

**Interchange Fee Task Force
at the Payment System Council**

**Program of Card Charges
Reduction in Poland**

Warsaw, March 2012

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List of abbreviations

FDNCT - Foundation for the Development of Non-cash Transactions

MSC - Merchant Service Charge

NBP - National Bank of Poland

POS - point of sale

RP - Republic of Poland

CCCP - Court of Competition and Consumer Protection

TFEU - Treaty on the Functioning of the European Union

OCCP - Office of Competition and Consumer Protection,

IFTF - Interchange Fee Task Force

I. Introduction

The issue of card charges, in particular interchange fees which account for more than 80% of the merchant service charge,¹ in Poland has been the subject of analyses and discussions for a long time both in Poland and in other European Union countries and worldwide. This problem is also of interest to supervising institutions and financial market regulators. This also applies to the National Bank of Poland. Although the NBP is not a party to a card scheme in view of the need to tackle the problem of the interchange fee in Poland and in fulfilling its role of a catalyst for change in the payment system it initiated work on a comprehensive diagnosis of the problem to find a compromise solution for all participants of the card systems in Poland. On 3 October 2011, the Payment System Council, a consultative and advisory body to the Management Board of the NBP, first discussed the "Analysis of the functioning of the interchange fee in cashless transactions in the Polish market"² prepared by the Payment System Department of the NBP and subsequently established the Interchange Fee Task Force (IFTF). The primary objective set for the Task Force was to prepare proposals for changes in the amount and structure of interchange fees which should result in a faster growth of cashless transactions in Poland, including an increase in the number of persons using banking services and the use of non-cash payment instruments, in particular payment cards.

Between November 2011 and March 2012 the Interchange Fee Task Force held four meetings. At the third meeting of the Task Force on 31 January 2012, representatives of the National Bank of Poland presented an original proposal of the guidelines for changes concerning interchange fees in Poland which is a compromise balancing both the expectations of payment card issuers and card organisations, as well as merchants, acquirers and consumers. In February 2012, the proposal was submitted for consultation and assessment by all Task Force members. A major part of the comments, suggestions and opinions submitted

¹ The components of the merchant service charge (MSC) include three items, of which the most important one is the interchange fee, while the other two components are additional fees paid to the card organisation (assessment fee) and the margin of the acquirer.

² The above study, incorporating a number of comments of the Members of the Payment System Council and the Interchange Fee Task Force as well as own additions of the NBP, after its presentation to the Management Board of the NBP in January 2012, was published on the NBP website (http://nbp.pl/systemplatniczy/obrot_bezgotowkowy/interchange.pdf).

by the members of the Task Force was incorporated into the final version of the NBP proposal which was presented in the form of this Program as an appendix to the final report on the work of the Interchange Fee Task Force at the last, fourth meeting of the Group on 13 March 2012.

At the meeting on 13 March 2012 the Task Force discussed the guidelines, objectives and components of the Program presented by the NBP and obligated all members to present, by 16 March 2012, their opinions on the Program, i.e. either an approval or comments, to the Head of the Task Force, as part of the assessment of the final version of the report on the Group's work presented at that meeting. The members of the Task Force authorised its Head to compile, on the basis of comments submitted by the members by 16 March 2012, a final version of the report and to deliver it to the members by 22 March 2012. The members of the Task Force were requested to provide by 23 March 2012 either their unconditional approval or dissenting opinion that would be attached to the report. They were also informed that a failure to provide a reply by 23 March 2012 would be deemed to mean the approval of the version of the report proposed by the NBP.

On 23 March 2012:

- 1) 9 members of the Task Force submitted their approval of the report,
- 2) 7 members of the Task Force did not provide a reply, which was deemed to be the approval of the report in accordance with earlier arrangements,
- 3) 5 members of the Task Force submitted dissenting opinions to the Program. Dissenting opinions form Appendix No. 5 to the final report on the Interchange Fee Task Force work.

The final version of the "Program of card charges reduction in Poland" was presented on 30 March 2012 to the Payment System Council, together with the final report on the work of the Interchange Fee Task Force. Due to the fact that during the above mentioned meeting some of the dissenting opinions were withdrawn and the Program was amended so as to take into account the comments motioned under dissenting opinions the Council endorsed the Report and the Program without any dissenting opinions.

II. Reasons for the development of the "Program of card charges reduction in Poland"

The reasons for the development of the "Program of card charges reduction in Poland" include the following key circumstances:

