



**REPORT ON  
COMPLAINTS AGAINST THE  
'EASY PAY SYSTEM'**

**CONSUMER COUNCIL  
AUG 2000**

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### REPORT ON COMPLAINTS AGAINST THE 'EASY PAY SYSTEM'

#### INTRODUCTION

1. Since April 2000 the Consumer Council has received complaints from merchants in Hong Kong against the Electronic Payment Services Company (Hong Kong) Limited (EPSCO). EPSCO is the operator of a debit card payment system known as 'EPS' (easy pay system) that directly transfers payments from a customer's bank account to the bank of a merchant at the point of sale.
2. The complainants alleged that EPSCO is a 'monopoly' service provider and is taking advantage of its market power to levy unreasonable transaction charges from the complainants for using the EPS system. The complaints have two dimensions. First, some complainants had originally negotiated a flat fee of \$2.00 per transaction regardless of the amount, and EPSCO had moved to change that to a percentage based fee up to 0.75% calculated on the amount of the transaction. Second, there were complaints generally by merchants regarding the use by EPSCO of percentage based transaction fees rather than flat fees.
3. Hong Kong is a market economy, and it is through the process of competition that the objectives of economic efficiency and the free flow of trade are to be achieved<sup>1</sup>. The intention behind the Council's report is not to consider the quantum of what a reasonable transaction fee should be (as the Council does not have access to commercially sensitive information and data to do so). Nor is the Council seeking to argue for uniform fees in the marketplace for a particular group or groups of merchants. It's intention is to consider the question of whether there has been a market failure in the delivery of debit card network payment services to merchants due to a lack of competition, and the implications for consumers. This report consolidates the limited information that the Council has been able to obtain from the industry, including the complainants and EPSCO, and general research on retail payment systems overseas.

#### EPSCO

4. EPSCO was set up in 1984 by a consortium of banks in Hong Kong. At present there are 35 member banks, and ownership of EPSCO is through share capital of individual banks. According to EPSCO records obtained from the Companies Registry, the Hongkong and Shanghai Banking Corporation (HSBC) is the company's largest shareholder. Out of the total 67 shares, HSBC holds 24 shares followed by Hang Seng Bank Limited with 4 shares. The other member

<sup>1</sup> This reflects Hong Kong Government policy, as enunciated in its *Statement on Competition Policy* issued May 1998, Paragraph 2.

banks have 1 to 2 shares only. The Articles of Association of EPSCO also provide that the number of members of the company shall not at any time exceed fifty major banks in Hong Kong. The Articles of Association also allow for EPSCO to declare dividends and capitalise any profits that may arise. Information from the Companies Registry shows that at the time when EPSCO was set up, its management board was composed of representatives from HSBC, Hang Seng Bank, Bank of China, Bank of East Asia and Citibank.

5. According to the company's website information <<http://www/eps.com.hk>> its mission is to reduce cash and cheque transactions through the development of various electronic fund transfer services. Its services offer consumers and merchants channels to pay and receive funds, and create a smoother flow of funds within the banking industry. Products and services offered include EPS, Payment by Phone Service (PPS), Payment Express Terminal (PET), electronic funds transfer services for Hong Kong Jockey Club and Octopus' Add Value Machine.

#### ***How EPS works***

6. EPS is a retail payment system that makes electronic payments from a consumer's bank account directly to a merchant's bank account at the point of sale. The payment is effected through the consumer presenting a debit card issued by one of the EPSCO consortium members to the merchant. The debit card is used to activate a specially provided terminal through which the merchant's bank account is credited with a corresponding amount from the consumer's bank account. EPSCO currently has contracts with about 10,000 merchants, which it claims represent 20% of Hong Kong merchants.<sup>2</sup>

#### ***Categories of fees***

7. In discussions with EPSCO and with merchants it was disclosed that of the merchants currently with EPS terminals, there are actually three categories of fees that apply:
  - \$2.00 flat fee;
  - 0.75%; and
  - 'other'

#### ***Special rates***

8. Information was initially provided to the Council by EPSCO indicating the number of EPSCO terminals in operation, categorised according to one of the above three payment categories. Further information was sought on an elaboration of what the 'other' category meant and a breakdown of the number of merchants falling within each payment category. However, EPSCO informed the Council that the information previously provided on terminals was commercial in confidence and should not be disclosed. Similar reasons were cited for declining to provide information on the costs of effecting transactions.

