



EUROPEAN COMMISSION
Competition DG

CASE AT.39398 – Visa MIF

(Only the English text is authentic)

ANTITRUST PROCEDURE

Council Regulation (EC) 1/2003

Article 9 Regulation (EC) 1/2003

Date: 29.04.2019

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Brussels, 29.4.2019
C(2019) 3034 final

COMMISSION DECISION

of 29.4.2019

**relating to a proceeding under Article 101 of the Treaty on the Functioning of the
European Union and Article 53 of the EEA Agreement**

Case AT.39398 – Visa MIF

(Text with EEA relevance)

(Only the English text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty¹, in particular Article 9(1) thereof,

Having regard to the Commission decision of 6 March 2008 to initiate proceedings in this case,

Having expressed concerns in the Statement of Objections of 3 April 2009, the Supplementary Statement of Objections of 23 April 2013 and the further Supplementary Statement of Objections of 3 August 2017,

Having given interested third parties the opportunity to submit their observations pursuant to Article 27(4) of Regulation (EC) No 1/2003 on the commitments offered to meet those concerns,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer,

Whereas:

1. SUBJECT MATTER

- (1) This Decision is addressed to Visa Inc. and Visa International Service Association ("Visa International") (together "Visa") and concerns Visa's rules on inter-regional

¹ OJ L 1, 4.1.2003, p.1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and 102, respectively, of the Treaty on the Functioning of the European Union ("Treaty"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the Treaty should be understood as references to Articles 81 and 82, respectively, of the EC Treaty when where appropriate. The Treaty also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the Treaty will be used throughout this Decision.

multilateral interchange fees ("MIFs") applicable to card-based inter-regional transactions concluded at merchants located in the EEA with consumer debit and credit cards issued by an issuer located outside the EEA.

- (2) On 3 August 2017, the Commission adopted a Supplementary Statement of Objections ("SSO") addressed to Visa. That SSO supplements further the SSO of 23 April 2013 and the Statement of Objections ("SO") of 3 April 2009, addressed to Visa and Visa Europe Limited².
- (3) In its SO and SSOs, the Commission came to the preliminary conclusion that Visa's rules on inter-regional MIFs infringed Article 101 of the Treaty and Article 53 of the EEA Agreement.
- (4) While Visa disagrees with the preliminary conclusions reached by the Commission in the SSO, it nevertheless has offered commitments under Article 9(1) of Regulation (EC) No 1/2003 to meet the concerns expressed by the Commission. This Decision makes those commitments binding on Visa.

2. THE PARTIES

- (5) Visa is a worldwide payment organisation that is represented by Visa Inc. and Visa International.
- (6) Visa Inc. was incorporated in May 2007 under the laws of Delaware (USA) and has been listed on the New York Stock Exchange since its initial public offering in 2008. It is the holding company³ of its wholly owned and controlled subsidiary Visa International⁴.
- (7) Visa International is a membership organisation registered under the laws of Delaware (USA). Its members are banks and payment service providers that are card acquirers or card issuers, or both.

3. PROCEDURAL STEPS

- (8) On 6 March 2008, the Commission opened proceedings with a view to adopting a decision under Chapter III of Regulation (EC) No 1/2003. The Commission adopted a SO on 3 April 2009, a SSO on 23 April 2013 and a further SSO on 3 August 2017, setting out its competition concerns relating to Visa's inter-regional MIFs. The SO and the SSOs constitute a preliminary assessment for the purposes of Article 9(1) of Regulation (EC) No 1/2003.
- (9) On 20 November 2017, Visa replied to the SSOs in writing. On 27 and 28 February 2018, an Oral Hearing took place.
- (10) On 26 November 2018, Visa submitted commitments ("the Commitments") to the Commission.

² On 3 June 2016, the merger between Visa Inc. and Visa Europe was completed and Visa Inc. acquired Visa Europe. As a consequence, Visa Europe ceased to be a separate undertaking. Therefore, any reference to Visa Europe in this Decision should be read as referring to the period prior to 3 June 2016.

³ Visa Europe's response of 16 October 2009 to the request for information of 4 September 2009, question no. 15 (ID 7874).

⁴ Visa Europe's response to the SO, paragraph 485 (ID 7871).

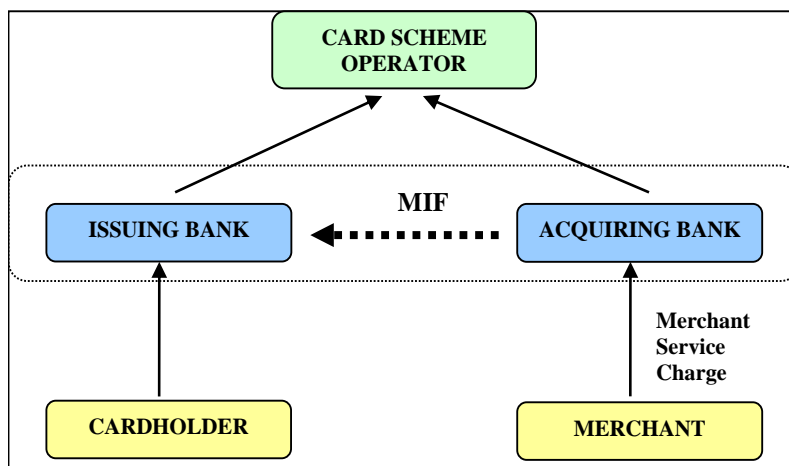
- (11) On 5 December 2018, the Commission published a notice in the Official Journal of the European Union pursuant to Article 27(4) of Regulation (EC) No 1/2003 ("Article 27(4) Market Test Notice"), summarising the case and the Commitments and inviting interested third parties to give their observations on the Commitments within one month following publication.
- (12) On 29 January 2019, the Commission informed Visa of the observations received from interested third parties following the publication of the Article 27(4) Market Test Notice.

4. PRELIMINARY ASSESSMENT

4.1. Background

4.1.1. The Visa card payment scheme

- (13) The Visa card payment scheme ("Visa scheme") is a "four-party" card scheme under which several financial institutions issue cards or acquire transactions under common card brands, in this case the Visa, Visa Electron and V-PAY brands. The Visa scheme is two-sided, with Visa acting as the platform, through which the issuing banks ("the issuers") and the acquiring banks ("the acquirers") interact.



- (14) In such a card payment scheme, the issuing bank is the cardholder's bank. Issuers provide cardholders with payment cards, ensure the completion of payment transactions by authorising payments and transferring funds to the acquirer, and provide related services. The acquiring bank is the merchant's bank that credits the merchant's bank account after receiving the funds from the issuer.

