constraints from issuers, acquirers and merchants in the determination of the default IIF, and high barriers to entry to a payment system characterised by important network externalities; Visa and MasterCard are both dominant in the upstream network market in Mauritius.

9.7 In relation to the downstream markets, it has been established, on account of their ability to maintain significantly high market shares over a sustained period of time, that together, MCB and SBM are together in a monopoly situation in the issuing market and the acquiring market.

9.8 Having established the existence of a monopoly situation in the three relevant markets, the Executive Director has next considered whether the current level of IIF established by Visa and MasterCard constitutes a prevention, restriction, or distortion of competition in any of the relevant
markets in accordance with Section 46(2)(a) of the Act. In particular, the Executive Director is concerned that the current level of IIF could be restricting competition in the acquiring market by inflating the base on which acquirers set the MSC, effectively creating a floor to the MSC. The Executive Director has found that the IIF in Mauritius can account for between 47% and 79% of the MSC on \( \times \) transactions and between 37% and 72% of the MSC on \( \times \) transactions, thus, effectively creating a floor to the MSC and potentially preventing, restricting, or distorting of competition in the acquiring market by limiting the ability of pure acquirers or small integrated ones to charge a MSC that is lower than the IIF. For larger integrated issuers-acquirers, such as MCB and SBM, because of their large cardholder base, the majority of card transactions processed at their POS terminals are effected using cards issued by them. On these transactions, the two integrated issuers-acquirers receive the IIF (paid as acquirers) through their issuing business. Thus, large integrated players can absorb, at least to some extent, part of the IIF and are in a position to offer lower merchant fees than an equally efficient pure acquirer.

9.9 Despite the entry of Cim Finance in 2008 in the acquiring market, MCB and SBM have been able to maintain high market shares in this market and have a considerably larger acquiring merchant base compared to Cim Finance and Barclays. MCB and SBM also benefit 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.

9.10 While the IIF is a key element of revenue for most card issuers, it should be noted that card issuers, particularly, those that issue credit cards, also derive revenue from other sources, including annual cardholder fees, and interests on advances. While the IIF represents the main revenue source for issuers of debit cards only, 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.

9.11 Despite card scheme owners’ claims that the IIF operate as a ‘balancing mechanism’, the IIF policy focus of the card schemes seems to lean heavily towards promoting one side of the platform, namely card issuance, at the expense of card acquiring. As at date, neither Visa nor MasterCard have provided evidence to support their claims that their respective methodologies favour the setting of IIFs at an efficient level, especially considering their restrictive effects in the acquiring market as explained above. On the contrary, it appears that there is an upwards pressure in IIF rates as a result of competition between MasterCard and Visa to attract issuers, rather than as a result of market forces. Furthermore, a comparative assessment of growth in the acquiring and issuing markets further questions the extent to which the prevailing default IIFs act as a ‘balancing mechanism’.

9.12 The Executive Director has found that the introduction of a lower IIF of 0.5% by Visa for the petrol segment has enabled smaller acquirers such as Cim Finance and Barclays to offer more competitive MSCs than those of larger integrated issuers-acquirers for this segment. The response of acquirers following the reduction in IIF provides strong evidence that a reduction in the IIF can be accompanied by a corresponding decrease in MSCs. By reducing the costs of acceptance for
merchants, a reduction in IIF could potentially increase the level of card acceptance by merchants in Mauritius, which is currently relatively low at 48%, further enhancing the scope for growth in the acquiring market.
10. Comments to Responses of Main Parties to the Provisional Findings Report

10.1 The Provisional Report of Investigation was issued to each main party on 30\textsuperscript{th} November 2015, and apprised the latter of the information gathered, the assessment conducted, the provisional findings together with the possible remedies which the Executive Director intended to recommend to the Commission for the purposes of addressing the harm identified.

10.2 Each main party was invited by way of letter dated 30\textsuperscript{th} November 2015, to provide its reasons, in writing, as to why the provisional findings should not become final and more generally, to submit their views and comments on the contents of the provisional report issued to it.

10.3 The following main parties did not submit any written response to the Provisional Report of Investigation issued to them: \(\times\), \(\times\), \(\times\), and \(\times\). The response of each of the remaining main parties has been reproduced in its entirety at Annex C of this Report.

10.4 This Chapter contains the Executive Director’s views and comments on key comments put forward by the main parties on:

i. the substantive assessment and findings contained in the Report; and

ii. the methodologies and results of the Consumer and Merchant Surveys.

10.5 The Chapter is divided into two parts. Section A contains an abbreviated version of the key comments submitted by respective main parties together with the corresponding views of the Executive Director. Under section A, the individual responses of the following main parties: Barclays, Cim Finance, MCB, SBM, MasterCard and Visa, which where relevant, have been abbreviated and reproduced in tabular format. The corresponding column entitled ‘Executive Director’s Response’ addresses the comments reproduced in their respective Tables. Section B, for its part, embodies the Executive Director and where relevant TNS’ response to main parties’ views on the Consumer and Merchant Surveys. Under this section, main parties’ comments on the Consumer Survey and the Merchant Survey have been respectively compiled and collated on an issue-by-issue basis together with the corresponding Executive Director’s response.
A. Executive Director Comments to Submissions on Provisional Findings

1. Comments from Barclays
II. Comments from Cim Finance
III. Comments from MCB
IV. Comments from SBM
V. Comments from MasterCard
VI. Comments from Visa
## B. Executive Director Comments to Submissions on Consumer and Merchant Surveys

