



Republic of Serbia
**COMMISSION FOR
PROTECTION OF COMPETITION**

25/IV Savska St., Belgrade
Number: 4/0-02-769/2018-01
Date: November 2, 2018

Pursuant to Article 35(2) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013), the President of the Commission for Protection of Competition enacts the following

CONCLUSION

I PROCEEDING SHALL BE INSTITUTED *ex officio* for the investigation of infringement of competition against the following companies:

1. VISA Incorporated, 900 Metro Centre Boulevard, Foster City, California, USA
2. VISA International Service Association, 900 Metro Center Boulevard Foster City, CA 94404, USA
3. VISA CEMEA Holdings Limited, 100 New Bridge Street, London, United Kingdom, EC4V 6JA,

in order to determine the existence of a decision of a form of association of undertakings that restricts competition on the payment card market in the territory of the Republic of Serbia, within the meaning of Article 10 of the Law on Protection of Competition.

II Companies VISA Incorporated and VISA International Service Association are provided with a deadline of 30 (thirty) days from the date of receipt of this conclusion to appoint a procurator holder for the receipt of notices in the Republic of Serbia and to notify the Commission for Protection of Competition thereon, with a forewarning that in the case of failure to act accordingly, a procurator holder for the receipt of notices will be assigned by the Commission for Protection of Competition on behalf of said companies, whereas the companies shall bear the expense of such legal services.

III All persons in possession of data, documents or other relevant information which could contribute to the accurate fact-finding in the proceedings are invited to submit said to the Commission for Protection of Competition, 25/IV Savska St., Belgrade.

IV This conclusion shall be published in the Official Gazette of the Republic of Serbia and on the website of the Commission for Protection of Competition.

Rationale

The Commission for Protection of Competition (hereinafter, the Commission) has analyzed the competitive conditions on the payment card market in the territory of the Republic of Serbia and came to findings which produce a reasonable assumption that VISA payment organization and the legal entities representing it, VISA Incorporated, 900 Metro Centre Boulevard, Foster City,

California, USA, VISA International Service Association, 900 Metro Center Boulevard Foster City, CA 94404, USA и VISA CEMEA Holdings Limited, 100 New Bridge Street, London, United Kingdom, EC4V 6JA, set fallback multilateral interchange fees within the VISA payment card system unjustifiably high. Namely, each purchase and payment with a VISA card includes four parties: consumer, merchant, a credit institution that has a contractual relation with a cardholder which allows for the provision and use of VISA payment card (hereinafter, issuing bank), and a credit institution that has a contractual relation with a merchant for accepting VISA payment card (hereinafter, acquiring bank). The multilateral interchange fees (MIFs) are retained for each VISA payment card transaction at the point of sales of merchants, paid by an acquiring bank to an issuing bank. The MIF is included in the merchant service charge, paid for each transaction by a merchant to an acquirer for accepting a card for payment.

In the absence of specific bilateral agreements between banks on interchange fees, VISA payment organization obligates all member banks included in the VISA payment card system to apply MIFs in a set amount by default as fallback to each POS payment card transaction. By setting the fallback interchange fees for VISA payment card transactions unjustifiably high, VISA payment organization has exerted an influence on the merchant service charge increase. This further indicates that merchants accepting cards for payment pass on a part of the costs of the merchant service charge to consumers through higher retail prices, regardless of whether the payment is made by payment cards or in cash.

The Commission has collected information on the interchange fees and on authorized decision-making body from the member banks of VISA payment organization and from the branch of VISA CEMEA Holdings Limited, 100 New Bridge Street, London, United Kingdom, EC4V 6JA, with registered sea in Belgrade, 5V Milentija Popovića St.

In the Reply entered under reference number 4/0-01-666/2018-23 of October 5, 2018, VISA CEMEA - branch in Belgrade states that it generates revenue from the fees retained by VISA payment card issuing banks and acquiring banks, based on the number of transactions and their value. According to the statements presented by the branch, VISA interchange fees are set as “the value transfer between financial institutions” and not as the merchant service charge. Moreover, denying the interest in setting the interchange fees, it is stated that VISA payment organization has no interest in having “too high” or “too low” fees, but strives to set the rates at which related fees are calculated at a level that is optimal for the interests of both sides, issuing and acquiring banks. Furthermore, it is also underlined that the interchange fees are not necessarily relevant for all payment card transactions. There is no interchange fee when an issuing bank is at the same time the acquiring bank.

