

## News release

11 January 2008

### **Greiðslumiðlun [VISA Iceland], Kreditkort [MasterCard Iceland] and Fjölgreiðslumiðlun [jointly owned netting system] admit to non-compliance with the Competition Act and will pay a combined total of ISK 735 million (approx. Euros 7.9 million) in administrative fines**

Following an investigation by the Competition Authority, Greiðslumiðlun hf. (now Valitor), Kreditkort hf. (now Borgun) and Fjölgreiðslumiðlun hf. have concluded a settlement with the Competition Authority. According to the terms of the settlement, Greiðslumiðlun admits to having abused its dominant position in the market by taking actions which targeted a new competitor (PBS/Kortapjónusta). In the text of the settlement, Greiðslumiðlun hf. and Kreditkort hf. also confess to having engaged in long-standing and extensive collusion. Fjölgreiðslumiðlun was partly involved. The settlement with Fjölgreiðslumiðlun includes an admission that the company violated the ban in the Competition Act on anti-competitive practices by associations of undertakings. As a result, the three undertakings have agreed to pay administrative fines and change their business practices and conduct in the market. Greiðslumiðlun will pay a fine of ISK 385 million (approx. Euros 4.1 million), Kreditkort will pay ISK 185 million (approx. Euros 2.0 million), and Fjölgreiðslumiðlun ISK 165 million (approx. Euros 1.8 million).

The background of the case is that on 13 June 2006, the Competition Authority launched a dawn raid on the business premises of Greiðslumiðlun. On the basis of the documents discovered, a search was conducted on the premises of Kreditkort on the same day. In connection with the examination by the Competition Authority of the seized documents, evidence emerged of possible violations by Fjölgreiðslumiðlun, and a search was therefore conducted of the premises of that company on 14 March 2007.

Greiðslumiðlun approached the Competition Authority last year and requested a settlement in the case. Discussions led to a settlement being concluded with the company on 29 November 2007. Kreditkort also approached the Competition Authority and requested a settlement of the case, and a settlement with that company was signed on 19 December 2007. Finally, Fjölgreiðslumiðlun requested discussions on a settlement; the discussion concluded with the signature of a settlement with the company on 7 January 2008. These settlements are grounded in Article 17(a) of the Competition Act, which stipulates that when an undertaking has violated the provisions of the Act the Competition Authority is authorised to conclude the matter by a settlement.

This case concerns the payment card market and its submarkets. Greiðslumiðlun and Kreditkort are competitors in the market for acquiring services. Acquiring involves services to merchants (e.g. retail shops) whereby they are authorised to accept payments by means of payment cards, collecting their data and disbursing the proceeds when card holders have paid their bills. Greiðslumiðlun held a dominant position in this market. Fjölgreiðslumiðlun is an undertaking jointly owned by the commercial banks, the savings banks, Greiðslumiðlun, Kreditkort and the Central Bank of Iceland. Fjölgreiðslumiðlun's tasks include the operation of electronic payment systems (RÁS-systems) for authorisation, collection of entries and clearance of payments relating to transactions involving payment cards. Access to this system is essential for parties operating in the payment card market.

Greiðslumiðlun has confessed to having violated Articles 10 and 11 of the Competition Act and Articles 53 and 54 of the EEA Agreement. Kreditkort has confessed to having violated Article 10 of the Competition Act and Article 53 of the EEA Agreement. Fjölgreiðslumiðlun has confessed to having violated Articles 10 and 12 of the Competition Act and Article 53 of the EEA Agreement. The violations consisted primarily in the following actions:

1. Actions of Greiðslumiðlun against PBS/Kortapjónustan (abuse of dominant position)

Until the year 2002, Greiðslumiðlun and Kreditkort had provided virtually all the acquiring services relating to the use of payment cards involving Icelandic merchants of goods and services. In November of that year, a

Danish company, PBS International, began offering acquiring services in competition with these two undertakings. PBS has a partner undertaking in Iceland, Kortafjónustan ehf., which is responsible for contracting with merchants and transmitting records. These companies will hereinafter be referred to jointly as PBS/Kortafjónustan.