1. Analyses carried out by the NBP showing that in recent years the development of payment card acceptance indicators, in particular the growth in the number of points of sale (POS) that accept payment cards did not keep pace with a high growth in the number and value of payment card non-cash transactions.
2. NBP opinion that high fees incurred by merchants in respect of card payments, the so-called Merchant Service Charges (MSC) are one of the main factors responsible for this situation. The prevailing part of the MSC is the interchange fee, transferred by the acquirer to the issuer of the payment card used by the customer to make a purchase.
3. NBP analyses showing that interchange fees in Poland are currently the highest or among the highest in the European Union both as regards cards issued under the logo of VISA and MasterCard organisation.
4. In June and July 2011 work was underway in the Sejm and Senate on the payment services act implementing the Payment Services Directive. Although the issue of interchange fees charged on payment cards is not a direct component of the Directive, it is linked with surcharges, i.e. additional fees which the merchant may charge to the customer for making payment with the use of a card and whose purpose may be to reimburse the merchant for costs such as the merchant service charge, including the interchange fee. Surcharges constituted an element which the Directive has left to the discretion of EU Member States and the government proposal for a payment services act did not introduce either a ban or a requirement to charge surcharges. However, in the course of parliamentary work, proposals emerged to introduce provisions into the act that would unconditionally allow to charge surcharges, and proposals to regulate interchange fees. Both the NBP and the Ministry of Finance were of the opinion that such strict regulations on surcharges which might be negatively perceived by consumers and might negatively impact the development of non-cash transactions in Poland should not be imposed at that stage. Instead, the issue of the level of the interchange fee, being in fact the reason for the proposals made, should be resolved by attempting

to reach a market agreement first. In August 2011, the NBP submitted a declaration to the Senate budget and public finance committee offering to address this problem as part of the work of the Payment System Council at the NBP Management Board.

5. An important reason for the NBP to attempt to find a compromise between the two major parties of the payment card scheme, being beneficiaries and payers of the interchange fee, i.e. payment card issuers on one hand and merchants on the other hand, was also a certain legal deadlock related to the lack of a final resolution concerning the implementation of the decision made by the President of the Office of Competition and Consumer Protection (OCCP) of December 2006, which recognised the practice consisting in banks' participation in an agreement aimed at jointly setting the fees as a practice restricting competition. Banks and payment organisations appealed this decision. First, the Court of Competition and Consumer Protection (CCCP) found the appeal justified in 2008. Subsequently, as a result of the appeal filed by the OCCP President, the Court of Appeal overruled the decision of the CCCP and referred the case for reconsideration to the court of first instance. According to the OCCP, for several years banks had incorrectly interpreted the situation as not allowing banks, particularly banks associated in the VISA organisation (in the MasterCard organisation decision-making powers were transferred from banks to the head office of the organisation), to introduce any changes in the interchange fee level because such a change would have to be made in the form contested by the OCCP. A resolution of this matter in court seemed impossible in the near future due to a long process of coming to an incontestable decision. Therefore the NBP, recognising the arguments of the OCCP that the concern related to the recognition of the interchange fee reduction as an unlawful act is unjustified, initiated the establishment of the Interchange Fee Task Force which could develop proposed changes for the amount and structure of interchange fees, but would obviously not make these decisions on its own.
6. Changes in the amount and structure of interchange fees, including their reduction to the average EU level, was previously an element of the "Program for the Development of Cashless Transactions in Poland" prepared in 2008-2009 by the NBP, the Polish Banks Association and the Coalition for Cashless Transactions and Micropayments and was submitted to Ministry of Finance in 2009 in order to be further adopted as a government program. Card organisations agreed with the

above provisions concerning interchange fees at the stage of preparing the Program under the Coalition for Cashless Transactions and Micropayments. However, the Program has not been adopted by the government yet. One of the major objections of the government was the issue of high interchange fees which was raised during parliamentary debate on the payment services act and which indicated that the banking sector achieved high income from those fees. This in turn meant that merchants incurred high costs related to non-cash card payments that would be promoted by the Program. Failure to implement the "Program for the Development of Cashless Transactions in Poland" for reasons related to the interchange fee, which was important from the perspective of the development of civilisation and the economic development, was an important reason for the NBP to seek another solution to the problem of the interchange fee, in the hope that the solution of the interchange fee problem would allow the government to adopt the Program and implement measures provided for in that Program which are important and positive for the Polish economy.

On 3 October 2011, at the meeting of the Payment System Council, which is a consultative and advisory body to the Management Board of the National Bank of Poland, the Council discussed the material entitled "Analysis of the functioning of the interchange fee in non-cash transactions in the Polish market" prepared by the Payment System Department of the NBP was presented. The material contained detailed information on the interchange fee as well as a comparison of interchange fees in Poland and various EU countries. The analysis of these data showed that interchange fees in Poland were indeed the highest or among the highest in the European Union, becoming a barrier to the development of the network of points of sale accepting payment cards, and thus a barrier to the dissemination of non-cash transactions. Taking into account the proposals put forward in the report, the Council decided to establish the Interchange Fee Task Force composed of representatives of all parties of the four-party card scheme, i.e. merchants, issuers of banking cards, payment organisations, acquirers, consumer organisations, the Polish Banks Association and government institutions. In accordance with the decision of the Council of 3 October 2011, the task of the Task Force was to analyse the possibility of changing the structure and the amount of interchange fees in Poland. As part of its activities, the Task Force was to prepare and present results of its work at the first meeting of the Payment System Council in 2012, while the card organisations were to work out a schedule of actions aimed at achieving the expected structure and level of interchange fees and to present it at a meeting of the Payment System Council in June 2012.

III. Objectives of the Program

Main objective of the Program:

Creating a situation where every consumer holding a payment card may use it for non-cash payments in the largest possible number of points of sale in Poland and regardless of the transaction value.

