European Commission closes its investigation into the European Payment Council's Standardisation processes

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Introduction

On 13 June 2013 the European Commission (the Commission) announced[1] that it has closed its investigation of the European Payments Council (EPC)[2] in relation to its attempts to create new standards for payments made over the internet (e-payments). The Commission was concerned that the EPC's work on standards for e-payments, and in particular the e-Payments Framework, could exclude new entrants not linked to a bank from competing on the e-payments market.

The decision by the Commission to close the investigation came after the EPC announced that it had ceased developing the e-Payments Framework (which had caused the Commission competition concerns) and had also stopped any other standardisation initiatives which would have the same object or effect. Subsequent to this announcement, the complainant in this case, Sofort AG, withdrew its complaint. The Commission therefore closed its investigation.

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[1] http://europa.eu/rapid/press-release_MEMO-13-553_en.htm

[2] The European Payments Council ("**EPC**") is the coordination and decision-making body of the European banking industry regarding payments. It's members represent payment institutions, banks and other banking communities. Its purpose is to support and promote SEPA. The EPC does this by developing payments schemes and frameworks to promote further integration within the euro payments sector. In particular the EPC develops and maintains SEPA payment schemes rulebooks (SEPA Credit Transfer and SEPA Direct Debit rulebooks) which identify a set of rules on how to move funds between people's accounts within SEPA. These rules are based on technical standards defined by standards bodies such as the International Organization for Standardization. For further information on the role of the EPC, see: http://www.europeanpaymentscouncil.eu/content.cfm?page=what_is_epc

Background

After the introduction of the Euro in March 2000, the Member States, the European Commission and the European Central Bank focussed on championing the integration of the European payments market by the creation of a harmonised method of electronic euro card payments within a Single European Payments Area (SEPA).[3]

The European Central Bank, the European Commission and EU governments subsequently tasked the European Payments Council with developing standards for integrating online euro credit transfers and euro direct debit schemes into a single set of European payment schemes. SEPA is an initiative set up by the banks[4] in response to the EU institutions' requests.

The aim of SEPA is " … [that] consumers, businesses and governments are able to make cashless payments throughout the euro area from a single payment account anywhere in the euro area using a single set of payment instruments as easily, efficiently and safely as they can make payments today in the domestic context".[5] Although SEPA relates to the euro area, it is envisaged that the effect of SEPA would spill over into the non – euro area of the EU resulting in a true single European payments market.[6]

SEPA's goals are to:

- integrate existing national euro credit transfer and euro direct debit schemes into a single set of European payment schemes: SEPA Credit Transfer (SCT) and SEPA Direct Debit (SDD).
- create a Single European Payments Area for cards aimed at ensuring a consistent customer experience when making or accepting payments with cards throughout the euro area.
- incentivise increased use of electronic payment instruments, while reducing the cost of wholesale cash distribution.

The aim is that when complete, SEPA will enable internet users, whether they are consumers, businesses or governments to simplify and streamline their cross-border e-payments processes and centralise financial operations across the EU. By eliminating differences between cross-border payments, significant cost savings could be achieved. For example, merchants could benefit from cheap, efficient and secure electronic payments encouraging more use of e-payments. Payment service providers could benefit from economies of scale through standardising payments instruments and open market access. In addition, technology providers would develop pan-EU instruments.

Going forward

This investigation formed one of a number of investigations which have been commenced by the European Commission as a result of its concerns about the potential anti-competitive effects that

[3] The idea for the SEPA project can be traced back to 1990, with the publication of a European Commission report 'Making Payments in the Internal Market'. This outlined a vision for a single payments area, stating that "*the full benefits of the single market will only be achieved if it is possible for business and individuals to transfer money as rapidly, reliably and cheaply from one part of the Community to another as is now the case with (in) most Member States*".

[4] http://ec.europa.eu/competition/antitrust/cases/dec_docs/39876/39876_1012_10.pdf

[5] http://www.europeanpaymentscouncil.eu/knowledge_bank_download.cfm?file=Joint Statement European Commission and European Central Bank. Single Euro Payments Area (May 2006).pdf

[6] European Commission Green Paper Towards an integrated European Market for card, internet and mobile payments, COM (2011) 941 final Brussels 1.1.2012.

can occur through standardisation processes. The Commission recognises that standard setting can be efficiency enhancing and promote interoperability and competition; however, how standards are set, used or accessed also has the potential to restrict competition, including by restricting the opportunities for non-participants.

While the Commission's interest in cases relating to standard setting has not waned, it did acknowledge in its Green Paper on Card, Internet and Mobile Payments published on 11 January 2012 (a summary of which can be found here [link to KL bytes article European Commission Green Paper on Card Internet and Mobile Payments….. on KL website]) that despite keen competition enforcement activity on the part of the Commission, such investigations actions are considered insufficient on their own to ensure competition in this area. As a result, the Commission is considering whether to adopt legislation to determine rules which govern the behaviour of all industry participants in the e-payments market. This was reiterated in the Commission's press release announcing the closure of its EPC investigation.[7]

Similar thoughts as to the efficacy in particular of self-regulation were also expressed in May 2012, when, at a conference on Card, Internet and Mobile Payments,[8] Joaquim Almunia, Vice President of the European Commission responsible for competition policy noted that "the actual take-up of the new SEPA instruments has been too slow. In February this year [2012], SEPA credit transfers accounted for less than 25% of all such transactions in Europe and SEPA direct debits for a meagre 0.4%. These figures show that we have reached the limits of strict self-regulation and that the Commission needs to change tack." The Commission's reaction was to set 14 February 2014 as the deadline for banks to migrate to SEPA credit transfers and direct debits.

Comment

Although this investigation is closed, the Commission considers that the smooth functioning of cross-border internet payments are extremely important for the development of the internal market and, as a result, the Commission and national regulators will continue to monitor this market closely to ensure there is effective competition in the market.

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[7] http://europa.eu/rapid/press-release_MEMO-13-553_en.htm

[8] http://europa.eu/rapid/press-release_SPEECH-12-325_en.htm