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1. Consultation on migration end-date

In June 2009, the EU Commission launched a public consultation process on whether and how deadlines for SEPA migration should be set. The consultation has been terminated and the results have been published on 29 September 2009.¹ The consultation document contains 11 questions that participants were asked to answer. The first question addresses the crucial point whether an end date should be set or not. The other questions relate to the way in which the end-date (or end-dates) should be set.

The EU Commission received 136 responses of which it has used 105 in its analysis. Those cases, in which different participants provided identical (word for word) answers were treated as one response. Of the remaining 105 respondents, 34% were private payment users (businesses, merchants and consumers), 18% were public sector entities (as regulators and/or payment user) and 45% came from the payment sector (PSPs/banks, technical providers, consultants, national SEPA committees). Looking at the national background of respondents, Germany is the clear front runner with a share of 28%, followed by France (9%), the UK (8%), the Netherlands (8%) and Italy (6%). Another 11% was categorised as EU/international.

Clearly, the most important question in the consultation document is question 1. For this question, the EU Commission provides three possible answers:

- a) yes, there is a need to set (a) deadline(s) to SEPA migration
- b) yes, but under certain conditions
- c) no

¹ See European Commission, Internal Market and Services DG, FEEDBACK ON THE PUBLIC CONSULTATION ON POSSIBLE END-DATE(S) FOR SEPA MIGRATION, Brussels, September 29, 2009. ("EU Comm, Summary 2009")
(http://ec.europa.eu/internal_market/payments/docs/sepa/feedback_migration2009_09_29_en.pdf)

The EU Commission does not provide precise figures on the number of respondents favouring a., b. or c. It states however, that a “*large majority of respondents, among all categories, emphasised the need to set (a) deadline(s) for the migration to SCT and SDD.*” (EU Comm, Summary 2009, page 4)

This result seems to be interpreted as a mandate to take action and set an end-date. In its press release, summarising the results, the EU Commission notes:²

“Respondents generally expressed support for fixing at EU level a deadline for the full migration to SEPA. The Commission will discuss this matter with Member States before taking a decision on how best to proceed.”

Thus, the consultation seems to have moved the EU closer to a legally binding migration to SEPA products and a politically prescribed shutting off of national legacy systems.

Our comment:

*To be fair enough, if one just does the counting of responses, the number votes in favour of setting a deadline (under conditions or not) is much higher than the number of votes against. But what does that mean? In its summary report, the EU Commission says that it wants to present a “**qualitative** analysis of the responses and of the main arguments”. But as the two quotes above from the Summary Report and the Press Release show, in the end, what seems to count is **quantity** of votes. After cleaning out about a fourth of the responses, the EU Commission simply counts the numbers in favour or against a certain proposition. But the results of such a procedure are less than convincing. Most importantly, there is no way to determine to what degree these responses really are representative for payment users and payment suppliers in the EU. They may be – but they may also be completely skewed.*

What makes it difficult to interpret the results is that there is no weighting of the responses. The answer of a single consumer is treated like the answer of BEUC (the European Consumers' Organisation), the answer of one company gets the same weight as the answer of a national association of companies or merchants. For instance, the Commission says that “Merchants did not respond much” (EU Comm, Summary, page 2). But EuroCommerce the European Merchant Association and HDE, the German merchant association responded. So, it could be argued that the European merchant sector was well represented. But when applying the methodology of the EU, each of the two bodies only counts as one participant. Consequently, three small merchants, each answering individually, would have given the

² See IP/09/1372 (<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1372&format=HTML&aged=0&language=EN&guiLanguage=en>)

merchant sector more weight. Many PSPs, organised in EPSM, also provided input to the consultation. Since they did so via EPSM, their voices counted as 1. As it stands, they should all have responded individually (but not identically) to give their opinion a higher weight.