- (15) According to Visa's network rules⁵, a transaction that has been cleared and settled gives rise to an "interchange fee" to be paid by the acquirer to the issuer. Issuers and acquirers can agree bilaterally on the interchange fee. If there is no such bilateral agreement, a so co-called multilateral interchange fee applies.
- (16) In the Visa scheme, different MIFs apply depending on the transaction type (for example on-line or in-store, with PIN or with signature), the geographic scope of the transaction, and the card type (for example debit or credit card, the specific brand such as Visa, Visa Electron or V-PAY, and entry level, basic, enhanced or premium). As to the geographic scope of the transaction, Visa defines a transaction as:
- (a) "Domestic", when the issuer of the card used and the merchant outlet are located in the same country;
 - (b) "Intra-regional", when the issuer of the card used is located in a different country from the merchant outlet but within the same region (Visa has defined six regions world-wide, of which the "Europe Region" is one);
 - (c) "Inter-regional", when the issuer of the card used and the merchant outlet are located in different regions.⁶
- (17) Acquirers charge merchants a Merchant Service Charge ("MSC")⁷. The MSC is typically a percentage of the transaction value (ad valorem), although the fee for debit card transactions is sometimes a fixed fee or a combination of fixed and ad valorem fees. The acquirer keeps part of the MSC, part is passed on to the issuer (the interchange fee) and a part is paid to the scheme (scheme fees collected by Visa). The level of the MIF directly affects the MSCs because acquirers treat the interchange fees as a cost and take them into account when setting the level of the MSC. Interchange fees are a significant price component of the MSCs.
- (18) This Decision concerns those inter-regional transactions where the merchant outlet is located in the EEA while the issuer of the card used is based outside the EEA ("the inter-regional transactions").
- (19) For the purposes of this Decision, a "debit card" means a card that accesses a consumer deposit and includes "prepaid cards"⁸, while a "credit card" means a card

⁵ The Framework Agreement between Visa Inc., Visa International, Visa Europe, Visa US and Inovant LLC provides that Visa Inc. should set the Interchange Rates and the rules for setting such rates for "international transactions" (that is inter-regional transactions). See Framework Agreement, paragraph 33.3 of Schedule 1 (Bilateral Services) (ID 3546). Also, see Visa's Core Rules and Visa Product and Service Rules ("Visa Rules"), dated 15 October 2016 (ID 11584), with the latest update on 13 October 2018, Glossary page 823, where "MIF – Europe Region" is defined as "Multilaterally agreed interchange fee(s) paid by an Acquirer to separate Issuer or vice versa". Available at: <https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>. The Visa Inc. merger with Visa Europe on 3 June 2016 had no impact on the rules that set the inter-regional MIFs. Visa's reply to the request for information of 23 March 2017 (submitted by Visa on 25 April 2017), ID 11581, pages 5 and 6, reply to question 3.

⁶ Visa Rules, Glossary.

⁷ The MSC is also referred to as "merchant fees", "merchant service charges", "discount rates" or "disagios".

⁸ "Prepaid card" means a card used to access funds in a Visa prepaid account or a card where monetary value is stored on a chip.

that is used to defer payment of debt or incur debt and defer its payment, including “charge cards”⁹.

- (20) For the purposes of this Decision, “consumer card transactions” are transactions made using a card-based payment instrument issued to natural persons, which is not limited in use to business expenses, while “commercial card” transactions are transactions with a card-based payment instrument other than consumer card transactions.
- (21) In this Decision, in-store transactions when the cardholder is present in a shop are referred to as “card-present” or “CP” transactions. On-line transactions when the card number and authentication details are transmitted via internet, mail or telephone are referred to as “card-not-present” or “CNP” transactions.

4.2. Relevant market

- (22) In the SO and SSOs, the Commission took the preliminary view that the relevant product market for the purposes of these proceedings is the market for acquiring card payments. Services for acquiring card payments are distinct from services for other means of payments, such as cash, credit transfers or direct debit payments. Services for acquiring card payments are generally offered by either commercial banks or specialised acquirers. The finding of such a product market is in line with the Commission's established practice¹⁰ and the case-law of the Court of Justice of the European Union¹¹.
- (23) In its previous practice¹², confirmed by the Court of Justice of the European Union¹³, the Commission has found that the geographical scope of the market for acquiring card payments is national. That conclusion has been based on the strong divergences in the pricing of services for acquiring card payments in different countries, the considerable differences in the market structure and the fact that cross-border

⁹ “Charge card” means a type of Visa consumer credit card that is non-revolving and requires the total outstanding balance to be paid in full in each statement cycle.

¹⁰ Commission Decision of 26 February 2014 in case COMP/AT.39398 - VISA MIF (Commission’s 2014 *Visa* decision), Commission Decision of 24 July 2002 in case IV/29.373, *Visa II* (OJ L 318, 22.11.2002, p. 17), (Commission’s 2002 *Visa* decision), recital 43, Commission Decision of 17 October 2007 in case COMP/38606 *Groupeement Cartes Bancaires (CB)* (OJ C 183, 5.8.2009, p. 12), (Commission’s 2007 *Groupeement Cartes Bancaires* decision), recitals 165 to 170, Commission Decision of 3 October 2007 in case COMP/37860 *Morgan Stanley* (OJ C 303, 13.12.2006, p. 2), (Commission’s 2007 *Morgan Stanley* decision), recitals 39 to 47, Commission Decision of 19 December 2007 in case COMP/34.579, COMP/35.518, COMP/38.580 *MasterCard* a.o. (OJ C 264, 6.11.2009, p. 8), (Commission’s 2007 *MasterCard* decision), recital 278. See also decisions in other sectors: Commission Decision of 20 April 1999 in case IV/M.1455 *Gruner + Jahr/Financial Times/JV*; Commission Decision of 7 July 2005 in case M.3817 *Wegener/PCM/JV*.

¹¹ Judgment of the Court of Justice of 11 September 2014, *MasterCard and Others v. Commission*, C-382/12, ECLI:EU:C:2014:2201, paragraph 240; Judgment of the General Court of 24 May 2012, *MasterCard Incorporated, e.a. v. Commission*, T-111/08, ECLI:EU:T:2012:260, paragraphs 21, 22 and 23, and paragraphs 168 to 182 (in particular paragraphs 172 and 173); Judgment of the General Court of 14 April 2011, *Visa Europe v. Commission*, T-461/07, ECLI:EU:T:2011:181, paragraphs 16 to 19, and paragraphs 91, 110, 111, 143, 144 and 149.

¹² Commission’s 2002 *Visa* decision, recital 53, Commission’s 2007 *Groupeement cartes bancaires* decision, Commission’s 2007 *Morgan Stanley* decision, Commission’s 2007 *MasterCard* decision, paragraphs 318-329.

¹³ Judgment of the General Court in *MasterCard* paragraphs 21-23, 172-173; Judgment of the General Court in *Visa Europe*, paragraphs 16-19, 149; Judgment of the Court of First Instance of 23 February 1994, *CB and Europay v. Commission*, T-39/92 and T-40/92, ECLI:EU:T:1994:20, paragraph 104.

acquiring remains limited. In the SSO of August 2017, the Commission took the preliminary view that it might be appropriate to revise those previous findings, to the extent that no essential barriers to offering acquiring services appear to exist throughout the EEA at present. Many acquirers operate in several Contracting Parties to the EEA Agreement, either serving merchants through local branches or providing cross-border services to at least larger merchants that are present in many Contracting Parties to the EEA Agreement and demand centralised services. Such factors could indicate that the geographic scope of the market may currently be larger than national.

