

Introduction and General Remarks

The **SEPA Migration Monitoring Committee** (the Committee) is one of the bodies created in Spain to foster the migration to SEPA at national level. It is composed of representatives of the payment services supply side (Spanish banking associations, domestic card schemes and ACH) and of the Banco de España. Its aim is to give guidelines to facilitate the transition to SEPA by designing the National Migration Plan and monitoring its implementation.

At its 26th meeting on 30 March 2012, the Committee resolved to approve and submit to the European Commission its contribution to the consultation paper launched by the EC on 11 January under the title: *“Green Paper: Towards an integrated European market for card, internet and mobile payments”*.

The present document includes the comments on those aspects shared by the supply side of the Spanish market as a whole. This is without prejudice of any additional comments, specific to the idiosyncrasies of the different members of the Committee or other individual entities, which may be made at their own discretion.

The SEPA Migration Monitoring Committee is overtly committed with the success of the SEPA project as a means of furthering the benefits of the Single Market. As such, it does support the overall objectives stated in the Green Paper, namely: a) more competition, b) greater choice and transparency for consumers, c) increased innovation, and d) enhanced security and customer trust.

Nevertheless, despite concurring with the authorities’ assessment on the importance of a true digital Single Market for the future of the EU, the Committee is of the firm belief that changes in the payments landscape cannot by themselves be taken as a sufficient driver to achieve the greater degree of integration pursued by these public bodies. This seems to have been also the conclusion of the 6 February SEPA Council when clearly qualifying an EU wide online e-payment offering as one (as opposed to the sole) of the pre-conditions for a single market for e-commerce.

Against this background, we would like to take advantage of the present consultation process to highlight a number of issues which are either perceived as a source of major concern for our community as a whole or which, to our understanding, might likely lead to the adoption of a range of measures contrary to the accomplishment of the above-mentioned goals.

Detailed comments

4.1. Market Fragmentation, market access

4.1.1. Multilateral Inter-change fees (MIFs)

- 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?

Divergences in MIFs from one country to another and with regard to cross-border payments, as is also the case with the various price levels across EU markets, are to be assuredly drawn on objective underlying structural differences (e.g. economic and technological development stage, de facto cost structure, actual use of cards, etc.)

To cite but one example, as of today payment penetration in the different European markets is as diverse as one could imagine. On the one hand, about half the countries feature a yearly total of 50 transactions per capita. In some others this figure rises up to 150 operations per capita.

On top of that, nominal MIF values render very hard to compare across countries. They may sometimes hide underlying strategies closely bound to the specificities of each market.

Along the same lines, cross-border MIF levels should not be taken as the role model for the expected medium-term evolution in the MIF landscape at domestic level. Cross-border card transactions still account for a very small share of the overall number of payments made by means of a card. Moreover, their MIFs are the result of a settlement between DG-COMP and the international card schemes, pending future costs studies that support objectively the outcome of the merchant indifference tests.

Hence, the SEPA Migration Monitoring Committee does not consider the diversity of MIFs in Europe neither as cause of market fragmentation nor as an inhibitor of competition in the issuing or acquiring business.

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?

Increased legal clarity on MIFs is indeed very much-needed at this stage in order to have developments in the cards market speed up. The lack of a clear guidance from competition authorities is visibly delaying investment decisions due to uncertainty and, as a corollary, it is also hampering the degree of innovation in the area of electronic payments.

Nevertheless, in order for this guidance not to create additional distortions, the resulting practical methodology for the determination of an appropriate level of interchange fees has to take into account the particular circumstances of every market and every scheme. A “one-size-fits-all regulatory approach on the MIF” would underestimate the existing structural differences between payment service providers and countries, thus potentially favouring oligopolistic or even monopolistic outcomes in the market. This would be further detrimental to the interests of consumers as it reduces their choice.

Consequently, in discussing the detailed methodology to be applied consistently across the EEA, the SEPA Migration Monitoring Committee supports an open consultative process with the participation of all interested stakeholders both from the demand and supply side.

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?

