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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM

Session III: Competition and Payment Card Interchange Fees – Call for contributions

20-22 September 2021

This document is circulated in preparation of the discussion under Session III of the Latin American and Caribbean Competition Forum that will take place in a virtual format on 20-22 September 2021 hosted by the OECD and IADB on the OECD Zoom platform. Delegations are requested to submit their written contributions to the Secretariat by **23 August 2021** at the latest. Advance notice of your intention to submit contributions before or by **6 August 2021** would be useful. More documents related to this discussion can be found at oe.cd/lacfc.

Please contact Ms. Lynn Robertson [Lynn.Robertson@oecd.org], Ms. María Manuela Palacio [c.mpalacio@sic.gov.co] or Mr Mateo Varela [mwarela@sic.gov.co] if you have any questions regarding this document.

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Competition and Payment Card Systems *– Call for contributions –*

1. Introduction

1. This year's Latin American and Caribbean competition Forum (LACCF) will feature a roundtable discussion on "Competition and Payment Card Systems" organised by Colombia's Superintendencia de Industria y Comercio (SIC). The SIC is writing to invite you to prepare and submit a written contribution for the session.

2. This call for contributions aims to identify some topics that you may wish to address in your written and oral contribution. To further assist you with the preparation of your contribution, we refer you to (i) the background paper prepared by SIC which will be circulated in the next months and can be used as a starting point for discussions during this session, (ii) the more detailed list of questions included in the Annex and (iii) the suggested bibliography included at the end of this letter. Please note that the list of questions in the annex is neither prescriptive nor exhaustive, and you are free to raise other relevant issues that reflect your experiences.

3. We would like to remind you that we will compile short summaries of the written contributions to be distributed before the meeting. We would like to invite you to submit such a short summary (no more than one page) together with your contribution.

4. The LACCF webpage (oe.cd/laccf) will be the primary vehicle for conveying documentation and related links on this subject. Unless explicitly requested not to do so, the Secretariat will reproduce all written contributions on the site.

5. In order to ensure an effective preparation of the roundtable discussion, I would be grateful if you could advise SIC and the OECD Secretariat by **Friday 6 August 2021** the latest if you are planning to make a written contribution on the topic. Written submissions are due by Friday **Monday 23 August 2021** and failure to meet this deadline may result in your contribution not being distributed in a timely fashion in advance of the meeting.

6. All communications regarding the documentation for this roundtable should be sent to Ms. María Manuela Palacio (c.mpalacio@sic.gov.co), Mr Mateo Varela (mvarela@sic.gov.co) and Ms. Angélique Servin (Angelique.SERVIN@oecd.org). Please address all substantive queries relating to this discussion to Ms. María Manuela Palacio (c.mpalacio@sic.gov.co) and Mr Mateo Varela (mvarela@sic.gov.co).

7. The contributions themselves should be sent by email (as a Word document in electronic format, 5 pages maximum in Spanish or English) to Ms. María Manuela Palacio (c.mpalacio@sic.gov.co) and Mr Mateo Varela (mvarela@sic.gov.co) and copied to Ms. Angélique Servin (Angelique.SERVIN@oecd.org) by **23 August 2021** at the latest. Country contributions will be circulated to participants through the LACCF website www.oecd.org/competition/latinamerica/ (short url: oe.cd/laccf) and www.oecd.org/competition/latinamerica/2021forum/. Furthermore, if you would like to circulate other relevant material please submit a copy to the Secretariat before **23 August 2021**.

2. Background

8. Credit card payment systems are complex multisided platforms, which pose particular challenges for authorities in the enforcement of competition law.

9. A question that commonly arises, related to the multi-sidedness of these markets, concerns the appropriate market definition. As a rule, the definition of a relevant market is crucial to the outcome of antitrust enforcement in this sector, but it is not possible to define these markets according to traditional tools. Furthermore, the issue of market definition can be complicated by the existence of multiple card-payment systems, or even payment systems that do not rely on cards.

10. The question of the suitable strategy for market definition, in turn, influences the analyses of whether particular companies have market power. Card issuers may exercise market power over merchants, and this market power may exist even for payment cards with small overall market shares. Merchants often complain that they do not have a realistic ability to turn away cards, even if they believe the merchant fees for using a card are unjustifiably high.

11. It is often disputed whether investigative practices are welfare-enhancing or anticompetitive. Practitioners argue whether potential anticompetitive conducts should be subject to *per se* offense or rule of reason analysis. In effect, authorities have incentives to frame investigated practices in this sector as *per se* prohibitions to avoid having to deal with the difficulties above surrounding market definition and the identification of market power.

12. However, there are also legitimate reasons for subjecting particular practices that may have welfare-enhancing aspects to such strict treatment. For instance, a number of the most problematic practices concern restraints on merchants – e.g. the honour-all-cards rule, the no-steering rule and the no-surcharge rule – which are typically not caught by *per se* prohibitions.