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<sup>2</sup> BSMG Worldwide Media Release issued on behalf of EPSCO 'Standardizing EPS Service Charge Affects Only 200 Merchants', 5 June 2000.

9. As for the charging rate noted as 'other', EPSCO stated that the term refers to a situation where a particular merchant has negotiated a special individual fee, for example, a percentage fee lower than 0.75% based on a high volume of transactions. The Council was informed in discussions with merchants that in addition to a lower percentage transaction fee below 0.75%, there was another fixed fee scale not tied to each transaction, for example, a fixed monthly fee that would be charged if a merchants transactions exceeded a certain number per month. If the transactions did not exceed the specified number, the 0.75% transaction fee would apply.

***Cost of EPSCO operation***

10. EPSCO stated that for more than 10 years after its inception, it recorded deficits and that it had invested heavily in security and technical upgrades each year. The company stated that despite these difficulties, it has been charging a percentage fee of 0.75% on transaction value and has never revised the charge. The current fee alignment was aimed at standardising the EPS charge among all merchants.

11. EPSCO claimed that it had made efforts to explain the reasons for the fee alignment to merchants and had given adequate notification late December 1999 of the proposed changes, which were to take effect from 1 April 2000. This was in accordance with the merchant agreement that sets out the terms and conditions for a merchant to use the EPSCO service, and allows for changes to be made upon prior notice.

***EPSCO's rationale behind the percentage transaction fee***

12. EPSCO stated that its reason for applying a percentage based transaction fee, rather than a flat fee was because it considered a flat fee to be unfair to merchants, particularly those with 'smaller ticket size'. In other words, the lower the transaction value, the higher the percentage rate would be. It was also stated that a flat fee would have to be constantly reviewed as system usage grew, while a percentage based rate would be self adjusting. EPSCO was unable to provide the Council with any information that explained the rationale for setting the percentage fee of 0.75%.
13. EPSCO claimed that the change in the fee structure scheme only impacted a few merchants. Since EPS was established, it was stated that 90 percent of EPS merchants have been charged a service fee of 0.75% of the transaction amount. Only a small number of merchants, for individual reasons, had been charged a concession rate of HK\$2 per transaction for the past 15 years. It was claimed that this special rate is lower than the cost to provide the EPS service.
14. EPSCO stated that its key objective is to reduce the amount of cash and cheques in the retail market in Hong Kong. It provided the service regardless of size to small, medium and large merchants and did not impose a minimum spending amount for its service, in order to provide both consumers and merchants with a convenient payment tool. It therefore preferred a percentage

based commission scheme to a fixed transaction fee so that small retailers with a large number of small transactions could still afford the program and therefore be encouraged to join.

15. EPSCO's rationale was that if a merchant had many small volume transactions, it would be unprofitable for the merchant to accept the card if the transaction fee was set at a flat rate. For example, if a merchant typically has many purchases at \$100, for which debit cards were used, and has to pay \$2 per transaction, this would amount to a cost to the merchant of 2% of the purchase price, erasing much if not all of the margin. If a percentage based fee of 0.75% was used, this would only cost the merchant 75 cents.
16. However, while there may be some merchants who prefer a percentage transaction rate, the merchants who complained to the Council stated that their transactions were typically much higher and the percentage based fee acted against their interests. For example, if a debit card was used by a customer of a goldsmith or a travel agent for a typical transaction of \$10,000, the 0.75% transaction fee would cost the merchant \$75.
17. In the Council's opinion, if transaction fees for merchants are to be charged (bearing in mind that 'excessive' transaction fees could act to impede growth of the system by merchants) the matter comes down to the issue of choice. In particular whether merchants have competitive choices available to them for the product, and what competitive pressures exist to determine an efficient level of the fees.

