

The case of MasterCard and OTP is closed by the acceptance of commitments

The Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) accepted the commitments offered by MasterCard Europe Sprl (MasterCard) and OTP Bank Nyrt. (OTP), through the implementation of which the undertakings shall bring the stipulations of their agreement in line with the rules of the applicable competition law.

On the basis of the commitments, the GVH imposed an obligation on the parties to terminate in their agreement on incentives and support made for a five-year period, OTP's undertaking of a card-ratio and MasterCard's undertaking to provide subsidies which was aimed at facilitating the achievement of the card-ratio contained in the agreement. This termination is to have a retroactive effect to 1 January 2014.

The market of **card payment services** affected by the agreement under investigation by the GVH is connected to the card payment system which can be described as a two-sided market. In card payment systems competition occurs on several levels; on the level of the payment organisation on the one hand, and on the level of the card issuers and the acquirers on the other hand. The main goal of a **payment organisation** is to have as many credit cards as possible on the market bearing its logo and to have these cards accepted at as many places as possible. It is in the interests of the **issuing banks** that they are able to provide their customers with better products and services in the most profitable manner.

The contract of OTP and MasterCard was signed in 2012 in accordance with these goals and principles. **OTP then** undertook t

- reach the turnover level determined by MasterCard each year (turnover level clause)
- reach the card proportion within OTP's debit card portfolio determined by MasterCard (card proportion clause).

MasterCard undertook to provide OTP with different kinds of subsidies to achieve these goals.

The GVH initiated a competition supervision proceeding in 2013 in order to investigate the above mentioned behaviour, as it found it likely that the contract between OTP and MasterCard would restrict the choice between sale options and would also impede the market entry of competitors.

In the course of the proceeding the GVH investigated both the turnover level clause and the card proportion clause, but it was only in the case of the latter that it came to the conclusion that it could be regarded as single branding, since it exceeded the 80 % foreclosure level applied in the European Commission's practice. However, through the abolishment of the card proportion clause exceeding 80% and the subsidies, the infringement of the rules on restrictive agreements of the Competition Act and the Treaty on the Functioning of the European Union could be brought to an end.

When assessing a commitment application the main goal of the GVH is to ensure the efficient protection of the public interest. Commitments enable a more efficient elimination of a behaviour that is contrary to the provisions of the Competition Act, and the decision made on a commitment application also serves as a guideline for other market operators. When making a decision about a commitment the GVH assesses all of the factors both for and against its acceptance, while taking into consideration the characteristics of the relevant market.

After analysing the contents of the commitment application, the **GVH established** that the protection of the public interest could be efficiently ensured by accepting the commitments offered by MasterCard and OTP.

The GVH, among other things, regarded the following considerations as working **in favour of the acceptance** of the commitments:

- the commitments immediately – and through the accounting between the parties, with a retroactive effect to 1 January 2014 – terminated the behaviour restricting competition on the market of debit cards,
- the debit card portfolio of OTP will once again be contestable by competitors, since the termination of the card-ratio clause and the related support may initiate competition which may result in a broadening of supply and in decreasing prices for consumers,
- the agreement contributed to the proliferation of PayPass technology,
- the commitments meet the requirement of verifiability.