

Section 44 of the Competition Act (Cap. 50B)

Notice of Decision issued by the Competition Commission of Singapore

In relation to a Notification for Decision by Visa Worldwide Pte. Ltd. of its MIF system as formalised in the Visa Rules

3 September 2013

Case number: CCS 400/001/06

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [X]

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Glossary

“Acquirer” means an entity that has a contract with a merchant to facilitate the merchant’s acceptance of a payment card.

“Closed Loop Payment Card Network” means a payment network in which there are no multiple issuers or multiple acquirers. The scheme administrator also performs the issuing and acquiring roles.

“IMC” means the Interchange Management Committee of Visa Inc.

“Issuer” means an entity that issues a payment card to a cardholder to facilitate the cardholder’s usage of the payment card.

“MDR” means the Merchant Discount Rate paid by a merchant to an acquirer for a Visa Transaction expressed as a percentage of the transaction value. The “Merchant Discount” refers to the fee deducted by the acquirer off the transaction value that is paid to the merchant.

“Member” means an entity that participates in the Visa Network as an issuer and/or acquirer of Visa Cards.

“Membership Rules” means the Visa International Operating Regulations Volumes I and II, the Visa Regional Operating Regulations – Asia Pacific, and the Visa International By-Laws and Regional Board Delegations applicable at the time of the MIF Application, and which were superseded by the Visa Rules after the restructuring, which involved Visa Enterprise transforming itself into the Visa Group.

“MIF” means the Multilateral Interchange Fee, which is a multilaterally determined fee payable by the acquirer to the issuer for a payment card transaction.

“Open Loop Payment Card Network” means a payment card network in which there are multiple issuers and multiple acquirers.

“Singapore Members” means Bank of China Limited (“BOC”), Citibank Singapore Limited (“Citibank”), DBS Bank Ltd (“DBS”), Hongkong and Shanghai Banking Corporation Limited (“HSBC”), Malayan Banking Berhad (“Maybank”), Oversea-Chinese Banking Corporation Ltd (“OCBC”), Standard Chartered Bank Ltd (“SCB”), and United Overseas Bank Ltd (“UOB”), CIMB Bank Berhad (“CIMB”) and the Australia and New Zealand Banking Group Limited (“ANZ”).

“The IPO” means the initial public offering of the Class A Common Stock of Visa Inc. which was completed on 25 March 2008.

“Visa Cards” means Visa-branded payment cards (including credit and debit cards).

“Visa Enterprise” means the worldwide enterprise comprising Visa International Service Association (“Visa International”), Visa USA Inc. (“Visa USA”), Visa Europe Limited (“Visa Europe”), Visa Canada Association (“Visa Canada”), and Inovant LLC (“Inovant”) that existed prior to the restructuring, which involved Visa Enterprise transforming itself into the Visa Group.

“Visa Group” means the Visa Inc. group of companies (the group of companies of which Visa Inc. is the parent), which includes Visa Inc., Visa International, and Visa Worldwide but does not include Visa Europe Limited.

“Visa International” means Visa International Service Association, which is a corporation registered in Delaware, United States of America.

“Visa Network” means the card payment network operated by the Visa Enterprise or the Visa Group.

“Visa Rules” means the current by-laws (where applicable) and the operating regulations of the Visa Group’s operating affiliates (including, without limitation, the Visa Worldwide Operating Regulations and Visa International Operation Regulations), collectively with any and all other applicable requirements for participation in the Visa Network.

“Visa Transaction” means a payment/purchase transaction made using a Visa Card.

“Visa Worldwide” means Visa Worldwide Pte. Ltd.

“Visa Worldwide Operating Regulations” means collectively, the Visa International Operating Regulations, the Asia Pacific Regional Operating Regulations of Visa International, and the Supplementary Operating Regulations of Visa Worldwide.

Chapter 1: The Notification for Decision

- 1.1 This notice sets out the analysis and decision of the Competition Commission of Singapore (“CCS”) in relation to the application filed pursuant to section 44 of the Competition Act (Cap. 50B) (“the Act”) by Visa International Service Association (“Visa International”) on 1 January 2006 (“the MIF Application”) for a decision on the MIF system set out in its Membership Rules (now superseded by the Visa Rules) regarding the application of section 34 of the Act (“the Notification”).¹ CCS’s analysis and decision are based on submissions and information provided by Visa International, and subsequently provided by Visa Worldwide, and other relevant third parties.
- 1.2 The MIF system, as formalised in the Membership Rules of the Visa Enterprise on the date of the Notification, was the original subject of the Notification. The Membership Rules have since been superseded by the Visa Rules following the restructuring of Visa Enterprise, which involved Visa Enterprise transforming itself into the Visa Group.
- 1.3 Visa International has submitted that it now regards the Visa Rules as the relevant subject for the purposes of considering whether Visa International can properly be considered an association of undertakings for the purposes of section 34 of the Act, and for considering the application of the exemption contained within paragraph 9 of the Third Schedule of the Act.² As explained by Visa International, it is the Visa Rules that now afford Visa International the ability to set the MIF rates.³ CCS accepts that the MIF system is now articulated in the Visa Rules, and hence, this decision relates to the MIF system as formalised in the Visa Rules.
- 1.4 On the evidence available to CCS and for the reasons set out in this document, CCS concludes that the Visa Group’s MIF system, as notified by Visa Worldwide, has not infringed the section 34 prohibition of the Act.

Chapter 2: The Legal Framework

- 2.1 CCS has assessed the Notification under section 44 of the Act, with reference to the guidance found in the *CCS Guidelines on the Section 34 Prohibition*. An explanation of the legal framework is provided below.

¹ Application for Decision-Multilateral Interchange Fees, Form 1

² Visa International’s submission, dated 30 January 2009, paragraphs 51, 52, 81 and 82

³ Visa International’s submission, dated 30 January 2009, paragraph 82

2.2 Section 34 of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore.

2.3 In particular, section 34(2)(a) of the Act provides that:

“...agreements, decisions or concerted practices may, in particular, have the object or effect of preventing, restricting or distorting competition within Singapore if they –
(a) directly or indirectly fix purchase or selling prices or any other trading conditions;
...”

Notification for Decision under Section 44 of the Act

2.4 Section 42 of the Act provides that CCS may examine an agreement on the application of a party to the agreement who thinks that the agreement may infringe the section 34 prohibition. Where the application is made under section 44 of the Act, CCS may make a decision as to:

- (i) whether the section 34 prohibition has been infringed; and
- (ii) if it has not been infringed, whether this is because of the effect of an exclusion or because the agreement is exempt from the prohibition.⁴

2.5 Where CCS has determined an application under section 44 of the Act by making a decision that the notified agreement has not infringed the section 34 prohibition, CCS shall take no further action in relation to the section 34 prohibition with respect to the agreement unless it has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision, or it has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.⁵

2.6 Generally, in assessing the section 34 prohibition, CCS will apply the appreciable adverse effect on competition test, namely, does the agreement appreciably prevent, restrict or distort competition within Singapore. CCS will assess the effect on competition by analysing the market shares of the parties to the agreement in any of the relevant markets, market power of the parties to the agreement, the content of the agreement and the structure of the market or markets affected by the agreement, such as entry conditions or the characteristics of buyers and the structure of the buyers' side of the market.⁶

⁴ Section 44(2) of the Act

⁵ Section 46(2) of the Act

⁶ *CCS Guidelines on the Section 34 Prohibition*, dated 2007, paragraph 2.21

2.7 The CCS may also consider whether an agreement may, on balance, have a Net Economic Benefit (“NEB”). To qualify as a NEB under the paragraph 9 of the Third Schedule of the Act, the agreement must contribute to:

- (i) improving production or distribution; or
- (ii) promoting technical or economic progress,

but not:

- (iii) impose on the undertakings concerned restrictions which are not indispensable to the attainment of those benefits; or
- (iv) afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the goods or service in question.

2.8 CCS notes that it is for the undertakings claiming the benefit of the exclusion for individual agreements under the Third Schedule of the Act to prove that the agreement satisfies the requirements.⁷ In general, the assessment of benefits flowing from agreements would be made within the confines of each relevant market to which the agreements relate. However, where two or more markets are closely related, efficiencies generated in these separate markets may be taken into account.⁸

Chapter 3: Industry Background

3.1 This Notification relates to the Visa Network, specifically in relation to Visa Cards, which are accepted by a wide range of merchants in Singapore as payment for goods and services.

3.2 In assessing this Notification, CCS has reviewed the card payment industry in which Visa Group operates in markets within Singapore. Outlined below is a brief explanation of the different consumer payment methods, commonly used in Singapore, as well as an explanation of the Visa Network and the Visa Group’s MIF system in markets within Singapore.

Consumer payment methods

3.3 The common methods of making retail payments in Singapore include cash, cheques, online payment accounts, and payment cards. Payment cards come

⁷ *CCS Guidelines on the Section 34 Prohibition*, dated 2007, paragraph 2.25

⁸ *CCS Guidelines on the Section 34 Prohibition*, dated 2007, Annex C, paragraph 10.1

in various forms, including stored value cards and charge, credit and debit cards.

- 3.4 Credit cards are one of the most prominent payment methods used by consumers. Credit card payments accounted for approximately 19% of all household purchases in Singapore in 2009.⁹ It is estimated that there were around [X] credit cards in circulation in Singapore in 2011¹⁰, with the approximate number of cardholders totalling 1.29 million.¹¹ In 2011, the total value of credit card transactions by Singapore cardholders reached [X]¹²
- 3.5 Debit cards are also commonly used by consumers. The total transaction value¹³ of debit cards by Singapore cardholders in 2011 amounted to about [X]¹⁴ Debit cards are either PIN-based or signature-based. A bank-issued PIN debit card is a transaction card that typically provides only a payment service, rather than also offering a credit facility. A PIN debit card can be used to pay a retailer by Electronic Funds Transfer at Point of Sale (“EFTPOS”) using an electronic terminal or alternatively it can be used to withdraw cash at an ATM terminal. In this respect a PIN debit card serves a similar function as a signature debit card.¹⁵

Payment card networks

- 3.6 Credit card and debit card purchase transactions are processed through payment card networks, which are associated with particular card brands. The most commonly known brands of credit cards in Singapore are Visa and MasterCard (both also license their brands for debit cards), and to a lesser extent, American Express (“Amex”) (which also has charge cards). While JCB International Credit Co. Ltd (“JCB”), China Union Pay (“CUP”) and Diners Club (“Diners”) also have presence in Singapore, the total value of transactions and the average number of transactions of these cards are considerably less. Network For Electronic Transfers (Singapore) Pte. Ltd. (“NETS”) operates the NETS debit card network in Singapore; there are also NETS-branded prepaid cards in Singapore.
- 3.7 Payment card networks operate with different business models but generally involve five different roles for industry participants. These five roles are set out in the following paragraphs.

⁹ MAS, Financial Stability Review 2010

¹⁰ CCS’s internal calculations based on submissions from banks and card schemes

¹¹ Credit Bureau Singapore Industry Statistics 2011

¹² CCS’s internal calculations based on submissions from banks and card schemes

¹³ Transaction value refers to the dollar amount of purchases by cardholders.

¹⁴ CCS’s internal calculations based on submissions from banks and card schemes

¹⁵ Application for Decision-Multilateral Interchange Fees, Form 2, paragraph 114

- 3.8 The **scheme administrator** acts as an intermediary between acquirers and issuers, in the processing of card payments and provides to issuers and acquirers network administration services including, among other things, the right to use its intellectual property. The scheme administrator determines the rules and operating regulations that govern the activities of both acquirers and issuers and, depending on the network's business model, may also carry out the role of an issuer and/or acquirer itself. Where the issuers and/or acquirers are third parties, they are customers of the scheme administrator and pay fees for the use of its brand, services and infrastructure.
- 3.9 An **issuer** issues payment cards to cardholders on terms agreed between the issuer and the cardholder, obtains network administration services from the scheme administrator, and reimburses the acquirer through the scheme administrator for authorised transactions. Issuers might also, but need not, be acquirers.¹⁶ As indicated above, an issuer may be the scheme administrator itself. Issuers compete for cardholders by offering discounts when the cardholder uses their card with certain merchants, or cash rebates on a cardholder's transaction spend, or rewards for expenditure using the card and the benefit of privileges associated with the card.¹⁷ In Singapore, generally all credit cards provide cardholders with transaction-based rewards and/or rebates.
- 3.10 An **acquirer** enters into a service agreement with a merchant to pay to the merchant the full value of a transaction for which the payment card is used by the cardholder, less any merchant service fee, also known as the Merchant Discount, and is charged by the acquirer to the merchant.¹⁸ The acquirer also obtains network administration services from the scheme administrator for which fees may be charged, and obtains reimbursement from the issuer through the scheme administrator for properly presented transactions. As indicated above, an acquirer may be the scheme administrator itself.
- 3.11 A **cardholder** enters into a contractual arrangement with an issuer, who issues a payment card (such as a credit card) to the cardholder, which may be used to purchase goods and services from a merchant. In the case of a credit card, the cardholder can also obtain a cash advance or other credit from the issuer. In each case, the card is issued on terms agreed between the issuer and the cardholder. The cardholder typically receives rewards, rebates or privileges from the issuer as a result of their purchases.¹⁹

¹⁶ Application for Decision-Multilateral Interchange fees, Form 1, page 11

¹⁷ Responses from [S<] dated 19 December 2011

¹⁸ The term "merchant discount" is used in the industry because this amount is deducted off the transaction value that the merchant receives as payment for the purchase. The Merchant Discount Rate ("MDR") is the merchant discount expressed as a percentage of the transaction value.

¹⁹ Cardholders who use the credit facility of a credit card pay interest charges. In addition, some cardholders pay annual fees, late payment fees, and other fees levied by the issuer. The discussion here focuses on payment transactions that do not incur these additional charges.

- 3.12 A **merchant** enters into a contractual arrangement with a cardholder for the sale of goods or services, accepting the payment card as a means of payment for the goods or services purchased. The merchant will also enter into a contractual agreement with an acquirer, who agrees to process the payment card transaction and pay to the merchant the full value of the transaction less any relevant MDR. A merchant may enter into agreements with more than one acquirer for the processing of transactions. It is common in Singapore for a merchant to fund discounts for transactions, where payment is made using a card issued by its acquirer. Such discounts encourage customers to spend at the merchant's premises and promote the card issued by the acquirer.
- 3.13 As noted above, payment card networks operate under different business models. One such model is that of an open loop payment card network, where there are both multiple third-party issuers and multiple third-party acquirers. The Visa Group and MasterCard operate open loop payment card networks. Another model is the closed loop payment card network, where the scheme administrator performs the issuing and acquiring roles as well. There are also hybrids where the scheme administrator would license third-party issuers and/or acquirers in addition to performing issuing and/or acquiring roles itself. The Amex network is an example of a closed loop payment card network that has hybrid elements, as Amex also licenses third-party financial institutions to issue its cards in addition to issuing cards itself.
- 3.14 Table 1 below shows the issuers in Singapore and the card brands which they issue. Some issuers are pure issuers in Singapore while others are both issuers and acquirers in Singapore. Amex cards are issued by Amex and two other licensed issuers.

