



HOTREC¹ reply to the Commission Green paper consultation “Towards an integrated European market for card, internet and mobile payments” – COM(2011)941 final

GENERAL INTRODUCTION

The European hospitality industry welcomes the Commission’s intention to assess the current landscape for card, internet and mobile payments and to identify the obstacles to a fully integrated payments market. With the dematerialization of money, and the uptake of internet bookings for tourism services, the hospitality industry is a prominent user of card and internet payments, while the use of mobile payments is expected to be on the rise in the future for some type of services provided by hospitality establishments. As clients of hotels, restaurants, bars and discotheques tend to pay more and more with these payment means, the European hospitality industry is genuinely interested in this Commission initiative. For these reasons, HOTREC wishes to provide general comments about the issues contained in the Green Paper and to reply more specifically to its questions 1 to 5, 14 to 17 and 25 to 28, as they refer to the most important issues for the European hospitality industry.

- I. The issue of Multilateral Interchange Fees (MIF) should be prioritized to solve problems faced in payment markets

HOTREC believes that the payment market should be examined as a whole, with a holistic vision that encompasses all issues dealt with by the Green Paper. This is especially true as technology is evolving quickly, and it is reasonable to consider that in the near future consumers will have the possibility to use various means of payments based on different technologies, be it at distance or at the point of sale.

The European hospitality industry considers that solving the MIF problem should be top the

¹ HOTREC represents the hotel, restaurant and café industry at European level. The sector counts 1.7 million businesses, with almost 92% of them being micro enterprises employing less than 10 people. The micro and small enterprises (having less than 50 employees) represent more than 99,5% of businesses and make up some 62% of value added. The industry provides some 9,5 million jobs in the EU alone. HOTREC brings together 43 National Associations representing the interest of the industry in 26 different European countries.

priority, as MIF constitute as such the main obstacle to a fully integrated single market for payment. The anti-competitive effect of MIF are reinforced by their combination with the additional rules imposed by the main card schemes (i.e. Honour All Cards Rule, Non Discrimination Rule, restrictions on cross-border acquiring, lack of transparency in fees). If left unsolved, these problems could generate a spill-over effect for other payment means in the near future, which would be extremely detrimental for merchants and consumers across the EU.

This is the reason why HOTREC considers that solving the MIF problem should be top the priority. Once it will be resolved, other discussions relating to these additional rules imposed will be more easily addressed.

II. The legislative option to regulate MIF is the best answer

Competition proceedings against Visa and MasterCard have probably helped bringing down the fees to a certain extent, while the use of payment cards kept growing steadily. Nevertheless, competition cases are not the final solution to the issue, mainly because they address only one specific case for some specific aspects and take several years to be completed, therefore allowing the concerned companies to organize themselves in the meantime to circumvent any possible adverse judgment or decision.

This can be illustrated by the agreement negotiated by the Commission with Visa and MasterCard regarding the MIF levels, which raise the following problems:

- MIF are based on a questionable methodology, which do not relates in any manner to the real cost occurred for processing the transactions;
- By fixing a range of fees, it tends to prevent potential newcomers on payment market to propose services below these rates;
- It leaves aside commercial cards, therefore allowing to compensate potential losses on MIF for consumer cards by charging high fees on these products which are everyday more widespread;
- By fixing rates on average MIF, it adds to the lack of transparency and prevents merchants from negotiating their rates with the full knowledge of the costs (especially as MIF are not negotiable and do constitute the most important part of the fees paid by merchants).

Given the above mentioned reasons, HOTREC considers that the legislative option is the most appropriate way to regulate MIF and solve the issues mentioned in this Green Paper for all kind of payments (card, internet and mobile).

1) Under the same card scheme, MIFs can differ from one country to another, and for cross-border payments. Can this create problems in an integrated market? Do you think that differing terms and conditions in the card markets in different Member States reflect objective structural differences in these markets? Do you think that the application of different fees for domestic and cross-border payments could be based on objective reasons?