## INDUSTRY COMPLAINTS

18. This matter was initially brought to the Council's attention by the Hong Kong Jewelers & Goldsmiths Association (HKJGA); representing jewellers and goldsmiths, and the Hong Kong Travel Industry Council (TIC); representing all travel agent associations in Hong Kong. Subsequent representations were made to the Council on behalf of other groups of merchants in Hong Kong. A survey carried out by the Office of Mrs. Selina Chow, Legislative Council Member, between 8 and 21 May 2000, on 2571 merchants in the furniture, cosmetics, electrical appliances and computer industry, indicated widespread concern on EPSCO's increase in fees (for those with \$2.00 flat fees) and use of a percentage based transaction fee<sup>3</sup>.
19. In that survey 70% of respondents indicated that they had signed the new agreement with the 0.75% transaction fee, but only 22.7% accepted the new fee. Furthermore, primary boycotts against EPSCO's system were subsequently organised by collective groups within retail sectors, that involved substantial numbers of merchants. A media release issued on behalf of EPSCO was headed 'Standardising EPS Service Charge Affects Only 200 Merchants'<sup>4</sup>. As noted previously, EPSCO has declined, on the grounds of commercial confidentiality to

<sup>3</sup> Media Release by the Office of Mrs. Selina Chow, Member, Legislative Council, dated 1 June 2000.

<sup>4</sup> Op Cit. EPSCO Media Release.

provide a breakdown of the number of merchants using the various transaction fees that the Council believes are on offer. However, it was clear to the Council that the concern with EPSCO's actions in the retail sector went further than a number of merchants who have had their terms and conditions changed from a flat fee to a percentage based fee. Information provided by some of the complainants is as follows.

#### ***Jewellers and Goldsmiths***

20. HKJGA opined that EPSCO had used jewellers as a means of promoting use of the system in its development stages beginning in 1985. Initially EPSCO attempted to have jewellers pay a percentage based transaction fee, but following resistance, a \$2.00 flat fee became the norm, and remained so until recently, when EPSCO notified merchants that it intended to change the fee to a percentage based system.

21. As the transaction values for purchasing gold, jewels and watches were high, varying from a few thousand to several hundred thousands, EPS was widely used as a form of payment in daily transactions in the jewellery sector. According to the HKJGA 20% of transactions in the jewellery sector are traded by EPS in order to keep the prices competitive, especially for gold bar transactions. A major factor for jewellers in using the system is that there is no bad debt. The most common users of EPS in the jewellery sector were those who did not want to carry large amounts of cash and those who did not have credit cards or preferred not to use them.

22. HKJGA stated that EPSCO are charging transaction fees to their members under three categories. Some had the \$2.00 flat fee, some paid \$1800 per month flat fee (for large jewellery retailers) and others paid between 0.5% and 0.75% on the transaction value.

23. Because jewellers and goldsmiths transactions were often substantial amounts, the change to a percentage transaction fee from a fixed fee could substantially alter the cost to the merchant of using the payment system. According to the calculations of one jeweller, the total expense of the transaction charge using the new method of calculation, over a period of 8 months (March 1999 to October 1999) would be 10.8 times the transaction cost under the old scale.

#### ***Travel Agents***

24. The TIC informed the Council that when EPSCO first approached travel agents approximately fifteen years ago to utilise the service, it also attempted to negotiate a percentage based transaction fee with travel agents. There was resistance from the industry and a flat fee was negotiated. Travel agents felt that the payments system was essentially a substitute for consumers using automatic teller machines (ATMs) and that the EPS terminals were more or less ATMs<sup>5</sup>. In these circumstances it was felt that a fixed transaction fee was more appropriate. The reason was that unlike credit cards, where the cost of

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<sup>5</sup> In fact, for merchants' customers to use the EPS service they must have an ATM card issued by a participating bank in order to use the service.

operation includes the cost of credit to banks<sup>6</sup>, the cost of the EPS service was largely fixed, and not affected by the size of the transaction. Accordingly, a fixed transaction fee became the industry norm.