Table 1: Issuers of credit, charge, and debit cards in Singapore

Issuers	Payment cards issued									
	Visa		MasterCard		Amex	JCB	CUP	Diners	NETS	EPINS
	Credit	Debit	Credit	Debit	Credit*	Credit*	Credit*	Credit*	Debit	Debit
Citibank	x	x	x							x
CIMB	x		x							
Maybank	x	x	x	x						x
OCBC	x	x	x	x					x	
HSBC	x	x	x							
DBS	x	x	x	x	x				x	
Standard Chartered Bank ("SCB")	x		x	x					x	
Bank of China ("BOC")	x		x				x			
ANZ	x		x							
State Bank of India ("SBI")				x						
UOB	x	x	x		x	x	x		x	

	Payment cards issued									
Amex					x					
Diners								x		

*refers to credit and charge card

- 3.15 Table 2 shows the acquirers and the card brands for which they provide card acquiring services to merchants. Banks and payment processors in Singapore provide acquiring services for Visa Cards and MasterCard, while Amex and NETS provide acquiring services directly to merchants.
- 3.16 All banks in Singapore that are acquirers are also issuers. In addition, there are two payment processors, Global Payments Asia Pacific Limited (“Global Payments”) and Merchant Solutions Private Limited (“Merchant Solutions”), that are acquirers for credit cards and debit cards. In 2006, Global Payments and HSBC formed a joint venture to provide credit card and debit card acquiring services to merchants. However, Global Payments has since acquired HSBC’s 44% shareholding of the joint venture.²⁰ Merchant Solutions was a joint venture between SCB and First Data International (“FDI”) and was established in 2007.²¹ SCB has now divested its shareholding to FDI and has been renamed First Data Merchant Solutions.²² [X]²³

Table 2: Acquirers of credit, charge, and debit cards in Singapore

Acquirers	Payment cards acquired							
	Visa	MasterCard	Amex	JCB	CUP	Diners	NETS	EPINS
Citibank	x	x		x				
Maybank	x	x						
OCBC	x	x			x			
Global Payments ²⁴	x	x		x	x			
DBS	x	x		x	x			
Merchant Solutions ²⁵	x	x		x	x			
UOB	x	x		x	x			
Amex			x					
Diners						x		
NETS					x		x	
EPINS								x

²⁰ <http://investors.globalpaymentsinc.com/releasedetail.cfm?ReleaseID=747695>

²¹ Merchant Solutions was an alliance between First Data International and SCB. [X]

²² https://www.firstdatams.sg/fdms/en_sg/home/about-first-data.html

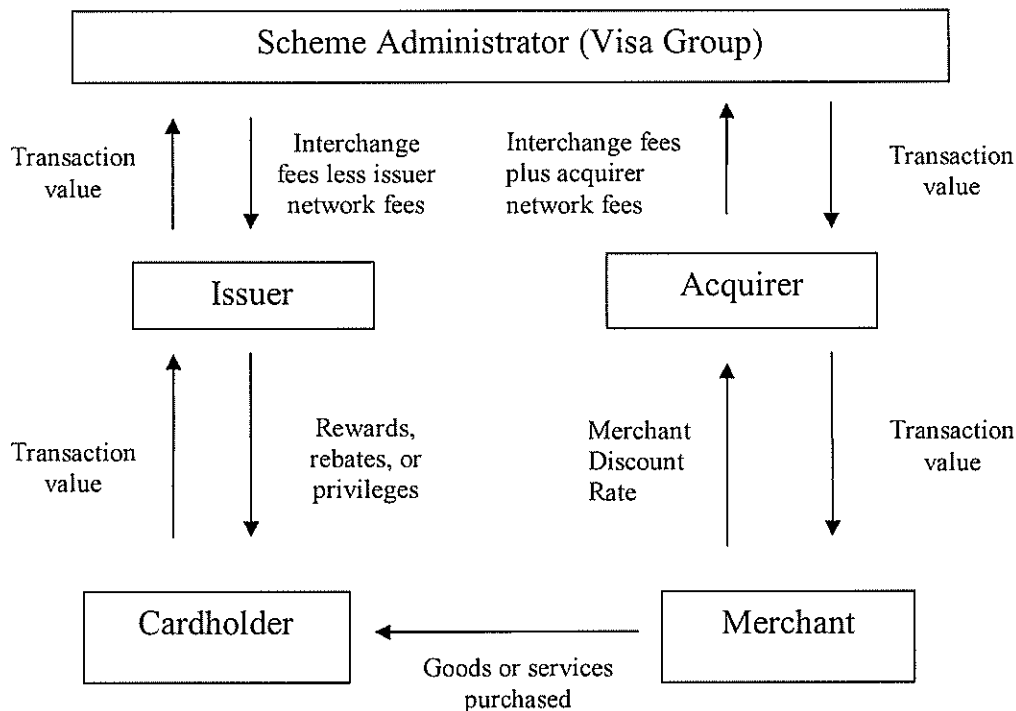
²³ [X]

²⁴ Outsourced to Global Payments Asia-Pacific Limited, which used to be a joint venture between HSBC and Global Payments Inc

²⁵ Outsourced to Merchant Solutions Private Limited, which used to be a joint venture between SCB and First Data International

- 3.17 The Visa Network is an open loop payment card network. Each payment transaction under the Visa Network would therefore involve third-party issuers and acquirers. Figure 1 shows the payment flow through the Visa Network.

Figure 1: A typical card purchase transaction in Visa Network



- 3.18 Where the issuer and the acquirer are the same entity in a Visa Transaction, this is typically referred to as an ‘on-us’ transaction, which is in contrast with an ‘off-us’ transaction where the issuer and the acquirer are different entities. Visa Worldwide estimates that [3%] of its transactions in Singapore are ‘on-us’ transactions.²⁶ As the scheme administrator, the Visa Group handles settlement centrally, i.e., the Visa Group settles the necessary amounts with the issuer and acquirer separately and bilaterally. In the case of the issuer, this involves the issuer paying to the Visa Group the transaction value plus network fees²⁷ less interchange fees which it may receive. For each purchase transaction, the interchange fee is a fee payable by the acquirer to the issuer.²⁸ In the case of the acquirer, the Visa Group pays the acquirer the transaction value less network fees and interchange fees. Generally, the transaction value

²⁶ Visa Worldwide’s submission dated 29 May 2012

²⁷ Other Visa Group fees could include service fees, data processing fees and international transaction fees.

²⁸ Application for Decision-Multilateral Interchange Fees, Form 1, paragraph 3.1.14 and Visa Worldwide submission dated 24 August 2012, paragraph 5.1.

and interchange fees are settled [X], while the Visa Group's network fees²⁹ are settled [X].³⁰

- 3.19 As the scheme administrator, the Visa Group acts as counterparty to its issuers and acquirers in settling transactions. Effectively, for purchase transactions, the Visa Group makes assurances to acquirers that for Visa Transactions (in the event a Member does not honor its obligations), the Visa Group is subrogated and assumes the rights and obligations of the failed Member for Visa Transactions.³¹ The Visa Group has the ability to charge its Members additional service fees to recoup settlement losses incurred due to a Member failure.³²

Interchange Fees

- 3.20 The Visa Group's **Multilateral Interchange Fee ("MIF")** system is used to determine the default level of interchange fees.³³ Interchange fees are paid by acquirers and received by issuers. Interchange fees pass through the Visa Group and are netted out to members on a [X] basis.³⁴ For any 'off-us' Visa Transaction, interchange fees are settled through the Visa Group. For any 'on-us' Visa Transaction that is processed within the member and not by the Visa Group, MIF is not applied. If instead the 'on-us' Visa Transaction is processed by the Visa Group, interchange fees are netted off in the settlement.³⁵ Hence, for 'on-us' transactions, it is for the integrated issuer-acquirer to decide, on its own, the level of internal transfer between acquiring and issuing businesses.
- 3.21 Although an interchange fee is paid by an acquirer and received by an issuer, there are no contractual agreements between issuers and acquirers in the Visa Network, except where the issuers and acquirers enter into bilateral agreements.³⁶ Interchange fees, therefore, as with all Visa Group network fees, are required as part of the contractual arrangement between the Visa Group and its Members who can be Principal Members or Associate Members.³⁷ Default interchange fees set by Visa Group, therefore, would still

²⁹ Visa Group's network fees are the fees the Visa Group charges its Member Banks for the use of its services and infrastructure.

³⁰ Visa Worldwide's submission dated 24 August 2012, paragraph 5.1

³¹ Visa Worldwide's submission dated 24 August 2012, paragraph 6.4 and 6.5. Visa International By-Laws, October 2011, Section 9.01

³² Visa International Operating Regulations, dated 15 October, 2012, page 862 and 1209

³³ Visa International's submission, dated 7 February 2006, page 3

³⁴ Visa Worldwide's submission dated 24 August 2012, paragraph 5.2

³⁵ Visa Worldwide's submission dated 25 May 2012 paragraph 10.2.

³⁶ [X]

³⁷ According to the Visa International Certificate of Incorporation and By-Laws, a Principal Member can either directly or by contract with other members actively develop, maintain and service direct contractual relationships with holders of Visa bank cards. An Associate Member is defined as Member of Visa with rights and responsibilities and is sponsored by a Principal Member. An Associate Member may at any time obtain one or more sponsorships from one or more Principal Members.

be settled centrally by the Visa Group, rather than bilaterally between issuer and acquirer. Bilaterally negotiated interchange fees could either be settled centrally by the Visa Group solely, or alternatively, Members may continue to send the transactions through the Visa Group at default interchange rates and then reconcile the differences between the default rates and the bilateral rate through a separate process.³⁸

3.22 [X]³⁹[X] in the Visa International Operating Regulations (“VIOR”).⁴⁰

3.23 Visa Transactions are broadly categorised into three geographic types – inter-regional, intra-regional, and domestic, all of which have their own corresponding range of MIF rates:

- (i) **Inter-regional transactions:** These refer to Visa Transactions involving an issuer and an acquirer from different operating regions of the Visa Network. Provisions relating to inter-regional MIF are set out in the VIOR.⁴¹ In particular, under “General Interchange Requirements” it states that:

“An Acquirer reimburses the Issuer an Interchange Reimbursement Fee for each Interregional Interchange Transaction. This fee is calculated as a percentage of net sales (Transaction Receipt totals less Credit Transaction Receipts).”⁴²

- (ii) **Intra-regional transactions:** These refer to Visa Transactions involving an issuer and an acquirer from different countries within the same operating region of the Visa Network.

- (iii) **Domestic transactions:** This refers to Visa Transactions involving an issuer and an acquirer from the same country.⁴³ Notwithstanding the presence of a domestic MIF which acts as the default interchange rate, the interchange rate can, in principle, be negotiated bilaterally between the issuer and the acquirer. In particular, the VIOR provides that:

“Members in a country may enter into Private Agreements or bilateral agreements to establish domestic Interchange Reimbursement Fees applicable to Domestic Transactions.”⁴⁴

3.24 Within each geographic type of Visa Transaction above, MIF rates would further vary according to a set of criteria.⁴⁵ Transactions involving different

³⁸ Visa Worldwide’s submission dated 25 May 2012, paragraph 1.1

³⁹ Visa Worldwide’s submission dated 31 August 2012, paragraph 14.8

⁴⁰ Visa International Operating Regulations, dated 15 October 2012, Chapter 9 Interchange Reimbursement Fee Compliance

⁴¹ Visa International Operating Regulations, dated 15 October 2012, Chapter 10

⁴² Visa International Operating Regulations, dated 15 October 2012, Chapter 10, page 1171

⁴³ Visa International’s presentation to CCS, dated 16 February 2006

⁴⁴ Visa International Operating Regulations, dated 15 October 2012, Chapter 10, page 1171

⁴⁵ Visa International’s submission dated 23 March 2006, pages 5 to 7

categories of merchants may incur different levels of MIF. For example, transactions involving petrol retailers, airlines and transport operators each have a different MIF rate from other categories of merchants. The MIF also varies according to the type of card used. For example, payments made with Platinum cards may incur a higher MIF as compared to payments made with Gold or Classic cards. There are also other factors that affect the particular MIF rate that applies, such as whether the transaction is processed electronically.⁴⁶

Merchant Discount Rate

- 3.25 As mentioned above, the merchant will pay a transaction-based fee known as the MDR, generally expressed as a percentage of transaction value. Acquirers for Visa Transactions have informed CCS that MDRs offered and agreed with merchants are determined by taking into account some of the following factors⁴⁷:
- (i) Merchant card sales transaction volume;
 - (ii) Average transaction size at merchant;
 - (iii) Size and type of merchant business;
 - (iv) Number of merchant outlets;
 - (v) Stability of the merchant;
 - (vi) Whether the merchant is a corporate customer or part of a partnership programme;
 - (vii) Type of service required by merchant; and/or
 - (viii) Interchange and network fees.
- 3.26 Different types of MDR can be offered to merchants depending on the card type (credit and debit), product type (eg. Gold, Classic, Platinum), brand of card (eg. Visa or MasterCard) and/or nature of the transaction (eg. through on-line or brick-and-mortar merchants). However, generally, the MDRs charged to merchants in Singapore do not vary by card type (credit or debit) or by product types (eg. Gold, Classic, Platinum). They also usually do not vary between Visa [§<] transactions. Consequently, most acquirers in Singapore offer a “**blended rate**” to most merchants, which is a single rate for all Visa [§<] transactions.

⁴⁶ *Ibid*

⁴⁷ Responses from [§<] dated 19 December 2011

- 3.27 However, some acquirers in Singapore, namely [X], do offer a MDR that varies according to **product type** or interchange rate. This form of pricing can mean that the merchant pays acquiring fees based on the type of card used (e.g. Classic, Gold, Platinum,), and/or whether it is conducted on-line or at a brick-and-mortar outlet. [X] offers “**interchange plus**” pricing, which is where the MDR is equal to the interchange rate plus a specified percentage.⁴⁸ This form of pricing is offered mainly to online retailers.
- 3.28 Additionally, most acquirers differentiate MDR in the following way:
- (i) “**on-us**” for transactions acquired where payment was made by a card issued by the acquirer; and
 - (ii) “**off-us**” for transactions acquired where payment was not made by a card issued by the acquirer.
- 3.29 Some acquirers also differentiate their MDR between the following types of transactions:
- (i) “**domestic**” for transactions acquired where payment was made by a card issued in Singapore; and/or
 - (ii) “**foreign**” for transactions acquired where payment was made by a card issued outside of Singapore.
- 3.30 The types of MDR described above are also shown in Table 3 below. The table shows the proportion of merchants in Singapore that are charged a particular type of MDR. CCS found that the vast majority of merchants in Singapore were charged a blended MDR (i.e. the same MDR for Visa [X] transactions) and some merchants were charged an MDR which varied for ‘on-us’ and ‘off-us’ transactions. While the proportion of merchants that are charged blended ‘on-us’ and ‘off-us’ rates varies between the acquirers, CCS found that the actual number of ‘on-us’ transactions for large acquirers could be significant.⁴⁹
- 3.31 CCS found that very few merchants were charged an MDR that varied by whether the transaction was domestic or international, or whether the transaction differed by card type.

Table 3: Proportion of merchants charged a certain type of MDR
[X]^{50, 51}

⁴⁸ Response from [X] dated 15 February 2012.

⁴⁹ See Table 5.

⁵⁰ Blended MDR refers to a single rate for all Visa [X]; ‘On-us’ MDR refers to transactions between the same issuer and acquirer; Off-us MDR refers to transactions between different issuer and acquirer; Domestic MDR refers to domestic transactions; International MDR for international transactions; Product based MDR refers to

Chapter 4: The Notifying Party

- 4.1 Visa Worldwide is part of the Visa Group which operates the Visa Network. The Visa Network is a global electronic payment platform that connects consumers, businesses, financial institutions, and governments in more than 200 countries and territories. Over the four quarters ended December 31, 2012, Visa Inc, the parent company, which owns Visa International, Visa Worldwide, and other Visa entities, but not Visa Europe Limited transacted US\$6.44 trillion in payment products.⁵²

Visa's Corporate Structure

Visa Enterprise (pre-restructuring)

- 4.2 Before October 2007 the current ownership structure for the Visa Group did not exist. Rather, Visa Enterprise comprised Visa International, Visa USA Inc. ("Visa USA"), Visa Europe Limited ("Visa Europe"), Visa Canada Association ("Visa Canada"), and Inovant LLC ("Inovant"). Prior to the restructuring of Visa Enterprise, Visa Enterprise was a membership organisation wholly-owned and controlled by its Members. In particular, the Singapore Members were members of Visa International.

Visa Group (post-restructuring)

- 4.3 Visa Enterprise underwent a process of corporate restructuring from October 2007 to April 2009 ("the Restructuring"), transforming itself into the Visa Group. This process included, among other things:
- (i) Visa International becoming a wholly-owned subsidiary of Visa Inc.;
 - (ii) the allocation of equity in Visa Inc. to Members;
 - (iii) the initial public offering of Visa Inc. shares ("the IPO");
 - (iv) the majority-ownership of Visa Inc. by public investors;
 - (v) the change in operational and governance arrangements in Visa International; and
 - (vi) the transfer of operations of the Visa Network in the Asia Pacific Region from Visa International to Visa Worldwide.

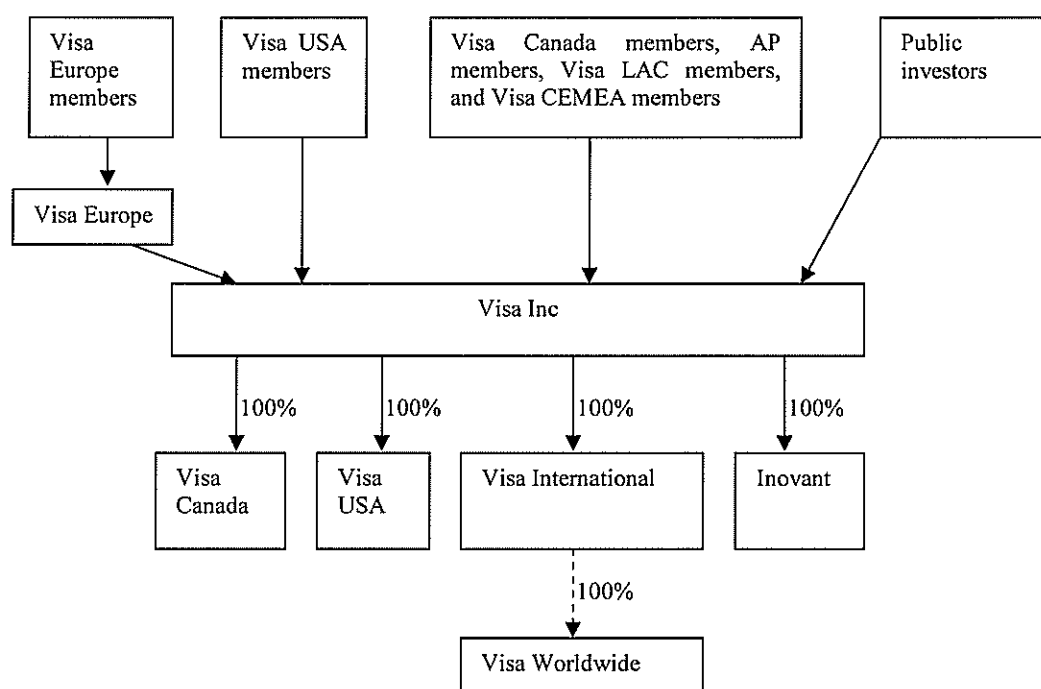
MDR that varies according to the type of card used e.g. Classic, Gold, Platinum; Interchange plus refers to MDR is equal to interchange rate plus a specified percentage.

