



## **UNLAWFUL PRACTICES OF BANKS**

**Twenty banks were jointly setting the fees collected on transactions made with Visa and MasterCard cards. After the 5-year-long proceedings the Office of Competition and Consumer Protection has declared unlawful the practices that have been applied for as long as 13 years.**

**[Warsaw, January the 4<sup>th</sup>, 2007]** Payment cards are becoming more and more popular. The Poles have as many as 22 million of them in their wallets. They use them more and more often when paying for goods and services. Just in 2005 the users of "plastic money" spent over 30 billion PLN in this way.

Most of us don't realize that banks collect a commission on each card transaction at a shop – the so-called *interchange* fee. In Poland this fee amounts to 1-2%. This money is an important source of revenue for the card-issuing banks (the annual revenue is over 400 million PLN).

Following a complaint by the Polish Organization of Trade and Distribution, since 2001 the Office of Competition and Consumer Protection has been examining the agreements on the setting of the *interchange* fees. As a result no fewer than twenty banks were accused of resorting to anti-competitive practices.

The proceedings conducted by the OCCP showed that the level of the *interchange* fee was not based on objective criteria, such as costs borne by banks for the development and functioning of the payment system, **but was determined by way of an agreement of entrepreneurs who communicated with each other in order to obtain additional revenue from each transaction made with Visa and MasterCard cards.**

According to the OCCP, the fee calculated in this way constitutes a tax imposed on retailers offering goods and services who, on each card transaction, lose an amount of 1-2%, which is collected by the card-issuing banks. The jointly determined interchange fee also sets a minimum price for services provided to merchants by acquirers (i.e. entities which process card transactions).

As OCCP established, artificially raised costs of transaction handling, borne by shops accepting cards may mean higher costs for consumers – also those who pay with cash (commercial outlets do not differentiate prices depending on the payment form). In fact the costs associated with the use of cards are borne by all market participants, although they are not aware of these burdens.

**To restore competition, the President of the Office ordered the banks – participants of Visa and MasterCard systems - to discontinue immediately the disputed practices.** According to the OCCP, non-cash transactions can be settled at par value, without deducting the *interchange* fee.



**Fines in the total amount of 164 million PLN have been imposed on 20 banks which have entered into the unlawful agreement.** To determine their amount the more favourable provisions of the competition and consumer protection law, applicable at the start of the proceedings, were applied. The President of the Office has imposed the following financial sanctions:

PKO BP SA, Pekao SA – 16.59 million PLN,  
BPH – 14.66 million PLN,  
Bank Zachodni WBK, ING Bank Śląski – 14.08 million PLN,  
Kredyt Bank, Bank Millenium – 12.15 million PLN,  
Bank Handlowy – 10.22 million PLN,  
BGŻ – 9.64 million PLN, BRE Bank,  
Lukas Bank – 7,71 million PLN,  
Nordea Bank Polska, Invest Bank, Getin Bank – 4.82 million PLN,  
Bank Pocztowy, Bank Inicjatyw Społeczno-Gospodarczych, Bank Ochrony Środowiska, Fortis Bank Polska, Deutsche Bank – 2.89 million PLN,  
HSBC Bank Polska – 193 thousand PLN.

The decision of the OCCP is not final – the banks may appeal to the court of Competition and Consumer Protection.

The European Commission has also been examining the way in which *interchange* fee is determined for cross-border transactions. In 2002, after long proceedings, the Commission issued a decision concerning the agreement on Visa cross-border *interchange* fees. Although it was found to restrict competition, the agreement was granted a 5-year exemption on condition that the fees be based on real, justified costs, gradually reduced and that banks inform retailers on the fee's level. Parallel antitrust proceedings regarding fees collected on Master Card transactions are still on-going.

Authorities of Great Britain, Italy and Spain have also questioned the agreements on the joint setting of *interchange* fees, whereas in some countries (Denmark, the Netherlands, Norway, Finland or Luxembourg), there are card systems other than Visa and MasterCard, in which the *interchange* fee is not collected at all.

**Additional information:**

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