Until the time that PBS/Kortafjónustan launched its business operations, the normal procedure was that Greiðslumiðlun and Kreditkort would settle accounts with merchants on a monthly basis. PBS/Kortafjónustan, however, offered a new option in competition with these undertakings. The new option was to offer merchants more frequent payments relating to credit card transactions, as early as two days following the respective transactions. It can be of significant benefit for merchants to receive the payments in question as soon as possible. It should be kept in mind that the use of credit cards is more widespread in Iceland than in most other countries. Greiðslumiðlun, Kreditkort and Fjölgreiðslumiðlun colluded on specific actions intended to oppose the entry of PBS/Kortafjónustan into the market, as described in Chapter 2.

The documents of the case show that the managers of Greiðslumiðlun were hostile to the competition from PBS/Kortafjónustan. In Greiðslumiðlun, memos were composed and e-mail messages written revealing an intent to drive PBS/Kortafjónustan out of the Icelandic acquiring market, and certain actions were planned for this purpose. The objective, according to documents from Greiðslumiðlun, was to prevent the new competition from cutting into the profits of Greiðslumiðlun derived from this line of business; at the same time, the exclusion of PBS/Kortafjónustan was intended as a warning to any other parties proposing to start competing in the Icelandic market. The actions taken by Greiðslumiðlun for the purpose of driving PBS/Kortafjónustan from the market were of various kinds, and this abuse continued during the years 2002 – 2006. The following is a further description of these actions.

1.1 As a result of its position in the market, Greiðslumiðlun had access to information concerning the business activities of PBS/Kortafjónustan. On the basis of this information, among other things, Greiðslumiðlun approached PBS/Kortafjónustan's customers and offered them special terms and offers for the purpose of luring them away from PBS/Kortafjónustan. These terms and offers consisted in unlawful exclusive price cuts and more frequent disbursements, which were not generally available to merchants doing business with Greiðslumiðlun. In some cases, offers were also made of reduced rent for POS terminals, or even free use of such terminals, which constitutes illegal bundling.

1.2 Greiðslumiðlun used technical barriers, including risk management<sup>1</sup> to make it more difficult for merchants doing business with PBS/Kortafjónustan to carry out their credit card transactions. Greiðslumiðlun used risk management differently in their own systems when authorisation was being requested in respect of transactions between Icelandic merchants and PBS/Kortafjónustan than in the case of merchants using Greiðslumiðlun's own acquiring services. These actions of Greiðslumiðlun were not consistent with the normal function of risk management where the nationality of the merchants is of significance. Instead, different risk management was used depending on whether Icelandic merchants were doing acquiring business with the competitor or not. The effect was that it was made more difficult for merchants using PBS/Kortafjónustan to conduct sales than merchants using Greiðslumiðlun, with resultant delays and inconvenience for merchants and card holders. Another example of a technical barrier was that in the first months that PBS/Kortafjónustan was engaged in acquiring in Iceland, Greiðslumiðlun translated the amounts in Icelandic krónur into US dollars, and then back into Icelandic krónur on card holders' statements, with resultant currency risk. When card holders complained to Greiðslumiðlun, the company attempted to direct their dissatisfaction at the merchants who were doing business with PBS/Kortafjónustan.

1.3 Greiðslumiðlun and PBS are associated with VISA International. The companies pertain to VISA Europe, i.e. the VISA Europe regional office, which is based in London. The documents show that Greiðslumiðlun exerted pressure on VISA Europe and established special rules on acquiring, which were designed to obstruct the business activities of PBS/Kortafjónustan in Iceland.

## 2. Collusion

Greiðslumiðlun and Kreditkort engaged in various forms of collusion. Fjölgreiðslumiðlun participated to some extent in this collusion.

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<sup>1</sup> Risk management generally has two purposes. On the one hand to monitor that withdrawals by card holders do not exceed the withdrawal limits set by card issuers for individual card holders over each payment period. On the other hand, risk management is used to minimise losses to issuers resulting from abuse of lost, stolen or falsified cards. In such cases, stricter risk management is used when cards are used with foreign merchants than local.

2.1 Greiðslumiðlun and Kreditkort colluded on reactions and measures which began in November 2002 for the purpose of preventing the entry of PBS/Kortafjónustan into the acquiring market in Iceland. These two companies took the initiative in this collusion, while Fjölgreiðslumiðlun participated, e.g. by providing information on the new competitor.