⁵¹ Outsourced to Merchant Solutions Private Limited, which used to be a joint venture between SCB and First Data International.

⁵² http://corporate.visa.com/_media/visa-corporate-overview.pdf

- 4.4 From October 2007, the Singapore Members became non-equity members of Visa International. In April 2009, as part of the final phase of the restructuring, the operations of the Visa Group in Singapore and the rest of the Asia Pacific region were transferred from Visa International to a new entity, Visa Worldwide (both of which are now wholly-owned subsidiaries of Visa Inc. Visa Worldwide is an indirect subsidiary of Visa International).⁵³ Figure 2 below illustrates the ownership structure of the Visa Group diagrammatically post-restructuring. Visa Europe does not come under Visa Inc's ownership, and remains wholly-owned by its membership association of banks.

Figure 2: Ownership structure of the Visa Group



Source: Visa Inc. Form 10-K, dated 20 November 2009, page 78

- 4.5 As non-equity members of Visa International, the Members have no voting or economic rights in Visa International, though they may hold certain classes of shares in Visa Inc. with economic rights and limited voting rights. Visa Inc., which is the only equity member of Visa International, holds all the voting and economic rights in Visa International.⁵⁴

⁵³ Visa Worldwide Supplementary Operating Regulations

⁵⁴ Visa International Certificate of Incorporation, dated 1 October 2007

Visa Worldwide

- 4.6 Visa Worldwide is a wholly-owned subsidiary of Visa Inc.⁵⁵ It was incorporated in Singapore on 17 October 2007 with the intention that it would become the principal operating subsidiary of the Visa Inc. in the Visa Asia Pacific Region.⁵⁶ The assets and liabilities of the Singapore Branch of Visa International were transferred to Visa Worldwide with effect from 30 September 2008.⁵⁷ Hence, Visa Worldwide has since 1 October 2008 held the business formerly operated by Visa International in Singapore.⁵⁸ However, it should be noted that the Visa International Operating Regulations are part of the Visa Worldwide Operating Regulations.⁵⁹

The Interchange Management Committee

- 4.7 [REDACTED]^{60,61}

- 4.8 [REDACTED]⁶²

Chapter 5: A Decision of an Association of Undertakings and/or An Agreement between Undertakings

- 5.1 Section 34 of the Act prohibits agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore.
- 5.2 The European Court of Justice in *Commission v Anic*⁶³ had clarified that there is no requirement for the conduct to be categorised either as an agreement or as a concerted practice (or in the present case, as a decision).

Decision of an Association of Undertakings

- 5.3 In *Wouters*⁶⁴, Advocate-General Leger noted that although the concept of an association of undertakings is not defined in the EC Treaty,

⁵⁵ Visa International's submission dated 23 April 2009, paragraph 10

⁵⁶ Visa Worldwide Memorandum and Articles of Association, dated 17 October 2007

⁵⁷ Visa International's submission dated 30 January 2009, page 5

⁵⁸ Visa Worldwide Draft Resolutions of the Board of Directors, dated 1 April 2009.

⁵⁹ Visa International Operating Regulations, dated 15 October 2012, page 51

⁶⁰ Visa International's submission dated 30 January 2009, page 3

⁶¹ IMC Charter, dated 1 October 2008, page 1

⁶² Visa Worldwide's submission dated 24 August 2012

⁶³ Case C-49/92P [1999] ECR I-4125, at [112], [131] and [132]

*"[a]s a general rule, an association consists of undertakings of the same general type and makes itself responsible for representing and defending their common interests vis-à-vis other economic operators, government bodies and the public in general".*⁶⁵

5.4 Further, as Advocate-General Leger highlighted in *Wouters*,

*"[the concept of an association of undertakings] seeks to prevent undertakings from being able to evade the rules on competition on account simply of the form in which they coordinate their conduct on the market. To ensure that this principle is effective, Article 85(1) [now Article 101(1)] covers not only direct methods of coordinating conduct between undertakings (agreements and concerted practices) but also institutionalised forms of cooperation, that is to say, situations in which economic operators act through a collective structure or a common body".*⁶⁶

Visa International's Submissions

5.5 Prior to the Restructuring, Visa International acknowledged that it was an association of undertakings within the meaning of section 34(1) of the Act and hence the Visa Rules governing the Visa Network could be regarded either as decisions of an association of undertakings or as agreements between undertakings, with the constituent members of the association being the then-Members of the Visa Network.⁶⁷

5.6 After the restructuring, Visa International submitted that Visa International is no longer an association of undertakings and that Visa Worldwide would not be an association of undertakings.⁶⁸ In this regard, Visa International considered that the salient issues in determining whether it remains an association of undertakings are firstly the extent to which the Singapore Members are now involved in, or control the decision making of Visa International, and secondly, the extent to which Visa International's financial and economic interests are aligned to that of the Members.⁶⁹ In Visa International's submission, if the Singapore Members have no involvement in, or control over the operations or decisions of Visa International, and if Visa International's interests could be said to be not necessarily aligned to that of its Singapore Members, then these undertakings could no longer be considered an association of undertakings.⁷⁰

⁶⁴ Opinion of Advocate-General Leger in *J. C. J. Wouters, J. W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*, [2002] ECR I-1577, paragraph 61

⁶⁵ Visa International also had regard to the same (albeit referring to the European Commission's *MasterCard* decision instead) in its submission dated 30 January 2009, Annex 1, paragraph 55.

⁶⁶ Opinion of Advocate-General Leger in *J. C. J. Wouters, J. W. Savelbergh and Price Waterhouse Belastingadviseurs BV v Algemene Raad van de Nederlandse Orde van Advocaten*, [2002] ECR I-1577, paragraph 62.

⁶⁷ Application for Decision-Multilateral Interchange Fees, Form 1, paragraph 2.3.2

⁶⁸ Visa International's submission dated 30 January 2009, Annex 1, paragraph 52

⁶⁹ Visa International's submission dated 30 January 2009, Annex 1, paragraph 57

⁷⁰ Visa International's submission dated 30 January 2009, Annex 1, paragraph 58

- 5.7 Visa International submitted that following the restructuring, there is minimal scope for the Singapore Members to be involved in, or to control the decisions of the Visa Group. Apart from the fact that the combined equity of the Singapore Members in Visa Inc. is less than [\times]⁷¹, Singapore Members are only allowed to hold Class C shares, which grant their holders only limited voting rights. Visa Worldwide has also confirmed that Singapore Members and its employees “do not sit on any Visa board or committee, nor do they have any management, governance, or decision making role or responsibilities in Visa”.⁷²
- 5.8 In this regard, Visa Worldwide submitted that Visa International’s restructuring removed all bank representation and involvement from the management and governance of Visa International⁷³ and that the effect of the restructuring has led to a divergence in the financial and economic interests of the Visa Worldwide and the Singapore Members, such that it is no longer an association of undertakings.⁷⁴

CCS’s Assessment

- 5.9 It is not disputed that the Singapore Members, both pre- and post-restructuring of Visa International, continue to be undertakings of the same general type. It is also not disputed that Visa International operated as an association of undertakings prior to the restructuring, with the constituent members being the Singapore Members,⁷⁵ referred to by Visa Worldwide post restructuring as “client banks”, and the MIF system being the decision of the association. The key question is whether there continues to be an association of undertakings and whether the MIF is still a decision of an association of undertakings.
- 5.10 As stated in Advocate-General Leger’s opinion in *Wouters*, an association represents and defends the common interests of its members. In *MasterCard*, the General Court noted

*“it follows from the case-law of the Court of Justice that the existence of a commonality of interests or a common interest is a relevant factor for the purposes of assessing whether there is a decision by an association of undertakings within the meaning of Article 81(1) EC [now Article 101(1) EC]”*⁷⁶.

⁷¹ Visa International’s submission dated 23 April 2009, Appendix 11

⁷² Visa Worldwide’s submission dated 24 August 2012, paragraph 2.1

⁷³ Visa Worldwide’s submission dated 24 August 2012, paragraph 1.4

⁷⁴ Visa International’s submission dated 30 January 2009, paragraphs 69 to 71

⁷⁵ Application for Decision-Multilateral Interchange Fees, Form 1, paragraph 3.1.22

⁷⁶ Judgment of the General Court dated 24 May 2012, Case T-111/08 *MasterCard v European Commission*, paragraph 251

- 5.11 In *MasterCard*, the General Court found that there existed a commonality of interests between MasterCard and the banks on the issue of the MIF.⁷⁷ In this regard, “the banks, including those which were active on the acquiring market, had an interest in the MIF being set at a high level”⁷⁸ as they benefit, by virtue of the MIF, from a minimum price floor which readily enables them to pass on the MIF to merchants.⁷⁹ It would also be in the interest of the MasterCard payment organisation to set the MIF at a level that the banks deem attractive as the number of transactions and therefore the revenues of the MasterCard payment organisation depend essentially on the willingness of the banks to promote MasterCard cards to their customers.⁸⁰
- 5.12 In finding that the banks had an interest in a high MIF, the General Court in *MasterCard* took into consideration the fact that virtually all banks engaged in the acquiring business were also card issuers and benefited, to that extent, from the MIF.⁸¹ The situation is similar in Singapore as all acquiring banks are issuers, and in addition to that, there are two non-bank payment processors, Global Payments and Merchant Solutions, that provide only acquiring services. On the issuing side, out of the 10 Singapore Members which participate in the Visa Network, five are currently issuers only, three have no involvement in acquiring in Singapore⁸², while two had set up joint ventures with non-bank acquirers.⁸³ Five banks are both issuers and acquirers.⁸⁴
- 5.13 CCS is of the view that there exists a commonality of interests between Visa Group and all the Singapore Members in respect of the MIF for the reasons set out below. The composition of the Visa Network participants is such that they would all have an interest in setting the MIF at a common level, even if they may hold different views on the actual level of the MIF, and they would all have a common interest in the perpetuation of the MIF system, post-restructuring.

⁷⁷ Judgment of the General Court dated 24 May 2012, Case T-111/08 *MasterCard v European Commission*, paragraph 259

⁷⁸ Judgment of the General Court dated 24 May 2012, Case T-111/08 *MasterCard v European Commission*, paragraph 252

⁷⁹ Judgment of the General Court dated 24 May 2012, Case T-111/08 *MasterCard v European Commission*, paragraph 253

⁸⁰ Judgment of the General Court dated 24 May 2012, Case T-111/08 *MasterCard v European Commission*, paragraph 255

⁸¹ Judgment of the General Court dated 24 May 2012, Case T-111/08 *MasterCard v European Commission*, paragraph 254

⁸² ANZ, CIMB and BOC.[3<]

⁸³ HSBC entered into a joint venture with Global Payments Inc. in July 2006, for the creation of Global Payments Asia-Pacific Limited (“GPAP”) which provides credit card and debit card acquiring services to merchants. With the divestment of GPAP to Global Payments Inc. in Dec 2012, HSBC no longer provides acquiring services to merchants. SCB entered into a joint venture with FDI to form Merchant Solutions in 2007. SCB has now divested its shareholding in the joint venture to FDI and has ceased to provide acquiring services to merchants.

⁸⁴ UOB, Citibank, OCBC, DBS and Maybank

- 5.14 It is clear that Members which are issuers only would benefit from a common MIF since they receive the revenue. It is also clear that Members which have both acquiring and issuing businesses would benefit from a common MIF for the same reason. As noted by the General Court in *MasterCard*, “the MIF represents a cost for the banks only if they decide to absorb it themselves” and “even if that were the case, it is reasonable to conclude that the MIF remains a source of revenue for the banks in so far as they also have an issuing business”.⁸⁵ CCS’s inquiries have shown that acquirers regard MIF as a cost component of the MDR and that some acquirers are of the view and/or recognised that their acquiring businesses support their issuing businesses.⁸⁶ As such, on balance, they would still benefit directly from a common MIF. For instance, [X] submitted that its presence in both the card issuing and merchant acquiring businesses in Singapore enables it to build strong relationships with merchants.⁸⁷ [X] stated that its acquiring business allows it to gain a better understanding of their customer spending patterns at the merchants⁸⁸. [X] submitted that its merchant acquiring business supports its card issuing business strategically.⁸⁹
- 5.15 The Restructuring did not generally affect the contractual and business relationships between the Singapore Members and Visa Group. It would also seem that Visa Group by retaining the MIF system after the restructuring and continuing in its primary function of the scheme administrator, continued to make itself responsible for representing and defending the common interest between itself and the Singapore Members in respect of the Visa Group’s MIF system.
- 5.16 CCS is of the view that the restructuring was not intended to change Visa Group’s business model⁹⁰, which was based on the open-loop payment card system, the operating regulations that governed the MIF system or other key aspects of the Membership Rules. In the announcement of the proposed restructuring, the Chairman of the Visa International board and the President and CEO of Visa AP told the Members of Visa AP that:

“Under the proposed restructuring, you will continue to benefit from one of the world’s most trusted payment brands, Visa’s global transaction processing and risk infrastructure, and one of the broadest sets of products and services in the industry. Importantly, this

⁸⁵ Judgment of the General Court dated 24 May 2012, Case T-111/08 *MasterCard v European Commission*, paragraphs 253 and 254

⁸⁶ Response from [X] dated 1 February 2012, Paragraphs 4.1, 4.2 and 17.4; Response from [X] dated 15 February 2012 Paragraphs 4.1 Meeting with [X] dated 8 May 2012; Response from [X] dated 15 February 2012, Paragraphs 4.1 and 17.3; Response from [X] dated 15 February 2012, paragraphs 14.1 and 17.3; Response from [X] dated 15 February 2012, paragraphs 14.1 and 17.3.

⁸⁷ Response from [X] dated 15 February 2012

⁸⁸ Response from [X] dated 21 February 2012

⁸⁹ Response from [X] dated 15 February 2012, paragraph 14.1

⁹⁰ The Original Global Restructuring Agreement, dated 15 June 2007; and the Draft Visa International Board Resolutions, dated 24 August 2007

business model is designed to enable Visa to enhance global coordination while maintaining strong local market relationships, expertise and execution...

...Visa is taking a measured and thoughtful approach to this transformation to ensure that the outcome is a corporate structure that benefits all of Visa's stakeholders throughout the world...

*... As we move forward with this effort, it is important to know that we remain completely focused on adding value to your business and to the Visa cardholders and Visa-accepting merchants that you serve. **This work will not interrupt your relationship with Visa. All regional Visa client services remain intact**".⁹¹ (Emphasis ours)*

- 5.17 The Visa Inc's proxy statement-prospectus, dated 13 September 2007, on the then proposed restructuring specifically assured the Members including the Singapore Members that their existing agreements with the Visa Group would not, in general, be affected by the Restructuring:

"In general, and in the absence of a specific contractual provision requiring consent or notice in connection with a transaction like the proposed restructuring, your existing agreement(s) will not be affected by the restructuring."⁹²

The perpetuation of this business model can be seen as an assurance to the Members that, despite the changes brought about by the restructuring, the MIF system would be retained.

- 5.18 Based on both internal and external communications of the Visa Group obtained by CCS⁹³, there is no evidence to suggest that Visa Group has ever contemplated the removal of its MIF system as part of the restructuring. Before the restructuring, Visa International consistently argued that the MIF system stimulated transaction volumes for Visa Cards.⁹⁴ As the Visa Group was to continue deriving its revenues mainly from the value or number of transactions it processes, the Singapore Members that continued to be referred to as "members" under the VIOR would have been aware that the Visa Group had a strong incentive to keep the MIF system after the restructuring.

- 5.19 Further, in the summary of the Visa Inc. proxy statement-prospectus, dated 13 September 2007, in respect of the issue of legal and regulatory risks in relation to interchange fees, it was clearly stated that:

"If [Visa] cannot successfully defend [Visa's] ability to set default interchange rates to maximize system volume, [Visa's] payments system may become unattractive to issuers. This result could reduce the number of financial institutions willing to participate in [Visa's]

⁹¹ Visa Asia Pacific Member Letter 46/06, dated 11 October 2006.

⁹² Visa Inc. proxy statement-prospectus, dated 13 September 2007, page viii.

⁹³ For example, the Visa Proxy Statement-Prospectus on the Visa Restructuring dated 13 September 2007, Notices sent by Visa to the Singapore Members on their equity allocation in October 2007, email correspondence between the Singapore Members and Visa in relation to the restructuring and IPO.

⁹⁴ Application for Decision-Multilateral Interchange Fees, Form 1, paragraph 3.1.22

open-loop multi-party payments system, lower overall transaction volumes, and/or make closed-loop payments systems or other forms of payment more attractive. Issuers could also charge higher fees to consumers, thereby making our card programs less desirable and reducing our transaction volumes and profitability, or they could attempt to decrease the expense of their card programs by seeking incentives or a reduction in the fees that we charge. Any of the foregoing could have a material adverse impact on our revenue, our prospects for future growth, and our overall business."⁹⁵

- 5.20 The above statement suggests that Visa Group would continue to defend the common interest of its Members which include the Singapore Members in retaining the MIF system as a critical part of its business model, as the removal of the same could have a material adverse impact on the business.
- 5.21 Finally, the very fact that Visa Group has actually kept its MIF system after the restructuring adds to the inference that the incentive to retain the MIF was embedded in the choice of business model. Through the year 2008, Visa Inc. undertook a major project to revise the operating rules for the Visa Network.⁹⁶ According to Visa Inc., the key objectives for the Visa Operating Regulations Alignment Project included ensuring that the regulations were current; simplifying language and reducing the number of regulations; and aligning regulations across regions and geographies for greater consistency.⁹⁷ However, although the project resulted in the consolidation of various international, regional, and domestic operating and dispute resolution rules into a single VIOR, it did not materially revise any part of the regulations relating to the Visa Group's MIF system.⁹⁸
- 5.22 Based on the above, CCS finds the existence of a commonality of interest between Visa Group and the Singapore Members in respect of the MIF system. This common interest continued from pre-restructuring of the Visa Enterprise to post-restructuring.