13. Finally, non-cash payment systems serve a valuable role in facilitating certain transactions. This is an area where significant innovations have occurred over the past decades (e.g. contactless payments, online payments, etc.). Such efficiencies, alongside others, are commonly invoked in cases involving payment systems.

14. Authorities have to grapple with how these efficiencies, such as those described above, should be treated, questions like: should all efficiencies produced be considered, including those that are not directly related to investigated practices? This matter, again, relates, first, to the multisided nature of the market, and second, to the fact that different sets of consumers may be affected differently by a practice – with some, being affected even if the practice is on the whole welfare-enhancing scenario.

15. Furthermore, the market is extremely dynamic, which means that each of these questions may have to be assessed anew in each particular case. The market is facing threats of disruption from a number of fronts, at the same time it has grown significantly over recent years. The challenges posed earlier may become more difficult when considered in the particular context of Latin American and Caribbean markets, where the questions concerning the role of card payment systems are most likely to intersect with issues such as limited access to financial institutions and formal payment mechanisms.

16. Faced with such challenges, some jurisdictions have followed up on competition enforcement with regulation. This raises additional issues concerning not only the appropriate scope of competition enforcement in such a setting, but also the extent to which adopting regulations in this field is rather a most suitable alternative.

17. This topic has been the subject of discussion at the OECD before, even if at a different forum. In 2006, the OECD Competition Committee held a roundtable on ‘Competition and Efficient Usage of Payment Cards’, whereas in 2012 it devoted a section to ‘Competition and Payment Systems’. Moreover, in June 2019, the OECD held a roundtable where it explored the degree to which digital disruption from FinTech and BigTech impairs stability in the retail banking market, including the rise of alternative payment methods, and whether these players needed a different type of regulatory oversight.

18. It is in light of these considerations that the present session will discuss competition and payment card systems. Its goal is not to discuss all these matters anew, but to reflect on recent developments and on the particular challenges facing competition authorities in Latin America and the Caribbean.

19. It is worth exploring the nature of these markets in Latin America and the Caribbean – and whether they have any relevant particularities that distinguish them from payment card markets elsewhere in the world. This is crucial to determining the extent to which competition enforcement and regulatory initiatives in Latin America and the Caribbean can and should rely on, and borrow, from experiences by competition authorities in other regions, and the other way around.

20. Another important aspect to consider in the session concerns market developments – both in Latin America and the Caribbean, and elsewhere. This is important in as much as understanding the evolution and current state of the competitive environment will provide valuable input for competition authorities when assessing upcoming challenges in this sector.

21. The challenges and questions raised above make up the backbone of this session, its main goal, then, is to identify the key issues that competition authorities in Latin America and the Caribbean face in pursuing competition enforcement in this sector. The session will discuss common challenges across the region and will hopefully allow us to identify a set of approaches and principles that can be used to overcome these challenges.

Annex. Suggested Questions for Consideration in the Country Contributions

Session II: “Competition and Payment Card Systems”

1. How has the payment card industry evolved in your jurisdiction? What are the new challenges you see emerging?
2. Are there any other payment means such as contact less pay or mobile pay that have leapfrogged traditional payment cards? If so, what has been the response of incumbents?
3. Have there been any defensive or pre-emptive mergers in the payment cards or mobile payments sector? If so, how were they addressed by your agency?
4. Has your agency undertaken any market studies on the payment cards industry? If so what were the competition issues the study identified? What recommendations did your agency make to address these issues? Were any particular entry barriers identified?
5. Has your agency undertaken any work on defining the payment card market? What tools and methodologies did your agency use? What particular challenges did you face?
6. Describe any cases that your agency investigated, explaining the theory of harm and the outcome.
7. Does your agency have the capacity to ensure competition in the payment card industry? If no, what skills do you believe are lacking? What are the new challenges posed by the industry that your agency cannot address due to a lack of the required skills.
8. If there is a financial regulator in your country, explain any work you may have done together on the payment card markets.
9. Has your agency undertaken any specific advocacy measures aimed at the financial sector regarding payment cards?

Main suggested bibliography

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For examples on growth and changes to markets:

- <https://www.jpmorgan.com/merchant-services/insights/reports/brazil>
- <https://www.pymnts.com/credit-cards/2021/rappi-to-introduce-credit-cards-in-brazil-with-visa/>

Settlement between Visa and Mastercard:

- <https://www.mcaginc.com/post/visa-mc-interchange-fee-settlement>
- <https://www.paymentcardsettlement.com/en>

VISA abandoning its planned takeover

- https://techcrunch.com/2021/01/12/visa-will-not-acquire-plaid-after-running-into-regulatory-wall/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAALaeITPzMq0iLLKAVTRBK-IgNbIJ8_j2AFO_tBZdgdyw5YpygdQoWGbCbAMzDk-JgN6nqDZ8mZ211j3J3Lx6usC4Yt96h3SzTzOUfKgOv4avOesTFg9qs3oLxnsuTPDKqc2GH2oubqth9HqipQPJg6kCPoCWpXXEYfj5jXbnCJW