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<tr>
<th>Nature of Issues</th>
<th>Main Parties Comments to CCM Consumer Survey</th>
<th>Main Parties Comments to CCM Merchant Survey</th>
<th>Executive Director’s Comments to CCM Consumer Survey</th>
<th>Executive Director’s Comments to CCM Merchant Survey</th>
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<tr>
<td>Tabulation of Survey results</td>
<td>A main party has averred that given that it has only been provided with reports summarizing the survey results and has not been given access to the underlying data, it cannot ascertain whether TNS Analysis tabulated or synthesized the results accurately.</td>
<td>The ED refers to TNS submissions to the effect that TNS follows both the standards of EASOMAR and Data Protection Act regarding confidentiality and data protection. According to these guidelines, TNS is prohibited from sharing data collected from respondents without their consent. TNS was selected after a thorough evaluation process and in light of its extensive experience in conducting related projects. The ED is satisfied that TNS has submitted proof of the required expertise, skills and knowledge for the purposes of administering these surveys and it has provided the ED with the necessary quality control assurance for the purposes of ascertaining the credibility and integrity of the Survey Reports.</td>
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<td>Margin of error and quality control</td>
<td>Neither report contains information related to the margin of error for any of the surveys’ results or the sampling process, nor do they detail the findings of the quality control checks. These lacunae render the reports unreliable.</td>
<td>The ED submits that the Survey Methodology and quality control have been mentioned at the beginning of the respective Survey reports. Additionally, a draft version of the proposed methodology in relation to the Surveys, which contained a detailed approach of the Surveys and other technical aspects including stratification, had been shared with the parties for their views and comments.</td>
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<td>The integrity of the data provided by merchants cannot be assumed to be conclusive. One main party has sought to clarify the form of quality assurance leveraging on an auditing exercise which has been conducted to ensure that the data provided therefrom are genuine figures. Clarification has been sought on the existence of a serious risk that the interviewees have taken a one sided view, whereby they expect the relative services and products to be offered for free, independently of the fundamentals of economics of an industry and a country.</td>
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<td>The ED refers to TNS’ submissions to the effect that it has conducted quality checks at several stages of the survey administration process: 1) during fieldwork where fieldworkers have been accompanied by internal research assistants; 2) post-administration where respondents were called afterwards to provide clarifications on ambiguous answers and 20% of respondents per interviewer were call checked for specific questions to verify whether data collected is reliable such that questionnaires which failed the QC process were rejected and re-allocated to another interviewer; 4) 20% of data check for each data operator was conducted to ensure that data has been correctly captured; 5) Calculations were checked by the analysis department and before report was submitted to CCM, a final check was carried out by one of the directors. The ED further submits that the Surveys were meant to identify and assess the reasons for acceptance and non-acceptance of the various types of payments cards. The ED believes that the Surveys have accordingly fulfilled those objectives.</td>
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<td>Nature of questions asked to respondents</td>
<td>It is not clear from the Survey reports which survey questions had predetermined options from which the respondents would select and which questions allowed the participants to provide their own unprompted answers.</td>
<td>The ED refers to TNS submissions to the effect that most of the questions had to be closed-ended since administration of the questionnaires was quite lengthy (on average 1 hour for each consumer interviewed and 2 days for merchants as the Merchant Survey questionnaire was split in two segments). TNS also submits that several pilot tests were conducted before kicking-off fieldwork in order to finalise pre-determined options and produce a questionnaire that was as easy as possible for the purposes of administration.</td>
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<tr>
<td>Possible bias in the Survey results</td>
<td>Unless the wordings “Introduction to Be Read” in the CCM Merchant Survey questionnaire (which stated that the CCM is assessing whether the charges set for processing of payment card transactions at POS terminals are anti-competitive) were removed from the final Merchant Survey questionnaire, there is strong reason to believe that the results of the CCM Merchant Survey are biased by such survey instrument.</td>
<td>The ED refers to TNS submissions to the effect that had the ‘Introduction section’ not been mentioned in the questionnaires, no merchant would have disclosed highly confidential information about their financial transactions to fieldworkers. TNS further submits that on several occasions, the Managers at TNS had to intervene since merchants were greatly reluctant to provide information on their transactions. The ED further notes that concerns relating to the CCM’s investigation were already made public since the start of the investigation and for the purposes of the Survey administration, a Press Communiqué was also released to ensure the smooth running of fieldwork.</td>
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Regarding the Merchant survey, only 48% of the 346 merchants interviewed own a POS, which causes the survey results to be biased, as even merchants who are not using a POS are actually expressing their views on the matter. Given the spread of merchant respondents, the survey unsurprisingly reveals a strong preference for cash. Furthermore, the sample merchants having experienced the POS machine is thus even smaller and statistically not significant.

The integrity of the data provided by merchants (section 7 of the CCM Merchant Survey) cannot be assumed to be conclusive. It would be welcome to perform some form of quality assurance leveraging on an auditing exercise to ensure that the data provided therefrom are genuine figures. Besides, some elements of costs, notably VAT, have been overlooked by the merchants.

The ED refers to TNS submissions to the effect that a clear rule for statistical analysis is to have a minimum sample size of 30. Regarding the merchant segments in the Merchant Survey (i.e. merchants with POS and merchants without POS), the sample sizes are largely sufficient and the sub-sample sizes statistically significant.

TNS further submits that all figures pertaining to merchants’ costs of acceptance of payment cards have been cross verified before analysis. With respect to cost elements, TNS avers that the MSC had to be simplified by focusing on key questions.
It has been submitted that the questions put to consumers were confusing, arbitrary and vague and at times, were put to consumers that would not be able to give an objective answer as they have no real knowledge/experience dealing with non-cash payment instruments (as indicated for the following Questions):