Conclusion on Decision of Association of Undertakings

- 5.23 A decision by an association may include the constitution or rules of an association of undertakings or its recommendations. The key consideration is whether the object or effect of the decision, whatever form it takes, is to influence the conduct or co-ordinate the activity of the members in some commercial matter.⁹⁹
- 5.24 The MIF system was already put in place prior to the Restructuring, and has not changed substantively even after the restructuring. The rules imposed by

⁹⁵ Visa Inc. proxy statement-prospectus, dated 13 September 2007, page 11

⁹⁶ Visa International's submission, dated 30 January 2009, paragraphs 48 and 49

⁹⁷ Visa Inc., Introduction to the Visa Operating Regulations, Alignment Project, dated 2010

⁹⁸ *Ibid* and Visa International Operating Regulations, Volume 1, Section 8.3 dated 15 November 2008

⁹⁹ CCS Guidelines on the Section 34 Prohibition, paragraph 2.13

Visa International and now Visa Worldwide on the Singapore Members in respect of the MIF system serve to align the commercial conduct of these Members, and collectively to impose costs upon their merchant customers.

- 5.25 As shown above, the Singapore Members have effectively delegated the decision-making function in respect of the MIF to the Visa Group by choosing to remain within the Visa Network and to abide by its rules.¹⁰⁰ They are able to rely on the Visa Group to continue to coordinate their conduct in their collective interests because the Visa Group shares those interests. CCS is of the view that it appears that the Visa Group continues to be an institutionalised form of cooperation where the Singapore Members act through the Visa Group, in respect of the MIF, and accordingly, the Visa Group may well constitute an association of undertakings in this regard.

Agreement between undertakings and/or concerted practice

Visa International's Submission

- 5.26 Visa International has submitted that, if it is no longer an association of undertakings, the MIF will automatically be exempted from the application of section 34 of the Act through the application of paragraph 8 of the Third Schedule of the Act (pertaining to vertical agreements). Visa International's position is that the Visa Rules are vertical agreements which relate to the conditions under which the Singapore Members may participate in the Visa Network and provide Visa Card services to their customers. Further, Visa International has submitted that Singapore Members have no involvement in the setting of membership license criteria nor any involvement in or power in relation to any amendment to the Visa Rules.¹⁰¹
- 5.27 It is implicit in Visa International's submission that it does not dispute that it is an undertaking post-restructuring. In any event, Visa Worldwide (which holds the business formerly operated by Visa International in Singapore) is an "undertaking" under section 34 of the Act as it is a body corporate capable of carrying on commercial or economic activities relating to goods or services.¹⁰² It is not disputed that the Singapore Members, both pre- and post-restructuring, continue to be undertakings. It is also clear that the Visa Rules, after the Restructuring, would form part of the bilateral contractual relationship between Visa Worldwide and each Member in Singapore. The key question is therefore whether the Visa Rules, containing the MIF system, remain as a multilateral agreement between undertakings after the restructuring, and if so, whether such agreement is exempted from the section 34 prohibition.

¹⁰⁰ Visa International Operating Regulations, dated 15 October 2012

¹⁰¹ Visa International's submission, dated 30 January 2009, Annex 1, paragraphs 78 and 83

¹⁰² CCS Guidelines on the Section 34 Prohibition, paragraph 2.5

5.28 The Third Schedule of the Act provides as follows:

“8(1) The section 34 prohibition shall not apply to any vertical agreement, other than such vertical agreement as the Minister may by order specify.

(2) In this paragraph, “vertical agreement” means any agreement entered into between 2 or more undertakings each of which operates, for the purposes of the agreement, at a different level of the production or distribution chain, and relating to the conditions under which the parties may purchase, sell or resell certain goods or services...”¹⁰³

5.29 Although Visa International acknowledges that, in certain circumstances, some multiparty arrangements may not benefit from the “vertical agreement” exclusion due to the fact that not all parties to the agreement operate at a different functional level or a party at a different functional level is involved in what is essentially a horizontal agreement between parties at the same functional level, Visa International’s position is that these circumstances do not present themselves in the present case as there is no agreement between parties at the same functional level in relation to the default MIF rate.¹⁰⁴

CCS’s Assessment

5.30 CCS’s position is that the agreement in question is *not* limited to the *default MIF rate*. Instead, as submitted by Visa International in their application for a decision, the agreement in question is the *MIF system* contained in the Visa Rules.¹⁰⁵ It is not disputed that prior to the restructuring, the Membership Rules, which set out the MIF system, could be regarded as an agreement between undertakings.¹⁰⁶ Although the Singapore Members have effectively “outsourced” the decision making in relation to the MIF system to the Visa Group by approving the Global Restructuring Agreement, the agreement notified to CCS (i.e. the MIF system contained in the Visa Rules) has been left intact post-restructuring and therefore upholds the integrity of the pre-restructuring agreement between the Singapore Members and Visa International. Consequently, CCS is of the view that the Visa Group’s MIF system contained in the Visa Rules is likely to remain as an agreement between undertakings even after the Restructuring.

5.31 It is clear that the Singapore Members agree with the Visa Group to be bound by the provisions in the Visa Rules. The Visa Rules are not a series of hermetically sealed vertical agreements made between the Visa Group and each of the Members separately. Rather, the Visa Rules, containing the MIF system, establish a known common default rate for the fees paid by the acquirer for a service rendered by the issuer, and which is ultimately passed

¹⁰³ Third Schedule of the Competition Act, paragraph 8

¹⁰⁴ Visa International’s submission, dated 30 January 2009, Annex 1, paragraphs 84 and 85

¹⁰⁵ Application for Decision-Multilateral Interchange Fees, Form 1, paragraph 2.3.2

¹⁰⁶ Application for Decision-Multilateral Interchange Fees, Form 1, paragraph 2.3.2

on to third parties (i.e. merchants). In this regard, the Singapore Members operate on the same level of the production or distribution chain for the purposes of the MIF system and it is not the case that *each* of the relevant undertakings operates *at a different level of the production or distribution chain*. It would therefore appear that the Singapore Members have, on a horizontal level, implicitly agreed with each other to apply the MIF restriction in the Visa Rules in their mutual dealings. Accordingly, the Visa Rules reflecting the MIF system does not benefit from the “vertical agreement” exclusion set out in paragraph 8 of the Third Schedule of the Act and is likely to constitute an agreement between undertakings.

Conclusion on agreement between undertakings and/or concerted practice

- 5.32 As mentioned above, there is no requirement for conduct to be categorised either as an agreement or as a concerted practice. CCS is of the view that the implicit nature of the Members’ agreement with each other, and each Member’s choice to remain within the Visa Network and to abide by the Visa Rules and thereby effectively delegating the decision-making function in respect of the MIF, may well constitute a concerted practice falling within the meaning of section 34 of the Act, should it fall short of a definite agreement.¹⁰⁷

Overall conclusion

- 5.33 In conclusion, CCS finds that the Visa Group, post-restructuring, may well constitute an association of undertakings in respect of the MIF system, as the Singapore Members have effectively delegated the decision-making function in respect of MIF to the Visa Group by choosing to remain within the Visa Network and to abide by the Visa Rules. CCS also finds that the Visa Group’s MIF system could constitute an agreement between undertakings and/or a concerted practice between the Singapore Members and the Visa Group.
- 5.34 Given that the Visa Group’s MIF system could be a decision by an association of undertakings and/or an agreement between undertakings within Singapore, CCS has proceeded to assess if the Visa Group’s MIF system has the object or effect of preventing, restricting or distorting competition within Singapore.

Chapter 6: Object or Effect of Preventing, Restricting or Distorting Competition

- 6.1 Section 34(1) of the Act prohibits “...*agreements between undertakings, decisions of associations of undertakings or concerted practices, which have*

¹⁰⁷ Cases 48, 49, 51-7/69, *ICI v Commission (Dyestuffs)* [1972] ECR 619 at paragraphs 64 and 65

as their object or effect the prevention, restriction or distortion of competition within Singapore". From a plain reading of the section, it is apparent that "object" and "effect" are alternative and not cumulative requirements.

- 6.2 In the *Pest Control Case*¹⁰⁸, which was subsequently applied in the *Express Bus Operators Case*¹⁰⁹, *Electrical Works Case*¹¹⁰, the *Employment Agencies Case*¹¹¹ and the *Ferry Operators Case*¹¹², CCS held that,

*"...Where an agreement has as its object the restriction of competition, it is unnecessary to prove that the agreement would have an anti-competitive effect in order to find an infringement of section 34"*¹¹³

- 6.3 Visa International has submitted that the MIF is a mechanism designed to provide sufficient incentive to ensure that the optimum level of issuing and acquiring among Members is achieved in the Visa Network.¹¹⁴ According to Visa International, if the interchange fee for Visa Transactions is inadequate, issuers will not have sufficient incentive to promote the use of the Visa Card at an efficient level and an imbalance between use and acceptance of the Visa Card would emerge, which would threaten the viability of the Visa Network.¹¹⁵
- 6.4 CCS has not found any decisions from other jurisdictions which have decided that the MIF system has as its object the prevention, restriction or distortion of competition. There is, however, one European decision¹¹⁶ which has taken the other approach and assessed the MIF system from the effects perspective. In the current case, having regard to antitrust decisions of overseas jurisdiction on card schemes,¹¹⁷ CCS's analysis proceeds by considering whether the restrictive effects of the MIF would constitute an infringement of section 34.

Chapter 7: The Counterfactual

- 7.1 The counterfactual is an analytical tool that serves as a means of assessing whether a given practice has restrictive effects on competition by considering whether an alternative realistic situation from which the relevant practice has

¹⁰⁸ [2008] SGCCS1

¹⁰⁹ [2009] SGCCS2

¹¹⁰ [2010] SGCCS4

¹¹¹ [2011] SGCCS5

¹¹² Case No. CCS 500/006/009

¹¹³ See *Pest Control Case* [2008] SGCCS 1, at [49], *Express Bus Operators Case* [2009] SGCC 2, at [71], *Electrical Works Case* [2010] SGCCS 4, at [49], *Employment Agencies Case* [2011] SGCCS 5, at [61] and Case No. CCS 500/006/009, *Ferry Operators Case* at [66]

¹¹⁴ Application for Decision-Multilateral Interchange Fees, Form 1, Paragraph 3.1.20

¹¹⁵ Application for Decision-Multilateral Interchange Fees, Form 1, Paragraph 3.1.22

¹¹⁶ Case T-111/08 *MasterCard v European Commission*

¹¹⁷ Case T-111/08 *MasterCard v European Commission*

been removed would be more competitive. The counterfactual assists in answering the question of whether an agreement, decision or concerted practice, in this case the Visa Group's MIF system, gives rise to an appreciable adverse effect on competition in any of the identified relevant markets within Singapore.

7.2 As noted in the ECJ's decision in *Societe Technique Miniere*,

*"The competition in question must be understood within the actual context in which it would occur in the absence of the agreement in dispute. In particular it may be doubted whether there is an interference with competition if the said agreement seems really necessary for the penetration of a new area by an undertaking".*¹¹⁸

The General Court also noted in *O2(Germany) GmbH & Co, OHG v Commission* that the examination required in light of Article 81(1) EC [now Article 101(1)] consists essentially in taking account of the impact of the agreement on existing and potential competition and the nature of competition in the absence of the agreement, those two factors being intrinsically linked.¹¹⁹ In short, the counterfactual is the likely situation that would have existed but for the agreement in question.

7.3 In relation to the Notification, the counterfactual scenario is one that describes the situation where the current MIF system does not exist. As the counterfactual is not a situation that exists, it is inherently hypothetical, but at the same time a realistic hypothetical. Determining the appropriate counterfactual serves to facilitate a comparison of the situation *with* the alleged restrictive agreement (i.e. the present state) against the situation *without* the alleged restrictive agreement (i.e. the counterfactual) in order to assess the effects of the agreement on competition, as well as any economic benefits that may arise from the alleged restrictive agreement.

7.4 The counterfactual scenario is compared to the scenario where the MIF system exists, which is the current situation with the alleged restrictive practice under consideration. The difference in competition between the two scenarios provides an indication of whether the MIF has an appreciable adverse effect on competition in any of the identified relevant markets within Singapore.

7.5 Under the alternative card scheme rule that would apply in the absence of the MIF system ("the alternative card scheme rule"), acquirers and issuers may try to reach a bilateral agreement on interchange fees. Where there is *no bilateral agreement* on interchange fees between the acquirer and the issuer for any payment transaction, no interchange fees would apply to that

¹¹⁸ *Societe Technique Miniere* [1966] ECR 235 at page 250 applied in Case C-7/95P *John Deere v Commission* [1998] ECR I-3111, see paragraph 76.

¹¹⁹ Case T-328/03 [2006] ECR II-1231 at [71]

transaction. In other words, under the alternative card scheme rule, the following applies:

- (i) Each acquirer/ issuer is required to process and accept all valid payment transactions involving the acquirer/issuer (i.e. no acquirer/issuer can refuse to process the transaction that it is involved in, the issuer cannot withhold payment of the transaction value to the acquirer, and the acquirer does not require a bilateral agreement with the issuer in order to process and accept the issuer's payment cards);
- (ii) Each issuer is prohibited from charging the acquirer an interchange fee for a payment transaction, unless a bilateral agreement on interchange fees between the issuer and the acquirer for such a transaction exists; and
- (iii) Each acquirer is prohibited from charging the issuer an interchange fee for a payment transaction, unless a bilateral agreement on interchange fees between the issuer and the acquirer for such a transaction exists.

7.6 As is the case under the present card scheme rule, where there is a *bilateral agreement* on interchange fees between the acquirer and the issuer for any payment transaction, the bilaterally agreed interchange fees would apply to that transaction.

7.7 CCS considers that under the alternative card scheme rule described above, pure issuers, pure acquirers, and integrated issuers-acquirers are likely to be affected in different ways. Various outcomes may emerge, depending on the extent to which there are bilateral agreements on interchange fees, and on the levels of interchange rates that may arise. These possible outcomes are discussed in greater detail below.

7.8 CCS will consider the above counterfactual scenario in conducting its assessment of whether the Visa Group's MIF system has an appreciable adverse effect on competition in any of the identified relevant markets within Singapore.

Visa Worldwide's Submissions

7.9 Visa Worldwide submits that in the counterfactual, bilateral agreements would not be likely to arise. [3<].¹²⁰

¹²⁰ Visa Worldwide's submission dated 21 March 2013, paragraph 13.1

- 7.10 Based on information provided by the acquirers and issuers in Singapore, CCS is of the view that various possible outcomes may emerge in the counterfactual depending on the willingness and ability of each pair of issuer and acquirer to reach a bilateral agreement on interchange fees:
- (i) If all pairs of issuers and acquirers reach bilateral agreements on interchange fees, all transactions would likely be subjected to positive interchange fees;
 - (ii) If some pairs of issuers and acquirers reach bilateral agreements on interchange fees while other pairs of issuers and acquirers do not, positive interchange fees may apply to some transactions while no interchange fees would apply to other transactions; and
 - (iii) If no pair of issuer and acquirer reaches a bilateral agreement on interchange fees, no interchange fee would apply to all transactions.
- 7.11 Pure issuers, pure acquirers, and integrated issuers-acquirers each have different incentives to seek a bilateral agreement with another issuer or acquirer, and their bargaining powers in negotiating such an agreement would vary depending on the sizes of their cardholder base and merchant base. Bilateral agreements may be easier between integrated issuers-acquirers as they can have *quid pro quo* arrangements to pay each other. As large integrated issuers-acquirers in Singapore have both a large cardholder base and large merchant base, it is likely that they would have a superior bargaining position, which would make it easier for them to secure bilateral agreements on interchange fees and to obtain rates that are favourable to them, i.e. paying relatively lower interchange fees as acquirers and receiving relatively higher interchange fees as issuers. However, issuers and acquirers are also likely to consider the extent to which they compete with each other which may affect their decision to negotiate.