In HOTREC's view, the MIF system constitutes in itself the main barrier to a fully integrated single market in the area of payment. Indeed, the MIF system:

- distorts competition between payment means;
- produces an adverse effect on competition between banks, which leads to higher prices;
- prevents entry of newcomers in the card payment market;
- induces the phasing-out of cheap national debit schemes and the replacement by (more expensive) MIF-based payment cards;

The European hospitality industry therefore considers that MIF mechanisms should be eliminated, especially as payment card schemes and their benefits are hardly transparent. In MIF based systems, the acquiring bank charges the merchant in addition to the service charges. If possible the merchant shifts it to the customer. The customer pays the cardholder fee and additionally the potential interchange fees. The end-result is that there is little incentive to use the card for payment and that the practice of interchange fees raise massively the costs of the transactions, without any real justification.

Differing MIFs for cross-border payments have an adverse effect on the functioning of an integrated European market. Businesses across Europe are increasingly carrying out commercial operations outside their country of origin, mainly due to e-commerce, and without any doubt in the tourism industry. Differing MIFs distort competition amongst businesses, as higher MIFs cut into the profit margin and businesses do not always have access to the payment service provider offering the lowest MIF. This results from different technical standards and specific rules making cross-border schemes less attractive, such as cross-border acquirers having to pay the domestic MIF nonetheless.

The European hospitality industry is convinced that there is absolutely no objective reason (either operational or economic) that would justify for different MIF under the same card scheme within the European single market. These different MIF only increase uncertainty for merchants and customers. Evidently there are no impartial structural differences in the Member States.

For instance, in July 2011, in France, the "Groupement Cartes Bancaires" (Credit Card Group) committed to the French Authority for Competition to cut MIFs by 36% to reach the average rate of 0,3% of the price. According to the Group, the average MIF rate applied to businesses was 0,47%. However, according to a survey from the French hospitality associations this rate is much higher: 0,6% for French cards on average (and up to 1,4%) and 1% for foreign cards. These differences are clearly not related to any objective different situation for the hospitality industry: these higher MIF rates are unilaterally imposed by the banks without any justification or figures.

3) If you think that action on interchange fees is necessary, which issues should be covered and in which form? For example, lowering MIF levels, providing fee transparency and facilitating market access? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards?

Such differences in the MIF levels are a clear argument in favour of the abolition of MIF, which are not based on objective reasons. HOTREC is also sceptical on the “Merchant Indifference Test” (MIT) as a method for determining a benchmark for MIF. Indeed, the use of the MIT would mean that merchants and consumers would receive no incentive or benefit if they choose to use more secure and technologically advanced payment means (e.g. card schemes), by comparison with the traditional physical money. This would send a dangerous signal for innovation in the payment market. Moreover, the application of the MIT leads to MIF levels which are disconnected from the real cost of processing a card transaction.

2) Is there a need to increase legal clarity on interchange fees? If so, how and through which instrument do you think this could be achieved?

Yes, the European hospitality industry considers that an EU regulatory intervention is needed to eliminate the MIF, as it is the only way to ensure a real competition and integration in the European payment card market, while encouraging the entry of newcomers.

However, in case this would not be achievable, a regulatory intervention is anyway needed to ensure that interchange fees and their impact (transfer of costs) become clear for customer (card holder) and merchant before contracting with the acquiring bank. The terms and conditions of interchange fees need to be clearly transparent, publicly available and comparable, in order that an objective decision in favour of or against a system could be made, and that there are no hidden charges to either the merchants or the card-users.

This could be achieved through an EU legislation, for instance with an amendment of the Payment Service Directive (2007/64/EC). Such legislation could compel banks, card issuing companies and PSPs to make the information on the cost arising from electronic payments more transparent. It could also either:

- Oblige them to provide details on how the MIF are calculated, so as to give all necessary elements to renegotiate MIF rates; or
- Limit, prohibit or oblige MIFs to be proportionate with the real costs arising from the execution of a payment.