Specific objectives of the Program:

1. To significantly increase the number of points of sale accepting payment cards in Poland during the period of the Program implementation, and thus to increase the saturation of card merchants in the total number of points of sale in Poland.
2. To enlarge the card acceptance network especially in smaller towns and rural areas (the so-called "local" Poland), thus contributing indirectly to increasing the share of bank account and payment card holders, and consequently to the reduction of financial exclusion and dissemination of non-cash transactions.
3. To obtain benefits for the consumer by reflecting reductions in the interchange fee in the decrease in prices of goods and services.
4. To gradually achieve the EU average interchange fee in Poland, no later than from 1 January 2017 (currently it is approximately 0.70% of the transaction value for debit cards and 0.84% for credit cards).
5. To increase the transparency of card charges in Poland.
6. To adjust the structure and amount of card charges in Poland to the situation in the majority of European Union countries, including in respect of mutual relationships between the amount of the interchange fee for debit and credit cards.
7. To reduce the risk of too high costs of payment card acceptance at smaller merchants.
8. To increase the number and value of non-cash card transactions in Poland, which will translate into an increase in respective indicators of the development of non-cash transactions in Poland in comparison with other countries.
9. To introduce incentives for accepting micropayments, which, together with the ban to make unilateral decisions on not accepting payment cards up to a certain amount, should result in the resignation by merchants from posting information about the minimum transaction value for which card payment is accepted.

10. To avoid, in relation to the regulatory option, a high risk of significant disturbances in the functioning and development of the card market in Poland.
11. To expand the economic knowledge and awareness of merchants and consumers on issues related to card charges.

IV. Entities covered by the Program

The Program covers the following entities:

1. Card organisations operating on the Polish market, including:
 - a) organisations operating four-party card schemes, including:
 1. VISA,
 2. MasterCard,and, additionally:
 - b) organisations operating three-party card schemes, including:
 1. Diners Club,
 2. American Express,
2. Issuers of payment cards, operating in the Polish market, including banks and cooperative savings and loan associations as well as card organisations referred to in item 1 letter b,
3. Polish Banks Association and other bank organisations,
4. Acquirers operating in the Polish market,
5. Entities operating points of sale, accepting payment cards (merchants), and organisations associating them,
6. National Bank of Poland,
7. Ministry of Finance,
8. Office of Consumer Protection and Competition,
9. Office of the Polish Financial Supervision Authority.

V. Material scope of the Program

The Program covers:

1. All payment cards issued in Poland by the issuers of payment cards referred to in clause IV.2 with the logo of the card organisations referred to in clause IV.1, to individuals, including both debit cards, credit cards and charge cards. Only cards issued to entities other than individuals (business cards) are excluded from the Program.
2. Merchant service charges (MSC) and all its components, including:
 - a) interchange fee,
 - b) additional local fees (Poland specific) paid to payment organisations, e.g. marketing fees, processing fees,
 - c) merchant's margin,
3. System fees charged to acquirers and issuers of payment cards,
4. Basic fees charged by payment card issuers, such as fees for issuance and use of a payment card (not applicable to loyalty programs, discounts etc.),
5. Other elements of the card market in Poland related to the areas described in clauses 1, 2 and 3.

VI. Program implementation period

The program will be implemented in 2012-2017, save that:

1. in 2012 only organisational and preparatory work and the first decisions of card organisations, resulting in interchange fee reductions in 2012 or no later than from 1 January 2013, will be implemented,
2. subsequent the interchange fee reductions will follow in 2014-2016, depending on the satisfaction of the conditions set out in the Program,
3. in 2017, regardless of previous conditional interchange fee reductions, an unconditional reduction will take place to the level of the average EU interchange fees (unless previous reductions reach this level of EU fees earlier).

VII. Proposed scenario for the reduction of card charges in Poland

The Interchange Fee Task Force proposes to adopt, as basic assumptions for the selected scenario of card charges reduction in Poland, the following assumptions:

A. Activities related to the interchange fee

1. The following maximum rates for interchange fees for individual transactions are proposed:
 - a) for debit cards:
 - 1.10% of the transaction value in 2012 or from 1 January 2013, at the latest (unconditional change),
 - 1.00% of the transaction value from 1 January 2014 (subject to the satisfaction of the condition for the reduction),
 - 0.90% of the transaction value from 1 January 2015 (subject to the satisfaction of the condition for the reduction),
 - 0.80% of the transaction value from 1 January 2016 (subject to the satisfaction of the condition for the reduction),
 - 0.70% of the transaction value from 1 January 2017 (unconditional change),
 - b) for credit cards and charge cards:
 - 1.20% of the transaction value in 2012 or from 1 January 2013, at the latest,
 - 1.11% of the transaction value from 1 January 2014 (subject to the satisfaction of the condition for the reduction),
 - 1.02% of the transaction value from 1 January 2015 (subject to the satisfaction of the condition for the reduction),
 - 0.93% of the transaction value from 1 January 2016 (subject to the satisfaction of the condition for the reduction),
 - 0.84% of the transaction value from 1 January 2017 (unconditional change).
2. The Program assumptions concerning maximum rates of the interchange fee would be common for VISA and MasterCard, however with the option of retaining a different structure of the fees.
3. The target level of the interchange fee from January 2017 should be the average of national fees for the EU countries for debit and credit cards (at present it is 0.70%

and 0.84% of the transaction value, respectively but the fee will probably decrease over time).