| With respect to Q2: (i) The trend in Mauritius indicates that the higher the value of purchase, the greater the chance that the consumer would use a card to make the purchase. Therefore, it would generally be merchants that sell more expensive items that would have the incentive to accept payment cards. However, persons from lower income communities would make fewer such purchases in a given time period and would therefore be less likely to purchase from merchants that accept card payments and |
| With respect to Q 1 to 3: These questions all relate to the subjective preferences of the Surveyed Merchants. Additionally, these questions do not seek to investigate why a merchant has certain subjective views about a given mode of payment. This renders the data collected from these questions in the Merchant Survey open to a multitude of different interpretations, none of which would amount to anything more than speculation. |
| The ED refers to TNS submissions to the effect that the questionnaires have been pilot tested before full-blown fieldwork was launched. The purpose for conducting the pilot test was to ensure that questions are comprehensible and easily administered on field. In addition the Surveys were intended and designed as quantitative surveys (as opposed to qualitative study). |
| (i) The ED submits that the argument put forth is unsubstantiated, the more so as merchants who accept cards de facto have a legal obligation to accept cash. Thus, the argument that cardholders ‘from lower income communities will be less likely to purchase from merchants that accept card payments’ has no rationale. |
| According to TNS, all research works state that usage comes from preferences. The purpose of having these questions in the questionnaire was to determine the extent to which the market is open to different payments instruments and also to understand whether perception of the different payment instruments can influence consumer behaviour. |
more likely to make most of their purchases from merchants that do not accept card payments.

(ii) The Consumer Survey Report indicates that 9% and 11% of the Surveyed Consumers that do not own credit or debit cards, respectively, indicated that the reason for this was that they did not know what a credit or debit card is. Consumers, who do not know that a certain type of payment card exists, do not know how it works and/or has never owned a payment card cannot provide an objective opinion on such payment instrument. Any statistics obtained from those Surveyed Consumers should be disregarded.

(ii) TNS notes that options 'Don't know / has no idea' was allowed in the questionnaire for questions where respondents could not give their views. Throughout the report, the sample size has been provided to avoid misinterpretations. According to the findings and sample size, unawareness for credit card is more significant as compared to debit card.
With respect to Q 5 & 6:

(i) Approximately 17% - 18% of the population of Mauritius belong to the Muslim faith wherein the use of instruments that attract interest (such as credit or debit cards) are prohibited. Therefore, a large number of persons that belong to the Muslim faith would not consider owning either credit or debit cards. In Q 5-6 of the Consumer Survey where consumers were asked why they do not own credit or debit cards the option to indicate that you do not wish to own a credit or debit card as a result of religious reasons was not provided. There was an option to indicate "other" as a reason for not owning a payment card; however, it is unclear whether the reason for the "other" box was explained properly to the consumers. Additionally, the space given to specify why the other option was chosen was very limited.

(ii) The options given to consumers as possible answers to

With respect to Q 18 & 19

(i) These questions are again extremely subjective and merely seek to investigate the Surveyed Merchants’ views about a given mode of payment without seeking to investigate why.

(ii) These questions provide the option for the Surveyed

(ii) TNS submits that the surveys were intended and designed as quantitative surveys (as opposed to qualitative study where further probing is allowed).

(i) TNS takes the view that such statement relies on a mere assumption. Additionally, questions pertaining to faith are strongly prohibited in a marketing research questionnaire. Had this been a strong reason for not having/owning cards among the surveyed respondents, TNS notes that its Survey would have returned such responses/details under the open-ended option 'Other'. TNS submits that interviewers are given separate sheets with reference number for open-ended questions.

(ii) TNS submits that interviewers are briefed including through role-
these questions are very unclear and it is not known whether the persons conducting the Consumer Survey properly explained the answers to the consumers. This effect would be aggravated where consumers received the questionnaire by post, as the answers would not have been explained to them at all. Examples of answers that are confusing and might easily be misunderstood include: "inconvenient", "no need / no desire", and "don't know".

| With respect to Q 26: (i) There are many other potential reasons as to why a consumer would have a credit card but not use it in a particular month. For example, the person could have reached the limit on their credit card. Additionally, given that the general preference is to use credit cards only for large purchases, the person has simply not made a large purchase in the preceding month. The option to indicate "other" is present in the list of answers to this question but, with respect to Q 23 & 24: Not all merchants accept payment cards; however, all of the Surveyed Merchants do accept cash. The fact that there are only 166 merchants that accept payment cards and will therefore consider providing discounts for card transactions versus the 346 Surveyed Merchants that accept cash and will therefore consider providing discounts for cash payments skews the data collected from this question. | With respect to Q 26: (i) TNS submits that interviewers were given separate sheets with reference number for open-ended questions. | With respect to Q 23 & 24, analysis has been done only amongst POS owners who offer discount (please refer to slide 32 of the Survey Report), which eliminates the possibility of skewedness towards a particular payment instrument. |
there is no space for the surveyed consumer to expand on why they chose the "other" option.

(ii) The answers to this question are again vague and would potentially lead to confusion amongst the Surveyed Consumers. For instance the following options have been provided: "interest", "fees", -"don't know", and "risk of debt".

**With respect to Q28:**
The Surveyed Consumers are not asked to give a reason as to why they allocated the 11 points between the two payment methods in the manner that they did. There are multiple different manners in which to analyse the information the Surveyed Consumers provided to this question, none of which would be more than speculation.

With respect to Q28, TNS submits that TNS GLOBAL adopts this approach across the world for measuring effectiveness of a payment instrument by cross-analyzing preference versus market share.

**With respect to Q 29 to 31:** It is unclear why the hypothetical card fee increases to persons currently paying card fees and the levels of potential card fees that might be introduced on payment cards on which currently no card fees are charged.

The ED submits that Q 29 to 31 were intended to capture consumer reaction, in particular the significance of any switching behaviour on the part of cardholders, in response to a small but significant non-transitory increase in price, to verify the claim purported by several
were set at very low levels in the Consumer Survey report.

| Represen-tativeness and Reliability | Concerns have also been expressed regarding the representativeness and reliability of the CCM Merchant Survey, due to the sampling methodology employed. The convenience sampling calls into question whether the CCM Merchant Survey is truly representative of merchants in Mauritius who are in a face-to-face payment relationship with customers. The CCM Merchant Survey Report does not provide additional details. | TNS submits that with respect to fee information in the Consumer Survey, respondents were given enough time to gather the requested info. The Merchant Survey was carried out by business-to-business interviewers, who have been trained to handle more complex surveys. Additionally, TNS carried out further, in-depth quality checks for sensitive business information since this was key to the study. |

| | | The ED notes that details regarding the sample structure are provided in the Merchant Survey Report in terms of business activities and geographical spread.

