

## SUMMARY OF THE CASE VATC 2457

On 25 April 2005 the now-defunct Competition Service opened formal proceedings in relation to an agreement to fix the intersystem exchange rates against the payment methods systems SERVIRE, SISTEMA 4B and EURO 6000, following a complaint received from the associations of traders and tourist businesses (ANGED, CAAVE, CEC, FEH and FEHR).

On 16 November 2006 the Competition Service, together with the payment method systems SERVIRE, SISTEMA 4B and EURO 6000 and the trade associations, entered into a Termination by Commitments Agreement (TCA) which involved the assumption of a series of commitments in relation to the intersystem and intrasystem rates for payment transactions using debit and credit cards.

The TCA was based on compliance with the following concurrent principles: costs-based objectivity, transparency and differentiation between operations with credit and debit cards, and an express commitment to an effective reduction in the levels of exchange rates, applicable immediately and progressively. The TCA indicated that this was the best possible solution at that time, but it was approved at a time of changes in the European Union and, therefore, would have to be modified by reference to those changes.

In order to give effect to the agreed terms, the Agreement provided for the presentation of certain costs studies that would serve as the basis for the calculation of the exchange rates to be applied from 1 January 2009. However, in accordance with the principle of an effective and immediate reduction in the levels of exchange rates, the Agreement provided for the application of certain maximum limits for the exchange rates on a transitional basis until 31 December 2008. These limits differentiated between volume of the transaction and between credit and debit operations and were decreasing in the course of 2006, 2007 and 2008. In addition, clause seven of the Agreement itself provided that the transitional limits *shall be extended, if necessary, until 2010, as long as the effective application of the maximum limit deriving from the costs study has yet to take place*. In fact, such maximum limits for the 2009/2010 period are fixed in the Agreement (the so-called “column four” of the table).

Various reasons led the Council to conclude in 2009 that it would not be appropriate to apply the maximum limits deriving from the costs studies to the intrasystem exchange rates. Fundamentally, the fact that the maximum limits that would result from the application of the costs studies presented by the parties would be higher than the transitional maximum limits provided for in the TCA, contravening the express commitment to an effective reduction of the levels of exchange rates, which formed the

basis of the TCA. In addition the Council indicated that both the European Union and its member states were fully engaged in a process of theoretical and empirical changes that made it advisable not to apply the costs method.

In light of this, in its Resolution of 29 July 2009 the CNC Council resolved that it would not be appropriate to apply the maximum limits deriving from the costs studies presented by each payment methods system to the Investigations Division in the course of its monitoring of the case to the intrasystem exchange rates, and urged that the intrasystem exchange rates provided for in column four of the TCA should be applied until 31 December 2010, the end of the TCA monitoring period.

The CNC Council has proceeded to declare the monitoring of the TCA closed to the extent that its monitoring expires on 31 December 2010. The parties are free to determine the exchange rates to be applied from 1 January 2010, provided that they do so with complete respect for the provisions of Act 15/2007, in particular article 1 of it.