2.2 There was collusion between Greiðslumiðlun and Kreditkort on maintaining a mutual understanding that the companies should not seek franchises under each other's trade marks. This entailed a joint understanding that Greiðslumiðlun would not compete with Kreditkort in acquiring for MasterCard/Maestro cards, while Kreditkort would not compete with Greiðslumiðlun in acquiring for VISA/Electron cards.

2.3 Greiðslumiðlun colluded with Kreditkort by agreeing that the latter company should not enter the POS terminal rental business in competition with Greiðslumiðlun, against an agreement that Kreditkort would instead be allowed to buy VISA instalment contracts. This means that the companies colluded on market sharing in a way that was designed to restrict competition in the POS terminal rental market.

2.4 Kreditkort and Greiðslumiðlun colluded on issuers' shares in the commission from merchants for the use of debit cards.

2.5 Kreditkort and Greiðslumiðlun colluded on reducing competition in offers to customers, in addition to colluding on marketing and promotion work. This consisted principally in discontinuing certain offers to customers.

2.6 Greiðslumiðlun and Kreditkort colluded on establishing various terms relating to payment card activities and various aspects of merchants' business operations and consumers' interests.

2.7 Kreditkort, Greiðslumiðlun and Fjölgreiðslumiðlun colluded on exchanges of information concerning business-related matters, such as information on market share, prices and pricing plans. This exchange of information, e.g. on market share, had the effect of creating an anticompetitive transparency in this oligopolistic market.

2.8 Greiðslumiðlun and Kreditkort colluded on various development and investment projects relating to payment clearance and acquiring. The objective was to defend the position of the companies in acquiring and payment clearance services and limit the risk of potential future competition.

2.9 As regards various of the above violations, Kreditkort and Greiðslumiðlun have emphasised that the companies omitted to apply for exemptions from the provisions of the Competition Act prohibiting collusion.

### 3. Restrictions on competition within Fjölgreiðslumiðlun

Within Fjölgreiðslumiðlun, a committee was in place that operated the RÁS electronic payment system (the Rás Committee), with three members and three alternate members. The committee was composed of one representative of each card company, Greiðslumiðlun and Kreditkort, and one employee of Fjölgreiðslumiðlun. The Rás Committee was intended as a forum for co-operation and its tasks included discussions of technical and security matters, standardisation and supervision of equipment certification. The committee was also intended to discuss business and contracts with merchants and to submit proposals to the board of directors of Fjölgreiðslumiðlun concerning corrective actions, e.g. regarding acquiring terms to merchants. Examination of documents at Fjölgreiðslumiðlun, as well as the card companies, revealed serious collusion resulting from this forum. The collusion consisted in decision making within the Rás Committee, and sometimes also within the board of directors of the company, on issues which mostly related to competition between Greiðslumiðlun and Kreditkort. It is a common feature of all these matters that they are anti-competitive in the market for the use of payment cards and thereby have a potential impact on the available options and operating environment of merchants and on the interests of consumers. The following is a further description of these actions.

3.1 Within the Rás-Committee work was done on co-ordinating rules on joint risk management and call-in ratios when payment cards are used in business transactions.

3.2 Discussions were held on variable card payment periods within the year for merchants in respect of business transactions involving credit cards. This led to a joint position being taken vis-à-vis merchants, and it also impacted consumers' interests. There was also collusion on other matters, e.g. on co-ordinated practices of

Greiðslumiðlun and Kreditkort vis-à-vis merchants authorised to accept payment cards in business transactions without card-holders' signatures.

3.3 Collusion within the Rás Committee included decisions to the effect that it would be left up to the company (Fjölgreiðslumiðlun) to decide whether any additional solutions should be hosted in the POS terminals and other equipment connected with the payment clearance system and, if so, which solutions. This had the effect of distorting competition in this regard.

3.4 There was collusion on practices in risk assessment and decisions on reference amounts when mobile telephones are used for payment clearance. This led to co-ordination between Greiðslumiðlun and Kreditkort.

3.5 There were discussions on the standards of the Icelandic card companies relating to payment card transactions and joint planning of the Icelandic acquiring arrangements. There were communications concerning a joint method of calculating interest for card-holders, on the one hand, and merchants, on the other hand, when debit cards are used in business transactions. Fjölgreiðslumiðlun has emphasised the point that the nature of payment systems and payment clearance calls for a certain degree of co-operation between financial undertakings, and that the scope for independent conduct is extremely limited in this regard. There was extensive co-operation within Fjölgreiðslumiðlun on measures relating to various development and investment projects, and Fjölgreiðslumiðlun also served as a forum for discussions and joint decisions of the banks and card companies regarding their ownership of other companies related to this market with the objective of protecting the owners' position in payment clearance services in Iceland.