According to TNS, 'convenience sampling methodology' as deployed involves:
1) interviews being conducted based on appointments, according to merchants’ convenience (day and time); and
2) merchants being given the flexibility to answer the questionnaire in two parts. First, they had to meet the requirements of the 'Acceptance of Payment Instrument for Face-To-Face Transactions' section. Only then, would relevant merchants be given one... |
regarding the convenience sampling methodology. Clarification has been sought on the geographical spread of the sample of merchants surveyed (for e.g. are all merchants located in just a few cities and towns?). Without such additional information regarding the sampling methodology, it is impossible to assess whether the results of the CCM Merchant Survey are unintentionally biased / distorted.

### Sample size

As regards the CCM Consumer Survey, the sample size of 400 is too small to observe key sub-populations within the sample. For example, the results demonstrate that only 2% of survey respondents (i.e. between 6-9 individuals) used prepaid cards and only 4% (15 individuals) use cheques. Hence CCM Consumer Survey cannot be relied upon to draw meaningful conclusions regarding these 2 payment methods. At one point, the Consumer Survey Report even According to Statistics Mauritius, there are about 900,000 individuals aged 18 years and above. For the purpose of the survey, it was proposed to survey 400 individuals on the basis of setting the confidence level at 95% with a confidence interval of 5%.

For the CCM Merchant Survey, the sample size of 346 is too small. Only 6% of the survey respondents - between 13 & 15 merchants – accept mobile payments, only 48% (i.e. around 166 merchants) currently accept payment cards. It is difficult to draw meaningful conclusions where the merchants are broken down by sector. The CCM Merchant Survey Report itself acknowledges the limitations created

The ED refers to TNS’ submissions to the effect that the merchant sample size has been determined using an established sampling methodology (the Bill Godden Formula (2004)). The ED further submits that a detailed document on TNS’ approach to determining the merchant sample size had been shared with main parties.
Given that some of the questions in the Consumer Survey were only put to certain of the Surveyed Consumers (based on their answers to previous questions) the effective sample size per question is generally much smaller than 400.

Despite the fact that the survey methodology provided by the CCM provided that 400 merchants would be contacted during the survey, the Report indicates that only 346 merchants were eventually contacted. The number of merchants surveyed therefore only constitutes 86.5% of the sample size set out in the CCM's own methodology. Moreover, the effective sample size per question is much smaller than the total number of surveyed merchants.

TNS provides that all the research models state that statistical tests could be carried provided the sample size is 30 and above.

TNS submits that the margin of error between a sample size of 400 and 346 is statistically similar: +/- 4.9% as opposed to +/- 4.6% respectively. According to TNS, all the research models state that statistical tests could be carried provided the sample size is 30 and above.
Only 400 respondents were interviewed for the survey, while a major bank in Mauritius itself has some 700,000 cards. The sample size might not be large enough to constitute a fair and unbiased representation of the whole cardholder population in Mauritius which amounts to around 1,500,000. Besides, the percentage of the 400 interviewed who actually have a card, is not specified in the survey.

TNS submits that the sample size has been calculated based on the Mauritius’ adult population. This sample size has been reached on basis of setting the confidence level at 95% with a confidence interval of 5%.

**Scope of the Survey**

The surveys were supposed to consider 6 payment instruments (cash, cheques, debit cards, credit cards, prepaid cards & mobile payments). However these payment forms are not used consistently across the survey questions. Many of the key questions of the CCM Consumer survey exclude prepaid cards and mobile payments from analysis; some portions also exclude cheques. In one instance (p. 45-46), the Merchant Survey adds a payment method (direct debt) not contemplated elsewhere in the survey. Failure to use a

The ED refers to TNS’ submissions to the effect that prepaid cards and mobile payments have a relatively low penetration in the market. Even if these were included in the questionnaire, it would not have been possible for TNS to perform cross-analysis due to small sample size (only 8 respondents in the Consumer Survey stated that they use prepaid cards).

The length of the questionnaire bordered around 45 minutes though respondents were informed that the interview would take around 25 minutes in the introduction). Had
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<th>Consistent set of payment methods reduces the utility of the survey results and the ability to make meaningful comparisons across findings.</th>
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<td>TNS extended the questionnaire, interviewers would have gotten a lot of no/incomplete responses since there was a non-significant risk of respondents losing interest and providing inaccurate information.</td>
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<th>The CCM Consumer Survey focuses almost exclusively on consumers’ current usage patterns / preferences with respect to different payment methods when in fact one of the stated objectives of the CCM Consumer Survey is to obtain information related to the level of substitution between payment cards and other forms of payment instruments (and the actual Survey Report contains very little data related to substitution of payment methods). Much of what appears in the substitution section of the Consumer Survey Report is also confusing. The section on calculating a preference share for different payment forms does not provide adequate details on the methodology or</th>
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<td>The ED submits that the Survey has addressed all the objectives of the study. Based on TNS’ experience, a questionnaire cannot usually exceed 45 minutes otherwise respondents would lose interest in the survey. The Survey questionnaire was carefully designed and the questions to be included therein limited to meeting the objectives of the Survey. This is the reason why a draft of the questionnaire had been shared with all parties for their views. With respect to the preference share, TNS submits that it is important to use a framework that is standard across all the respondents, justifying therefore the choice of “Rs5,000” which had to provide a strong cut-off point likely to influence the choice of payment instrument.</td>
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conclusions. The Report states that the respondents were presented with “several scenarios ... alternating between cash, debit card, credit card prepaid card and cheque” but provides no details on the scenarios or their contents. The exercise also focused exclusively on a payment of Rs 5000 despite the Report’s earlier conclusion that consumers’ payment preferences vary greatly depending on the transaction amount. The Consumer Survey does briefly address annual card fees. However, the vast majority of surveyed cardholders ‘have no idea how much they pay in card fees’, casting serious doubts over any conclusions reached about the impact of card fees or a change therein.
Other comments

(i) The Consumer Survey focuses on consumers' preference with regards to different payment methods which may not reflect reality; for example, cheque transactions occupies an important place in this survey whereas such payment instrument is on the decline at a major bank (and no more used in some other countries).