4. The first reduction to the maximum interchange fee level should be implemented on the basis of decisions of the competent decision-making bodies of VISA and MasterCard, as declared to the National Bank of Poland by 30 May 2012 (i.e. before a meeting of the Payment System Council in June 2012), made no later than by 15 September 2012 and entering into force in the fourth quarter of 2012, however not later than from 1 January 2013.
5. Interchange fee reductions to maximum rates in three subsequent years, i.e. in the years 2014-2016, would be conditional, i.e. they would be implemented depending on the satisfaction of the conditions set out in detail in part VIII, and introduced from 1 January of the year following the base year in which the conditions for the reduction are examined. The satisfaction of the conditions will be examined in the third quarter of each base year for the period of 12 previous months (in the case of the number of points of sale accepting payment cards the examination would involve a comparison between the balance as of the end of the second quarter of the base year and the second quarter of the previous year, while in the case of a comparison of the number and value of non-cash card transactions it would be a period from the third quarter of the previous year to the second quarter of the base year), the decision on a reduction (if the conditions are satisfied) or no reduction (if the conditions are not satisfied) would be made in the third quarter of the base year and the reduction would enter in force from the beginning of the following year.
6. Reductions aimed at achieving the proposed maximum levels of interchange fees for each year would be regarded as minimum, especially if the actually achieved rates of growth of selected indicators of the development of non-cash transactions were far larger than benchmarks, which means that competent decision-making bodies of e payment organisations could make decisions on greater reductions.
7. In addition, the Task Force recommends changes should be introduced in the method of setting the amount of the interchange fee so as to ensure it is lower for micropayments (up to PLN 20).

B. Activities related to merchant service charges

1. It is proposed that acquirers generally transfer reductions of the interchange fee pro-rata to merchant service charges, i.e. so that the reduced interchange fee does not result in an increase in the acquirer's profit in this respect per one transaction (the total profit of the acquirer may increase as a result of a larger scale of transactions).
2. After 1 January 2013 acquirers should not sign new agreements providing for a rate of the merchant service charge higher than the maximum rate applicable from that day, and old agreements should be annexed within a few months, however no later than within six months.
3. It is proposed that the following basic maximum rates for merchant service charges be set for individual transactions, common for debit cards, credit cards and charge cards under four-party schemes:
 - 1.80% of the transaction value no later than from 1 January 2013 (unconditional change),
 - 1.70% of the transaction value from 1 January 2014 (subject to the satisfaction of the condition for the reduction),
 - 1.60% of the transaction value from 1 January 2015 (subject to the satisfaction of the condition for the reduction),
 - 1.50% of the transaction value from 1 January 2016 (subject to the satisfaction of the condition for the reduction),
 - 1.40% of the transaction value from 1 January 2017 (unconditional change),

It is possible to establish higher maximum rates for the merchant service charge than those mentioned above, if this results solely from an increased level of risk of a particular merchant.

4. The Program assumptions concerning maximum rates of the merchant service charge would be common for all acquirers and cards issued under four-party schemes operating in Poland, i.e. VISA and MasterCard. In the case of Diners Club and American Express cards the rates will have to be set after a detailed analysis. The interchange fee in the latter two organisations is not present, however the merchant service charge determined by them, which includes relevant costs of the payment system, the issuer and the acquirer in a single entity,

should not be higher than the maximum MSC rate set for the above mentioned card organisations.

5. If the acquirer determines the merchant service charge as a combination of the amount-based fee and percentage fee, the total charge, calculated in relation to the transaction value may not exceed the maximum MSC.

C. Activities concerning additional fees paid to payment organisations

Interchange fee reductions may not be accompanied by the introduction of new or an increase in the already existing other local fees (Poland specific), charged by payment organisations to acquirers or merchants, as well as to payment card issuers.

D. Activities concerning basic fees for issuance and use of a debit card

It is proposed that issuers of payment cards should not automatically transfer the unrealised income lost as a result of the interchange fee reduction to basic fees charged to holders of debit payment cards, i.e. fees related to the issuance and use of the card.

VIII. Defining the conditions for the interchange fee reduction in Poland

The Interchange Fee Task Force proposes the following conditions for the interchange fee reduction for the variant of conditional reductions:

1. Reductions to subsequent (after the first reduction in 2012 or no later than from 1 January 2013) lower levels of the interchange fee in 2014-2016 would be implemented provided that the weighted annual rate of growth of selected indicators of non-cash transactions development in the last 12 months was greater than or equal to the parameter expressed as a percentage (102%) compared to the weighted average growth rates of these indicators arising from the econometric forecasts for basic figures related to non-cash transactions prepared in the fourth quarter of 2011 by experts from the Warsaw School of Economics at the request of the NBP, published on the NBP website (hyperlink: http://nbp.pl/systemplatniczy/obrot_bezgotowkowy/prognoza2011-2016.pdf).

2. Taking into account the analysis of the objectives of the development of individual parties to the card scheme and the indicators of non-cash transactions development related to them indirectly or directly, three indicators of this development were proposed:

- a) the number of points of sale accepting payment cards,
- b) the value of non-cash card transactions,
- c) the number of non-cash card transactions,

which were assigned the following weights: 50%, 30% and 20%, respectively.