- (24) In the SSO of August 2017, the Commission considered that the exact scope of the geographic market could be left open because it would not change the Commission's preliminary view that Visa's rules on inter-regional MIFs restrict competition.

4.3. Position of the parties on the relevant market

- (25) In the SO and the SSOs, the Commission took the preliminary view that Visa was largest card scheme in the market for acquiring card payments within the EEA, followed by Mastercard, in terms of the value of consumer card transactions. It was also significantly larger than other card payments schemes, including American Express, China Union Pay, Japan Credit Bureau and Diners/Discover. In those Contracting Parties to the EEA Agreement where Mastercard was the market leader, Visa was the second largest scheme.¹⁴
- (26) In the SO and the SSO, the Commission also took the preliminary view that card payments were characterised by important network effects and that Visa had an important merchant acceptance network in the EEA, comparable in size of that of Mastercard, but significantly larger than that of other card payments schemes such as American Express, China Union Pay, Japan Credit Bureau and Diners/Discover.¹⁵
- (27) Therefore, in the SO and the SSOs, the Commission took the preliminary view that Visa's large share of consumer card transactions and its strong merchant acceptance network reinforced its strong market position in the EEA.

4.4. Practices raising competition concerns

- (28) This Decision concerns Visa's rules on inter-regional MIFs¹⁶ applicable to consumer card-based inter-regional transactions concluded at merchants located in the EEA with consumer debit and credit cards issued by an issuer located outside the EEA.
- (29) Visa sets rules on inter-regional MIFs¹⁷ that apply to inter-regional transactions concluded at merchants located in the EEA with consumer debit and credit cards issued by an issuer located outside the EEA. In the case of inter-regional transactions, the issuer and the acquirer can also set the interchange fees in bilateral agreements (including where the issuer is outside the EEA and the merchant is

¹⁴ Visa Europe's reply to the request for information of 9 October 2015, Question 2 (ID 10859)

¹⁵ Visa Inc's reply to the request for information of 15 September 2015, Annex 9 (ID 10873).

¹⁶ At least since October 1974, Visa applied rules that required payment of MIFs on inter-regional transactions (see Visa's reply to Question 2 of the request for information of 15 September 2015, p. 6, (ID 10869)). In 1977 Visa notified its rules on the MIFs to the Commission under Regulation 17/62, First Regulation implementing Articles 85 and 86 of the Treaty (OJ 13, 21.02.1962, p. 204). The rules have not been substantially changed since their entry into force and are still in force today.

¹⁷ Framework Agreement, paragraph 33.3 of Schedule 1 (Bilateral Services) (ID 3546). Also, see Visa Rules (ID 11584), with the latest update on 13 October 2018.

located in the EEA)¹⁸. However, Visa has stated that “inter-regional bilateral agreements are rare”¹⁹.

4.4.1. Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement

4.4.1.1. Principles

- (30) Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement²⁰ prohibit, as incompatible with the internal market, agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

4.4.1.2. Application to this case

- (31) In the SO and the SSOs, the Commission took the preliminary view that Visa, as the representative of an association of undertakings, has infringed Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement by collectively setting rules on MIFs that apply to card-based inter-regional transactions with consumer debit and credit cards issued by an issuer located outside the EEA at merchant outlets located in the EEA. These include "card present" transactions and "card not present" transactions.
- (32) In the SO and the SSOs, the Commission took the preliminary view that Visa's rules on inter-regional MIFs constitute a decision by an association of undertakings that has as its object and effect an appreciable restriction of competition in the market for acquiring card payments within the EEA.
- (33) In the 2017 SSO, the Commission came to the preliminary conclusion that Visa is an association of undertakings, as it fulfils the two conditions established by the Court of Justice in the *MasterCard* case²¹, namely the retention by the Visa scheme's members of certain important decision-making powers in respect of essential aspects of the operation of the Visa scheme, and the existence of a commonality of interests between Visa and its scheme members on the issue of the MIF.

¹⁸ Visa has explained that it sets default MIFs for inter-regional transactions but the issuers and the acquirers in *Visa Inc. territories* are free to agree bilaterally on the interchange rate applicable between them. Visa's reply to the Commission request for information of 19 November 2010, Q1, p. 1 (ID 7784). See for example Visa Rules, Chapter 1.9.2.3.

¹⁹ Visa has estimated that less than 1% of inter-regional transactions are subject to bilateral agreements. Visa's reply to the request for information of 19 November 2010, Q1, p. 1 (ID 7784).

²⁰ Article 53(1) of the EEA Agreement is modelled on Article 101(1) of the Treaty and contains the same prohibition, with the difference that Article 53(1) of the EEA Agreement refers to "*trade between contracting parties*" instead of to "*trade between Member States*" and to "*competition within the territory covered by the [EEA] Agreement*" instead of "*competition within the internal market*".

²¹ Judgment in *MasterCard and Others v Commission*, C-382/12, EU:C:2014:2201, paragraph 67.

- (34) In the SO and the SSOs, the Commission came to the preliminary conclusion that Visa's rules on inter-regional MIFs amount to horizontal price-fixing. The inter-regional MIFs fix a significant component of the price charged to merchants for acquiring services through the MSCs. The Commission came to the preliminary conclusion that the restriction of competition on price follows from the very substance of Visa's rules on inter-regional MIFs. The Commission also came to the preliminary conclusion that the objective of Visa's rules on inter-regional MIFs is to fix a part of the price charged to merchants and to restrict competition to the benefit of Visa and its members/licensees, primarily the issuers. Such price fixing is by its very nature harmful to competition and reveals in itself a sufficient degree of harm to competition to be considered a restriction of competition *'by object'*.
- (35) In the SO and the SSOs, the Commission also came to the preliminary conclusion that Visa's rules on inter-regional MIFs have the effect of restricting competition in the market for acquiring card payments within the EEA. According to the Commission's SO and SSOs, Visa's inter-regional MIFs apply directly to almost all inter-regional transactions made at merchants in the EEA. They determine a significant component of the price charged to merchants for acquiring services through the MSC, therefore limiting the acquirers' scope for reducing and differentiating their MSCs, and acquirers pass them on to merchants. Therefore, inter-regional MIFs have a direct impact on prices by inflating MSCs (see for reference recital (17)).
- (36) In the SO and the SSOs, the Commission came to the preliminary conclusion that the restrictive object and effect of Visa's rules on inter-regional MIFs appear to be further reinforced by the following factors, amongst others: inter-system competition that results in high MIFs (the higher the Visa MIF, the more attractive it becomes for an issuer to issue Visa cards), lack of downward pressure by acquirers on MIFs, and merchants' lack of countervailing bargaining power to constrain the level of MIFs. As regards acquirers, the Commission took the preliminary view that they appear to be indifferent to the MIFs because MIFs apply equally to all acquirers, which allows them to pass on the common MIF cost to the merchants.
- (37) The Commission's preliminary view was that merchants' lack of countervailing bargaining power might be due to several factors, in particular the must-take nature of Visa cards, the Honour All Cards Rule, the practice of blending of MSCs and the lack of competition between Visa and MasterCard in the acquiring market (see recitals (25) to (27) on the market position). It appears that the MIFs incentivise issuers to issue cards and card transactions have increased rapidly in the last years in the EEA. This results from the consumer demand to pay by card. If merchants do not accept cards, they fear that they will lose customers to other competing merchants who accept cards (business stealing) and cards therefore become a 'must-take' for merchants.
- (38) Visa's Honour All Cards Rule obliges merchants who accept a Visa card of one of the three brands – Visa, Visa Electron or V-PAY – to accept all cards of the same brand, irrespective of which bank issued the card (honour-all-issuers element) and irrespective of the card product, for instance whether it is a debit or credit card, or a standard or a premium card (honour-all-products element). The Honour All Cards Rule therefore means that a merchant, which accepts 'ordinary' Visa cards of any of the three Visa brands for fear of business stealing, cannot refuse payments that carry a higher interchange fee, for example because the card is a premium card or the

