JOINT STATEMENT ON USE OF CO-BADGED CARDS IN A PASS-THROUGH WALLET

Background

Today in Europe we have 9 domestic card payment schemes that are considered vital in the domestic payments landscape. They operate a secure and cost-efficient infrastructure that keeps low Merchant Service Charge (MSC) and they contribute to reducing the use of cash and create transparency. The domestic schemes create higher competition between brands and are solid alternatives to International Card Schemes (ICS) solutions.

A high majority of the cards are co-badged with an ICS brand in order for cardholders to use the card globally – making the consumer experience smooth and secure.

The EU/EEA already has in place a regulation – the Interchange Fee Regulation (IFR) – that sets the framework for how the co-badged card should work – and also how the schemes must not restrict competition by issuing rules that hinder or prevent a card issuer from co-badging a card.

During the last couple of years, we have seen a high increase of payments with primarily Apple Pay – a pass-through wallet. A co-badged card (both brands) enrolled in Apple Pay will work exactly like the physical card when used. It will be presented as two brands side by side – and will give the merchant the option to steer the cardholder towards the preferred payment brand.

Recently, an ICS has issued mandates, that affects co-badged cards, and effectively hinders the local scheme brand of the co-badged card to be enrolled.

We consider rules that will effectively deprive issuers, cardholders and merchants the benefits of a co-badged card in x-pays to be in violation with IFR, to restrict competition and be possible abuse of dominant position.

It is the intention of this paper is to give an assessment on how co-badged cards should be enrolled in pass-through wallets in order to adhere to the IFR.

Visa Mandate:

> *"Effective 13 April 2024 in Denmark, Finland, Iceland, Norway and Sweden, issuers must ensure that a cardholder that has provisioned a card with more than one payment scheme into a wallet application can make a clear and transparent choice within the wallet application between the payment schemes to complete each transaction initiated using the wallet application.*
>
> *Issuers should work with their digital wallet providers to ensure that when a co-badged card with two or more payment schemes is provisioned into a digital wallet, the choice between schemes is available in the wallet. The choice must be clear and transparent during the provisioning of the card and the cardholder must also be able to choose the payment scheme for every transaction carried out using the digital wallet."*

IFR assessment

Co-badging and choice of payment brand is regulated in Article 8(1) and Article 8(6) of the IFR:

<u>Article 8(1): Schemes must not hinder or prevent issuers' co-badging</u>

Article 8(1) stipulates that:

> *"any payment card scheme rules (…) that hinder or prevent an issuer from co-badging two or more different payment brands or payment applications on a card-based payment instrument shall be prohibited."*

It follows from Article 8(1) that the card scheme Rules must not hinder or prevent the co-badging of any brand on a card-based payment instrument.

The IFR defines a card-based payment instrument as:

> *"any payment instrument, including a card, mobile phone, computer or any other technological device containing the appropriate payment application which enables the payer to initiate a card-based payment transaction which is not a credit transfer or a direct debit as defined by Article 2 of Regulation (EU) No 260/2012"*

The *card-based payment instrument* applied in connection with a (pass-through) mobile wallet is, in our view, the mobile phone as such. The (pass-through) mobile wallet contained on the mobile phone, on the other hand, is a payment application under the IFR.

Our view is in line with the view of the EU Commission. Thus, the EU Commission has taken the position that a (pass-through) mobile wallet, including a payment card, *"cannot be regarded as being itself a payment instrument but, rather, a payment application"* contained on a payment instrument.

Summing up, it follows from Article 8(1) that the card scheme rules must not hinder or prevent issuers from co-badging with any brands on a mobile phone containing a (pass-through) mobile wallet.

It is not explicitly stated in the IFR or relevant case law what is precisely meant by "hinder" or "prevent".

In our view, any scheme rule that directly or indirectly creates barriers for issuers' co-branding, thereby hampering competition between payment brands and limiting cardholders and merchants' choice of payment brand, "hinders" or prevents" co-badging in violation of Article 8(1).

Hence, if mobile wallet providers do not support or wish to support the scheme rules, issuers wanting to issue cards covered by the scheme rule are forced to de-select to enroll the other brand side of the co-badged card in mobile wallets.

This deselecting will effectively prevent the other side of the co-badged card from being enrolled in (passthrough) mobile wallets thereby

(i) securing the scheme brand the position as the only card enrolled,
(ii) (ii) restricting competition between brands, and
(iii) (iii) depriving cardholders and merchants of the choice between the two payment brands on a co-badged card.

Our conclusion is unaffected by the fact that it could be claimed that the rules are "consistent" with the IFR by ensuring that cardholders can choose between payment schemes when a co-badged card is provisioned to a digital wallet and used for payment.

Thus, in our view, the IFR does not require that cardholders can chose between payment schemes in the (pass through) mobile wallet. What matters under Article 8 of the IFR is that users, that is **both** cardholders and merchants, have a choice between the two payment brands on a co-badged card, cf. Article 8(6), point 40 of the IFR preamble, and our view on Article 8(6) just below.