(ii) The Report only briefly addresses annual fees; the vast majority of surveyed cardholders "have no idea how much they pay" in card fees (p. 42 of the Consumer Survey Report). The effectiveness of any conclusion reached pertaining to the impact of card fees or a change therein remains doubtful.

(i) The CCM Merchant Survey report indicates that 6% of the surveyed merchants that do not accept card payments had previously accepted cards, noting the main reason to quit being too many 'charges' to be paid. The Survey Report provides no details regarding the nature of charges referenced, the number of merchants who cited such charges as a factor in their decision to stop accepting card payments, or the other reasons cited by those merchants. Given the paucity of information, one cannot infer much about merchants' motivations in foregoing card acceptance. Moreover, the Report does not indicate that any of these merchants would resume accepting cards if the MSC were reduced.

(ii) The fact that the majority of respondents surveyed for the purposes of the Consumer Survey are not aware of the amount they pay is a very strong insight of their ability to switch payment instruments and gives an indication of what matters to consumers in their choice of a specific payment instrument.

(i) The CCM Merchant Survey questionnaire is much longer than that of the CCM Consumer Survey, given the nature and amount of information requested. This explains why the Merchant Survey questionnaire was split into two so that respondents don't lose interest and they have enough time to gather the requested costs-related information.

(ii) According to TNS, the first version of the questionnaire relating to MSC was difficult to administer during pilot-testing given the complexity of information requested and the fact that it was very...
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|---|---|---
|   | costs of accepting different payment methods. Although the report provides data on back-office tasks related to cash and card payments, the surveyed merchants “could not relate to the annual labour cost for each of the back-office task”. This lack of data makes it impossible to compare the relative costs of acceptance of these different payment forms. Focusing the analysis only on the MSCs associated with payment cards provides an incomplete/biased picture, as there are also costs associated with acceptance of cash/cheques. | difficult for merchants to relate to since their accounts were not structured as to capture requested information. Section 7 had to be reworked and simplified to facilitate respondents in relating better to the costs of accepting different payment methods and thus, maximise on capturing key data. |
|   | (iii) The requisite assurances from the CCM to the effect that TNS Analysis is fully conversant with the different payment instruments and the technical jargon being used in the different questionnaires, as it is submitted that the knowledge and ability to explain same to the interviewees are key to the success of this enterprise. | (iii) The ED is satisfied that TNS has submitted proof of the required expertise, skills and knowledge for the purposes of administering the Surveys. |
|   | (iii) The Merchant Survey Report does not clearly establish that the acceptance of payment cards would significantly grow if interchange rates in Mauritius decreased accordingly, even though merchants would be in favour of lower merchant service fee. The response of the merchants eludes the effect that, decreased interchange rates | (iii) The ED submits that the Merchant Survey was conducted with the objectives of collecting information in relation to: the current level of acceptance or non-acceptance of the various types of payment cards; the reasons for acceptance and non-acceptance of the various types of payments cards; and the costs and benefits of accepting payment cards and other payment instruments, as opposed to establishing the effect of a decrease in IIF |
would have on the issuers and on consumer usage of payment cards. The Merchant Survey Report indicates that "nothing" would motivate almost 50% of the merchants who currently do not accept payment cards, to accept cards as a payment method, whereas 22% of merchants who currently do not accept payment cards indicated that a "decrease in bank charges" might convince them to accept payment cards.

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<th>Survey Methodology</th>
<th>TNS submits that the Consumer Survey is a mass survey whereby the age group, gender, location, socio-economic groups and ethnic group are nationally represented which eliminates the possibility of particular skewedness in the survey results.</th>
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<td>It has been submitted that several persons belonging to the demographics indicated belong to population groups that make very limited use of credit cards. For instance, the Report indicates that approximately 32% of the persons interviewed belonged to the socio-economic group C2, whereas 18% belonged to the socio-economic group DE. Furthermore, approximately 58% of the participants interviewed are from rural parts of Mauritius. It is submitted that persons from rural</td>
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communities and lower income groups do not embrace the usage of credit and debit cards and prefer using other forms of legal tender such as cash. The inclusion of a large number of participants from rural and lower income groups has the ability to skew the results of the Consumer Survey.
II. Possible Remedies

A. Legal Framework on Remedies

11.1 If the Commission determines that, by virtue of their respective Membership agreements with relevant member institutions in Mauritius, Visa and MasterCard are each party to a vertical agreement not involving resale price maintenance under Section 45 of the Act and which is reviewable as per Section 46, the Commission has the power, independently, to impose the relevant directions it considers necessary, reasonable and practicable for remedying, mitigating or preventing the adverse effects of that conduct. This Chapter serves the dual purpose of detailing the statutory framework in relation to remedies which the Commission may impose in view of remedying a Section 45 breach of the Act generally and secondly, setting out the possible remedies which the Executive Director believes addresses the specific competition concerns identified in the Report, for the Commission’s consideration.

11.2 In respect of directions relating to prevention, restriction or distortion of competition, Section 60(1) of the Act 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 as it 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.