In line with the previous reply, the Committee strongly believes that a workable methodology for the calculation of interchange fees must guarantee that the interests of all the various parties are balanced properly. This is the only way to secure a mutually acceptable and stable environment which fosters efficiency and growth in electronic payments alike.

As the abundant economic literature on interchange fees has demonstrated thus far, a social welfare-maximizing price structure does indeed depend on a wide array of factors¹, hence making it virtually impossible to anticipate the actual effects that a decrease in the levels of interchange fees may have over the market.

¹ The level of the actual fee, the degree of competition in the issuing /acquiring markets, the magnitude of the reduction, the current level of fees and rewards, possible cross-subsidizing between banking services, the effective pass-through ratios, etc.

A practical case study like the one in Spain, where ceilings on multilateral exchange fees and a calendar of reductions was agreed between banks and merchants over an extended period of time, suggests that this measure has not necessarily led to further cutbacks in end-user prices for the goods or services they purchase at the point of sale. This measure did not lead either to an increase in the penetration of payments with cards at merchants. As a matter of fact, evidence shows that, for the period 2006 – 2010, while interchange rates decreased more than 60%, the penetration of payments with cards only grew by 168 basis points, from 15,09% to 16,77%.

Conversely, a potential side effect of this action has been the nominal increase in average cardholder fees, ultimately resulting in a transfer of profits from cardholders to merchants , i.e. potentially giving rise to the emergence of additional sources of revenues for the merchant side.

Notwithstanding the above, the Spanish SEPA Migration Monitoring Committee would certainly favour additional steps to enhance transparency in the market about its pricing aspects if still considered necessary. Yet, we wouldn't support neither very detailed disclosure of this information at bank level nor an active divulgation of individual MSC by merchants because of its practical complexities and the difficulties in ensuring the reliability of the figures provided.

In reference to the question of the distinction between consumer cards and business cards, there are certainly important differences between them. The risks taken by business cards have other parameters than the ones of consumer cards. Additionally, there are special services which are only offered to the business segment.

4.1.5 Access to settlement systems

10) Is non-direct access to clearing and settlement systems problematic for payment institutions and e-money institutions and if so what is the magnitude of the problem?

In the view of the Spanish SEPA Migration Monitoring Committee, any steps taken in this direction should be preceded by a thorough analysis of their potential risk-related implications in terms of its sound management, its systemic impact on financial market infrastructures as well as any associated security issues.

Greater harmonization of solvency and prudential supervision requirements along with risk management policies among the various players would be considered as a necessary precondition in order to help create the required level-playing-field prior to granting wider access to clearing and settlement systems.

4.1.7 Information on the availability of funds

13) Is there a need to give non-banks access to information on the availability of funds in bank accounts, with the agreement of the customer, and if so what limits would need to be placed on such information? Should action by public authorities be considered, and if so, what aspects should it cover and what form should it take?

The Spanish SEPA Migration Monitoring Committee would like to make a clear case for cautiously approaching this subject. At this junction, the multiple and intricate legal, contractual, operational, fiduciary and security implications of providing non-banks (and even other banks not holding the actual payment account in their books) with access to information on the availability of funds in a given customer account seem to be missing from the Green Paper.

The former stem from a variety of laws (e.g. data protection law, payment services directive, consumer rights directive), best industry practices and a certain organizational setup currently in place and which have evolved in some concrete ways over the years. Hence, from a practical perspective it wouldn't be advisable to turn the back to this factual reality if the market is to continue functioning smoothly. Against this light, it is therefore necessary to first devote some time to understanding the deeper connotations of any actions in this field prior to taking any material steps that could see the current rules of the game change profoundly.

Where a piece of regulation is to be issued, it should make sure to lay down a clear and consistent framework of conditions, requirements and implications applicable to all the various parties that addresses, at least, the following issues at stake:

- The third party's identity and entitlement
- The customer authorization and authentication methods
- The legal liabilities and consequences on the account-holding PSP and a third party PSP stemming from any private agreement between the customer and the latter one

A formula like the one of a "power of attorney" could prove to be a good starting point for the discussions on a potential way forward in this context.