transaction is inter-regional and therefore carries a higher MIF. Blending is the practice of charging the same MSC for transactions made with different payment card types or for different transaction types of the same payment card carrying different MIFs. Blending renders the pricing structure non-transparent: if merchants are unaware of the fact that different card products and different transaction types carry different MIFs and come at different costs, they are not able to make an informed choice as to which cards to encourage and which to discourage.

- (39) Lastly, in the SO and the SSOs the Commission took the preliminary view that Visa's rules on inter-regional MIFs are not objectively necessary²².

4.4.2. *Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement*

4.4.2.1. Principles

- (40) Pursuant to Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement, an agreement is exempted from the prohibition of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement where it satisfies the following four cumulative criteria: (a) it contributes to improving the production or distribution of goods or services or to promoting technical or economic progress; (b) it allows consumers a fair share of the resulting benefit; (c) it does not impose restrictions that are not indispensable to the attainment of those objectives; and (d) it does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

4.4.2.2. Application to this case

- (41) In the SO and the SSOs, the Commission took the preliminary view that Visa's rules on inter-regional MIFs do not appear to meet the requirements for an exemption under Article 101(3) of the Treaty and Article 53(3) of the EEA Agreement.
- (42) In view of the above (see recitals (28) to (41)), the Commission came to the preliminary conclusion in the SO and SSOs that Visa's rules on consumer card-based inter-regional transactions give rise to competition concerns.

4.5. **Effect on trade between Member States**

- (43) In the SO and the SSOs, the Commission took the preliminary view that the decisions of an association of undertakings regarding Visa's rules on inter-regional MIFs are capable of appreciably affecting trade between Member States and the Contracting Parties to the EEA Agreement within the meaning of Article 101(1) of the Treaty and Article 53(1) of the EEA Agreement.
- (44) Visa's payment cards are an international means of payment that can be used by cardholders not only in the country where the cards are issued, but also at merchant outlets in other countries. The Commission took the view that Visa's MIFs affected trade between Member States on 9 August 2001 when it adopted the negative clearance decision concerning Visa International²³, on 24 July 2002 when it adopted

²² The Court of Justice of the European Union has confirmed that MIFs are not objectively necessary, General Court in *MasterCard*, paragraphs 74 to 120; Court of Justice in *MasterCard*, paragraphs 78 to 120.

²³ Commission Decision of 9 August 2001 in case COMP/29.373 — Visa International (OJ L 293, 10.11.2001, p.24) (Commission's 2001 *Visa* decision).

an exemption decision concerning Visa International²⁴, and on 26 February 2014 when it adopted a commitment decision pursuant to Article 9 of Regulation (EC) No 1/2003 addressed to Visa Europe²⁵.

- (45) Visa's rules on inter-regional MIFs fix a significant component of the price charged to merchants through the MSCs and apply to all inter-regional transactions with consumer Visa cards in the whole of the EEA²⁶. They therefore by their very nature directly influence the pattern of trade between Contracting Parties to the EEA Agreement²⁷ and affect, or are capable of affecting, trade between Contracting Parties to the EEA Agreement.
- (46) Accordingly, Visa's inter-regional MIFs, by their very nature, directly affect the pattern of trade between Contracting Parties to the EEA Agreement in the acquiring market²⁸. They consequently affect, or are capable of affecting, trade between Contracting Parties to the EEA Agreement.

5. PROPOSED COMMITMENTS

- (47) The key elements of the Commitments offered by Visa on 26 November 2018 are set out in recitals (48) to (54).
- (48) Six months following the date on which Visa receives formal notification of this Decision, Visa commits to cap the MIFs for all consumer card-based payment transactions as follows:
 - (a) Inter-regional Debit MIF for Inter-regional Card Present (CP) Transactions at 0.2%; and
 - (b) Inter-regional Credit MIF for Inter-regional Card Present (CP) Transactions, at 0.3%; and
 - (c) Inter-regional Debit MIF for Inter-regional Card Not Present (CNP) Transactions at 1.15%; and
 - (d) Inter-regional Credit MIF for Inter-regional Card Not Present (CNP) Transactions at 1.50%.
- (49) At the latest within 12 working days from the notification of this Decision, Visa will notify each acquirer of Visa inter-regional transactions and will request that each acquirer, in turn, notify promptly their respective merchant customers that: i) the

²⁴ Commission's 2002 *Visa* decision.

²⁵ Commission's 2014 *Visa* decision.

²⁶ In case of inter-regional transactions the issuers of the payment cards are located outside the EEA. However, Article 101 of the Treaty applies irrespective of where the undertakings are located or where the agreement has been concluded provided that the agreement or practice is either implemented or produce effects inside the EEA. See point 100 of the Commission Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty ("Guidelines on the effect on trade concept") (OJ C101, 27.4.2004, p.81). This is the case with respect to Visa's rules on inter-regional MIFs. They are implemented with respect to transactions taking place in the EEA, are applied by acquirers located in the EEA and create a restriction of competition on price in the EEA. In the SO and the SSOs, the Commission provisionally found this is liable to harm European merchants and consumers that pay the inter-regional MIFs to issuers located outside the EEA.

²⁷ See the Guidelines on the effect on trade concept: points 29, 61 and 64 with respect to horizontal practices and point 72 with respect to vertical practices.

²⁸ See, points 16, 25, 27, 32, 63 of the Guidelines on the effect on trade concept.

Commitments have been adopted and that ii) the Inter-regional MIFs will be capped for all future consumer debit and credit card inter-regional transactions for the duration of the Commitments.