11.3 Section 60(3) of the Act further non-exhaustively enumerates the possible directions which the Commission may consider giving to the enterprise concerned. The Commission may, in particular direct the enterprise to -

a) terminate or amend an agreement;
b) cease or amend a practice or course of conduct, including conduct in relation to prices;
c) supply goods or services, or grant access to facilities;
d) separate or divest itself of any enterprise or assets;
e) provide the Commission with specified information on a continuing basis.

11.4 As such, the Commission is empowered to impose remedial measures which are designed in such a manner as to restore or enhance competition by changing the market structure, or to result in enterprises changing their behaviour.

11.5 In determining the remedial measures to be applied to the enterprise(s) concerned, the Act provides that the Commission shall have regard to the extent to which any of the offsetting public benefit it has considered during its determination are present in that case.

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*212 The only form of restrictive business practice that can result in a financial penalty under the Act is a collusive agreement (as catered for under Sections 41 – 43): price-fixing agreements, bid-rigging, market sharing or resale price maintenance.*
11.6 When designing the remedies, the Executive Director shall have regard to: effectiveness, timeliness and proportionality of implementation costs to the expected benefits of the remedy\textsuperscript{213}.

11.7 ‘Effectiveness’ will be judged according to a remedy’s likely effect on the state of competition in the relevant market, and the adverse effects resulting from any weakness of competition. The purpose of remedies is to remedy, mitigate or prevent the adverse effects on competition that have been identified by the Commission. The Executive Director will not seek wider ‘remedies’ to promote competition in areas beyond those identified in its report.

11.8 The principle of ‘timeliness’ implies that the Executive Director will prefer remedies that act swiftly to deal with problems it has identified, over those that operate only after a delay. However, timeliness and effectiveness of remedies may be in conflict, if the most effective remedies operate only over the longer term. In particular, remedies that aim to increase the degree of competition in a market by encouraging entry are likely to be quite slow in acting to correct a failure of competition. In such circumstances, the Executive Director may need to balance effectiveness against timeliness, although it may instead adopt a package of remedies which both provide for short-term improvements and a more comprehensive long-term solution.

11.9 The Executive Director will consider the ‘proportionality’ of the costs of any remedy it imposes to the benefits it expects to result from the operation of that remedy. It would not be sensible to impose remedies if the costs of those remedies are out of proportion to any benefits that can be expected to emerge from them. It should not be assumed that the lowest-cost remedy will be chosen. The Executive Director’s primary focus will be on the effectiveness (and timeliness) of different remedies, and a more effective remedy will normally be preferred to a less effective one even if its costs are higher.

11.10 The Executive Director will only seek to apply remedies in the relevant markets identified in its Report. In most cases, anticompetitive conduct and the effects of that conduct will occur in the same relevant market. However, in some cases behaviour in one relevant market may have adverse effects on another. In such circumstances, the Executive Director may apply remedies in all relevant markets.

B. Proposed Remedies

11.11 In order to at least mitigate the detrimental effects on users and consumers identified in the Report and which have resulted from the prevention, restriction or distortion of competition in the acquiring market in Mauritius, the Executive Director recommends that:

(i) the legal entities representing the Visa payment organisation be directed to cap the default IIFs on Visa Classic, Gold and Electron debit and credit cards at 0.5% for card-present POS transactions effected in Mauritius for a period of five years starting from the effective date of implementation of the Commission’s decision;

(ii) the legal entities representing the MasterCard payment organisation be directed to cap the default IIFs on Standard, Gold and Maestro-Cirrus debit and credit cards at 0.5% for

\textsuperscript{213} CCM Guidelines 6 – Remedies and Penalties, paragraph 3.3.
card-present POS transactions effected in Mauritius for a period of five years starting from the effective date of implementation of the Commission’s decision;

(iii) the legal entities representing the Visa and MasterCard payment organisations respectively be given a maximum period of six months starting from the date of notification of the Commission’s decision to implement the above-proposed IIF caps on their respective card products and to communicate the effective date of implementation of the directions to the Commission;

(iv) the legal entities representing Visa and MasterCard payment organisations be 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;

(v) the legal entities representing the Visa and MasterCard payment organisations be directed to modify their respective network rules, as may be required, to reflect the Commission’s 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 the Commission’s decision;

(vi) the Visa and MasterCard payment organisations and the respective legal entities representing them be 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;

(vii) each issuer of Visa and/or MasterCard card products in Mauritius be 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

(viii) each acquirer of Visa and/or MasterCard card products in Mauritius be 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-proposed IIF cap of 0.5%.

11.12 Issuers in Mauritius also issue premium/high-end cards (such as Titanium and Platinum cards) under Visa and MasterCard brands, which carry significantly higher IIFs. These cards offer additional benefits/rewards to cardholders, which would be expected to result in increased issuing costs. Given the low issuance of such premium cards in Mauritius and in the absence of detailed information pertaining to the costs and benefits associated with premium cards issuance and
acquiring, the Executive Director is not, at this stage, proposing any remedy with regards to the level of IIF set for these cards.

11.13 While the Executive Director is aware of the potentially restrictive effects of the HACR; however, in light of the potential unintended consequences of abolishing or modifying the HACR on the market, especially in terms of the adverse effects on consumers relating to uncertainty of merchant acceptance of their cards, and taking into consideration the expected effects of the proposed remedies, the Executive Director is not recommending any modification to the HACR at this stage.

C. Assessment of Proposed Remedies

11.14 The proposed cap of 0.5% on IIF for card-present POS transactions effected using the above identified Visa and MasterCard card products is necessary, reasonable and practicable in order to at least mitigate the detrimental effects on users and consumers resulting from the prevention, restriction or distortion of competition in the local acquiring market. As submitted by Visa and MasterCard, their decisions to set their respective IIFs at 0.5% on petrol and government transactions for most card product categories was prompted by the need to incentivize card acceptance and usage given the low level of card acceptance214 in these segments. Additionally, there does not appear to be a significant difference in the costs of issuing cards across different merchant segments. It therefore appears unjustified to set higher IIFs for other merchant segments facing relatively similar low card acceptance levels.