Pure issuers

- 7.12 Pure issuers would likely have an incentive to negotiate with acquirers but they would be unlikely to reach an agreement. This is because acquirers would have little incentive to reach an agreement with pure issuers due to their small cardholder base and because in the absence of a bilateral agreement, pure acquirers would likely pay no interchange fees. For example, [X] stated that all competitor banks are unlikely to reach a bilateral agreement with [X] and that a bank with an acquiring business would not have an incentive to negotiate with a pure issuer and would prefer a zero

rate.¹²¹ Similarly, [X] highlighted that Visa issuers and acquirers were unlikely to negotiate with [X], because it was a small player, with limited bargaining power and no acquiring business.¹²²

- 7.13 Further, as all acquirers in Singapore have their own issuing business, they would likely consider the impact of paying interchange fees to a competing issuer, on their own issuing business. [X] highlighted that large integrated issuers-acquirers would have little incentive to negotiate fairly with [X] as it would be an opportunity for such acquirers to place significant limitations on the attractiveness of [X]'s credit card offerings.¹²³

Integrated issuers-acquirers

- 7.14 Integrated issuers-acquirers are likely to be better placed to negotiate, as they tend to have a larger cardholder base and merchant base, and can offer mutually beneficial arrangements.¹²⁴ For instance, [X] stated that it would consider negotiating if it made financial sense, namely, whether there would be a profit or margin to be made for the parties to the transaction.¹²⁵ [X] was of the view that bilateral agreements are likely to be reached between the local banks, which would provide them with a significant competitive advantage over foreign banks.¹²⁶ [X] was of the view that large issuers and acquirers are likely to reach bilateral agreements on interchange fees.¹²⁷ [X] was of the view that large issuers and acquirers may reach bilateral agreements among themselves, but not with smaller issuers.¹²⁸
- 7.15 Large integrated issuers-acquirers (e.g. UOB, DBS, Citibank) as acquirers, may have little incentive to pay interchange fees to small integrated issuers-acquirers (e.g. Maybank, OCBC). Hence, even if a bilateral agreement is reached between a large integrated issuer-acquirer and a small integrated issuer-acquirer, the level of interchange fees would likely favour the large integrated issuer-acquirer, as it has a larger number of cardholders and merchants. [X] stated that it would seek to conclude bilateral agreements with large issuers and acquirers, as they would have the widest network of acceptance points and cards in circulation. However, such banks may not wish

¹²¹ Response from [X] dated 7 December 2012

¹²² Response from [X] dated 21 November 2012 and Meeting with [X] dated 5 December 2012

¹²³ Response from [X] dated 16 November 2012, paragraph 1.3

¹²⁴ [X] indicated that banks with both issuing and acquiring business would be in the best position to make bilateral agreements. Response from [X] dated 2 November 2012. [X] is of the view that it may have been possible to negotiate a commercially acceptable bilateral agreement with other Visa acquirers which have a smaller, or similar acquiring footprint. Response from [X] dated 16 November 2012.

¹²⁵ Response from [X] dated 2 Nov 2012, page 1

¹²⁶ Response from [X] dated 9 November 2012, paragraph 3.1

¹²⁷ Response from [X] dated 16 November 2012, paragraph 3.1.

¹²⁸ Response from [X] dated 7 December 2012, paragraph 3.1.

to bilaterally negotiate interchange fees with [X] as it is a small player in the issuing and acquiring business.¹²⁹

- 7.16 While an arrangement between two large integrated issuers-acquirers could mutually benefit their issuing businesses, they may also view each other as close competitors. Instead of seeking a bilateral agreement, large integrated issuers-acquirers may choose instead to take advantage of their large cardholder base to further expand their merchant base to generate more ‘on-us’ transactions. For instance, [X] commented that given the time required to enter such negotiations and without any certainty of success, [X] would focus on changing internal business strategies.¹³⁰ [X] commented that bilateral negotiations are costly and could take time, and there would be no incentive to negotiate with other issuers and acquirers when they could switch to issuing cards through other card schemes. For example, [X] has approached [X] to [X] cards.¹³¹
- 7.17 Further, CCS notes that integrated issuers-acquirers may have an incentive to take advantage of their own cardholder base to reap the benefits of being in acquiring and issuing. For instance, the acquiring business provides issuers with a direct relationship with the merchant which in turn assists their issuing business in offering card promotions with those merchants. For example, [X]¹³² [X]¹³³

Pure acquirers

- 7.18 Pure acquirers may not want to offer to pay interchange fees when the default interchange fee, in the absence of a bilateral agreement, is zero. [X] noted that it was unlikely that pure acquirers would have a commercial motivation to reach a bilateral agreement on interchange fees with any other Visa Card issuer, as any agreement would likely mean incremental costs.¹³⁴ [X] stated that it would be difficult to negotiate with pure acquirers as it would not be in the financial interests of pure acquirers to negotiate.¹³⁵ However, pure acquirers may seek to have bilateral agreements with large issuers in order to encourage the issuers’ cardholders to spend at the pure acquirers’ merchants. In such a situation, large issuers may demand high interchange fees from the pure acquirers with a small merchant base. Alternatively, as large issuers in Singapore are also acquirers, they may instead prefer to acquire the pure acquirers’ merchants for themselves to capture revenue from merchants directly.

¹²⁹ Response from [X] dated 16 November 2012, paragraph 1.4

¹³⁰ Meeting with [X] dated 13 December 2012

¹³¹ Meeting with [X] dated 7 December 2012

¹³² Response from [X] dated 15 February 2012

¹³³ Response from [X] dated 15 February 2012

¹³⁴ Response from [X] dated 9 November 2012

¹³⁵ Response from [X] dated 16 November 2012

Conclusion on interchange fees in the counterfactual

- 7.19 Although pure issuers would have an incentive to negotiate to receive interchange fees, they are unlikely to be successful in reaching an agreement because of their small cardholder base. Acquirers are unlikely to have the incentive to approach those issuers with a small cardholder base. Pure acquirers would be unlikely to have an incentive to negotiate payment of interchange fees, and issuers would be unlikely to approach acquirers with a small merchant base. For all issuers and acquirers, the incentive to bilaterally negotiate may be further reduced if they can switch to other card schemes. Hence, CCS considers that pure issuers and pure acquirers are unlikely to reach bilateral agreements on interchange fees in the counterfactual.
- 7.20 However, given the potential for *quid pro quo* arrangements, CCS considers that integrated issuers-acquirers may have the incentive to reach bilateral agreements resulting in positive interchange fees for transactions between these entities. The level of the bilaterally negotiated interchange fee would depend on bargaining position of the parties involved. For instance, [X] stated that the factors that would affect the level of fees would be the bargaining power of issuers and acquirers and the level and form of competition.¹³⁶ [X] also commented that the level of the interchange fee would depend on the relative bargaining power of the parties to the negotiation.¹³⁷ [X] said that transaction volumes, number of cards in circulation, extensiveness of network points and merchant relationships would be relevant factors.¹³⁸
- 7.21 Given the superior bargaining position of the large integrated issuers-acquirers, they would likely be in a better position to reach bilateral agreements and to obtain more favourable rates than other players, i.e. receive interchange fees that are no lower than the amount that its bilateral partner would receive from it, and pay interchange fees that are no higher than the amount that its bilateral partner would pay to it. Further, any issuer or acquirer that enters a bilateral agreement with another acquirer or issuer must be made no worse off than it would be by not entering the bilateral agreement, as it could always choose not to enter the bilateral agreement.
- 7.22 Under the alternative card scheme rule, any bilaterally agreed interchange fee between any issuer and acquirer is unlikely to be higher than the present state. [X] highlighted that interchange fees would probably be similar to current levels and [X] said that it is likely to target the same level of interchange fees as is applied currently.¹³⁹ Other [X] were of the view that bilateral

¹³⁶ Response from [X] dated 2 November 2012

¹³⁷ Response from [X] dated 9 November 2012

¹³⁸ Response from [X] dated 16 November 2012

¹³⁹ Response from [X] dated 2 November 2012 and Response from [X] dated 16 November 2012

negotiations were unlikely to occur and so interchange fees were likely to be zero, in the counterfactual. In the event, that bilaterally negotiated interchange fees were likely to be higher, it is likely that the present state would be more competitive.

- 7.23 If bilaterally agreed interchange fees are widespread and average interchange fees in the counterfactual are similar to current levels, it is likely that the outcomes in the affected markets would be similar to the present state. However, if bilaterally agreed interchange fees are not widespread and average interchange fees in the counterfactual are lower than current levels, there may be differences between the outcomes in the counterfactual and the present state. In view of the potential harm to competition that may result, CCS has focused its competition analysis on the outcome that average interchange fees are lower to assess if the counterfactual would be more competitive than the present state.
- 7.24 To summarise, for the purpose of considering the counterfactual, CCS regards bilaterally negotiated interchange fees as the more likely outcome to arise in the absence of the MIF system where integrated issuers-acquirers may bilaterally agree on some positive but lower level of interchange fees, while pure issuers and pure acquirers may not reach any bilaterally negotiated interchange fees and would have no interchange fees.

Chapter 8: Theory of Harm

- 8.1 To assess the impact or potential impact on competition, CCS has considered possible theories of harm that could result from the Visa Group's MIF system. Theories of harm, which include the conditions necessary for these theories to hold, help to establish key questions of fact, and provide a framework in which to assess the evidence gathered to conduct a competition assessment. CCS has considered the following theory of harm that may occur in the present state with the Visa Group's MIF system.
- 8.2 Until very recently, all Visa Card acquirers in Singapore were also Visa Card issuers¹⁴⁰, and there was not a single Visa Card acquirer in Singapore that was not also a Visa Card issuer, i.e. no pure acquirer had entered the market. In the present state, integrated issuers-acquirers may use the MIF to prevent and/or hinder entry from pure acquirers.
- 8.3 Pure acquirers are required to pay interchange fees for all of their transactions, and so need to charge, on average, an MDR above the MIF level and other acquiring costs, including network fees, in order to be profitable. Therefore,

¹⁴⁰ [38]

for pure acquirers, all transactions will be ‘off-us’ and so the MIF sets a minimum floor for their MDR. In contrast, integrated issuers-acquirers are only impacted by MIF levels for ‘off-us’ transactions. For all other transactions, where they are both the issuer and the acquirer (‘on-us’ transactions), the level of MIF does not matter, as the bank can decide how much to transfer from its acquiring business to its issuing business.

- 8.4 As a result, in the present state, pure acquirers may be foreclosed through a combination of a high MIF being set with a lower MDR by integrated issuers-acquirers. Pure acquirers would need to pay the high MIF for all their transactions and so would have to charge a higher MDR to cover the cost of the MIF being paid, whereas integrated issuers-acquirers would be affected less by the high MIF and would be able to decide how much to transfer from its acquiring business to its issuing business for ‘on-us’ transactions, and would be able to offer a lower MDR to merchants. In the present state, integrated issuers-acquirers can thus set an MDR below the high MIF paid by pure acquirers and yet be more profitable than under the counterfactual when competition from pure acquirers may result in lower MDRs.
- 8.5 Under the theory of harm, the MDR may be set higher by integrated issuers-acquirers with the multilateral setting of interchange fees than under the counterfactual. Hence, the MDR charged to merchants may be higher in the present state than in the counterfactual.

Chapter 9: The Relevant Market

- 9.1 CCS adopts the conceptual approach of the hypothetical monopolist test to define the relevant product and geographic markets by identifying demand-side and supply-side substitutes to the focal product and the focal area.¹⁴¹

Product market

Visa International’s Submission

- 9.2 Visa International submits that the relevant product market is for payment systems, which is the market for the demand and supply of different payment instruments.¹⁴² In this market, Visa International envisages that payment cards by other global payment brands (such as MasterCard, American Express etc), PIN debit cards, stored value cards, charge cards, private label cards, cash, cheque and travellers cheque would all exert a competitive constraint on Visa Cards.

¹⁴¹ CCS Guidelines on Market Definition, dated 2007, paragraphs 2.1 to 2.2

¹⁴² Application for Decision-Multilateral Interchange Fees, Form 2

CCS's Assessment

- 9.3 In identifying the relevant product market, CCS considered how the Visa Group's MIF system could potentially affect competition in Singapore. The Visa Group's MIF system directly affects the Visa Group's scheme administration services for its credit and debit cards, as well as the issuing and acquiring services of Visa Card issuers and Visa Card acquirers respectively. For the Visa Group, its MIF is an important means through which it enhances the value of its payment card network. This is elaborated in further detail below. For issuers, the Visa Group's MIF is a major source of revenue that enables them to fund cardholder rewards and rebates. For acquirers, Visa Group's MIF is a major cost in processing Visa Transactions.
- 9.4 The Visa Network can be characterised as a two-sided platform, whereby two groups of customers (cardholders and merchants) interact through the Visa Group and its issuers and acquirers, and there are usage and network externalities between the two groups of customers. Cardholders, who are the customers of issuers, derive greater value from using a card that is widely accepted by merchants. Merchants, who are the customers of acquirers, derive greater value from accepting a card that is widely used by its customers.
- 9.5 Hence, card schemes like the Visa Group and MasterCard will seek to enhance the value of their payment card networks by encouraging cardholders to hold and use their cards and by encouraging merchants to accept their cards. In this regard, issuers and acquirers assist the Visa Group in attracting cardholders and merchants to the Visa Network, therefore the Visa Group will try and encourage issuers and acquirers to facilitate this process.
- 9.6 Interchange fees, which facilitate the transfer of funds from acquirers to issuers through the network, are an important means through which issuers and acquirers are respectively encouraged to set cardholder fees and MDRs, such that the price structure facing cardholders and merchants enhances the value of the overall network.
- 9.7 In the presence of competing card schemes, issuers, in particular, have a choice as to the particular brand of cards that they may issue. With this in mind, card schemes in setting interchange fees may consider how the level of interchange fees would influence the decision of issuers to issue their brand of cards, and to encourage the usage of these cards. As card schemes derive their revenue largely from transaction-based network fees charged to issuers and acquirers, they may also consider the extent to which greater profitability of issuers or acquirers may enable them to raise the level of network fees.

Activities of a card network

- 9.8 Although the payment card network may be characterised as a two-sided platform with two different inter-related customer groups, it should be noted that the three groups of participants, viz the issuers, the acquirers and the scheme administrator have distinct features with respect to the customer group served, the nature of the services provided and the operational infrastructure.
- 9.9 Issuing, acquiring and scheme administration services are very distinct activities with certain specialised players in each business both locally and globally. This is evidenced by information gathered from industry participants. For instance, issuers compete with other issuers for cardholders, by developing a comprehensive portfolio of cards targeting different cardholder segments, and by offering attractive rewards, discounts, and privileges in their card programmes to encourage card usage. For the services rendered, the issuer may charge the cardholder a variety of fees such as annual fees, interest fees, foreign currency exchange fees, etc. Further, issuers will enter into contracts for scheme administration services from card schemes, like the Visa Group and MasterCard, for use of their brand and network.
- 9.10 In contrast, acquirers compete with other acquirers to provide credit and debit card transaction processing services to merchants. In exchange, merchants pay the acquirer the MDR, which is usually a blended rate for Visa [X<] transactions.¹⁴³ In some instances, the acquirer may charge the merchant a rental fee for the use of the card terminal to process card payments. The acquirer will enter into contracts for scheme administration services from card schemes like the Visa Group and MasterCard, so that it can process Visa and MasterCard payment transactions.
- 9.11 Scheme administrators provide services to issuers and to acquirers in the form of access to the network for participating merchants and cardholders, settlement and network administration services and use of the intellectual property rights of the scheme's brand.
- 9.12 In addition, card schemes also undertake marketing activities such as entering into tie-ups with merchants to position themselves apart from other card brands. For example, [X<]¹⁴⁴ [X<]
- 9.13 As demonstrated in Tables 1 and 2 above, acquirers are usually issuers in Singapore. There are currently only a few issuers, namely ANZ, BOC and CIMB that do not provide acquiring services in Singapore.¹⁴⁵ One of the banks commented that the disadvantage of being an acquirer only is that it has

¹⁴³ Blended rate is the same MDR for Visa [X<] transactions.

¹⁴⁴ Response from [X<] dated 30 March 2012

¹⁴⁵ [X<]

to pay interchange fees to issuing banks as well as be exposed to the risk that the merchant they sign up might become insolvent.¹⁴⁶ In addition, the provision of acquiring services requires investment in infrastructure.¹⁴⁷

- 9.14 Some banks in Singapore previously outsourced their merchant acquiring services to another company. [X] commented that the merchant acquiring business was resource intensive, with frequent card scheme IT needs and there was a need for a discrete back office support structure.¹⁴⁸ [X]¹⁴⁹ CCS is aware that HSBC and SCB have divested their interest in the joint venture with Global Payments and Merchant Solutions respectively. [X]

Conclusion on activities in card network

- 9.15 Due to the distinct nature of competition in each of these different card network activities, the provision of the following services can be considered to be separate markets:

- (i) Card scheme administration services;
- (ii) Card issuing services; and
- (iii) Merchant acquiring services.¹⁵⁰

- 9.16 In conducting the analysis of the Visa Group's MIF system, it is important to recognise how the separate markets are inter-related in the context of a two-sided platform, and how the actions in one market can directly affect the other market and vice-versa.

- 9.17 As the theory of harm relates to merchant acquiring services, CCS has considered this market in greater detail. In particular, CCS has assessed the substitutability between acquiring services for transactions under different payment card networks, in particular, the Visa Network and MasterCard. However, given its interaction with the issuing market, CCS has also analysed the effect on this market.

Substitutability between different acquiring services

- 9.18 Given the theory of harm set out in Chapter 8, the focal product is the **acquiring services for Visa Cards**. The demand for acquiring services

¹⁴⁶ Response from [X] dated 19 December 2011

¹⁴⁷ [X]

¹⁴⁸ Response from [X] dated 19 December 2011

¹⁴⁹ Response from [X] dated 19 December 2011

¹⁵⁰ CCS's finding of three separate relevant markets within a card payment system is analogous to OFT's infringement decision against MasterCard. Decision of the Office of Fair Trading, No. CA98/05/05, Investigation of the multilateral interchange fees provided for in the UK domestic rules of MasterCard UK Members Forum Limited.

depends on the demand from merchants to purchase Visa Card transaction processing services, which is likely to depend on the costs and benefits of accepting different forms of payment, as well as the demand for card payments from its end-customers. This is explored in further detail below.