In case such MIF would be regulated, there should be a maximum fee that should not be exceeded. This range should be determined through a realistic survey on the real costs and risks effectively and concretely supported by banking institutions in case of transnational payments or national payments. It should both concern national and transnational payments, to prevent competition distortions. The EC could propose a general pan-EU protocol between the banks and the card service providers governing the manner in which services are to be provided and charged for to the banks' clients (the merchants) and the banks' customers (the card-users).

The European hospitality industry considers that the priorities should be:

- To strongly lower (if possible eliminate) MIF and to make the calculation/composition of the card fees fully transparent;
- To facilitate market access to new payment services, as there are only very few relevant companies internationally (which basically “dictate” the fees).

If MIF are not eliminated, then, the MIF structure needs to be focused first and foremost on safeguarding the card-users interests and not to serve as a cartel structure to exploit multiple fee opportunities. The MIF structure should include recommended guidelines to fee sharing and an obligation on parties not using such templates to state this explicitly in their terms and conditions of service. As the amount of MIFs is also determined by additional services and bonuses the specific card scheme offers, it might be necessary to differentiate and to justify such mandatory services, and to make the real beneficiaries of such bonuses (i.e. cardholders) pay for such services.

Actions should first target four-party schemes, as the issue of MIFs with two PSPs is more urgent. However, three party card schemes should be included, because hidden costs distort competition.

The use of commercial cards is becoming more and more widespread. The European hospitality industry witnessed in the recent years (and particularly since the recent Commission proceedings against MasterCard and Visa’s practices for consumer cards) a sharp increase in the fees paid for processing such cards. The European hospitality industry considers that there should be absolutely no distinction between consumer and commercial cards, as far as the MIF structure is concerned. Advantages for employees mentioned in the Green Paper could only be an exception and should be paid for by the real beneficiaries (i.e. the company holding the card). Typically these bonuses are not allowed to be used by employees for their own benefit, respectively the bonuses are taxed as benefits out of employment.

Finally, the use of IBAN frameworks completely remove the need to separate between a local and a cross border transaction, the IBAN details should suffice and standard protocols need to be set up to facilitate access to IBAN accounts by third party service providers involved in the payment process such as e-wallet or e- payment service companies or telecoms service providers. By allowing these firms to make authorised withdrawals from the designated IBAN account, this could diminish the dependence of certain industries over card payments.

4) Are there currently any obstacles to cross-border or central acquiring? If so, what are the reasons? Would substantial benefits arise from facilitating cross-border or central acquiring?

It is difficult to identify current and concrete obstacles to cross-border acquiring for outsiders (not part of the banking system). Nevertheless, the European hospitality industry’s experience is that current obstacles are often instigated by the card companies and the banks authorising payments. Visa and MasterCard’s rules prevent real cross-border acquiring. One substantial benefit from the facilitation of cross-border payments would be the option for businesses to centralise their financial operations and improve cost-effectiveness.

Additional restrictions on use of third party payment credits such as mobile phone companies or loyalty companies, provide scope for fee exploitation by telecom companies who currently demand

excessive shares of revenue to allow for m-payments through their infrastructure.

5) How could cross-border acquiring be facilitated? If you think that action is necessary, which form should it take and what aspects should it cover? For instance, is mandatory prior authorisation by the payment card scheme for cross-border acquiring justifiable? Should MIFs be calculated on the basis of the retailer's country (at point of sale)? Or, should a cross-border MIF be applicable to cross-border acquiring?

Generally, Internal Market rules and the resulting freedom to provide services must apply. Cross-border acquiring must be facilitated by moderating the rule of prior authorisation (as prior authorisation restricts competition possibilities). Free choice of acquirer together with its cross-border terms and conditions – detached from the point of sale - must apply. However, MIF based on the retailers country are not conceivable. In general, HOTREC considers that the abolition of MIF would tremendously facilitate cross- border acquiring.

14) Given the increasing use of payment cards, do you think that there are companies whose activities depend on their ability to accept payments by card? Please give concrete examples of companies and/or sectors. If so, is there a need to set objective rules addressing the behaviour of payment service providers and payment card schemes vis-à-vis dependent users?