- (50) At the latest within 12 working days from the notification of this Decision, Visa will publish, in a clearly visible and easily accessible manner on the Visa Europe website, all inter-regional debit and credit MIFs applicable to inter-regional CP transactions and inter-regional CNP transactions subject to the Commitments. This obligation remains in force through the duration of the Commitments.
- (51) Visa shall not circumvent or attempt to circumvent the Commitments either directly or indirectly by any act or omission. In particular, as of the notification of this Decision, Visa will refrain from all practices which have the equivalent object or effect of inter-regional MIFs. This includes specifically but not exclusively implementing programs or new rules whereby Visa transfers scheme or other fees charged to acquirers within the EEA to non-EEA issuers.
- (52) Subject to its commitment of non-circumvention, Visa may adopt appropriate consumer protection measures to ensure that consumers will not be adversely affected by the effects of changes to its inter-regional MIFs in particular concerning matters such as fraud, currency conversion, refunds and charge backs.
- (53) Visa shall appoint a Monitoring Trustee to monitor Visa's compliance with the Commitments. Before appointment, the Commission will have the power to approve or reject the proposed Trustee.
- (54) The Commitments will remain in force for a period of five years and six months after notification of this Decision to Visa.

6. COMMISSION NOTICE PURSUANT TO ARTICLE 27(4)

- (55) In response to the publication on 5 December 2018 of the Article 27(4) Market Test Notice, the Commission received 21 responses from interested third parties.

6.1. Summary of the main comments from third parties during the Market Test

- (56) This section sets out the main observations submitted by the interested third parties.

6.1.1. MIF caps for card-present and card-not-present transactions

- (57) Several respondents requested clarifications regarding the reasons why the caps for CNP transactions are higher than for CP transactions. Seven respondents considered that different caps for CP and CNP transactions add to the complexity of fees and scheme charges for card transactions. They also pointed out that Regulation (EU) 2015/751 of the European Parliament and of the Council²⁹ does not provide for such a differentiation. Two respondents considered that such a differentiation disadvantages on-line merchants. One respondent, on the other hand, welcomed higher caps for CNP transactions, as they allow issuers to set up the necessary fraud mitigation tools and better invest in the well-functioning of inter-regional transactions.

²⁹ Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions (OJ L 123, 19.5.2015, p. 1).

6.1.2. *Non-circumvention*

- (58) Three respondents considered that the wording of the non-circumvention clause is too restrictive and suggested extending it to ensure that any new fees, including increased scheme fees, charged to acquirers are covered. In particular, one respondent raised concerns that the clause will not be sufficient to prevent circumvention of the Commitments, and suggested amending the clause to reflect the non-circumvention clause in relation to scheme fees in the Commission's 2010³⁰ and 2014 *Visa* decisions. One respondent referred to past scheme fee increases by card schemes stating that they compensated for reduced interchange fees and "encouraged the development and introduction of a mechanism to avoid circumvention of the offered caps", without proposing any specific change to the proposed wording of the non-circumvention clause. One respondent called for the Commission to be vigilant concerning other fees charged to merchants, in particular scheme fees, when implementing the non-circumvention clause. One respondent suggested that the non-circumvention clause should not be restricted to acquirers within the EEA and to non-EEA issuers. Three respondents welcomed the clause preventing Visa from adopting any measures with similar object or effect to inter-regional MIFs and, among those, one respondent welcomed the explicit mention of programs, rules or fee increases charged to acquirers.

6.1.3. *Definitions*

- (59) One respondent asked whether card schemes could, in practice, re-define in-store transactions (card-present transactions) as card-not-present transactions in order to attract a higher interchange fee level. Another respondent proposed modifying the wording of the "Merchant Outlet" definition³¹ to provide for an option to establish the location of the merchant outlet in the country where a travel agent involved in the transaction is located.

6.1.4. *Duration and review of the Commitments*

- (60) Five respondents considered that the five-year and six-month duration of the Commitments was too short. Amongst those, one respondent went as far as to request a permanent commitment. However, that respondent also acknowledged that the envisaged duration was substantial and would provide medium-term benefits for merchants. Another respondent suggested transferring the Commitments into a long-term agreement, either through a similar agreement with card schemes or in the form of a regulation similar to Regulation (EU) 2015/751.
- (61) One respondent considered the duration of the Commitments to be too long and requested the Commission to consider a shorter duration, in particular in the light of the fast technological developments taking place in the market.
- (62) One respondent requested clarification on the interplay of the duration of the Commitments offered with the review of Regulation (EU) 2015/751.

³⁰ Commission Decision of 8 December 2010 in case COMP/AT.39398 – Visa MIF (Commission's 2010 *Visa* decision).

³¹ See clause 2.1 of the Commitments.

6.1.5. *Scope of the Commission's preliminary investigation*

- (63) Some respondents provided observations concerning issues which are beyond the scope of the Commission's investigation and, therefore, outside the scope of the case. In that regard, the main comments received concerned commercial cards and scheme fees.
- (64) In relation to commercial cards, five respondents considered that commercial cards should also have been included within the scope of the Commitments. In particular, it was argued that, since the entry into force of Regulation (EU) 2015/751, the number of commercial cards issued has increased, as well as their respective fees. In addition, one respondent argued that certain sectors (mainly travel and accommodation) have faced a significant increase in commercial card transactions related to individual consumer-based purchases.
- (65) Two respondents raised concerns about scheme fees not being included within the scope of the Commitments. A number of respondents also submitted that Mastercard and Visa could introduce new fees or increase the level of the fees, notably the scheme fees (preceding or following the implementation of the Commitments) as a way to circumvent the Commitments (see recital (58)).
- (66) One respondent was concerned that the higher caps applicable to card-not-present transactions may set a precedent for also increasing those caps within the EEA in the context of the review of Regulation (EU) 2015/751. Four respondents submitted suggestions to be considered in the context of the forthcoming review of Regulation (EU) 2015/751, which seek to extend the scope of that review to cover scheme fees, inter-regional interchange fees or commercial cards.

6.1.6. *Other comments*

- (67) Some respondents also raised concerns in relation to the following issues: the potential application of the Commitments to consumers in the United Kingdom in the future, the potential effects of the Commitments on issuing banks located outside the EEA (including reducing cardholder benefits and issuing banks switching to alternative card schemes) and the transparency of the Monitoring Trustee as well as its interactions with stakeholders.

7. **PROPORTIONALITY OF THE COMMITMENTS**

7.1. **Principles**

- (68) The principle of proportionality requires that the measures adopted by institutions of the Union must be suitable and not exceed what is appropriate and necessary for attaining the objective pursued.³²
- (69) In the context of Article 9 of Regulation (EC) No 1/2003, application of the principle of proportionality requires the Commission to assess that the Commitments in question address the concerns expressed by the Commission in its SO and SSOs and that the undertakings concerned have not offered less onerous commitments that also

³² See for instance, Judgment of the Court of First Instance of 19 June 1997, *Air Inter v. Commission*, T-260/94, ECLI:EU:T:1997:89, paragraph 144 and Judgment of the Court of First Instance of 23 October 2003, *Van den Bergh Foods v. Commission*, T-65/98, ECLI:EU:T:2003:281, paragraph 201.

address those concerns adequately. When carrying out that assessment, the Commission must take into consideration the interests of third parties.³³

7.2. Application to this case

(70) The Commitments adequately address the concerns identified by the Commission in the SO for the reasons set out in sections 7.2.1 to 7.2.7.