Generally, the treatment of associations in such a consultation process is tricky. Members may discuss a topic within an association and then come up with a joint opinion supported by all. In such a case, should only the association respond (for all its members)? Or should all members respond? The German savings banks tried something in between. The National Association (DSGV) responded and so did a number of savings banks. Since there was an agreed position, they all used the same text to answer the consultation questions. The EU Commission has treated this as just one answer. The procedure of the EU Commission has its logic. But it also raises a number of questions. If the DSGV speaks for all savings banks, should it not get a weight higher than 1? What about other sectors? Both, the German association of private banks and Deutsche Bank responded (in a broadly similar but not identical way). Many corporates referred in their answers to positions developed in the European Association of Corporate Treasurers (EACT). So, they could also be treated as a single source.

To cut a long story short, unless such a consultation process is organised in a more formal way, it cannot provide any reliable indication what market participants think. In particular, it cannot be inferred from the results of the current consultation that the majority of market participants is in favour of an end-date.

Still, it is interesting to read the responses, all of which have been published on the EU Commission website.³ They definitely provide food for thought, showing that the market is still divided as to the benefits of SEPA and the merits of an end-date. They also show a pronounced difference in the evaluation of SCT and SDD. What clearly strikes out is that SDD has few friends and that many market participants prefer exiting national solutions by a wide margin. The EU Commission promised a “qualitative” assessment of the responses. Well, this would be one qualitative result: SCT has its problems but may finally succeed. But participants would see a mandatory migration to SDD as a significant deterioration of quality and thus as a clear violation of the non-deterioration principle.

³ See http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/financial_services/end-dates_migration&vm=detailed&sb=Title

2. Interchange: Decision in Hungary

Interchange regulation remains on the agenda. In September 2009, the Hungarian Competition Authority (GVH) has fined seven Hungarian banks, Visa and MasterCard for distorting competition.⁴ The seven banks have been fined an approx. EUR 3,57 million, the two credit card companies Visa and MasterCard have each been fined EUR 1,76 million. The ruling applies to the period 1996 to 2008. The banks were fined because they jointly agreed in 1996 that they would introduce the same interbank commissions for both Visa and MasterCard. Therefore, on the acceptance side, there was no competition between Visa and MasterCard. The agreement between the banks has been terminated in 2008. Since then, they are applying different fees. The two credit card companies were fined because they made it possible for banks to conclude agreements that hindered competition. MasterCard has announced that it does not see any violation of the law and that it will appeal the GVH ruling.

Our comment:

At first, it may seem as if Hungary is just another case of a competition authority following more or less the argument of the EU Commission. However, a close look at the ruling of the GVH shows that this is not the case. First of all, the ruling does not cover current interchange rates but rates applied between 1996 and 2008.

Current Interchange Fees in Hungary

Trx. with electronic authorisation	Interchange fee
Visa Credit/Charge Card	0,65%
Visa Debit Card	0.27 EUR
MasterCard Credit/Charge Card	0.90% + 0.09 EUR (24 HUF)
MasterCard Debit Card	0.90% + 0.09 EUR (24 HUF)
Maestro	0.60% + 0.045 EUR (12 HUF)

Second, the GVH focuses mostly on the fact that rates were the same for both, Visa and MasterCard. As the GVH rightly points out, scheme competition is restricted in this way. But it does not see multilateral interchange fees per se as harmful. While pointing out in its

⁴ See http://www.gvh.hu/gvh/alpha?do=2&st=2&pg=133&m5_doc=6071

background paper⁵ that a joint interchange fee within one scheme may serve as a minimum price and thus reduce competition between acquirers, the GVH also stresses that a multilateral interchange fee may “produce substantial efficiencies”. Moreover, the GVH acknowledges that in a two-sided market cost-based pricing is not efficient. Thus, for the moment, interchange is legal in Hungary and the GVH highlights the favourable effects of having different rates for Visa and MasterCard.

3. Interchange: Decision in New Zealand

The Commerce Commission, the competition authority of New Zealand, has settled anti-trust cases with Visa and MasterCard (in August) and New Zealand banks (in early October). The Commission found all parties guilty of breaching the Commerce Act.

Under the settlement reached the banks committed to

- significantly reducing the average interchange fees
- offering retailers the option of unblended service fees
- offering retailers the option of fully unbundled service fees and
- refraining from surcharge prohibitions

Visa and MasterCard committed to:

- let issuers set interchange rates individually, subject to maximum rates determined by the schemes and made public.
- allow surcharging
- permit non-bank organisations or companies who wish to provide acquiring services to merchants to join the schemes as acquirers.