The European hospitality industry is becoming every day more dependent on its ability to accept payment by cards. For instance, in France, the hotel sector fulfils more than 60% of its turnover through credit cards. With the uptake of internet and the generalisation of online booking, this trend can only grow further in the near future.

As far as the leisure hotel sector is concerned, more and more guests want to use cards for payment and expect their cards to be accepted by the hotel. Cancellation fees are more often secured by card, instead of advance payment. Business hotels in large cities (attracting many international visitors) are even more reliant on payment cards. Business travellers almost always use their (business) cards. If the card is not accepted by the hotel, it will simply never be booked again.

In restaurants the consumption level more and more depends on the acceptance of cards. As guests often count on the possibility to use payment cards, they only have little cash with them. The lack of acceptance from some restaurants depends almost exclusively on the cost involved for specific card schemes.

As the revenue of hotel and restaurants businesses depend on their capacity to accept a maximum of payment cards, these companies absolutely need a better regulation of the commercial practices of banking and payment institutions. Objective rules addressing the behaviour of PSPs and payment card schemes is vital for the European hospitality industry, as it is simply not an option for many hospitality businesses to deny their customers the possibility to pay with such payment systems.

15) Should merchants inform consumers about the fees they pay for the use of various payment instruments? Should payment service providers be obliged to inform consumers of the Merchant Service Charge (MSC) charged / the MIF income received from customer transactions? Is this information relevant for consumers and does it influence their payment choices?

The European hospitality industry considers that transparency should be ensured in the billing and that consumers should be informed about the fees (MIF and Merchant Service Charge) merchants pay for the acceptance of a specific payment method. PSPs will be reluctant to disclose the public about the specific income received from a customer transaction. Thus it will be necessary to make the declaration by PSPs mandatory, in order to allow merchants to inform consumers if appropriate.

If consumers are given a full picture about the cost of payment means, there will be a little bit more pressure on all intermediaries to justify their fees. However, the mere knowledge of such costs will only affect marginally consumer's decision to use a particular payment system, as transparency in itself is not the driver for using one specific mean of payment. Indeed, consumers mainly decide to use a particular payment system (e.g. credit card) for the perceived comfort and safeness, as well as for some services offered (e.g. air miles or others benefits).

The link between prices consumers pay for goods and services is indirect and the use of cheaper payment methods will merely have an indirect and quite delayed effect on pricing and only if consumers consequently use the cheaper alternative. Furthermore, one of the main problems relates to the incentives card issuing companies offer card holders for payment by credit card (e.g. insurance, free miles etc.). This problem should be addressed: the real beneficiaries of these incentives and bonuses (i.e. the cardholder) should be the one paying for such services.

16) Is there a need to further harmonise rebates, surcharges and other steering practices across the European Union for card, internet and m-payments? If so, in what direction should such harmonisation go? Should, for instance:

- **certain methods (rebates, surcharging, etc.) be encouraged, and if so how?**
- **surcharging be generally authorised, provided that it is limited to the real cost of the payment instrument borne by the merchant?**
- **merchants be asked to accept one, widely used, cost-effective electronic payment instrument without surcharge?**
- **specific rules apply to micro-payments and, if applicable, to alternative digital currencies?**

Consumers should be able to make an informed choice about the method of payment they choose. They should be able to identify costs arising for the merchant and the link between margins and prices of goods and services. As merchants try to offer the lowest and most attractive price for the goods and services they offer, they are reluctant to offer further rebates for the use of a cheaper payment method. The question of surcharges for consumer is also delicate. If rebates and surcharges are used, these tools have to be easy, transparent and consistent.

Nevertheless, the contractual prohibition by credit card companies to pass on the costs generated by the use of credit cards disrupts the general legal principle of being allowed to specify and disclose the items the invoice consists of (and for which the customer pays). The merchant fee is not directly connected to the value of goods and services the merchant provides, nor to the real cost of the transaction, but rather is a condition for the acceptance of a payment. Surcharging should therefore be legally permissible generally, without a ban on surcharge by credit card companies, as long as the costs are strictly limited to the real cost of the payment instrument borne by the merchant.