3. Taking into account the results of econometric forecasts of basic figures related to non-cash transactions, it was assumed that if in 2012-2016 the existing trend of their development was extrapolated, the rates of growth of the indicators specified in clause 2 in annual periods, covering the comparative period of previous 12 months (in the case of the number of points of sale accepting payment cards it would be a comparison between the balance as of the end of the second quarter of the base year and the second quarter of the previous year, while in the case of a comparison of the number and value of non-cash card transactions it would be the period from the third quarter of the previous year to the second quarter of the base year) would reach the level indicated in table no. 1.

Table 1. Selected indicators of non-cash transactions development in each 12-month period of 2012-2016

No.	Indicator	Weight	Rate of growth in years (12 months July-June)			
			Q3 2012 - Q2 2013	Q3 2013 - Q2 2014	Q3 2014 - Q2 2015	Q3 2015 - Q2 2016
1	Number of points of sale equipped with POS terminals	50	7.79	7.3	6.87	6.44
2	Value of non-cash transactions executed with payment cards	30	11.32	9.06	6.86	4.7
3	Number of non-cash transactions executed with payment cards	20	16.46	14.24	12.18	10.15
	Total	100				

4. A reduction in the interchange fee would be possible if the weighted annual rate of growth of the indicators specified in clause 2, i.e. the sum of:

$$(1+(NPOSr - G1r)/G1r)*50\% + (1+(VCCTr - G2r)/G2r)*30\% + (1+(NCCTr - G3r)/G3r)*20\%,$$

was greater than or equal to 102%,

which would mean that the rate of growth of the major indicators of the non-cash transactions development after the previous interchange fee reduction in relation to the expected rate of growth of these indicators without taking into account the reduction of the above mentioned fees would have to be greater by 2 percentage points, increasing respectively the area of non-cash transactions in comparison with the previous year,

where:

- NPOSr - means the actual annual rate of growth of points of sale equipped with POS terminals in a 12-month period r,

- G1r - means the projected annual rate of growth in the number of points of sale equipped with POS terminals in a 12-month period r, for example for the period of the third quarter of 2012 - the second quarter of 2013, G1r would be 7.79,

- VCCTr - means the actual annual rate of growth of the value of non-cash card transactions in a 12-month period r,

- G2r - means the projected annual rate of growth of the value of non-cash card transactions in a 12-month period r, for example for the period of the third quarter of 2012 - the second quarter of 2013, G2r would be 11.32,

- NCCTr - means the actual annual rate of growth of the number of non-cash card transactions in a period r,

- G3r - means the projected annual rate of growth of the number of non-cash card transactions in a 12-month period r, for example for the period of the third quarter of 2012 - the second quarter of 2013, G3r would be 16.46.

The condition for the reduction would be calculated for the entire market and not separately for each card organisation (which would be impossible due to the lack of current and projected data for each organisation) and would be a condition for the interchange fee reduction for all payment organisations, regardless of whether the above mentioned condition was satisfied or not within a particular payment organisation.

5. If the condition for the reduction for a particular base year in the period of 2013-2015 is not satisfied, there will be no reduction in the interchange fee in the subsequent year. However, in the next base year the satisfaction of the condition for the reduction will be calculated on the basis of a comparison between the actual increase of a particular indicator for the period of two years and the forecast from the previous base year (forecast for 1 year).
6. It is proposed that the following additional indicators be monitored as part of the Program implementation as auxiliary indicators only, not included in the formula for calculating the condition for the reduction:
 - 1) the number of bank accounts,
 - 2) the share of payment cards in the value of merchants' turnover,
 - 3) the number of transactions per card per year,
 - 4) the number of POS terminals per 1000 inhabitants.

IX. Proposed changes in the structure of card charges

The Interchange Fee Task Force also proposes to adopt, in addition to the above mentioned main proposal concerning the level of the interchange fee and other card charges, changes in the structure of interchange fees. These changes would include the reduction of interchange fees defined for selected merchants or types of payment or the introduction of new fees into the fee structure, for selected types of merchants or payments that would be lower than the basic fees.

Taking into account the need to encourage entities and merchants who have not accepted payment cards until now, the Task Force recommends:

- 1) reducing the interchange fee radically for payments made to public sector entities, mostly general government institutions where, due to the interchange fee, payment of charges or taxes with a payment card has not been accepted until now; such a change could significantly expand the card acceptance network in Poland in a short time,
- 2) considering the possibility of a temporary interchange fee reduction, e.g. for one year, for entities with a defined low scale of turnover which have not accepted payment cards at all until now, which would also, in addition to the reduced basic rate of the

interchange fee or a proposal to reduce costs of a purchase of terminals as a result of their integration with new cash registers, constitute an incentive for smaller points of sale to start accepting payment cards,

- 3) reducing fees for micropayments (down to PLN 20).

X. Proposed forms of the implementation of the card charges reduction scenario in Poland

The Interchange Fee Task Force recommends multilateral agreements, concluded between all main parties to the card scheme, as a preferred solution for the Program implementation. An alternative solution recommended - in the absence of the approval or a possibility to conclude such agreements – is selecting the option of payment organisations' individual decisions and recognising the obligations provided for in the Program as a gentlemen's agreement, with the option to confirm the participation in the Program in the form of declarations of the parties made to the NBP.