The said choice does not need to be in the made in the (pass-through) mobile wallet. In fact, allowing for the choice to be made at the POS equipment instead, is in our view much more aligned with the IFR, cf. our view on Article 8(6) just below.

<u>Article 8(6): Payer and payee's choice of payment brand must not be limited</u>

The IFR regulation of cardholders' and merchants' choice of payment brand is found in Article 8(6) of the IFR:

> *"Payment card schemes, issuers, acquirers, processing entities and other technical service providers shall not insert automatic mechanisms, software or devices on the payment instrument or at equipment applied at the point of sale which limit the choice of payment brand or payment application, or both, by the payer or the payee when using a co-badged payment instrument.*
>
> *Payees shall retain the option of installing automatic mechanisms in the equipment used at the point of sale which make a priority selection of a particular payment brand or payment application but payees shall not prevent the payer from overriding such an automatic priority selection made by the payee in its equipment for the categories of cards or related payment instruments accepted by the payee."*

The main objective of Article 8(6) is to ensure that neither the cardholder nor the merchant's choice of payment brand is limited by other players in the ecosystem, and that the ultimate choice lies with the cardholder.

At face value, the fact that a scheme rule secures that the ultimate choice of payment brand lies with the cardholder therefore seems to be aligned with Article 8(6). However, studying such a rule more closely it becomes apparent that it is in reality depriving the cardholders' and the merchants' choice of payment brand on a co-badged card:

First, considering if no mobile wallet providers support or wish to support the scheme rule, the cardholders will de facto be prevented from enrolling the other brand of a co-badged card in the (pass-through) mobile wallets, cf. above.

Second, even assuming that providers of (pass through) mobile wallets would be willing to accept the scheme rule, it is our understanding that the scheme rule implies that a co-badged card enrolled into a mobile wallet must de facto function as a single-badged card. In other words, it is our understanding that if the cardholder chooses the scheme in the mobile wallet, the co-badged card will be presented as a single-badged card vis-à-vis the merchant's POS equipment.

By implication, as the mobile wallet will operate as containing two single-badged cards, the merchant will be deprived of the choice between payment brands on a co-badged card. Put differently, the Visa Rules will de facto imply that the merchant's right to install a default automatic mechanism in the POS equipment which makes a priority selection of a particular brand, will be without any value.

In our view, this goes against the wording of Article 8(6) as well as an important objective pursued by the provision.

Thus, according to point 34 in the preamble of the IFR[1], one of the objectives of the IFR/Article 8, is to remedy a problem identified as:

> *"Scheme rules applied by payment card schemes (…) tend to keep merchants and consumers ignorant about fee differences and reduce market transparency, for instance by (…) prohibiting merchants from choosing a cheaper card brand on co-badged cards (…). Even if merchants are aware of the different costs, the scheme rules often prevent them from acting to reduce the fees."*

If the payment brand is chosen in advance in the mobile wallet, the merchant cannot choose a cheaper payment brand – even when the cardholder has no specific preference.

Third, in Denmark and Norway, the payments industry has implemented Article 8(6) by allowing cardholders to select the payment brand of a co-badged payment instrument by pressing the yellow button on the merchant's POS equipment – applicable for both physical payment cards and mobile wallets.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32015R0751

The implementation of Article 8(6) by the payment industry is in alignment with the EU Commission's Staff Working Document[2] behind the IFR that states:

> *"In case a payment device includes several payment brands, the choice of the brand used for each transaction should be a decision taken by the payer in agreement with the retailer, once the retailer's device has indicated which brands are available."*

Hence, the Staff Working Document seems to envisage a technical solution corresponding to the "yellow button"-solution and does not mention nor support a different approach in relation to mobile wallets. On the contrary, if the choice is made in advance in the mobile wallet, this would mean that the merchant's device has not indicated the available brands as envisaged by the Commission.

The "yellow button" solution ensures the same approach for choice of payment brand across physical payment cards and mobile phones. As both devices constitute payment instruments with payment applications under the IFR, they should arguably be treated in the same manner.

Furthermore, the "yellow button" solution has been discussed with the Danish competition authorities, which did not express concerns, and a similar solution is applied in e.g. Norway and Italy.

Summing up, the "yellow button"-solution secures compliance with Article 8(6) of the IFR. If an ICS force implementation of an additional requirement on issuers to secure that the choice between payment brands is made in the wallet, it is in our view not mandated by the IFR. On the contrary, such a rule will in fact deprive the cardholders and the merchants the right to choose between the payment brands on a co-badged card.

ABOUT

https://bankaxept.no/en https://www.bancontactpayconiq.com/en https://sibs-mb.com/EN/ https://dankort.dk/en-GB

[2] https://data.consilium.europa.eu/doc/document/ST-12990-2013-ADD-3/en/pdf