17) Could changes in the card scheme and acquirer rules improve the transparency and facilitate cost-effective pricing of payment services? Would such measures be effective on their own or would they require additional flanking measures? Would such changes require additional checks and balances or new measures in the merchant-consumer relations, so that consumer rights are not affected? Should three-party schemes be covered? Should a distinction be drawn between consumer and commercial cards? Are there specific requirements and implications for micropayments?

Yes, such changes would improve transparency and facilitate cost-effective pricing of payment services. Changes in the card scheme and acquirer rules must directly address transparency issues. Consequently competition within the internal European market would be strengthened, resulting in better fees in theory.

Under the same card scheme, all MIF should be equal. Banishing the rule for non-discrimination as well as the obligation to accept all payment cards, would be very useful: these rules represent an obstacle for businesses. Indeed, they prevent businesses from setting a commercial strategy to reduce the fees they pay to payment services providers. In addition, these rules increase the dependence of businesses towards payment cards.

Moreover, MIF on micropayments are very often charged by a fixed rate which is disconnected from the actual cost of using such payment possibilities. Payment services providers should be compelled to justify the application of these rates and to detail how it was determined.

It is also not comprehensible why business-cards are substantially costlier than private-cards. For the service provider, expenses and internal costs for transactions are the same. Differences in the pricing for the use of such cards are not justified. Transparent cost structures would reveal this.

To be effective these changes in the rules need to be entrenched in a set of new checks and balances to curb abuses. If surcharging is allowed, a system of checks and balances should be ensured, in order to make sure merchants do not charge more than the costs incurred from the use of a specific payment method. The publishing of an EU standard code of practice and the related rights of the parties referred to above would be crucial. Specific arrangements also need to be made to deal with the issue of pre-paid debit cards being treated differently than post-paid cards on many internet websites (e.g. Ryanair). The artificial card processing fees charged by third parties also need to be addressed through the best practice guidelines referred to above.

25) Do you think that physical transactions, including those with EMV-compliant cards and proximity m-payments, are sufficiently secure? If not, what are the security gaps and how could they be addressed?

Safety of transactions can never be ensured at 100%. Cyber-crime increases constantly, criminals strike steady new paths. A perpetual evaluation is needed. Timely sms notification of transaction to card-users and prompt reconciliation of statements by end users would further reduce fraudulent use. Card holders must continue to be held harmless from fraud, if this is not due to any actions on their part.

26) Are additional security requirements (e.g. two-factor authentication or the use of secure payment protocols) required for remote payments (with cards, e-payments or m-payments)? If so, what specific approaches/technologies are most effective?

A multi-factor authentication contributes to increased safety. Unfortunately, even this system is not infallible. Personal data are often revealed for instance by phishing e-mails. Such additional security measures should left at the discretion of the cardholder and should be enforced on large value transactions, particularly within the corporate card environment.

27) Should payment security be underpinned by a regulatory framework, potentially in connection with other digital authentication initiatives? Which categories of market actors should be subject to such a framework?

Payment security should be underpinned at least by a basic regulatory framework. Mandatory digital authentication applying to all parties offering payment services would prevent most common cases of data theft and fraud. Consumers and legal retailers would be protected.

28) What are the most appropriate mechanisms to ensure the protection of personal data and compliance with the legal and technical requirements laid down by EU law??

Secured internet pages should only manipulate specific needed data. It is questionable to which extent the data should be stored after transaction: in order to comply fully with data protection requirements, personal information should be deleted as soon as the purpose for the collection of these data was achieved. Moreover, it must be encrypted and inaccessible to third parties.

Dissemination of the rights and obligations of all parties through pan-EU multimedia campaigns would also help achieving these objectives. Moreover, independent organisations or watchdogs (such as national consumer rights organisations) should be appropriately funded in order to monitor compliance with recommended best practices.

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