Credit card services (1)

1. Title of report: Credit Card Services: a report on the supply of credit card services in the United Kingdom (MMC - Cmnd 718)

2. Date of report: 26 May 1989 Published: 22 August 1989

3. Orders:

The Credit Cards (Merchant Acquisition) Order 1990 (SI 1990 No 2158)

Made - 31 October 1990

In force - 28 February 1991

Whereas the Secretary of State, in accordance with section 91(2) of the Fair Trading Act 1973, published on 25th April 1990 a notice stating his intention to make this Order, indicating the nature of the provisions to be embodied in it and stating that any person whose interests were likely to be affected by it and who was desirous of making representations in respect of it should do so in writing before 31st May 1990;

And whereas the Secretary of State has considered the representations made to him in accordance with that notice:

Now, therefore, the Secretary of State, being the appropriate Minister within the meaning of section 56 of the said Act, in exercise of the powers conferred by sections 56(2) and 90(2), (3) and (4) of, and paragraphs 1, 2 and 4 of Schedule 8 to, the said Act, and for the purpose of remedying or preventing adverse effects specified in a report of the Monopolies and Mergers Commission entitled ‘Credit Card Services - a report on the supply of credit card services in the United Kingdom’, hereby makes the following Order

Citation and commencement

This Order may be cited as the Credit Cards (Merchant Acquisition) Order 1990 and shall come into force on 28th February 1991.

Interpretation

(1) In this Order—

‘credit card’ means a payment card the holder of which is permitted under his contract with the issuer of the card to discharge less than the whole of any outstanding balance on his payment card account on or before the expiry of a specified period (subject to any contractual requirements with respect to minimum or fixed amounts of payment), other than:

(a) a payment card issued with respect to the purchase of the goods, services, accommodation or facilities of only one supplier or of suppliers who are
members of a single group of interconnected bodies corporate or who trade under a common name,

(b) a payment card with respect to which the payment card account is a current account, or

(c) a trading check;

‘merchant acquirer’ means a person who contracts with suppliers of goods, services, accommodation or facilities to reimburse them for supplies made on the production of a payment card, and ‘merchant acquisition’ shall be construed accordingly;

‘payment card’ means a card, the production of which (whether or not any other action is required) enables the person to whom it is issued (‘the holder’) to discharge his obligation to a supplier in respect of payment for the acquisition of goods, services, accommodation or facilities, the supplier being reimbursed by a third party (whether or not the third party is the issuer of the card and whether or not a fee or charge is imposed for such reimbursement);

‘payment card issuer’ means a person who issues payment cards for use by the holder in accordance with the terms of a contract between them, and ‘credit card issuer’ shall be construed accordingly;

‘payment card organization’ means a body which authorizes other persons to act as payment card issuers in respect of payment cards bearing the trade mark or service mark of the body or the trade mark or service mark of another such body which has so authorized its use.

(2) In the case of a person falling within paragraph (a), (b) or (c) of section 90(3) of the Fair Trading Act 1973, this Order shall extend to his acts and omissions outside the United Kingdom.

(3) This Order shall extend so as to prohibit the carrying out of agreements already in existence on the making of this Order as it prohibits the carrying out of agreements made subsequently.

NOTES

Modification

References to trade marks or registered trade marks within the meaning of the Trade Marks Act 1938 shall, unless the context otherwise requires, be construed as references to trade marks or registered trade marks within the meaning of the Trade Marks Act 1994: see the Trade Marks Act 1994, Sch 4, para 1.

Prohibition

(1) Subject to paragraphs (2) and (4) below, on and after 7th March 1991, if a payment card organization permits any payment card issuers to act as merchant
acquirers in the United Kingdom with respect to credit cards bearing a trade mark or service mark of (or authorized for use by) the payment card organization, then it shall be unlawful for the payment card organization:

(a) to make or carry out any agreement relating to payment cards to the extent that it prevents or has the effect of preventing a person authorized by the payment card organization to carry on business as a payment card issuer in the United Kingdom from acting as a merchant acquirer in the United Kingdom any time after that person commences to carry on business as a credit card issuer in the United Kingdom pursuant to that authorization;

(b) to make or carry out any such agreement to the extent that it requires or has the effect of requiring a person authorized by the payment card organization to carry on business as a payment card issuer in the United Kingdom to issue any payment cards before that person can act as a merchant acquirer in the United Kingdom; or

(c) to withhold or to agree to withhold or to threaten to withhold, or to procure others to withhold or to agree to withhold or threaten to withhold, from a person authorized by the payment card organization to carry on business as a payment card issuer in the United Kingdom, any supplies or services which would usually be provided by the payment card organization to a merchant acquirer authorized to carry on business as such in the United Kingdom, any time after that person commences to carry on business as a credit card issuer in the United Kingdom pursuant to that authorization.

(2) Paragraphs (1)(a) and (c) above shall not apply in cases where the payment card organization has reasonable grounds to believe that the person in question is not capable of efficiently conducting the business of merchant acquisition in the United Kingdom or is unlikely to comply with the operating requirements of the payment card organization with respect to the conduct of such business.

(3) The parties to an agreement made before 7th March 1991, the carrying out of which is unlawful under the preceding provisions of this article on and after that date, shall, to the extent that the carrying out would be unlawful, terminate the agreement before that date.

(4) Nothing in the preceding provisions of this article shall affect the right of a payment card organization to prohibit a person authorized by the payment card organization to carry on business as a payment card issuer from acting as a merchant acquirer with respect to suppliers who:

(a) accept (or intend to contract with a merchant acquirer to accept) in respect of payment for supplies a payment card which bears a trade mark or service mark of (or authorized for use by) the payment card organization and which is not a credit card; but

(b) do not accept (or intend to contract with a merchant acquirer to accept) in respect of payment for supplies a credit card bearing such a mark.

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Modification

References to trade marks or registered trade marks within the meaning of the Trade Marks Act 1938 shall, unless the context otherwise requires, be construed as references to trade marks or registered trade marks within the meaning of the Trade Marks Act 1994: see the Trade Marks Act 1994, Sch 4, para 1.

This Order does not restrict the right of a payment card organization to:

(a) take action against a payment card issuer which has not fulfilled a reasonable plan for the issue of payment cards in the United Kingdom previously approved by the payment card organization as a condition of authorization of the payment card issuer so to act as long as such action does not have the effect described in sub-paragraph (a) of article 3(1) above (unless the issuer ceases or is required to cease carrying on business as an issuer in the United Kingdom pursuant to the authorization);

(b) impose on merchant acquirers reasonable technical and administrative requirements with respect to the conduct of the business of merchant acquisition; or

(c) require that an application or request for authorization to act as a merchant acquirer first be made by a person who wishes so to act as long as (and subject to paragraph (b) above) such authorization is granted within three months of the delivery of the application or request to the payment card organization or by the time that the person commences to carry on business as a credit card issuer (whichever is later).

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Amendment

Revoked by SI 2000/2031, art 12.