11.15 Visa and MasterCard have failed 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. Several main parties have purported claims on the adverse impact of the proposed IIF cap, inter alia the anticipated losses to acquiring and issuing businesses and the decrease in benefits from card usage to the detriment of consumers, merchants and the Mauritian economy. However, none of the main parties have offered any factual or empirical evidence, to the Executive Director’s satisfaction, for the actual conjectures advanced. 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. As previously demonstrated, the current IIF rates do not appear to increase the utility of the payment cards system in Mauritius to both groups of consumers – i.e. cardholders and merchants – alike. On the other hand, the restrictive effects of the applicable default IIF rates in the downstream acquiring market contradicts Visa and MasterCard’s arguments that the current default IIF rates are acting as a balancing mechanism. Whereas the findings contained in the Report do not dispute the value provided by payment cards to merchants, these benefits do not necessarily offset the losses faced by merchants as a result of paying inflated MSCs together with the resulting restrictive effects on the acquiring market. In the absence of empirical evidence justifying the need for higher IIFs for

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214 Across the 346 merchants interviewed, the CCM Merchant Survey has revealed that only 48% of merchants accept cards. A breakdown by sector reveals that in the retail sector, card acceptance is at 53%, while in the hotels & restaurants sector, the level of debit card and credit card acceptance is at 65% and 71% respectively. However, in sectors with lower profit margins, such as general retailers in foodstuff, the level of card acceptance is significantly low at 27%.

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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 schemes themselves, the Executive Director considers that the domestic default IIFs in Mauritius across all merchant categories, for the card products previously identified, should be capped at 0.5%. To the extent that the IIF represents an important cost element of the MSC and ultimately, the acquiring costs, Executive Director believes that capping the default IIF rates to 0.5% will lower the card acceptance costs and is likely to, based on the estimated benefits of lowering IIF in the petrol and Government segments, generate higher acceptance of payment cards and incremental payment volume for Visa and MasterCard members in Mauritius. In turn, the intended pass through effect (of decreased IIF) on MSC rates is likely to encourage interbank competition and entry in the acquiring market.

11.16 While debit cards and credit cards do not carry the same level of risks and costs, the Executive Director has nevertheless recommended the same cap on debit and credit card transactions for reasons that are distinct to each type of cards. Credit cards, in particular, are typically more costly and risky to issue and could thus warrant a higher IIF cap. However, as opposed to issuers of debit cards for whom the IIF remains the main source of revenue, issuers of credit cards have other means of generating revenue from their card issuing business, including interests and cardholder fees. The Executive Director thus considers that a 0.5% cap on both debit and credit card transactions is reasonable and proportionate. It should be noted that both Visa and MasterCard have historically established the same IIF rates on debit and credit card transactions in Mauritius.

11.17 Neither Visa nor MasterCard have provided the Executive Director with sound analysis and empirical evidence to justify the setting of a higher IIF cap for any or all of the above-identified card products.

11.18 During the course of the investigation, several main parties, in particular the card schemes and large issuers, have expressed concerns that a reduction in the applicable default IIFs would adversely affect the card issuing side and ultimately cardholders as the IIF represents a revenue source for the issuers and goes towards covering the costs of issuance and maintaining cardholder benefits and rewards programs. It has also been submitted that a low interchange cap will lead issuers to introduce or increase card fees, thus likely to reduce card usage and ‘lead to a decrease in the incremental sales delivered to the merchants who accept (...) cards.’

11.19 However, the above argument ignores the fact that cardholder benefits offered by issuers are but one of the many features of payment cards. Payment cards also offer safety, convenience, security and reliability to cardholders that make them a distinct product compared to other payment methods. As a result, it is unlikely that a reduction in cardholder benefits would make cards less attractive to consumers to the point of significantly affecting sales of merchants. For instance, the CCM Consumer Survey showed that ‘an increase in annual card fee is unlikely to change consumers’ behaviour’. 78% of credit card users will continue using this form payment, 14% would consider switching to another payment instrument and 9% will definitely switch. In the case of debit cards,

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73% of respondents are most likely to remain loyal to this form of payment while 18% would probably switch and 8% would definitely switch\(^{216}\). Also, issuing banks of Visa and/or MasterCard brands are unlikely to increase cardholder fees to excessive levels in the presence of a reduced IIF because of issuing banks’ other non-IIF related commercial benefits derived from cardholders. Issuers of credit cards obtain considerable non-IIF related revenues from cardholders (interests and cardholder fees) which they would put at stake by raising cardholder fees to excessive levels in response to reduced IIFs. While the IIF represents the main revenue source for issuers of debit cards only, 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.

11.20 Moreover, despite the current level of the IIF, only a limited number of issuers offer rewards to cardholders or run promotional campaigns and the costs of those rewards programmes as a percentage of total issuing revenue is relatively low. Some of these issuers further benefit from marketing support from the card schemes to run these promotional campaigns. MCB and SBM are the two biggest beneficiaries of marketing support from the card schemes, understandably given their larger cardholder base. It is unlikely that a lower IIF would materially affect issuers’ incentive to promote card issuance and card usage.

11.21 Where the Commission considers that the proposed IIF cap of 0.5% on the above-identified Visa and MasterCard card products is necessary, reasonable and practicable in order to at least mitigate the detrimental effects on users and consumers resulting the competition harm identified, the Executive Director has further recommended that the implementation of the latter remedy be delayed by a maximum period of six months starting from notification of Commission’s decision. The Executive Director considers that six months is a reasonable period of time which provides Visa and MasterCard with sufficient time to modify their respective network rules and implement the relevant modifications within their respective card scheme networks to reflect the Commission’s directions.