Under the settlement, the banks and the schemes agreed to cover the costs of the Commission’s proceedings.

As a result of the settlement, the Commission expects more competition in the card market and lower fees for merchants.

Comment

The Commerce Commission follows the trend: unblending, un-bundling of fees, better access to schemes and prohibition of no-surcharge rules. On top of that comes a disguised regulation of interchange fees. The Commerce Commission says that issuers are now allowed to set interchange rates individually, subject to maximum rates. Judging from past

⁵ Hungarian Competition Authority (GVH): Background. Case of payment card schemes Vj-18/2008. <http://www.gvh.hu/domain2/files/modules/module25/10769E8D7015B1618.pdf>

experience (and common sense) there is little incentive for an issuer to go below the maximum rate. Thus, the maximum rate agreed in the settlement is likely to become the de facto common interchange rate. Visa and MasterCard have agreed to publish the maximum rates on their web sites.

4. Monnet: A new run-up?

SEPA regulators are still requiring a third European (debit) card scheme. They fear a duopoly of the two “American” schemes MasterCard (Maestro) and Visa (V PAY). They do not have a problem with a monopolistic system in the SEPA payment networks for direct debit and credit transfers, but obviously card payments must be something else. Usually three aspirants are mentioned: the European Alliance of Payment Schemes (EAPS), the more retailer focussed initiative of PayFair (located in Belgium) and Monnet, the axis of German and French banks. Hermann-Josef Lamberti, Board Member of the Deutsche Bank and one of the driving forces behind the Monnet project, has recently given a presentation at the Payment Conference of the German Bundesbank⁶ which provides some insights as to the current state of the project:

- The main argument for the Monnet initiative is the meaning of the debit card as a „mobile component“ to the current account. That's why the debit card system (instead of the international card systems MasterCard and Visa) should remain in the hands of banks.
- The project is still driven actively by German and French banks. Names of German banks (except Deutsche Bank) were not mentioned. As French banks Société Générale, BNP and the French Bank Association FBF take part.
- Obviously, conversations with the EU commission continued because of Interchange. The green light given by the commission allows the involved banks to make investment decisions in the Monnet project.
- The regulators require an own European card system. Without suitable initiatives on the part of the banks the regulators could be able to get a European card system mandatory. "Public interest" would dominate the infrastructure of the debit card system what would be contrary to the business interests of the banks in the card business. That is why a pro-active action of the banks is essential.

⁶ Zahlungsverkehrssymposium, Frankfurt, July 8th, 2009. An article based on the presentation has been published in Zeitschrift für das gesamte Kreditwesen, 17/2009, p. 16 -18.

- A Monnet-project company will probably be founded in October, 2009. Besides French and German banks other banks from Spain, Italy and the Netherlands could probably join this set-up.

Our comment

Since the end of last year, the Monnet camp has been rather quiet and some observers believed that the project, which is still in a draft concept stage, was dropped. But Lamberti's presentation shows that the project is still alive and kicking. If everything goes according to plan, first concrete steps will be taken this month. It is not clear which other German banks are likely to follow Deutsche. Postbank seems a natural candidate. There is also some support from the sector of cooperative banks. From the French side, there also has been public support. At the EFMA conference, Bernard Dutreuil of the French Banking Association (FBF) made a clear case for Monnet⁷. There also seem to be some talks with other schemes. Even a co-operation with EAPS seems possible. Representatives of the German co-operative banks, at least, do not view these two initiatives as mutually exclusive.

Still, it is a long way to go to implementing a fully fledged third scheme. Besides a large number of more technical issues there still is the interchange question. The EU Commission/MasterCard agreement has set the benchmark for debit card transactions at 0.2%. It may be possible for German banks to accept such a level, given that the current rate of 0.3% comes increasingly under market pressure. But for French banks such a level would imply reduction of almost 60%. So, a low rate seems problematic. But a higher rate would be equally problematic. If Monnet went live with a significantly higher interchange rate it would be difficult to find merchants willing to accept Monnet cards.

⁷ Bernard Dutreuil, The Monnet Project, EFMA – Payments & Cards, September 11th, 2009.

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