In terms of the decision-making bodies regulating the amount of interchange fees, it is stated that the responsible parties are foremost companies VISA Incorporated and VISA International Service Association, while VISA member banks are included in the capacity of members, either in the form of Principal or Affiliate membership.

In their replies, banks included in the VISA payment card system have provided the list of interchange fees currently applied, indicating that the decision-making process in relation to fees lies within the competence of VISA Incorporated, while some of them have submitted an agreement concluded with VISA International Service Association on the rights and obligations for the entry into this payment system and implementation of its rules.

Based on all available information and received replies and documentation, the Commission has found the following.

VISA is a global payment organization representing legal entities VISA Incorporated, VISA International Service Association, and regional VISA organizations (hereinafter, VISA organization). As a payment card system, VISA is a four-party, open global payment card system that operates through a network of payment card system offering non cash payment with VISA branded payment cards. VISA organization is present in the Republic of Serbia via branch office VISA CEMEA Holdings Limited – Branch Belgrade-New Belgrade, company number 29503915, whose registered predominant activity is 7022 – Business and other management consultancy. This branch office is the secondary establishment of company VISA CEMEA Holdings Limited, with registered seat in London, United Kingdom, whose parent and controlling company is VISA International Service Association, while company VISA Incorporated is the parent company of VISA International Service Association. Based on the analysis of the submitted Global Procedures of Interchange Fees, the Commission established that the chief regional officer also partakes in the decision on the modification of interchange fees in a country, pursuant to the VISA Core Rules and VISA Product and Service Rules, and that the Republic of Serbia is part of the CEMEA region¹, thus is concluded that VISA CEMEA also participates in setting the interchange fees.

VISA International Service Association enters into the Membership agreement and agreement on license for the use of marks with all interested banks. With this agreement, to which the Commission had an insight, VISA grants to its members – indicated in the agreement as “Users” - non-exclusive and non-transferable license. All membership - user rights and licenses under the VISA Core Rules and VISA Product and Service Rules², granted to a member bank when entering into the agreement indicate that VISA rules are applicable and mandatory for all VISA payment system parties, as well as that VISA is setting the interchange fees with the right to right to rectify the improper allocations.

When deciding and setting the amount of interchange fees, VISA organization takes into account the interests of member banks of its payment system, adjusting and tailoring them against their business interests, and in that manner creating a community of interests with its members. As further evidence, VISA organization “endeavors to evaluate interchange fees at the level that is optimal for the interests of both sides, issuing and acquiring banks.” In line with the aforesaid on the relationship between VISA organization and banks as members of the VISA payment card system, the Commission has taken its decision on the interchange fees as a decision with respect of a form of association of undertakings, within the meaning of Article 10(2) of the Law on Protection of Competition, hereinafter: the Law.

The Commission establishes that VISA organization has submitted data on the amount of fees, without providing an explanation to the structure of the interchange fee, as ordered.

As relevant sources of information, the Commission has used the rationale to the Law on Multilateral Interchange Fees and Special Operating Rules for Card-Based Payment Transactions (Official Gazette of the RS 44/2018, hereinafter, the Law on Multilateral Interchange Fees) and the EC Decision in the case against VISA organization on multilateral interchange fees³. In the rationale to this draft law⁴ is stated that the analysis of conditions in the

¹ Central and Eastern Europe, Middle East and Africa Region

² VISA Core Rules and VISA Product and Service Rules are available at:

<https://rs.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002D0914&from=EN> and http://ec.europa.eu/competition/antitrust/cases/dec_docs/39398/39398_6930_6.pdf

⁴ http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/1273-18.pdf

national payment system in relation to the payment cards has indicated that this market is characterized by business rules that require specific solutions in order to adequately enhance further development of this kind of non-cash payments, protect the interests of payment card users (consumers and merchants) and ensure a level playing field. Namely, based on the analysis conducted by the National Bank of Serbia, it is noted that the slower development of private network and limited growth in card payments is caused by the costs of payment card acquisition on POS. In the practice, the largest portion of the merchant service charge (about 60-70%) relates to the interchange fee. The interchange fees in the Republic of Serbia are currently several times higher than on the EU markets.