Demand-side substitutability

- 9.19 In deciding which type of consumer payment to accept, merchants will typically weigh the costs and benefits of each payment mode. A key consideration driving acceptance behaviour among merchants is the popularity of a particular mode of payment among consumers. Indeed, the lack of popularity as a payment choice amongst consumers is consistently the most cited reason by merchants for not accepting a particular form of card payment.¹⁵¹
- 9.20 CCS found that among payment cards, both Visa Cards and MasterCard have high merchant acceptance rates in Singapore. The merchant survey conducted for CCS in 2012 found that Visa Cards and MasterCard are each accepted by 93% of merchants that accept some form of card payment.¹⁵² This suggests that a very high proportion of card accepting merchants accept both Visa Cards and MasterCard. Rather than viewing Visa Cards and MasterCard as alternative payment modes, many card accepting merchants appear to view both as important payment cards to accept. The choice facing a merchant is rarely whether to accept Visa Cards or MasterCard as alternatives to each other, but whether to accept MasterCard in addition to accepting Visa Cards or vice versa.
- 9.21 Therefore due to a lack of demand-side substitutability between Visa Cards and MasterCard, CCS has sought to assess the acquiring services for Visa Cards, which involves card processing services that are necessary for a merchant to accept Visa Cards and participate in the Visa Network.
- 9.22 CCS notes that the merchant's cost of accepting Visa Cards is the same for credit and debit cards, as merchants are offered an MDR that applies to both credit and debit Visa Transactions. As a result, most merchants accept both Visa credit cards and Visa debit cards. Further, the acquiring services for Visa credit and debit cards are the same. The processing of credit and debit card transactions is the same and both are settled via the Visa Group. Therefore, CCS is of the view that the focal product involves acquiring services for all Visa Cards and the competition analysis would be the same even if separate markets for acquiring services for Visa credit and Visa debit were considered.

¹⁵¹ Retail Payment Methods, A survey among merchants in Singapore, prepared by Blackbox Research.

¹⁵² *Ibid*

Supply-side substitutability

- 9.23 As indicated in Table 2 above, all MasterCard acquirers in Singapore are also Visa Card acquirers in Singapore (and *vice versa*). Hence, there are no potential entrant Visa Card acquirers among existing MasterCard acquirers. Potential entrants to the Visa Card acquiring business could be Visa Card issuers in Singapore that are not already Visa Card acquirers, and other third party payment processors (besides First Data and Global Payments) with existing payment processing systems that they can tap on. However, it is not clear how significant such potential entrants would be as competitive constraints on Visa Card acquirers in Singapore.
- 9.24 It is also unclear to what degree a Visa Card-only (or MasterCard-only) acquirer would be successful in the market as it would require a merchant interested in accepting both brands to secure contracts with two different acquirers. A merchant with multiple acquiring relationships would have additional accounting work to perform and, potentially, additional operational and technical complexity in interfacing with two different acquirers.
- 9.25 Therefore, due to the lack of supply-side substitutability, CCS has sought to assess the relevant product market as acquiring services for Visa Transactions.

Conclusion on relevant product market

- 9.26 Given the lack of demand-side and supply-side substitutability, CCS has considered a narrow market that involves the acquiring of Visa Cards. If there are no competition concerns in a narrow market, then there would be no competition concerns if the acquiring market is considered to be wider than Visa Card acquiring to include MasterCard acquiring, credit and debit card acquiring, or other acquiring services or payment modes more generally.

Geographic market

Visa International's submission

- 9.27 Visa International contends that the geographical scope of the relevant market is Singapore.¹⁵³

CCS's Assessment

- 9.28 CCS is concerned about the potential restriction of competition in Singapore arising from the MIF. Given that merchants in Singapore cannot switch to acquirers outside Singapore to process all types of Visa Transactions, CCS

¹⁵³ Application for Decision-Multilateral Interchange Fees, Form 2, paragraph 150

agrees that the relevant geographical market is Singapore. This would include international transactions where such transactions involve a Singapore-based acquirer.

Overall conclusion on the relevant market

9.29 In view of the above analysis, the CCS is of the view that the relevant market for the purpose of assessing this Notification is that of:

- (i) the provision of issuing services of card payments in Singapore (“**the issuing market**”);
- (ii) the provision of acquiring services for Visa Card payments in Singapore (“**the acquiring market**”); and
- (iii) the provision of card scheme administration services in Singapore (“**the card scheme market**”).

9.30 While the key focus of CCS’s assessment of the Visa Group’s MIF is the acquiring market, CCS has also considered the competition effects in the issuing and card scheme market as they are likely to have an impact on competition in the acquiring market.

Chapter 10: Assessment of Appreciable Adverse Effect on Competition

10.1 The assessment of whether the Visa Group’s MIF system has an appreciable adverse effect on competition in any of the relevant markets in Singapore involves a comparison of the present state of competition and the counterfactual. As such, a detailed assessment of the card scheme market, issuing market and acquiring market is conducted below.

Competition in the card scheme market

Visa International and Visa Worldwide’s Submissions

10.2 Visa International submitted that there is vigorous competition between global payment card schemes.¹⁵⁴ It stated that its competitors are well resourced, possess extensive international networks and are able to capture economies of scale.¹⁵⁵ Visa International submitted that the global brand payment card schemes would be able to change the terms and conditions of their offerings at a scheme-level to take advantage of opportunities afforded by other schemes.¹⁵⁶ For instance, if Visa Card issuers were to reduce the reward

¹⁵⁴ Application for Decision-Multilateral Interchange Fees, Form 2, paragraph 178

¹⁵⁵ Application for Decision-Multilateral Interchange Fees, Form 2, paragraph 177

¹⁵⁶ Application for Decision-Multilateral Interchange Fees, Form 2, paragraph 179

points offered on cards, MasterCard issuers could vary MasterCard's terms and conditions to make it more attractive than Visa Card.

- 10.3 In the counterfactual, Visa Worldwide would be likely to continue the processing of Visa Transactions in Singapore to support its international reputation of offering a widely accepted payment network across the globe.¹⁵⁷ However, Visa Worldwide highlighted that in the counterfactual, it would not be able to compete with other payment networks and would not be able to use interchange fees to drive more business to the Visa Network by attracting the right balance of cardholders, card usage and merchants. Further, Visa Worldwide said that it would not be able to create incentives to effectively roll out new initiatives and technologies that depend on differential interchange fees to drive their growth, such as cards with embedded microchips and online authorisation.

CCS's Assessment

- 10.4 In assessing whether the Visa Group's MIF system results in an appreciable adverse effect on competition in the card scheme market, CCS compares the present state of competition between the card schemes with the likely state of competition in the counterfactual.

Present state of competition

- 10.5 The Visa Group obtains revenue from acquirers and issuers by receiving a certain percentage of the transaction value processed through the Visa Network. Hence, the greater the number of Visa Transactions and the higher the value of such transactions, the greater the revenue earned by the Visa Group. The Visa Group competes with other card schemes to increase card usage through greater merchant acceptance and larger cardholder base.¹⁵⁸ In Singapore, the Visa Group competes mainly with MasterCard and Amex for merchants and cardholders; and to a lesser extent, with Diners, JCB and CUP. The latter three card schemes have significantly smaller customer groups in terms of cardholder base and merchant outlets. They have an estimated combined market share of less than [X] by transaction value in 2011. Figure 3 shows that the Visa Group, MasterCard and Amex are the three main card schemes in Singapore.

Figure 3: Market shares for card schemes (by transaction value)

[X]

¹⁵⁷ Visa Worldwide's submission dated 21 March 2013, paragraph 12.5

¹⁵⁸ Response from [X]

- 10.6 CCS found that the Visa Group and MasterCard [X] they compete on fees (such as MIF, fees charged to issuers and acquirers) and other factors (rewards, branding, privileges and benefits offered to cardholders and services to issuers or acquirers). [X]¹⁵⁹

Interchange Fees

- 10.7 One way in which card schemes compete is through interchange fees. The Visa Group and its competitors use interchange fees to attract issuers and acquirers to their network to encourage card usage and merchant acceptance. In its submissions, Visa International stated that it draws on market intelligence to find out the attitude of issuers and cardholders to higher/lower interchange rates. This allows Visa International to form a view as to whether it is possible to increase the total number of transactions performed on the Visa Network by either increasing or decreasing a particular Visa Card default interchange rate.¹⁶⁰

- 10.8 [X]¹⁶¹

- 10.9 However, CCS found that while there have been changes to Visa Group [X] interchange fees for different merchant categories/transaction or card type, there has been [X] change to effective domestic interchange fees in Singapore from 2008 to 2011.¹⁶² [X]¹⁶³ [X] (Refer to Figure 4 below).

Figure 4: Domestic Interchange Fees for Visa Cards, MasterCard and Amex between 2008 and 2011

[X]

- 10.10 CCS's calculations show that the effective total interchange fees for Visa Transactions (including domestic and international transactions) have [X] (see Figure 5 below).

Figure 5: Effective Domestic and International Interchange Fees for Visa Transactions

[X]

¹⁵⁹ Response from [X] dated 17 August 2012

¹⁶⁰ Visa International's submission, dated 22 August 2008, paragraph 6

¹⁶¹ Visa International's submission dated 22 December 2011

¹⁶² Effective MIF refers to volume-weighted average interchange fees.

¹⁶³ [X] dated 3 August 2012.

- 10.11 Interchange fee revenues, which are received by issuers, are generally used to fund [X] CCS finds that while the entire interchange fee revenue is not passed on to cardholders, CCS estimates that around [X] of the transaction value is passed on [X] The evidence seems to be consistent with the argument that higher interchange fees are used to pay for cardholder rewards/rebates; [X] (see Figure 6).

Figure 6: Value of Cardholder Rewards/Rebates by card scheme

[X]

- 10.12 It is possible that issuers use interchange fee revenue to fund other issuing costs. [X]¹⁶⁴

Marketing, promotions and sponsorships

- 10.13 Card schemes compete for issuers who in turn compete for cardholders by offering marketing, promotions and sponsorships. Visa Worldwide said that it would negotiate deals with specific merchants for all Visa cardholders.¹⁶⁵ However, these were high level benefits related to travel and entertainment, for example, access to premium airport lounges, golf packages, concierge services, and occasionally tie-ups with retail malls. These deals are then offered to the issuing banks, which can then choose to package these benefits with their issuing rewards programmes. Visa Worldwide said that the banks would tend to focus on merchants that have high transaction volumes, like restaurants and retailers.
- 10.14 [X] highlighted that it too had a reward program that is applicable to all cardholders regardless of the issuer.¹⁶⁶ For example, [X] may also provide discounts for purchases made at selected merchants and fund lucky draw prizes. [X]¹⁶⁷
- 10.15 CCS concludes that in the card scheme market at present, there is some evidence of card schemes competing both on price (such as interchange fees), as well as non-price factors (such as marketing, promotion and sponsorship support to its customers).

Competition in the counterfactual

- 10.16 In the counterfactual, where there are likely to be bilaterally negotiated interchange fees between some integrated issuers-acquirers but no bilateral

¹⁶⁴ Meeting with [X] dated 5 December 2012

¹⁶⁵ Meeting with Visa Worldwide dated 21 February, 2012

¹⁶⁶ Meeting with [X] dated 26 April 2012

¹⁶⁷ Meeting with [X] dated 19 April 2012

agreements for pure issuers and pure acquirers, other card schemes like Amex are likely to continue to set their own interchange fees. Hence, competition in the card scheme market is likely to be different in the counterfactual.

- 10.17 In the counterfactual, the Visa Group is likely to continue to compete for cardholders and merchants, but their volume of business is likely to be impacted by changes in the issuing market. Considering the difficulties associated with bilateral negotiations, some issuers may focus on issuing cards of other card schemes, in particular [X], which provides interchange fees to issuers, so that they can continue to benefit from the receipt of interchange fees to pay for rewards which are used to attract cardholders. For instance, [X] commented that it is likely to issue more cards with other card network brands whose interchange fees are not impacted by the removal of the MIF system.¹⁶⁸ [X] also said that it would consider switching to issuing [X].¹⁶⁹ [X] stated that its likely response would be to cease to issue new Visa-branded cards and encourage existing cardholders to switch to other existing card network brands which [X] issues, such as [X].¹⁷⁰
- 10.18 CCS finds that at present [X]¹⁷¹ As such, issuers may be encouraged to issue [X]
- 10.19 CCS notes that [X]¹⁷² [X]¹⁷³
- 10.20 Consequently, pure issuers may issue fewer Visa Cards and cut back on rewards and rebates for Visa Transactions as there is no interchange fee to fund rewards to attract cardholders. As such, it is likely that the Visa Network could experience a fall in transactions volumes and values on their card network. Most of the issuing and acquiring banks in Singapore were of this view.¹⁷⁴ In such circumstances, the Visa Network would experience a decline in revenues.¹⁷⁵ For instance, MasterCard, which also operates an open-loop card payment like the Visa Network, said that [X]¹⁷⁶
- 10.21 A possible outcome is that some transactions would be processed by other card schemes that are unaffected by the removal of the MIF system. Evidence from Australia shows that when Visa Card's and MasterCard's weighted average credit card interchange fees were reduced by regulation to 0.5%, their

¹⁶⁸ Response from [X] dated 9 November, 2012 paragraph 5.2

¹⁶⁹ Response from [X] dated 7 December 2012

¹⁷⁰ Response from [X] dated 15 November 2012

¹⁷¹ CCS's calculations on average MDR, domestic interchange fees and average value of rewards paid out.

¹⁷² Meeting with [X] dated 19 April 2012

¹⁷³ Response from [X] dated 3 August 2012

¹⁷⁴ Response from [X] dated 2 November, 2012, [X] dated 9 November 2012, [X] dated 16 November 2012, [X] dated 2 November 2012, [X] dated 9 November 2012, [X] dated 9 November 2012, [X] dated 15 November 2012, [X] dated 7 December 2012.

¹⁷⁵ The Visa Group's revenue sources are from the following categories: [X]

¹⁷⁶ Response from [X] dated 17 August 2012, page 7

market shares (in terms of transaction value) fell from around 85.9% in September 2003 (prior to regulation) to as low as 79.4% in July 2011, while Amex's and Diners Club's (Amex has unregulated interchange fees, while Diners Club is a closed loop scheme) market share, increased over the same time period from 14.1% to 20.6%.¹⁷⁷

- 10.22 According to the Reserve Bank of Australia ("RBA"), the reduction of the share of credit cards and charge cards by open-loop card schemes in 2004, as a result of interchange regulation, coincided with the issuance of American Express cards by two major banks, and an arrangement between Diners and another major bank.¹⁷⁸ This suggests that the regulatory intervention may have discouraged issuers from issuing cards with reduced interchange fees, in favour of cards with interchange fees that were unregulated.
- 10.23 CCS is of the view that in the counterfactual, where some integrated issuers-acquirers may have positive but lower interchange fees, and pure issuers and pure acquirers are likely to have no interchange fees, the most likely outcome is that Visa's Transaction volumes and values would be lower than in the present state, and the competitive pressure that the Visa Group places on other card schemes would be reduced. Issuers would be more likely to switch to issuing and encouraging the use of credit card schemes that do not require bilateral negotiation.

Conclusion on competition in the card scheme market

- 10.24 In comparing the counterfactual with the present state of competition, it is likely that there would be less competition in the card scheme market in the counterfactual. Card schemes that are able to set interchange fees are likely to be in a better position to compete for cardholders and merchants, than card schemes that require bilateral negotiations between issuers and acquirers, with the interchange fee falling to zero in the absence of an agreement. In the counterfactual, given that pure issuers and pure acquirers are likely to have no interchange fees, the card scheme may have lower transaction values and volumes than in the present state. On balance, it is unlikely that the counterfactual scenario would result in a more competitive outcome. Therefore, the evidence available to CCS does not suggest that the Visa Group's MIF system has resulted in an appreciable adverse effect on competition in the card scheme market in Singapore.

¹⁷⁷ Reserve Bank of Australia

¹⁷⁸ Reserve Bank of Australia, "*Reform of Australia's Payments System: Preliminary Conclusions of the 2007/08 Review*", dated April 2008, page 21

Competition in the issuing market

Visa International and Worldwide's Submissions

- 10.25 Visa International submits that issuers of global brand payment cards have focused on fee waivers and free offers (e.g. vouchers, gifts, concessions) to encourage new applications.¹⁷⁹ However, the most common form of competition in card issuing is not through terms and conditions, which are now fairly standardised across most card offerings, but through reward schemes, where points are earned or rebates are given for purchases.
- 10.26 Visa Worldwide explained that, in the counterfactual, issuers could be expected to stop issuing Visa Cards and the number of Visa Cards in circulation would fall and existing cardholders would have less incentive to spend due to a reduction in issuer investments in cardholder usage programmes.¹⁸⁰ Visa Worldwide added that the value and volume of Visa Transactions would diminish, resulting in Visa Worldwide having smaller operations in Singapore with diminished economies of scale. Visa Worldwide explained that issuers would need to cut back rewards, increase annual fees and reduce expenditures on innovations and the marketing of its cards.

CCS's Assessment

- 10.27 In assessing whether the Visa Group's MIF system results in an appreciable adverse effect on competition in the issuing market, CCS has assessed the present state of competition between the issuers, and compared it to the likely state of competition between issuers that would have existed in the counterfactual. In making this assessment, CCS has noted the outcomes in the counterfactual for issuers, for card schemes and for acquirers.