7.2.1. MIF caps for card-present and card-not-present transactions

(71) When analysing MIF levels, regard should be had to the Merchant Indifference Test (“MIT”), a methodology originally developed in economic literature³⁴ and then further developed by the Commission to assess efficient interchange fees. The Commission uses this methodology as a benchmark or proxy for assessing compliance with Article 101(3) of the Treaty so as to ensure that merchants benefit from card acceptance. This approach is reflected in the Commission’s previous commitment decisions³⁵ in determining ranges of MIFs that would likely benefit merchants.

(72) According to the general framework of the MIT, the interchange fees should be such that, on average, the MSCs do not exceed the transactional benefits that merchants derive from accepting payment cards. Transactional benefits are defined as direct cost savings that accrue to a merchant when a card payment takes place (net of interchange fees) relative to a payment with an alternative payment method. Such transactional benefits accrued to a merchant are the direct benefits of a card payment relative to alternative payments.

(73) In this context, transactional benefits of card payments compared to an alternative payment instrument have to be quantified and measured in monetary terms. The MIT compliant MSC should not exceed the level of the measured transactional benefits. In order to compute the MIF compliant with the MIT the average acquirer margin and the scheme fees paid by the acquirer are deducted from the MIT-compliant MSC.

(74) Economic theory indicates³⁶ that the MIFs which comply with the MIT should allow merchants and their customers to benefit from increased card use and to increase the acquirers’ scope for reducing and differentiating their MSCs. Furthermore, to the extent that the MIFs are passed on to the cardholders by the issuers, they also ensure that cardholders are properly guided in their decision to choose the most efficient payment instruments.

(75) By ensuring that merchants, taken together, are indifferent between accepting and handling card payments and alternative means of payments, a MIT-compliant MIF creates a level playing field for competition between alternative payment instruments, while it prevents card schemes from exploiting the reluctance of merchants to turn down card payments as they are afraid that their competitors would steal their customers if they refused to accept card payments. In this context, a MIF

³³ Judgment of the Court of 29 June 2010, *Commission v. Alrosa*, C-441/07 P, ECLI:EU:C:2010:377, paragraphs 41 and 61.

³⁴ In particular, in the article jointly authored by Professor Jean-Charles Rochet and Jean Tirole, “Must Take Cards and the Tourist Test”, No 496, IDEI Working Papers from Institut d’Economie Industrielle (IDEI), Toulouse. Available at: http://idei.fr/doc/wp/2008/must_take_cards.pdf

³⁵ The Commission’s 2010 *Visa* decision and the Commission’s 2014 *Visa* decision.

³⁶ See recital (71).

that is above the MIT-compliant level would not appear to create benefits for merchants and consumers that would outweigh the possibly anti-competitive object and effect of the MIFs and a fair share of the resulting benefits would not be passed on to consumers, the merchants and their subsequent purchasers.

- (76) In order to perform the MIT taking into account the specificities of inter-regional transactions, the Commission conducted a market investigation requesting data from Visa, Mastercard, certain competitors and merchants.
- (77) The MIT-compliant MIF caps were calculated by comparing the merchants' costs of accepting payments made by debit and credit cards to those of accepting payments made with alternative means of payment. The relevant alternative means of payment are composed of payment instruments which must not, and do not, include a MIF component.
- (78) In order to compute the merchants' costs for credit and debit cards and the relevant alternative means of payments for CP and CNP inter-regional transactions, the Commission has relied on the merchants' cost data collected in the context of the Cost of Cash and Cards study³⁷ and further complemented by data specific to inter-regional transactions gathered from the respondents to the market investigation. The main merchants' cost categories that appear to be relevant, both for CP and CNP transactions, are³⁸: labour costs; costs of equipment used in processing payments; costs of services purchased from third parties; losses and revenues associated with the use of certain payments instruments such as the cost of fraud and theft. While the Cost of Cash and Cards Study focused on CP transactions, the data on merchants' costs for accepting card payments gathered in that study is also relevant for the application of the MIT for CNP transactions.
- (79) Following the market investigation, the Commission applied the MIT to debit CP and CNP and to credit CP and CNP inter-regional transactions and, as explained in recitals (80) to (84), different parameters were used depending on the type of transactions. That analysis takes into account that in inter-regional transactions there are the following main groups of payment service providers: four-party card payment schemes; three-party card payment schemes³⁹; other means of payments that can be funded by bank transfers, such as e-wallets (digital wallets⁴⁰), e-payments or bank transfer payments.

³⁷ Survey of merchants' costs of processing cash and card payments, final results March 2015 ("The Cost of Cash and Cards Study"). The study aims at measuring merchants' costs of processing cash and card payments in the context of domestic transactions for the purpose of applying the MIT, in the framework of efficiency justifications brought forward by payment card schemes under Article 101(3) of the Treaty.

Available at: http://ec.europa.eu/competition/sectors/financial_services/enforcement_en.html

³⁸ As a matter of principle, when applying the MIT these costs do not include the MIF cost associated with the acceptance of cards.

³⁹ A three-party card payment scheme is a payment card scheme in which the scheme itself provides acquiring and issuing services and card based payment transactions are made from the payment account of payer to the payment account of a payee within the scheme. Regulation (EU) 2015/751, Article 2(18).

⁴⁰ An e-wallet or digital wallet refers to an electronic device or online service that allows an individual to make electronic payment transactions. This can include payments for purchasing items on-line with a computer or using a smartphone to pay something at a store. A card or an individual's bank account can be linked to the digital wallet. Under the Visa Commitments, when the payment is made in a shop, it is

- (80) On the basis of the information collected, in the specific and current context of the inter-regional transactions and for the purpose of this Decision, the Commission has identified two distinct comparators for CP and CNP transactions, that comply with the requirements as set out in the Cost of Cash and Cards study,⁴¹ so that i) they are used by consumers and accepted by merchants and ii) have no MIFs attached to their use. On that basis, the Commission has indications that:
- (a) for inter-regional CP transactions cash remains a valid alternative to cards. Cash is a legal tender and the most common alternative to inter-regional CP payments with debit and credit cards that involves no MIF⁴²;
 - (b) for inter-regional CNP transactions cash could not be considered a valid alternative⁴³. Other alternatives, that are means of payments funded via bank transfers (which are outside the domestic payment systems of the EEA Contracting Parties and the Single European Payment Area, SEPA⁴⁴; “non-SEPA bank transfers”), were identified as plausible payment alternatives for the purposes of the MIT⁴⁵.
- (81) The use of different comparators for CP and CNP is the most important factor that indicates higher MIT-compliant MIF caps for CNP than for CP. This reflects the fact that, in the context of inter-regional CNP transactions, alternative means of payment funded via non-SEPA bank transfers carry significant costs for merchants.
- (82) Different merchants and thus different sectors bear different costs for handling payment transactions. Therefore, in order to reflect the relative importance of different sectors in inter-regional transactions, the Commission has computed the relative weights for the sectors that are most relevant in the inter-regional context based on the data gathered from Visa and Mastercard during the market investigation (observed transactions with Visa and Mastercard cards) and applied them in the MIT analysis. The relative importance of certain sectors (and the associated merchant costs) may vary depending on the purchasing channel, that is whether the transaction takes place on-line (CNP) or in the merchant’s shop (CP), on the geographic scope of

considered a CP transaction regardless of the payment instrument used (see clause 2.1 of Visa’s Commitments).