The Commission also noted Article 3 of the Law on Multilateral Interchange Fees stipulating that a multilateral interchange fee may not exceed 0.2% of the value of transaction for any debit card transaction, and that a multilateral interchange fee may not exceed 0.3% of the value of transaction for any credit card transaction. The payment service provider may not charge or offer a multilateral interchange fee contrary to paragraphs of this Article. This Law has entered into force on the eight day from the day of publication in the Official Gazette of the Republic of Serbia (June 16, 2018), and is applied on the expiry of six-month period from the day of entering into force (December 17, 2018).

The interchange fees are regulated in the European Union in EU Regulation 2015/751 on interchange fees for card-based payment transactions⁵, limiting the interchange fees at no more than 0.2% of the annual average transaction value of all domestic debit card transactions within each payment card scheme, and at no more than 0.3% of the value of the transaction for any credit card transaction.

Based on all of the above, the Commission found reasonable grounds to believe that VISA organization as a form of association of undertakings sets the fallback interchange fees in unfair amount, which are on average several times higher than those regulated by the Law on Multilateral Interchange Fees for the period starting from December 17, 2018, implemented by VISA member banks from the day of the conclusion of agreement with banks, whereby one of the first is dating back to 1996. The competition between banks in terms of merchant service charges offered to merchants for accepting payment cars is restricted in such manner, while is also possible to have a negative impact the state of competition on the payment card issuing market in the territory of the Republic of Serbia.

Pursuant to the provision of Article 10 of the Law, restrictive agreements are agreements between undertakings which as their purpose or effect have a significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia. Article 10(2) of the Law stipulates, inter alia, that restrictive agreements may include contracts, certain contract provisions, express or tacit agreements, concerted practices, as well as decisions of undertakings associations that directly or indirectly set the purchase or selling prices or other conditions of trade.

Article 35 of the Law stipulates that the Commission initiates antitrust proceeding *ex officio* when based on submitted initiatives, information and other available data finds reasonable grounds to believe that the parties concerned have infringed the competition.

Based on all of the above, the Commission found reasonable grounds to believe that the parties have infringed the competition from Article 10 of the Law – decisions of forms of associated

⁵ Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions, Official Journal L 123, 19.5.2015.

undertakings that as their purpose or effect have a significant restriction, distortion, or prevention of competition in the territory of the Republic of Serbia.

In accordance with the abovesaid, it is decided as on Paragraph I of the enacting terms herein.

The companies as legal entities representing VISA payment organization are considered to be affiliated undertakings within the meaning of Article 5 of the Law. Pursuant to Article 5, affiliated undertakings are two or more undertakings who are connected in such a way that one or more undertakings control another or the other undertakings.

Noting that companies VISA Incorporated and VISA International Service Association and VISA CEMEA Holdings Limited are viewed as a single undertaking, the delivery of documents to one undertaking shall be considered to be a delivery to all affiliated undertakings, that is, their attorney or agent (Article 39(4) of the Law). In the specific circumstances of the case, delivery of documents to companies VISA Incorporated and VISA International Service Association shall be made via VISA CEMEA Holdings Limited-Belgrade Branch, at the address 5V Milentija Popovića St., granting the right to the parties to appoint a procuracy holder for the receipt of notices. Pursuant to Article 69 of the Law on General Administrative Procedure (Official Gazette of the RS 18/2016), if the parties fail to act accordingly and do not appoint a procuracy holder within the set deadline, the Commission shall assign a proxy for the receipt of notices on behalf of said companies, whereas the companies shall bear the expense of such legal services.

In accordance with the abovesaid, it is decided as on Paragraph II of the enacting terms herein.

Pursuant to the provisions of Article 35(2) of the Law, it is decided as in Paragraph III of enacting terms herein.

Pursuant to the provisions of Article 40(1) of the Law, it is decided as in Paragraph IV of enacting terms herein.

Instruction on legal remedy:

This conclusion is not susceptible to special appeal, but is permitted to institute administrative dispute before the Administrative Court in Belgrade against the final decision of the Commission in this administrative matter.

PRESIDENT OF THE COMMISSION

Dr Miloje Obradović