Due to the position of the OCCP that a multilateral determination of the interchange fee under the payment card system, if made between competing payment systems, may constitute a restriction of competition within the meaning of Article 101 (1) of the Treaty on the functioning of the European Union and Article 8 clause 1 of the Act on Competition and Consumer Protection and the fact that the OCCP will not directly enter into such an agreement, as well as the fact that VISA and MasterCard have not concluded multilateral agreements in any of the countries across the world, the Task Force recommends instead of one agreement with all card organisations separate multilateral agreements for each payment organisation operating in market.

In the opinion of the Task Force, the agreement may not however constitute a barrier to entry for new entities (card systems, card issuers, acquirers or merchants) which could increase competition in the market for non-cash transactions.

The Task Force proposes the following assumptions for the selected form of the compromise solution implementation:

- 1) Participants of the agreement - representatives of payment card issuing banks, payment organisations, acquirers, merchants, the Polish Banks Association.
- 2) The scope of the agreement - determination of the material scope (cards covered by the agreement include all debit, credit and charge cards for individuals), determination of rules for the implementation of the Program of Card Charges Reduction in Poland, obligations of each party and a system for monitoring the implementation of the agreement, as well defining a "recovery plan" if the adopted assumptions are not achieved, together with designation of entities responsible for its execution.
- 3) The introduction into the agreement of a list of the following obligations that would also be also constantly monitored:
 - a) for payment organisations:
 - reduction of interchange fees to at least maximum rates specified in the Program, including for rates from 2014 depending on the satisfaction of the conditions for the reduction in a particular year (payment organisations could, of course, make decisions on higher reductions than those in line with the maximum rate, particularly in the case of much higher growth rates than those implied by the benchmark),
 - no increase in local fees (Poland specific) accompanying the interchange fee, i.e. fees for processing, marketing, system fees etc., for acquirers and issuers,
 - no introduction of new local fees (Poland specific) accompanying the interchange fee, i.e. fees for processing, marketing, system fees etc., for acquirers and issuers,
 - introduction of such changes to the method of setting the amount of the interchange fee that would not be discriminatory for micropayments (up to PLN 20), i.e. the reduction of the interchange fee for micropayments will be proportional to the main reduction,
 - seeking opportunities to implement reductions of fees paid by acquirers and issuers,
 - b) for card issuers:
 - no automatic transfer of the lost unrealised income resulting from the first interchange fee reduction to basic fees charged to payment card holders, related to card issuance and processing of card transactions,

c) for acquirers:

- generally proportional transfer of interchange fee reductions to merchant service charges, i.e. not causing an increase in the total margin of the acquirer in this respect,
- implementation of an appropriate information campaign accompanying the transfer of interchange fee reductions to merchant service charges in order to make merchants, especially smaller ones, aware of the source and purpose of the reductions,
- no new agreements with merchants with the merchant's rate higher than the specified maximum MSC and corresponding amendments to the existing agreements in due time,
- departure from the application of the blended fee, in favour of rates such as "interchange fee plus" or "interchange fee plus plus", clearly indicating the level of the interchange fee and the additional fee paid to the payment organisation (assessment fee) as well as the acquirer's margin or introduction of a generally applicable principle of informing about the amount of each component of the merchant service charge,

d) for merchants:

- generally proportional transfer of interchange fee reductions, resulting in reductions in MSC, to consumers. This is one of the most important expectations of the NBP - i.e, the ordinary consumer should benefit from the Program implementation also through the reduction of prices or smaller price increases should other costs rise; the interchange fee is, according to the information provided by merchants and supported by specific statistical data, an important component of the price of goods and services and a reduction in the merchant service charge due to a decrease in the interchange fee may not be reflected in an automatic, corresponding increase in the merchant's margin but should be reflected pro-rata in prices of goods and services;
- presentation by the merchants circles of a program supporting non-cash transactions, including specific activities aimed at enabling card acceptance in all points of sale, also in large networks which do not accept cards,

- respecting the prohibition of setting the minimum transaction value above which a card payment is possible, which would mean that shops would stop displaying notices of such limits,
- no surcharge for payment cards for the period of 4 years,
- no special measures to promote cash payments for the period of 4 years,
- no information activities that may adversely affect the development of non-cash transactions,
- refraining from any activities related to, for instance, a boycott of one of the card schemes,
- substantive support for the project of integrating cash registers with POS,
- granting support for activities of the card organisations related to the introduction of new methods of payment, in particular contactless and mobile payments,
- promotional, information and educational activities under the FDNCT,
- marking outlets clearly with signs informing of the possibility of making card payments,
- placing POS terminals in merchant's outlets in a location that is visible to the consumer.

e) common

- promotion of non-cash transactions,
- compliance with the prohibition of setting a minimum value of the transaction,
- granting support for activities of the card organisations related to the introduction of new methods of payment, in particular contactless and mobile payments,

4) The role of the NBP:

- to provide patronage for the agreement,
- to coordinate the preparation of the agreement,
- to initial it (if any activities attributable to the NBP are included in the agreement), however without being a party to the agreement,
- to coordinate the monitoring of the agreement implementation under the Program Monitoring Working Group,
- to oversee compliance and enforcement of obligations.