11.22 To at least mitigate the detrimental effects on users and consumers resulting from the prevention, restriction or distortion of competition in the local acquiring market as fast as possible, it is also important that acquirers pass-on the cost reductions resulting from lower IIFs to their customers (i.e. merchants). This in turn requires that merchants should be adequately informed that their acquiring institutions are now in a position to offer significantly lower MSCs. Although Visa and MasterCard do normally inform their respective member institutions in Mauritius of changes brought to IIF programmes affecting their relevant issuing and acquiring activities, usually by way of periodic IIF bulletins; such changes are not necessarily rendered public and as such, might not be known to merchants. Merchants are thus constrained in their ability to negotiate better MSC from acquirers and thus, have little or no means to benefit from any potential cost saving resulting from

\(^{216}\) CCM Consumer Survey Report, pp. 43-44.
reductions in IIF arrangements\textsuperscript{217}. Whereas the fact remains that merchants’ awareness of the cost components that make up the MSC remains significantly low; generating awareness among merchants on the fees paid by them in providing card acceptance facilities requires a long-term engagement with relevant stakeholders in the payment cards market.

11.23 However, the obligation on Visa and MasterCard to henceforth publish, within a reasonable delay, any change brought to their IIF arrangements applicable for Mauritius on their respective websites, complemented by the imposition of similar obligation upon each issuer in Mauritius provide a first step in ensuring that such information will be made readily available to merchants such that they are informed in a timely manner of the possible reductions in acceptance costs, through lower IIFs. A proposed cap of 0.5% only, absent the obligation to publish the changes to Visa and MasterCard’s IIF programmes, might not have the desired remedial effect given that it carries a real risk that such change would not, at least not immediately, be made known to the acquirers and merchants on the market, thus prolonging the restrictive effects of the current IIF levels in the market.

11.24 The Executive Director further considers that the proposed cap of 0.5% on default IIFs for the above-identified Visa and MasterCard cards should remain in force for a period of five years as from the effective date of implementation of the Commission’s decision given that the duration envisaged is long enough to allow for a significant change in market practices and to allow for potential entry in the acquiring market.

11.25 In accordance with CCM Guidelines 6 on Remedies and Penalties, all behavioural remedies must contain arrangements for review, triggered either by a specific date or a set of objective circumstances\textsuperscript{218}. The Executive Director accordingly recommends that a review process be undertaken at latest two years prior to the lapse of the five-year period to assess whether the proposed IIF cap of 0.5% should be maintained, reviewed or abolished, taking into consideration any change in market dynamics that may have occurred. Additionally, Section 64(2) of the Act provides that the Commission, where it is satisfied that there has been a material change of circumstances, may agree to vary or terminate a direction.

11.26 The Executive Director has also recommended that acquirers in Mauritius be directed to periodically report upon their prevailing MSC rates in order to assess the effectiveness of the above recommendations in remedying the competitive harm identified. This would allow the Commission to determine whether there has been the desired pass-through of a reduced IIF into more competitive MSC rates to the benefit of merchants and ultimately consumers.

11.27 Based on the above, the Executive Director considers that the above-proposed remedies are necessary, reasonable and practicable in order to least mitigate, in a timely manner, the detrimental effects on users and consumers resulting from the prevention, restriction or distortion of competition in the local acquiring market.

\textsuperscript{217} The CCM Guidelines 6 – Remedies and Penalties (para. 4.22) recognises that “competition problems typically become more acute the more ignorant or confused customers are about competitive alternatives. Either as a remedy for a general failure of competition, or to correct a problem specifically arising from a lack of information, the CCM may require enterprises to provide more information”.

\textsuperscript{218} CCM Guidelines 6 – Remedies and Penalties, para. 4.17.
12. Conclusion and Next Steps

12.1 As mentioned, this report is the Final Report of Investigation into payment cards, which sets out the findings of the Executive Director with respect to his investigation and is being submitted to the Commission pursuant to Section 51 of the Act.

12.2 As stated above, the Executive Director has identified three distinct relevant markets for the purposes of this investigation, namely (i) an upstream four-party payment card market for the provision of network services in Mauritius, (ii) a downstream four-party payment card market for issuing services in Mauritius, and (iii) a downstream four-party payment card market for acquiring services in Mauritius.

12.3 The Executive Director has *inter alia* found that 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 and that rather, the current level of IIF in Mauritius is acting as a floor on the MSC charged by acquirers to merchants. This in turn is resulting in 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.

12.4 In light of his findings, the Executive Director has further recommended a series of remedial measures for the Commission’s consideration and determination, and which together are necessary and proportional to at least mitigate the detrimental effects on users and consumers resulting from the prevention, restriction or distortion of competition in the local acquiring market.

12.5 It is up to the Commission to make a determination on the matter. The parties may request for a hearing under Section 55 of the Act. Section 56 of the Act also provides that ‘*[t]he Commission shall not impose a penalty on, or give a direction to, an enterprise, under Part VI, unless it has held a hearing in relation to that enterprise.*’
Annex A: Main Parties’ Submissions to Statement of Issues Report
Annex B: Bank of Mauritius’ Submissions to Provisional Report of Investigation
Annex C: Main Parties’ Submissions to Provisional Report of Investigation

This Section reproduces in toto the written submissions of main parties in response to the CCM’s provisional findings as contained in its Provisional Report which was communicated to each of the main parties on 30th November 2015.

The following main parties did not submit any written response to the Provisional Report of Investigation issued to them: >¥, ¥¥, ¥¥, and ¥¥.
Annex E: MasterCard IIFs for Mauritius, Intra-regional and Inter-regional IIF Rates, July 2016
Annex F: CCM Consumer Survey
Annex G: CCM Merchant Survey
Annex H: MasterCard’s Submission of 12 September 2012
Annex I: MasterCard’s Submission of 18 September 2015
Annex K: Extract of Visa Submissions, Email dated 31 July 2015
Annex L: Extract of Visa Submissions, Email dated 05 August 2015
Annex M: Extract of Visa Submissions, Email dated 10 September 2015
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