Present state of competition

- 10.28 In the issuing market, issuers compete for cardholders on several dimensions, including offering rewards/rebates, providing marketing support for merchants who offer discounts to their cardholders, offering competitive card fees (e.g. annual fees, interest charges and late payment fees for cardholders using the credit facility), and competing on product variety.
- 10.29 Figure 7 below shows that while DBS's and UOB's respective market shares, by cards in circulation, have [redacted] However, there is some evidence to suggest that some pure issuers have been more aggressive in trying to gain market share. For instance [redacted]¹⁸¹ [redacted]¹⁸² [redacted]

¹⁷⁹ Application for Decision-Multilateral Interchange Fees, Form 2, paragraph 191

¹⁸⁰ Visa Worldwide's submission, dated 21 March 2013, paragraph 16.3 and 16.4

¹⁸¹ Meeting with [redacted] dated 2 May 2012

¹⁸² Meeting with [redacted] dated 6 December 2012

Figure 7: Market shares for issuers, in Singapore, 2007-2011, by number of cards in circulation

[X]

- 10.30 CCS also measured market shares of issuers, by transaction value. Figure 8 below shows that [X], there has been [X] change in the market shares, suggesting that despite changes in the number of cards in circulation the transaction spend on cards, for each issuer, have continued to be the [X]. Figure 8 also shows that the top four issuers in Singapore [X] represent approximately [X] of the issuing market. The middle tier of issuers, namely, [X] represent around [X] of the market and the bottom tier, which includes [X] only represent [X].

Figure 8: Market shares for issuers, in Singapore, 2007-2011, by transaction value

[X]

- 10.31 In terms of product variety, a Euromonitor report on credit cards in Singapore found that, by 2009, banks had invested substantially in product innovation which included different types of credit cards, partnering with different merchants and co-branded cards to target consumers with different spending habits.¹⁸³ This trend is consistent with CCS's findings. Based on information from the issuing banks, CCS found that, in 2011, there were a total of over 250 different cards being issued in Singapore and a number of issuers had co-branded cards.¹⁸⁴ CCS also found that issuing banks were actively developing cards for different types of customers with different income levels. For example, [X]¹⁸⁵ [X]¹⁸⁶ [X]¹⁸⁷

Table 4: Number of different types of payment cards issued by each bank in 2011

[X]

- 10.32 A more recent Euromonitor report stated that attractive benefits including discounts, rewards programmes and cashback, offered by issuers had sustained cardholder interest in 2011.¹⁸⁸ The report commented that issuing

¹⁸³ Euromonitor International: Country Sector Briefing, March 2010. Credit cards -Singapore

¹⁸⁴ SCB, OCBC, DBS, BOC, Citibank, Maybank and UOB all have co-branded cards.

¹⁸⁵ Meeting with [X] 2 May 2012

¹⁸⁶ Response from [X] dated 15 February 2013 paragraph 5.2

¹⁸⁷ Response from [X] dated 15 February 2013 paragraph 5.2

¹⁸⁸ Euromonitor International report, Credit card transactions in Singapore dated December 2011

banks were even publicising updated discount schemes offered through major newspapers and offerings of 1-for-1 dining or up to 20% discount at selected retailers. Some issuers even offered extra gifts such as luxury watches for different-tiered spending within a certain period. This, therefore, encouraged consumers to charge their purchases to one card just to redeem the attractive gifts.

10.33 Further, a Datamonitor report commented that:

*“Singaporean consumers are unique in the way that they respond to reward schemes, which are their first consideration when choosing a credit card due to the default APR of issuers being 24%. This trend can be seen clearly through the product landscape across major credit card issuers in Singapore; all credit card products across the three major banks in the country provide rewards or promotional offers, which are the key selling point of the majority of credit cards.”*¹⁸⁹

10.34 CCS also found that all issuers were actively involved in developing card programmes and building relationships with merchants, including restaurants, to offer rewards to their cardholders.¹⁹⁰

10.35 As shown previously, in Figure 6, based on CCS’s calculations, during January 2004 to December 2011, the value of the reward/rebates paid on all Visa and MasterCard credit card transactions by the issuing banks [X]

10.36 CCS concludes that in the present state of competition in the issuing market, over the past five years there is evidence of issuers competing on offering different types of cards to consumers and offering innovative rewards/rebates to cardholders. While the top four issuers in Singapore represent a significant proportion of the issuing market, there is some evidence to suggest that there is a competitive fringe.

Competition in the counterfactual

10.37 Interchange fees are an important source of revenue for issuers. So if interchange fees were to be lower in a counterfactual, in order to keep its profit from falling, an issuer would need to recover the revenue previously earned from other sources, or it would need to reduce costs. Currently, other revenue sources for issuers include income from interest charges, annual fees, currency conversion fees, and card replacement fees. The largest source of issuing revenue, during January 2004 to December 2011, for all banks was found to be [X] The second largest was [X]¹⁹¹

¹⁸⁹ Datamonitor Payment Cards in Singapore report, July 2012, page 3

¹⁹⁰ Meeting with [X] dated 23 February 2012, Meeting with [X] dated 21 May 2012, Meeting with [X] dated 8 May 2012, Meeting with [X] dated 6 December 2012, Meeting with [X] dated 2 May 2012.

¹⁹¹ [X]

- 10.38 In the counterfactual, where there could be lower interchange fees, CCS is of the view that that there would likely be changes in the cardholder fee structure for cardholders, for example, annual card fees may no longer be waived and other fees may increase. [X]¹⁹² [X]¹⁹³ [X]¹⁹⁴ [X]¹⁹⁵
- 10.39 With lower interchange fee revenue, issuers would likely have to reduce cardholder rewards, invest less in product variety and potentially invest less in technologies. [X]¹⁹⁶ [X]¹⁹⁷
- 10.40 In the counterfactual, even though there may be positive bilaterally negotiated interchange fees for integrated issuers-acquirers, it is possible that they may seek to expand their merchant base in order to increase acquiring revenues to cross-subsidise the issuing business and make up for any potential loss of MIF revenue in the issuing business. Such banks could be more aggressive to expand their acquiring business by providing cardholder rewards/rebates on condition that the merchant processes the transactions through them as acquirers.
- 10.41 Integrated issuers-acquirers may find it easier to use the MDR revenue to compete more effectively in the issuing market without having to reduce its costs on offering rewards/rebates significantly. These banks already have a high percentage of ‘on-us’ transactions and are currently cross-subsiding their issuing revenues from their acquiring revenue. Visa Worldwide estimated that, between 2010 and 2012, around [X] of Visa Transactions were ‘on-us’.¹⁹⁸ Table 5 shows the proportion of Visa Transactions that are ‘on-us’ for each Visa Card issuer and/or acquirer in Singapore.

Table 5: Proportion of Visa Transactions in Singapore, for integrated issuers-acquirers that are ‘on-us’

[X]

- 10.42 [X] stated that in the counterfactual the issuing business may consolidate into a small group of large issuers and acquirers.¹⁹⁹ [X] submitted that in the counterfactual, the issuing market would likely be characterised by only a few large issuers.²⁰⁰ [X] submitted that large issuers and acquirers that depend on

¹⁹² Response from [X] dated 16 November 2012 paragraph 1.2.4

¹⁹³ Response from [X] dated 16 November 2012 paragraph 5.1.3

¹⁹⁴ Response from [X] dated 9 November 2012 paragraph 5.5

¹⁹⁵ Response from [X] dated 9 November 2012 paragraph 5.5

¹⁹⁶ Ibid

¹⁹⁷ Response from [X] dated 16 November 2012 paragraph 5.1.2 and Response from [X] dated 9 November 2012

¹⁹⁸ Visa Worldwide’s submission dated 29 May 2012

¹⁹⁹ Response from [X] dated 7 December 2012

²⁰⁰ Response from [X] dated 16 November 2012

revolvers, (who are consumers that are less likely to pay off their balance in full), and installment payments would survive.²⁰¹

- 10.43 In contrast, pure issuers are likely to find it difficult to reach a bilateral agreement with acquirers and so would likely receive no interchange fees. As a result, pure issuers would have less revenue to fund cardholder rewards and may need to increase their cardholder fees. Further, pure issuers with no acquiring business would not be able to cross-subsidise and may find it harder to compete for customers in the mass segment, having to focus on servicing niche customers instead. Ultimately, pure issuers may be forced to scale back their issuing business or even exit. [X] stated that small market players would be unable to compete effectively and may be forced to scale back their issuing business, and there would be higher entry barriers for new issuers.²⁰² [X] said that one possibility is a period of innovative card offerings from the largest issuers which would effectively drive out smaller issuers that would not be able to compete due to zero interchange fees.²⁰³ [X] said that smaller Visa Card issuers would find it increasingly difficult to remain profitable and may exit the card issuing business in Singapore.²⁰⁴ [X] stated that pure issuers would face a larger negative impact. Small issuers, especially pure issuers, may become unprofitable and exit. As a result, integrated acquirer-issuers would face less competitive pressure from pure issuers. [X] submitted that there would be higher entry barriers for issuers with the removal of the MIF as a significant revenue stream.²⁰⁵
- 10.44 CCS is of the view that in the counterfactual, the most likely outcome is that pure issuers would not be able to reach a bilateral agreement resulting in no interchange fees and so would seek to increase their cardholder fees and/or reduce the rewards and other incentives offered to cardholders. Consequently, cardholder usage is likely to be lower than the current system with an MIF. Most of the banks contacted were of the view that in the counterfactual, the value and volume of Visa Transactions would likely be lower than in the present state.²⁰⁶ In contrast, in the counterfactual, integrated issuers-acquirers may benefit from positive interchange fees through bilateral agreements, and so their cardholder fees and rewards would be less affected than the pure issuers.

²⁰¹ Response from [X] dated 15 November 2012

²⁰² Response from [X] dated 7 December 2012

²⁰³ Response from [X] dated 16 November 2012

²⁰⁴ Response from [X] dated 15 November 2012

²⁰⁵ Response from [X] dated 9 November 2012

²⁰⁶ Responses from [X] dated 2 November 2012, [X] dated 9 November 2012, [X] dated 16 November 2012, [X] dated 2 November 2012, [X] dated 9 November 2012, [X] dated 9 November 2012, [X] dated 15 November 2012, [X] dated 7 December 2012.

Conclusion on competition in the issuing market

- 10.45 In comparing the counterfactual with the present state of competition, it is likely that competition between issuers would be reduced in the counterfactual, as the competitive constraint from pure issuers may be lost. Pure issuers would find it difficult to compete with integrated issuers-acquirers who would be in a relatively stronger position as they would be able to use acquiring revenues or bilaterally agreed interchange fees to fund rewards paid to cardholders. In addition, if some integrated issuers-acquirers are able to reach bilateral agreements on interchange fees, while others are not, or can only do so on less favourable terms, the competition among the integrated issuers-acquirers may also be weaker in the counterfactual. For instance, it is possible that larger integrated issuers-acquirers may obtain more favourable interchange rates than smaller integrated issuers-acquirers. As there is no evidence to suggest that competition would be greater in the counterfactual in the issuing market, CCS is of the view that the evidence available does not suggest that the Visa Group's MIF system has resulted in an appreciable adverse effect on competition in the issuing market in Singapore.

Competition in the acquiring market

Visa International and Worldwide's Submission

- 10.46 Visa International submitted that the MIF does not restrict competition between acquirers to an appreciable extent (if at all) nor does it affect the relationship between acquirers and merchants.²⁰⁷ Acquirers compete for merchants on the basis of the MDR, of which MIF is only one component, as well as on the basis of other services offered to merchants. Visa International also submitted that merchants are highly sensitive to differences in charges and fees and can switch acquirers to obtain improved terms at any time.
- 10.47 Visa Worldwide said that, in the counterfactual, acquirers may start to unbundle their merchant fees for Visa Cards and MasterCard, compared to the present state where they are blended. Visa Worldwide stated that in this scenario, merchants would then face much lower fees for accepting Visa Cards than MasterCard. Visa Worldwide highlighted that any merchants accepting Visa Cards and not MasterCard may run the risk of upsetting customers who are accustomed to both types of cards being accepted.²⁰⁸ In the absence of an MIF system, merchant fees would fall as acquirers pass on the reduction in interchange fees.²⁰⁹ Visa Worldwide said that while there will be some merchants that choose to accept cards that they previously did not, any

²⁰⁷ Application for Decision-Multilateral Interchange Fees, Form 1, paragraph 439

²⁰⁸ Visa Worldwide's submission dated 21 March 2013, paragraph 16.35

²⁰⁹ Visa Worldwide's submission dated 21 March 2013, paragraph 16.43

increase in merchants accepting cards is expected to be moderate and not enough to offset the expected reduction in Visa Cards and MasterCard usage.²¹⁰

CCS's Assessment

- 10.48 In assessing whether the Visa Group's MIF system results in an appreciable adverse effect on competition in the acquiring market, CCS has assessed the present state of competition between the acquirers and compared it to the likely state of competition between the acquirers that would have existed in the counterfactual. In making this assessment, CCS has noted the outcomes in the counterfactual for issuers and for card schemes that could have affected competition in the acquiring market. This assessment is explored in further detail below.
- 10.49 In assessing competition in the acquiring market, as explained in the assessment of the relevant market, CCS's focus is on Visa Card acquirers. However, in Singapore, Visa Card acquirers are also MasterCard acquirers, and the acquirers make little distinction between Visa Cards and MasterCard. [X] CCS also finds that Visa Cards and MasterCard have similar high merchant acceptance rates in Singapore and so merchants are more likely to require services from acquirers of these cards. Therefore in considering the acquiring market, CCS's assessment includes Visa Cards and MasterCard acquiring. CCS is of the view that the competition analysis for Visa Cards and MasterCard acquiring is likely to be the same for Visa Card acquiring.
- 10.50 Further, if there are no competition concerns that arise in relation to the acquiring market when comparing the present situation with Visa Cards and MasterCard present, then there are unlikely to be any competition concerns if CCS also considers the acquiring services for Amex and NETS.

Present state of competition

- 10.51 In the present state, CCS finds some evidence of competition between acquirers in Singapore and this is reflected, to some extent, in the changes to the market structure. For example, over the past few years, [X]

²¹⁰ Visa Worldwide's submission dated 21 March 2013, paragraph 16.38

Figure 9: Market shares for acquirers in Singapore, 2008-2011, by transaction value

[X]

- 10.52 [X] informed CCS that it had been able expand in the acquiring market by improving on its service offerings like the type of terminal provided, the speed of connection, inventory management, meeting cashflow needs, and allowing transactions to be settled in different currencies.²¹¹
- 10.53 [X] had lost market share to the benefit of [X]²¹² Specifically, it found that [X]
- 10.54 The structure of the acquiring market is also changing as a result of new entry. In 2011, there was entry into the acquiring market from Maybank, [X]²¹³ [X]²¹⁴ CCS notes that entry into the acquiring business by Maybank [X]
- 10.55 On the whole, the top three acquirers in Singapore, who are also the top issuers, represent [X] of the acquiring market by transaction value. Compared to the smaller acquirers that are either pure acquirers or acquirers with small issuing businesses, these large acquirers are likely to benefit from economies of scale and the presence of ‘on-us’ sales volumes, which enable them to offer lower ‘on-us’ MDR levels to merchants. CCS notes that [X] because it did not have the scale required for a viable business.²¹⁵
- 10.56 Pure acquirers have emerged within the past year with HSBC and SCB divesting their stakes in Global Payments and Merchant Solutions respectively to third party payment processors. This suggests that contrary to the theory of harm, pure acquirers are able to enter the acquiring market in Singapore.
- 10.57 CCS notes that acquirers will seek to compete on price and non-price factors like quality of service and hardware and/or will target certain industries and/or merchants of a certain size. This is explored below.

Target merchants

- 10.58 Acquirers may seek to compete by targeting different types of merchants. For example, a survey found that [X]²¹⁶ [X]²¹⁷

²¹¹ Meeting with [X] dated 8 May 2012

²¹² [X] 3 August 2012

²¹³ Response from [X] dated 25 April 2012.

²¹⁴ Response from [X] dated 14 January 2013

²¹⁵ Response from [X] dated 15 February 2012

²¹⁶ Retail Payment Methods, A survey among merchants in Singapore, prepared by Blackbox Research

- 10.59 [X] was known for providing services to large merchants and that its high card issuing base allowed it to offer a greater proportion of ‘on-us’ transactions.²¹⁸ The survey also found that among acquirers, [X]
- 10.60 CCS found that for integrated issuers and acquirers, the acquiring business provides them with a direct relationship with merchants which in turn assist their issuing business in offering card promotions with those merchants. For example, [X]²¹⁹
- 10.61 [X] submitted that its presence in both the card issuing and merchant acquiring businesses in Singapore enables it to build strong relationships with merchants and gives it the scope to lower the MDR for ‘on-us’ transactions to the benefit of merchants and achieve benefits for its card issuing business.²²⁰
- 10.62 [X] stated that its acquiring business allows the bank to gain a better understanding of their customer spending patterns at the merchants, which enhances the bank’s marketplace intelligence, and provides insight as a card issuer on where and when their customers use their card. This allows [X] to better time and target appropriate card promotion and marketing, and more efficiently target relevant merchants for strategic tie-ups and offers for their customers, including negotiating for discounts and offers.²²¹
- 10.63 [X] submitted that its merchant acquiring business supports its card issuing business strategically.²²²

Price competition

- 10.64 CCS found that the top consideration for merchants in deciding on an acquirer for Visa Cards and MasterCard was cost, namely, a lower MDR (40%), lower terminal rentals (17%) and annual maintenance fees (15%).²²³ Cost was also an important consideration among smaller merchants with an annual turnover of under S\$1m.
- 10.65 A survey conducted [X]²²⁴
- 10.66 In assessing MDR levels for Visa Cards [X], information gathered by CCS shows that, since 2007, for some banks, the average MDR has been stable.