- 5) Schedule for the preparation of agreements:
- i. by 30 May 2012 - written declaration by the payment organisations of their readiness to implement the Program of reductions,
 - ii. 29 June 2012 - examination of declarations of the payment organisations by the Payment System Council,
 - iii. by 15 July 2012 - submission of declarations of the parties on entering into the agreement,
 - iv. by the end of August 2012 - the content of the agreements to be prepared and agreed with the parties entering into them and initialled by the NBP (if activities acceptable to the NBP and attributable to the NBP are agreed in the agreement),
 - v. end of September 2012 - signing agreements between the parties at the NBP's registered office and making a decision on reductions by competent decision-making bodies of the card organisations.

The content of the agreement should be precise and contain solutions that eliminate any attempts to circumvent it, for example, by changing the classification of the different types of cards, and to increase card charges outside the agreement.

XI. Proposed method of monitoring the Program of card charges reduction in Poland

The Interchange Fee Task Force recommends that:

- 1) a Program Monitoring Working Group be established in October 2012 as a working group at the Payment System Council, which would be coordinated by the NBP and would be composed of selected representatives of payment card issuers, payment organisations, merchants, acquirers, the Polish Bank Association, the NBP and government institutions, whose tasks will include:
 - a) monitoring the implementation of the Program, i.e. fulfilment of obligations by each party to the agreement,
 - b) preparing an assessment of the satisfaction of the conditions for reductions of card charges in each year of the Program implementation period,

- c) reviewing the objectives of the Program and proposing modifications,
 - d) recommending decisions on reductions in card charges to the Payment System Council and subsequently to payment organisations, and potential changes in the Program objectives to the parties of the agreements,
- 2) meetings of the Program Monitoring Working Group be held at least twice a year, i.e. in the first quarter (to implement the tasks referred to in item 1 letter a) and in the third quarter (to implement the tasks referred to in item 1 letters a-d),
 - 3) monitoring of the satisfaction of the conditions for reductions and recommending reductions from the next year be performed every year in the form of an examination by the Payment System Council, a consultative and advisory body at the Management Board of the NBP, in the third quarter of a particular base year of the material prepared by the Program Monitoring Working Group, containing an assessment of the satisfaction of the conditions and proposed decisions,
 - 4) if the Payment System Council establishes that the conditions for the next reduction in interchange fees are satisfied, requests to payment organisations to make relevant decisions in this respect be made by the NBP,
 - 5) every 2 years, i.e. in 2014 and 2016, all objectives of the Program of reductions be reviewed and potentially revised, by means of an examination by the Payment System Council of the material prepared by the Program Monitoring Working Group, containing an assessment of those objectives and potential proposals of change. This would not exclude the possibility of a partial revision of the objectives, on the occasion of the annual monitoring of the Program (however, this would not include, for instance, setting new benchmarks from econometric forecasts which, by definition, will be revised every two years).

XII. Proposed activities supporting the Program implementation

The Interchange Fee Task Force proposes to implement the following activities in support of the implementation of the compromise:

1. Development by a working group, composed, in particular, of representatives of merchants and acquirers, of a detailed plan for an increase in the number of points accepting cards during the Program period, together with a specifying

dates and tools allowing the accomplishment of the assumed objective for the increase.

2. Resumption by the government of work on the "Program for the Development of Cashless Transactions in Poland" due to the fact that the failure to solve the interchange fee problem was indicated by the government as the main barrier to the approval of this Program by the Council of Ministers. If this is not possible, it is proposed that selected tasks contained in that Program be implemented in the form of a Pact for Non-cash Transactions in Poland.
3. Undertaking regulatory actions, introducing principles supporting the Program implementation expected by the market, including:
 - 1) the right not to accept selected payment cards by merchants, e.g. cards whose acceptance involves higher costs for merchants,
 - 2) introduction of a transparency principle for the amount of fees in agreements between the acquirer and the merchant. At the request of the merchant, the acquirer will be required to provide information on the structure of the merchant service charge and the amount of its individual components (i.e. the interchange fee, additional fees for payment organisations and the acquirer's margin).
 - 3) the obligation for merchants to accept any amount of payment made with a payment card.
4. Introduction of a mechanism encouraging merchants to purchase cash registers with a POS terminal, also in an integrated version.
5. Introduction of an integration of payment devices (POS terminals) with new cash registers, which would enable to a significantly increase the level of saturation of terminals in the market for payment cards in a few years, with the support of the Ministry of Finance.
6. Undertaking actions aimed at making card payments available to the state administration.
7. Organisation by the NBP of the "Academy of Easy Finance" - a four-year project (covering the period of 2012-2015) organised with the participation of the NBP regional branches, designed to educate and promote non-cash transactions in individual regions of the country.

8. Performance of an analysis of issuers' costs by banks and payment organisations and performance by merchants of a Merchant Indifference Test, which may affect the revision of Program objectives at its later stage.
9. Performance by the NBP of an analysis of costs of payment instruments in Poland, on the basis of the analysis of issuers' costs and merchant indifference test,.
10. Promotional activities and organisation of competitions for merchants, aimed at, for instance, achieving a specific share of cards in merchants' turnover.