25. During the early stages of the system, utilisation by travel agents only accounted for about 5% of their customer transactions. At present that figure has grown to approximately 50%. It was considered that in the travel industry there was a high consumer convenience factor for using EPS because of the large amounts involved. Importantly, there was also an understanding that if credit cards were used for payment, the higher transaction fee travel agents had to pay for accepting credit cards would be passed on in higher charges for the agent's service. Moreover, travel agents found the system convenient, and because of lower transaction fees and immediacy of payment this contributed to lower costs of operation which could be passed on in lower charges for services to consumers.

#### ***Computer retailers***

26. The Chamber of Hong Kong Computer Industry Co., Ltd. (CHKCI) also lodged a complaint with the Council concerning this matter, alleging that EPSCO was a 'monopoly', and using its alleged monopoly power to set merchant transaction fees. The CHKCI conducted a recent telephone survey of members, with regard to ascertaining the current modes of commission charges levied by EPSCO to its members. CHKCI randomly selected 30 merchants, and out of the 30, 60% were paying the \$2 per transaction flat rate (minimum charge per month at \$500); 13.3%, \$1800 flat charge per month; 26.7%, 0.75% on transaction value.

27. In addition to the commission charge, they also indicated they pay a monthly charge of \$50 per terminal. The survey indicated that the volume of transactions paid through EPS varied between members within a range of 10% to 70%; an average of about 36%. CHKCI stated that virtually all members felt bound to have EPS available for customers who considered EPS as being equivalent to a cash payment, and that the trade would have no option but to pass on any increase in cost that flowed from an increase in transaction fees. CHKCI also noted that the cost of each transaction for using EPS was not directly related to the transaction value, and accordingly, believed EPS had no grounds to charge for the service using the transaction value as a base.

#### ***Other retailers***

28. While this matter was brought to the Council's attention by particular groups of merchants, it is important to appreciate that the retail sector is made up of many participants, each of which would have varying degrees of influence when negotiating with EPSCO. As noted earlier, EPSCO have indicated that, leaving aside the complainants who had the \$2.00 flat fee, some merchants have negotiated percentage based fees less than the 0.75% 'standard' rate.

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<sup>6</sup> The credit risk for either default on payment or misuse of a credit card is usually on the card issuer, unless the merchant is somehow at fault for failing to observe the card issuer's security procedures designed to limit risk.

Moreover, according to some complainants, there are merchants who have been able to negotiate monthly flat fees as an alternative to the percentage based fee, or a per transaction flat fee.

29. It is inevitable that differences in fee levels between merchants would exist, given that the characteristics of a network industry would put pressure on a supplier of the network service to build up capacity in the network, by offering discriminatory prices to merchants who bring value to the network. The range of those discriminatory fees, and details on the number and identity of the merchants who had the fees, would assist in clarifying some of the assertions made by the complainants and would also clarify the extent of bargaining power assumed to be held by some merchants. However, as noted earlier, the Council is unable to obtain details from EPSCO (which cited commercial confidentiality) to verify the extent of this fee level discrimination.

#### ***Effect on consumers***

30. As far as consumers are concerned, EPSCO felt that the change in the commission scheme should have no direct impact on consumers and stated that:

"In the past 15 years, most merchants subscribing to the EPS service have not transferred the 0.75% service charge to consumers. If EPSCO received complaints regarding this matter, it may consider terminating the EPS service for the particular merchant."<sup>7</sup>

This statement reflects a rule that EPS has in prohibiting merchants from imposing additional charges for transactions by customers where payment is to be effected through EPS.<sup>8</sup> The Council believes that credit card agreements have similar rules.

31. Transaction fees for using the EPS service, and credit card services, are a business cost for merchants. As such it is naïve to assume that they would not be passed on to consumers; in the same way that other costs of business are built into the retail price of goods and services. The real issue in relation to the EPSCO rule prohibiting merchants from offering discriminatory prices is whether consumers should be informed of the costs of using a particular card, and in turn whether they should have the benefit of choice. The Council believes that consumers should not be deprived of that information, or that choice.