⁴¹ The Cost of Cash and Cards Study, paragraph 75.

⁴² The Cost of Cash and Cards Study, paragraph 75.

⁴³ The Cost of Cash and Cards Study does not examine CNP transactions. However, it states that the choice of a comparator to cards in the CNP context would require an in-depth examination of the payment means available, without taking a final view on this. See paragraph 104 of the Cost of Cash and Cards Study.

⁴⁴ The aim of the single euro payments area (SEPA) is to ensure that making electronic payments throughout the entire euro area is as easy as making cash payments, and that there are no extra charges when making an electronic payment in euros in another Member State. To that end, Regulation (EC) No 924/2009 of the European Parliament and of the Council on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 (OJ L266, 9.10.2009, p.11) has equalised charges for transactions in euro, which has resulted in lower fees for consumers. SEPA and Regulation (EC) No 924/2009 do not apply to inter-regional transactions, where transaction costs are substantially higher than for SEPA transactions. See also the Final Report of the Commission’s Study on the extension of Regulation 924/2009 to currencies of Member States outside the euro area (in particular pages 13 and 50), available at https://ec.europa.eu/info/sites/info/files/180328-study-cross-border-transaction-fees-extension_en.pdf.

⁴⁵ In collecting data from payment providers, the Commission has received data specific for payments funded via bank transfers. The calculations are therefore based purely on the costs of payments via bank transfer.

the transaction, and on the value of debit or credit transactions. In particular, when looking at Visa's and Mastercard's inter-regional transactions, the accommodation sector (NACE code I.55) is relatively more important than it is for domestic transactions, while the retail trade sector (NACE code G.47, except for motor vehicles and motorcycles) is relatively less important than it is for domestic transactions. Therefore, the Commission has adapted the weights by increasing the weight allocated to the accommodation sector and decreased the weight allocated to the retail trade sector in the computation of the MIT-compliant MIF.

- (83) The Commission has computed the average transaction values for CP inter-regional debit and credit transactions and for inter-regional CNP debit and credit transactions based on the data gathered from Visa, Mastercard and competitors, since the merchants' cost of handling transactions also varies depending on the transaction value.
- (84) Further, the Commission has estimated the levels of acquirer margins⁴⁶ in the inter-regional CP and CNP transactions context.
- (85) The differences between debit and credit CP and CNP inter-regional transactions explained in recitals (78) to (84) lead to different MIT-compliant MIF caps. The application of each of these parameters has resulted in higher caps for CNP than for CP, notably due to the use of different comparators between CP and CNP.
- (86) For each type of inter-regional transaction (that is CP and CNP, debit and credit), the MIF caps proposed by Visa do not clearly appear to be in excess of the requirements of the MIT.⁴⁷ In the light of the elements set out in recitals (80) to (84), the evidence on the file indicates that for inter-regional CP transactions, a per transaction MIF of 0.2% for debit cards and of 0.3% for credit cards could make merchants, taken together, indifferent between accepting a cash payment and a card payment. For inter-regional CNP transactions, the evidence on the file indicates that a per transaction MIF of 1.15% for debit cards and of 1.5% for credit cards could make merchants, taken together, indifferent between accepting a non-SEPA bank transfer or an e-money transfer and a card payment.⁴⁸
- (87) Importantly, the Commitments only cap the MIF rates and do not prevent Visa from introducing lower MIF rates.
- (88) The Commitments therefore deal with the preliminary competition concerns identified by the Commission in an efficient manner, as they provide a direct and tangible benefit to merchants and ultimately consumers in the form of MIFs that are substantially lower than the currently applicable levels.

⁴⁶ For MIT analysis, the acquiring margin is defined as the difference between the MSC and the MIF. See for reference the Cost of Cash and Cards Study, paragraph 12, footnote 6.

⁴⁷ This assessment is based on an analysis of the replies of Visa, Mastercard, competitors and merchants to the Commission market investigation (see recital (76)) as well as the data gathered in the context of the Cost of Cash and Cards Study (see recital (78)).

⁴⁸ See replies of Visa, Mastercard, competitors and merchants to the Commission market investigation and the data gathered in the context of the Cost of Cash and Cards Study. Specifically concerning the inter-regional CNP transactions, the Commission gathered information from competitors and merchants on costs of alternative payment means funded via bank transfers (see recital (80)(b)).

7.2.2. *Non-circumvention*

- (89) The Commission considers that Clause 8 of the Commitments contains a far-reaching non-circumvention clause, which prohibits Visa from engaging in any conduct that would directly or indirectly, by act or omission, have the equivalent object or effect of inter-regional MIFs. This includes, but is not limited to, the introduction of fees which are legally or economically equivalent to inter-regional MIFs. This is similar to the 2010 and 2014 Visa commitments. In the same way as in those commitments, new fees or increased scheme fees equivalent to inter-regional MIFs are covered by the non-circumvention clause.
- (90) With regard to the argument that the non-circumvention clause should not be restricted to acquirers within the EEA and to non-EEA issuers⁴⁹, the example provided in the non-circumvention clause is not exhaustive and the scope of the clause is broad enough to cover fees which may have an equivalent object or effect to inter-regional MIFs.
- (91) A breach of the Commitments could lead to the application of a number of measures provided for in Regulation (EC) No 1/2003, namely reopening of the proceedings pursuant to Article 9(2), imposition of a fine pursuant to Article 23(2)(c), or the imposition of periodic penalty payments pursuant to Article 24(1)(c).

7.2.3. *Definitions*

- (92) As regards the comment on whether card schemes could re-define card-present transactions as card-not-present transactions, the Commission considers that the current definitions of “Card-Based Payment Instrument” (clause 2.1 of Visa’s Commitments) and “Card Present Transactions” (clause 2.1 of Visa’s Commitments) exclude such manipulations as they clearly specify under which conditions card-present transactions take place. Nevertheless, if such manipulation were to occur, this would be considered a breach and circumvention of the Commitments (see recital (91)).
- (93) As regards the definition of “Merchant Outlet”, the Commission considers that Visa’s Commitments provide for the possibility to allocate the place of the merchant outlet in the country of the travel agent (clause 2.1 of Visa’s Commitments).