²¹⁷ Meeting with [X] dated 17 May 2012

²¹⁸ [X] dated 3 August 2012

²¹⁹ Response from [X] dated 15 February 2012

²²⁰ Response from [X] dated 15 February 2012

²²¹ Response from [X] dated 21 February 2012

²²² Response from [X] dated 15 February 2012, paragraph 14.1

²²³ Retail Payment Methods, A survey among merchants in Singapore, prepared by Blackbox Research

²²⁴ [X]

[REDACTED]²²⁵ The evidence seems to suggest that higher interchange fees are associated with higher MDRs for merchants. Figure 4 above shows the [REDACTED]

Figure 10: Average Merchant Discount Rates

[REDACTED]

10.67 CCS found that in comparing the average MDR with Visa's total effective interchange fees, the margins for acquiring are [REDACTED] Figure 5 shows that, from 2008 to 2011²²⁶, Visa's interchange fees paid by acquirers in Singapore have been at around [REDACTED]. Figure 11 below shows that from 2006 to 2011, Visa's Network fees paid by acquirers in Singapore has been around [REDACTED]. With the average MDR levels of [REDACTED] charged by acquirers as shown in Figure 10, this suggests that there are [REDACTED] profit margins in the acquiring market.

Figure 11: Acquirer Network Fees for Visa Transactions (includes domestic and international transactions)

[REDACTED]²²⁷

10.68 CCS concludes that, in the acquiring market, there is evidence of acquirers competing over the past five years. Despite being a low margin business, there has been recent entry in the acquiring market, providing merchants in Singapore with more choice.

Competition in the counterfactual

10.69 In the counterfactual, where there may be positive interchange fees between some integrated issuers-acquirers and no interchange fees for pure acquirers, there is likely to be lower MDR and the degree of competition between acquirers is likely to be affected. This is explained in further detail below.

Lower MDR

10.70 Bilaterally negotiated interchange fees, on average, may be lower in the counterfactual. As such, it is likely that the MDR charged by acquirers would have been lower than the present state, given that interchange fees are a cost to acquirers. This outcome is consistent with the views of the acquirers²²⁸ and is also consistent with evidence from overseas which suggests that, in cases

²²⁵ Response from [REDACTED] dated 3 August 2012, paragraph 10

²²⁶ Effective MIF refers to volume-weighted average interchange fees.

²²⁷ [REDACTED]

²²⁸ Meeting with [REDACTED] dated 26 November 2012

where interchange fees have been reduced, the MDR has been found to be lower. For example, in Australia, it was found that the decline in interchange fees had been passed on to merchants via lower MDR for MasterCard and Visa Transactions.

- 10.71 It is not clear the extent to which MDR would be lower in the counterfactual. Even though MDR is likely to be lower in the counterfactual, CCS assesses below whether the degree of competition between acquirers would be greater in the counterfactual than what is observed in the present state of competition.

Impact on degree of competition between acquirers

- 10.72 For integrated issuers-acquirers, it is possible that they may seek to expand their merchant base in the counterfactual in order to fund cardholder rewards and rebates, so as to continue competing in the issuing business.²²⁹ In particular, there would be an incentive for issuers to acquire the merchants of other acquirers in order to obtain revenue when their cardholders spend at these merchants. Such banks could expand their acquiring business by providing cardholder rewards/rebates on condition that the merchant processes the transactions through them as acquirers.
- 10.73 In the present state, there is less of an incentive for integrated issuers-acquirers to acquire the merchants of pure acquirers and incentivise their cardholders in this manner, as issuers receive interchange fees for ‘off-us’ transactions. In the present state, a number of issuers in Singapore offer Visa Cards that provide cash rebates for transactions at all Visa Card merchants, even where the issuer is not the merchant’s acquirer. For example, UOB One Platinum Visa Card provides cash rebates of 3.33% on all purchases.²³⁰ Citibank Dividend Visa Card provides cash rebates of 5% on all petrol purchases, 2% on all dining, groceries, and pharmacies purchases, and 0.5% for other purchases.²³¹ CIMB Visa Infinite Card provides cash rebates of 1% on all purchases in Singapore and 2% on all purchases overseas.²³² DBS Visa Debit Card provides cash rebates of 0.3% on all purchases on the card.²³³ [3<] indicated that in the present state it focuses on cardholder preferences, rather than keeping to its base of acquired merchants, when selecting merchants for discounts and reward tie-ups.²³⁴ Therefore, in the present state, integrated issuers-acquirers benefit from both ‘on-us’ and ‘off-us’ transactions. In comparison, in the counterfactual, they would only benefit from ‘on-us’

²²⁹ Meeting with [3<] dated 21 November 2012. Meeting with [3<] dated 5 December 2012. Response from [3<] dated 16 November 2012

²³⁰ http://www.uob.com.sg/personal/cards/credit/uob_one_card.html dated 6 July 2013

²³¹ http://www.citibank.com.sg/gcb/credit_cards/citi_dividend.htm?eOfferCode=SGCDLNAV dated 6 July 2013

²³² http://www.cimbbank.com.sg/index.php?ch=sg_per_ca&pg=sg_per_ca_prod&ac=16&tpt=cimb_sg dated 6 July

²³³ <http://www.dbs.com.sg/personal/cards/debit-card/visa/default.page> dated 6 July 2013

²³⁴ Meeting with [3<] dated 7 December 2012.

transactions and so would seek to increase the volume and value of those transactions.

- 10.74 Large integrated issuers-acquirers, with the ability to incentivise their large cardholder base to spend at their merchants, would be well placed to capture the pure acquirers' merchants in the counterfactual. For instance, [X] said that in the counterfactual, domestic 'off-us' transactions would disappear over time as all merchants would be multi-acquired by all issuers and so all transactions would be sent to respective issuers as 'on-us' transactions. [X]²³⁵ [X] was of the view that, in the counterfactual, there would likely be a diversification of the merchant volume to multiple Visa Card acquirers, which may result in merchants having multiple terminals from various Visa Card acquirers to leverage on their respective bilateral arrangements with Visa Card issuers.²³⁶ [X] indicated that, in the counterfactual, banks with large issuing and acquiring businesses are likely to develop a close loop system and introduce fees to encourage their cards to be used. These banks may also form alliances with other similar banks to get interchange fees and acceptance of their cards with a large number of merchants, which could have the effect of driving out smaller banks, leaving only a few remaining card issuers and acquirers in the industry.²³⁷
- 10.75 Pure acquirers, while benefitting from having to pay no interchange fees to issuers, may be at a disadvantage due to the important link between the issuing business and the acquiring business, which becomes even more important in the absence of interchange fees. For example, [X]²³⁸ [X] Further, large issuers and acquirers would be able to have an advantage by offering lower MDR for 'on-us' transactions.²³⁹ [X]²⁴⁰
- 10.76 [X] said that as competition in the acquiring market intensifies, it will become more difficult for new acquirers to enter.²⁴¹ [X] said that there would be higher entry barriers for new acquirers due to the close relationship between the issuing business and the acquiring business.²⁴² [X] suggested that smaller acquirers would exit.²⁴³ [X] was of the view that only a few large acquirers would exist.²⁴⁴ [X] said that barriers to entry for Visa Card acquirers would be significant due to the ability of large acquirers, who are

²³⁵ Meeting with [X] dated 21 November 2012

²³⁶ Response from [X] dated 16 November 2012, paragraph 5.15

²³⁷ Response from [X] dated 9 November 2012, page 1; Meeting with [X] dated 5 December 2012, paragraph 20.

²³⁸ Response from [X] dated 9 November 2012

²³⁹ Meeting with [X] dated 26 November 2012

²⁴⁰ Response from [X] dated 21 November 2012

²⁴¹ Response from [X] dated 2 November 2012

²⁴² Response from [X] dated 7 December 2012

²⁴³ Response from [X] dated 9 November 2012

²⁴⁴ Response from [X] dated 16 November 2012

also issuers, to cross-subsidise and provide significantly lower pricing to its merchants.²⁴⁵

- 10.77 In the counterfactual, it is likely that integrated issuers-acquirers would have a greater incentive to encourage their cardholders to spend only at merchants that they acquire. The integrated issuers-acquirers were of the view that their acquiring business supported their issuing business and this is likely to be even more important in the counterfactual when issuers would not have received interchange revenue for 'off-us' transactions.²⁴⁶
- 10.78 In the present state, integrated issuers-acquirers receive interchange revenue, even when cardholders do not spend at merchants that they acquire. In the counterfactual, merchants may perceive less value in accepting Visa Cards through pure acquirers and smaller integrated issuers-acquirers, than large integrated issuer-acquirers. Merchants would have little incentive to engage in tie-ups and promotions with pure acquirers. For instance, CCS found that 28% of Visa Card and MasterCard accepting merchants offer promotions or incentive programmes to their customers for using Visa Cards and/or MasterCard.²⁴⁷ The benefits of participating in such promotions and incentive programs were lower MDR (30%) and increased sales volume (23%).
- 10.79 Therefore, in the counterfactual, while both pure acquirers and integrated issuers-acquirers would be able to offer a lower MDR, pure acquirers would lose their attractiveness in providing acquiring services to merchants. Merchants are likely to be attracted to integrated issuers-acquirers because they can benefit from their cardholder base. By offering those cardholders discounts and promotions or by being part of the integrated issuer-acquirers rewards/rebates programme, merchants would be able to encourage those cardholders to spend more at their stores. For instance, [X] stated that, at present, when evaluating [X] acquiring proposition, merchants would consider the customised reward programmes [X] can provide for their customers and [X] existing reward programmes.²⁴⁸ [X] stated that the competitive positioning of its acquiring business involves allowing merchants to access their cardholder base.²⁴⁹
- 10.80 It is possible that even if pure acquirers were forced to exit in the counterfactual, there would be little impact on competition as they only represent around [X] of the acquiring market. However, to the extent that the

²⁴⁵ Response from [X] dated 16 November 2012

²⁴⁶ Responses from [X] dated 1 February 2012, Paragraphs 4.1, 4.2 and 17.4; Response from [X] dated 15 February 2012 and Meeting with [X] dated 8 May 2012; Response from [X] dated 15 February 2012, paragraphs 4.1 and 17.3; Response from [X] dated 15 February 2012, paragraphs 14.1 and 17.3; Response from [X] dated 15 February 2012 paragraphs 14.1 and 17.3.

²⁴⁷ Retail Payment Methods, A survey among merchants in Singapore, prepared by Blackbox Research

²⁴⁸ Meeting with [X] dated 8 May 2012

²⁴⁹ Response from [X] dated 15 February 2012

acquiring services are relatively homogeneous, pure acquirers with a small market share may also serve as a competitive constraint on larger acquirers.

- 10.81 In the counterfactual, there would likely be a reduction in Visa Card usage and transactions. This would mean that small acquirers would lose economies of scale and would find it harder to be competitive in the acquiring market. This is significant as acquirers have stated that having economies of scale are important in providing acquiring services.²⁵⁰

Conclusion on competition in the acquiring market

- 10.82 In comparing the counterfactual with the present state, it is not clear whether competition in the acquiring market is likely to be greater in the counterfactual. As explained above, in the acquiring market, bilaterally agreed interchange fees, on average, may be lower, which would lead to a lower MDR in the counterfactual. To compensate for this, integrated issuers-acquirers may seek to expand their merchant base in order to maintain acquiring revenues required to support their issuing business.
- 10.83 It is not clear whether the extent of competition between acquirers would be significantly greater in the counterfactual than the present state of competition. As issuers would not receive revenue from acquirers in the absence of a bilaterally agreed interchange fees, issuers would likely encourage their cardholders to spend at merchants for whom they are the acquirers, or whose acquirer the issuer would receive bilaterally agreed interchange fees from. To the extent that small or pure acquirers are unlikely to reach bilateral agreements on interchange fees with issuers, issuers would likely steer their cardholders away from spending at merchants acquired by the small or pure acquirers.
- 10.84 In the counterfactual, while both pure acquirers and integrated issuers-acquirers would be able to offer a lower MDR, pure acquirers would lose their attractiveness in providing acquiring services to merchants. Merchants are likely to be more attracted to integrated issuers-acquirers because they can benefit from their cardholder base. By offering those cardholders discounts and promotions or by being part of the integrated issuer-acquirers rewards/rebates programme, merchants could encourage those cardholders to spend more at their stores.
- 10.85 As a result, it is likely that the barriers to entry and expansion for small or new acquirers would have been higher in the counterfactual when rewards, rebates, discounts and promotions are likely to be focused on 'on-us' transactions. Where large integrated issuers-acquirers face less competitive

²⁵⁰ Response from [S&C] dated 16 March 2012, Response from [S&C] dated 19 December 2011 and Meeting with [S&C] and [S&C] dated 17 May 2012.

pressure from fewer acquirers in the counterfactual, profit margins in acquiring may be higher than in the present state. If bilaterally agreed interchange rates are widespread in the counterfactual, then competition between acquirers in the counterfactual may not differ significantly from competition in the present state. On balance, the evidence available to CCS does not suggest that the Visa Group's MIF system has resulted in an appreciable adverse effect on competition in the Visa Card acquiring market in Singapore.

Overall conclusion on assessment of appreciable adverse effect

- 10.86 CCS has considered the competition effects of the Visa Group's MIF system in the card scheme market, the issuing market, and the acquiring market. These are distinct but related markets, as the Visa network can be characterised as a two-sided platform. CCS is of the view that the Visa Group's MIF system is most likely to harm competition in the acquiring market, as MIF sets a minimum floor for the MDR for all 'off-us' transactions, and is most likely to impact those pure acquirers that can only offer merchants 'off-us' MDR rates. Therefore, CCS has considered the acquiring market in Singapore in greater detail.
- 10.87 In the **card scheme market**, where the main schemes are the Visa Group, MasterCard and Amex, CCS finds that it is likely that there would be less competition between card schemes in the counterfactual compared to the present state. Visa Transaction volumes and values would likely be lower than in the present state, and other card schemes that are free to set interchange fees would have been in a better position to compete for cardholders and merchants.
- 10.88 In the **issuing market**, CCS finds that it is likely that there may be less competition in the counterfactual than in the present state. With the loss of interchange fee revenue in the counterfactual, issuers would likely seek to increase their cardholder fees and/or reduce cardholder rewards, which would in turn, likely result in lower card usage. Pure issuers would likely have to reduce their issuing business or even exit the market.
- 10.89 In the **acquiring market**, which mainly consists of integrated issuers-acquirers with a significant proportion of 'on-us' transactions, CCS finds that in comparing the counterfactual with the present state of competition, it is not clear whether competition would be greater in the counterfactual. In the counterfactual, bilaterally agreed interchange fees, on average, may be lower, which would lead to a lower MDR. As such integrated issuers-acquirers may seek to expand their merchant base, in order to maintain acquiring revenues required to support their issuing business. However, it is not clear whether the extent of competition between acquirers would be significantly greater than the present state of competition, as it is likely that the barriers to entry and

expansion for small or new acquirers would have been higher in the counterfactual when rewards, rebates, discounts and promotions are likely to be focused on ‘on-us’ transactions. If bilaterally agreed interchange rates are widespread in the counterfactual, then competition between acquirers may not differ significantly from the competition in the present state. On balance, the evidence available to CCS does not suggest that the degree of competition would be greater in the counterfactual.

Chapter 11: CCS’s Decision on the Application

- 11.1 CCS is of the view that notwithstanding the Restructuring, the Visa Group may well be considered an association of undertakings in relation to its MIF system. CCS also finds that the Visa Group’s MIF system could constitute an agreement between undertakings and/or a concerted practice between the Singapore Members and the Visa Group.
- 11.2 CCS next assessed whether the Visa Group’s MIF system has the effect of preventing, restricting or distorting competition within Singapore. Using a counterfactual scenario of no MIF, the evidence available to CCS does not suggest that the MIF system has resulted in an appreciable adverse effect on competition in Singapore in any of the relevant markets considered, viz. the card scheme market, the issuing market, or the acquiring market.
- 11.3 Hence, while CCS notes Visa International’s submission that the MIF improves and promotes the wider distribution and acceptance of Visa Cards, and reduces transaction costs, CCS does not find it necessary to assess the NEB claims.
- 11.4 For completeness, section 46 of the Act provides that if CCS has determined an application under section 44 by making a decision that the agreement has not infringed the section 34 Prohibition, CCS shall take no further action with respect to the notified agreement unless:
 - (i) It has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
 - (ii) It has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.
- 11.5 To this end, factors which CCS may consider as a material change of circumstance include any significant changes to any conditions relating to the MIF, including but not limited to:
 - (i) the way in which the MIF is determined;
 - (ii) the structure of the acquiring, issuing and card scheme markets;

- (iii) any significant competition concerns raised by any relevant party, as a result of any change related to the level of the MIF and/or MDR; and
- (iv) any amendment to the Visa Rules that results in merchants being prevented from promoting the use of an alternative method of payment.



Yena Lim
Chief Executive
Competition Commission of Singapore