#### **MARKETS AND MARKET POWER**

32. The question as to whether EPSCO has market power and whether it is using that power to levy fees on merchants requires an assessment of the relevant market from the demand and from the supply side, with reference to relevant product, geographic and functional dimensions. Defining the relevant market and evaluating the degree of power in that market are in effect part of the same process. However, for the sake of simplicity of analysis the two issues can be

<sup>7</sup> Op Cit. EPSCO Media Release.

<sup>8</sup> Rule 7.1 'Merchant Copy of EPS Merchant Agreement'



discussed separately. Moreover, the evaluation of both issues is carried out with the primary concern of identifying injury to consumer welfare.<sup>9</sup>

33. The process of establishing a relevant market requires an examination of the product under question with reference to the sources and potential sources of close substitutes. The objective is to determine the boundaries within which effective competition occurs. The wider the market boundaries, i.e. the greater the number of substitute products presently or potentially offered by competing market participants, the less likely that there is market power. On the other hand, the narrower the market boundaries, and the less there is competition between market participants, the more likely it is that market power exists.

#### **Demand side**

34. An important point to appreciate in regard to the allegation of misuse of market power is that the demand side assessment of the relevant market, and market power, has to be considered from the perspective of merchants. In effect, they are the 'intermediate' consumers demanding the product in this matter. In order for merchants to operate a viable business they need access to a number of products, i.e. premises, telephone, electricity fittings; and importantly, the means by which they can satisfy their preferences, and those of their customers, as to the manner in which payments are made. The degree to which merchants need these business inputs, and the level of sophistication of these inputs, would vary depending on their own preferences to cater for any special needs of their sectors, and their own personal preferences as far as their marketing strategies are concerned. What is important is that the demand for the products, in terms of product quality, price, and service level is satisfied by rivalry between independent competitors in a competitive marketplace.

#### **The product**

35. The means by which merchants can satisfy their customers' preferences for payment systems can be found amongst a number of payment mechanisms on offer. EPSCO is one service provider that supplies a unique payment mechanism, in terms of functionality, in that it is a debit card network payment service that directly transfers money from a customer's bank account to the merchant's account. EPSCO, as a supplier of a business input for merchants in Hong Kong, claims that its product faces competition from other products and payment mechanisms, i.e. cash, cheque, stored value cards, and credit cards<sup>10</sup>.

36. When EPSCO states that its product faces competition from other means of payment in Hong Kong, it needs to be emphasised that there are a number of dimensions to this state of competition. First of all, from the product dimension

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<sup>9</sup> This is consistent with the 'first principles' approach to anti-trust analysis where "Market definition and market power should be evaluated in the context of the alleged anti-competitive conduct and effect, not as a flawed filter carried out in a vacuum divorced from these factors." *Quoted* from Steven C Salop, 'The First Principles Approach to Antitrust, *Kodak* and Antitrust at the Millenium' in 'Antitrust Law Journal' Volume 68 Issue 1 2000.

<sup>10</sup> Transaction cards issued by merchants, for use only within the merchant's stores, were not raised as competitive choices by EPSCO, and the Council does not consider them to be relevant given they do not have ubiquitous usage in the overall retail environment.

EPSCO has to market EPS to its customers as a distinct product with some unique features, which while clearly differentiating it from those other products still offers a degree of payment functionality similar to other products. Otherwise the product would not take off. Having two different sets of customers, EPSCO also needs to have in mind different demand parameters. On the one hand EPSCO needs to convince merchant's customers that from among the range of payment services available, they should use a debit card. On the other hand EPSCO also needs to convince merchants that they should invest in the payment facility, in order to satisfy the perceived demand from their customers to use the service. Serving the demands of both sets of customers requires different approaches. Importantly, because EPS is a network product, there is also a need to take an incremental approach to developing product growth, by offering incentives to both sets of users, to develop critical mass to support the economic viability of the network.