7.2.4. *Duration and review of the Commitments*

- (94) Respondents did not provide any facts or evidence that would justify either extending or reducing the duration of the Commitments. In addition, the duration of the Commitments and the review of Regulation (EU) 2015/751 are two separate issues. The duration of the Commitments has to be assessed on its merits, irrespective of the review clause in Article 17 of Regulation (EU) 2015/751. Furthermore, inter-regional MIFs are not included within the scope of Regulation (EU) 2015/751.
- (95) The Commission considers that the five-years and six-month duration of the Commitments is sufficient to address adequately the concerns expressed in the SO and the SSOs. Given that the Commitments provide for an implementation period of six months, the “net” duration of the Commitments will effectively be five years.

⁴⁹ Clause 8.1 states that the non-circumvention obligation “[...] includes specifically but not exclusively implementing programs or new rules whereby Visa transfers scheme or other fees charged to Acquirers within the EEA to non-EEA issuers.”

This is in line with the Commission's practice in previous commitment cases⁵⁰ and slightly longer than in the commitments in the previous MIF cases⁵¹. A longer period would go beyond what is necessary to protect competition in such a fast-moving sector.

7.2.5. *Scope of the Commission's investigation*

- (96) The comments received regarding commercial cards and scheme fees go beyond the scope of this case and therefore also beyond the Commitments. As stated in recitals (1) and (31), the scope of this case and the practices raising concerns are limited to Visa's rules on *inter-regional MIFs* applicable to card-based inter-regional transactions concluded at merchants located in the EEA with *consumer* debit and credit cards issued by an issuer located outside the EEA. Commercial cards are not part of the investigation. Similarly, scheme fees, which are charged by Visa to issuers and acquirers, are not part of the investigation.
- (97) The concern that higher caps applicable to inter-regional card-not-present transactions may set a precedent in the context of the review of Regulation (EU) 2015/751 is also outside the scope of this case which must be assessed on its own merits. The Commission may carry out a review of Regulation (EU) 2015/751 in accordance with Article 17 of that Regulation and separately from this case. Accordingly, the suggestions for the review of Regulation (EU) 2015/751 which were raised by respondents, such as a proposal to extend its scope to include scheme fees, inter-regional interchange fees or commercial cards, are also not within the scope of this case.

7.2.6. *Other comments*

- (98) Regarding the question on the application of the Commitments to consumers in the United Kingdom in the future, it should be recalled that the Commitments are applicable to inter-regional transactions. These are defined in the Visa Commitments as "*a transaction at a Merchant Outlet located in the EEA with a Consumer Credit Card or Consumer Debit Card issued by an Issuer based outside of the EEA*" (see clause 2.1). In this regard, the Visa Commitments define the EEA as "*those countries participating in the European Economic Area as of the Commencement Date or joining thereafter for the duration of each such country's participation in the EEA during the term of these Commitments*" (see clause 2.1).
- (99) Regarding the potential effects of the Commitments on issuing banks located outside the EEA, the Commission's competition concerns set out in the SO and the SSOs, which the Visa Commitments address, concern the acquiring of card-based payment transactions within the EEA.
- (100) Finally, in relation to the transparency of the Monitoring Trustee and its interactions with stakeholders, the Commission refers to the appendix to the Commitments (also publicly available) where the functions, duties and obligations of the Monitoring Trustee are laid out. In particular, one of the duties of the Monitoring Trustee is to

⁵⁰ For commitment cases with a duration of five years see for example: Commission Decision of 4 May 2017 in case COMP/AT.40153 – E-book MFNs and related matters (Amazon); Commission Decision of 10 December 2015 in case COMP/AT.39767 – BEH Electricity; Commission Decision of 29 April 2014 in case COMP/AT.39939 – Samsung Enforcement of UMTS Standard Essential Patents; and Commission Decision of 25 July 2013 in case COMP/AT.39847 – E-books.

⁵¹ See the Commission's 2014 Visa decision that included a duration of four years (clause 9.2).

promptly report in writing to the Commission, if it concludes on reasonable grounds that there has been a failure to comply with the Commitments (clause 7 (c) in the appendix to the Commitments). These provisions are in line with the general practice of the Commission regarding the monitoring of commitments. Furthermore, a model text for trustee mandates is published on the Commission's DG Competition website⁵².

7.2.7. *Conclusion on proportionality*

- (101) Visa has not offered less onerous commitments in response to the SO and the SSOs that also address the Commission's concerns adequately.
- (102) The need to ensure increased deterrence through the imposition of fines has been removed by the submission of the Commitments, which will be made legally binding and enforceable through this Decision. While this effectively removes the risk of recidivism, it produces positive effects for market operators and consumers.
- (103) The Commission has taken into consideration the interests of third parties, including those of the interested third parties that responded to the Article 27(4) Market Test Notice.
- (104) Overall, the observations received in response to the Article 27(4) Market Test Notice did not allow the Commission to identify new competition concerns and contained no points such as to make the Commission reconsider the concerns it expressed in the SO and the SSOs. In view of the results of the market test, the Commission maintains the position that it took in the Article 27(4) Market Test Notice, namely that the Commitments are adequate to meet the competition concerns expressed in the SO and the SSOs.
- (105) This Decision accordingly complies with the principle of proportionality.

8. CONCLUSION

- (106) By adopting a decision pursuant to Article 9(1) of Regulation (EC) No 1/2003, the Commission makes the Commitments binding to meet the Commission's concerns expressed in the SO and the SSOs. Recital 13 of the Preamble to the Regulation (EC) No 1/2003 states that such a decision should not conclude whether or not there has been or still is an infringement.
- (107) The Commission's assessment of whether the Commitments are adequate to address its concerns is based on the SO and SSOs, representing the preliminary view of the Commission based on the underlying investigation and analysis, and the observations received from third parties following the publication of the Article 27(4) Market Test Notice.
- (108) In the light of the Commitments, the Commission considers that there are no longer grounds for action on its part and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003, the proceedings in this case should therefore be brought to an end.
- (109) The Commission retains full discretion to investigate and open proceedings under Article 101 of the Treaty and Article 53 of the EEA Agreement as regards practices that are not the subject matter of this Decision.

⁵²

See http://ec.europa.eu/competition/mergers/legislation/trustee_mandate_en.pdf.

HAS ADOPTED THIS DECISION:

Article 1

The Commitments in the Annex shall be binding on Visa Inc. and Visa International Service Association.

Article 2

There are no longer grounds for action by the Commission in this case.

Article 3

This Decision shall apply for a period of five years and six months from the date of notification of this Decision to Visa Inc. and Visa International Service Association.

Article 4

This Decision is addressed to:

Visa Inc.

900 Metro Center Blvd

Foster City

CA 94404

United States of America

Visa International Service Association

900 Metro Center Blvd

Foster City

CA 94404

United States of America

Done at Brussels, 29.4.2019

For the Commission

Margrethe VESTAGER

Member of the Commission