3.6 As regards various of the above violations, Fjölgreiðslumiðlun has emphasised that the company omitted to apply for an exemption from the provisions of the Competition Act prohibiting collusion.

#### 4. Sanctions and instructions

As a result of the above violations, Greiðslumiðlun has agreed to pay an administrative fine of ISK 385 million, Kreditkort ISK 185 million and Fjölgreiðslumiðlun ISK 165 million. In determining the amounts of the fines, it has been taken into consideration that these are serious violations of the Competition Act and liable to cause significant distortion of competition, as well as the fact that the violations extended over a long period. It is borne in mind that Greiðslumiðlun has possessed an extremely strong position in the market. As regards Fjölgreiðslumiðlun, account is taken of the fact that complex issues can arise in the operation of payment systems. It is not possible, therefore, to exclude the possibility that part of the violations committed by Fjölgreiðslumiðlun resulted from neglect.

In establishing the amount of the fine, consideration has also been given to the fact that the undertakings in question took the initiative in opening discussions with the Competition Authority on a settlement and that they have confessed to the violations of the Competition Act without reservation. Also, the undertakings have agreed to comply with instructions issued for the purpose of promoting competition. Through these actions, the three undertakings have facilitated and greatly shortened the investigation time and procedure before the Competition Authorities, which has a positive impact on competition in the defined market. Much weight has been given to this co-operation shown by the undertakings in determining the fines.

Greiðslumiðlun in particular is rewarded for being the first to step forward and admit its participation in collusion. Generally speaking, it is important that companies that break ranks in collusion, or take the initiative in admitting such violations or supplying information on them, should benefit from reductions in fines.

The instructions that Greiðslumiðlun, Kreditkort and Fjölgreiðslumiðlun have agreed to observe are intended to promote active competition and prevent further instances of similar violations. The instructions include the following:

- Kreditkort and Greiðslumiðlun will cease all business co-operation with competitors unless the companies are granted an exemption.
- Kreditkort, Greiðslumiðlun and Fjölgreiðslumiðlun will withdraw from all boards of directors, committees or decision groups which can provide a forum for collusion.
- Kreditkort, Greiðslumiðlun and Fjölgreiðslumiðlun are prohibited from providing or accepting information which is capable of distorting competition.
- The links between Greiðslumiðlun and Kreditkort have led to competition problems. Thus, the same companies have been represented on the boards of directors of both Greiðslumiðlun and Kreditkort. This provides a basis for collusion between the card companies, which can lead to serious distortion of

competition. For this reason, instructions have been issued to cut these management ties. Account is also taken of the fact that the boards of directors of Fjölgreiðslumiðlun, Greiðslumiðlun and Kreditkort have included representatives of undertakings engaging in competition with one another. Instructions have been issued to reduce the risk of distortion of competition for these reasons.

- A great deal of co-operation has taken place within Fjölgreiðslumiðlun between the parties who are the owners of that company. The co-operation has concerned technical and security matters which, among other things, relate to electronic payment clearance. There has also been co-operation on business issues, mostly relating to the business activities of the card companies. This co-operation has led to serious violations of the Competition Act. For this reason, and in light of the nature of Fjölgreiðslumiðlun as an association of companies, a comprehensive review should be undertaken of the business activities of the company. Fjölgreiðslumiðlun will therefore, before next 1 May, submit to the Competition Authority an application for exemption under Article 15 of the Competition Act relating to the co-operation that the companies participating in Fjölgreiðslumiðlun believe to be necessary within the company (e.g. for security reasons). The Competition Authority will study the matter in a new case which will be opened on receipt of the application.

#### 5. Conclusion

The Competition Authority is of the opinion that this case has extreme significance. It appears entirely reasonable to assume that its conclusion and the above changes will have an exceedingly positive impact on the financial markets. The responsible position taken by Greiðslumiðlun, Kreditkort and Fjölgreiðslumiðlun in the procedure before the Competition Authority will have the result of creating a much healthier competitive environment and contribute to increased competition in this important market.

The decision of the Competition Authority in the case is accessible in Icelandic on its website.