A detailed plan of activities supporting the Program implementation should be prepared before multilateral agreements are prepared.

XIII. General disclaimer

The implementation of the Program may be changed or discontinued if it results either from a decision of the European Commission, a decision of the OCCP, the Court of Competition and Consumer Protection or from relevant amendments of the national or EU law.

XIV. Determination of an alternative scenario in the case of a failure to implement the Program

In the opinion of the Interchange Fee Task Force if the above mentioned proposals are not implemented, the introduction of a relevant regulation concerning the interchange fee would be necessary, initiated by the NBP or supported by the NBP.

A statutory regulation may include the following elements:

- i. maximum rates of the interchange fee for Poland will be introduced or maximum rates will concern components of the merchant service charge, i.e. the sum of the interchange fee and the assessment fee (additional fee paid to the payment organisation) that will be non-negotiable by merchants,

- ii. alternatively to letter a - introduction, following the example of the telecommunications and power market, of a system for determining, accepting and controlling the fees together with creating a new central institution or entrusting related tasks to an existing institution,
- iii. a date will be determined on which all rates of interchange fees should be adjusted to a specific maximum level, e.g. the average level of national or cross-border fees in the European Union (in the case of a one-off high statutory reduction) or the amount of maximum rates appropriate for individual years will be determined (if a gradual reduction of interchange fees is agreed),
- iv. inclusion in the regulation of the obligation of an appropriate (proportional to current rates) transfer by acquirers of the interchange fee reduction to the amount of the merchant service charge,
- v. the regulation will cover all types of payment cards in three main categories:
 - credit cards,
 - charge cards,
 - debit cards,
- vi. the maximum rate for debit cards will be lower than for credit and charge cards,
- vii. the regulation will cover all card systems applying national rates of the interchange fee in the Polish market,
- viii. maximum rates for a full merchant service charge will also be introduced, which will also cover three-party schemes,
- ix. reductions in interchange fees cannot be accompanied by an increase in other fees charged to acquirers or merchants,
- x. the regulation should also provide for sanctions for failure to comply with relevant laws,
- xi. the regulation should determine the scope of the application of a potential surcharge (a full ban, partial ban, excluding, for instance, all payment cards or selected types of payment cards, e.g. debit cards, or the introduction of a full national option as provided for in the Payment Services Directive),
- xii. in addition to the amendment to the payment services act, the regulation will include amendments to other acts concerning government institutions obligated to oversee the performance of the above obligations of banks and card organisations.

A failure to implement the Program may also result in:

- i. undertaking by the banking sector of activities aimed at covering real costs of cash by merchants,
- ii. merchants' activities restricting temporary or permanent acceptance of all or selected payment cards,
- iii. support for establishing and developing card payment schemes that would be competitive against those currently operating in Poland, due to the fact that the problem of high interchange fee rates is caused largely by the lack of real competition in the Polish card payment market.

In the opinion of the Interchange Fee Task Force the regulatory option, although it is possible to be applied from a theoretical perspective, is a worse solution than the compromise option, assuming the implementation of the Program, for the following reasons:

- regulations relating to interchange fees cover mainly the activities of payment card issuers and card organisations. Regulations concerning merchant service charges may also cover activities of acquirers, which means that the regulations will probably not cover merchants. This implies that the fulfilment of their obligations specified in the Program under the compromise option will not be possible, which would be essential for the increase of the payment card acceptance network in Poland and the development of non-cash transactions. In addition, the reduction in merchants' costs due to the interchange fee reduction will not translate into benefits for consumers, i.e. a decrease in prices, but will only translate into a transfer of profits of payment card issuers earned previously on an excessive interchange fee to merchants.
- the scenario of activities proposed under the compromise option assumes, in contrast to the regulatory option, incentives to increase the payment card acceptance network and an increase of quantitative measures of the card market, which, together with supporting activities, may be reflected in a reduction of the financial exclusion in Poland.
- regulations may result in a faster and much more dramatic reduction of the interchange fee than in the case of the compromise option, which may considerably impair the development of the card market, also due to the fact that banks will more intensively seek compensation for unrealised income and high increases of fees for card issuance and use, and will withdraw from investments in programs of the development of innovative payments, such as contactless cards or mobile payments, requiring large expenditure on start-up and development.

- the compromise option, assuming an agreement and the absence of administrative instruments for its implementation, may be monitored by the NBP using its existing resources, which does not seem possible in the case of the regulatory option, where both in the option specified in item 1 and in 2 of the regulatory proposals it is necessary to designate a competent institution which may take administrative or regulatory measures against entities covered by the regulation and this may require an establishment of new resources at the government level to perform this task,
- currently there are no statutory regulations on the interchange fee in the European Union and problems related to the interchange fee level are solved either by decisions of national competition and consumer protection authorities or agreements or unilateral decisions of card organisations,
- there is a risk that one of the payment organisations will attempt to prove non-compliance of the regulation determining the level of the interchange fee with the Polish Constitution, including referring the regulation to the Constitutional Court, which could delay, in comparison with the compromise option, the introduction of reduced rates of the interchange fee in Poland.