37. From the perspective of persuading merchants' customers to use EPS services, EPSCO needs to have in mind the fact that consumers can generally choose to effect a payment with a merchant by way of a number of different products, such as cash, cheque, stored value cards, or credit cards. Moreover, from a customer's perspective, the availability of loyalty and reward programs attached to card usage (particularly credit cards) can have the effect of making the marginal cost of using a card, negative. In general, however, it is not critical for a customer, in order to make purchases from merchants, to have all forms of payment options (cash, cheque, stored value card, debit card, or credit cards) readily available.<sup>11</sup>

38. In the case of merchants, on the other hand, the degree of necessity in having a range of payment services available for customers to use, takes on a different dimension. Merchants could face the prospect of losing a sale if they do not have a customer's preferred method of payment. For example, some consumers may not want to carry large amounts of cash, and may not have a credit card<sup>12</sup>. By the same token, a merchant might not be able to compete with other merchants that have a particular payment facility because of specific attributes that the system might have over another. For example, where the cost of using one payment system is lower than another, and therefore enables the merchant to take advantage of lower operating costs.

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<sup>11</sup> For example, in 1996 The Congressional Budget Office Study by the Federal Reserve Bank of Minneapolis '*Emerging Electronic Methods for Making Retail Payments*' Chapter 1, pages 3 - 5 <http://www.mpls.frb.org/banking/payment> noted that no one knows what will be the demand for new payment mechanisms among consumers or the value of new payment methods to merchants. However, for consumers, they have usual concerns on convenience and cost and security and privacy. For merchants, the new means of exchange have to increase sales; reduce costs, or do both. The Study also noted that even if a particular payment system is not a merchant's first choice, if enough customers want to use it, competitive pressures may force the merchant to invest in it. Apart from added sales, to attract merchants, the new payment means also had to reduce costs -.

<sup>12</sup> For example, a Media Release issued by the Secretariat of Legislative Councillors of the Democratic Party, dated 21 May 2000 noted that in a recent consumer survey carried out by the Office of the Hon. Fred Li Wah Ming, Legislative Council Member, 69.3% of respondents indicated they would be inconvenienced if the EPSCO increase in transaction fees caused retailers to dispense with the EPS service.

39. Appendix 1 lists the different categories of point of sale payment systems that are available in Hong Kong, with an assessment of their different features.

#### *Credit cards*

40. There are similarities between credit cards and debit cards, in that both are part of a ubiquitous network payment system, and can be used for large transactions. However, a significant difference is that one operates on the basis of credit, while the other does not. As noted by the travel agents, using credit cards incurs a significant cost to merchants, and consumers are aware that in not using them, but choosing to use cash or a debit card instead, they can negotiate better deals. In addition, merchants with a debit card facility can offer a competitive price for their particular good or service to consumers using the card, compared to their competitor merchants who do not have the card facility.

41. Moreover, the process of negotiating transaction fees that merchants have to pay to a card issuing bank, is significantly different between the two. The fee for using the EPS service is only negotiable between the merchant and EPSCO which is a consortium of the banks that offer credit card services. The fee paid by merchants to card issuing banks for credit cards is negotiable between those individual banks that also issue debit cards. The Council understands that transaction fees for credit card usage currently fall between the general range of 2% to 4% for most merchants. Fees for credit cards are therefore determined to some extent through the competitive pressures that individual banks are under when supplying credit card services to merchants. The same competitive pressures do not apply, however, for debit card services.

#### *Stored value cards*

42. Stored value cards are payment systems that rely on card users transferring a specific amount of money onto a card that sets the limit of payment transactions that can be made. For example Mondex (by HSBC and Hang Seng Bank) Visa Cash (by Bank of China and Standard Chartered Bank) and Octopus Card. The complainants in this matter were of the view that stored value cards were not widely used in the retail sector as they are operated within a distinct closed system and they are tied to either one or a limited number of banks. Some stored value cards were also targeted for particular services; such as transport services for Octopus.

43. A significant feature of these cards is that the amounts available for consumers to store in the cards is limited, and therefore only favoured small transactions; which did not suit the purposes of the merchants who complained to the Council. The transaction fees for stored value cards are similar as for the EPS service. However, the actual cost to merchants would be quite small as the transactions are limited to the maximum available to be stored.

#### *Defining the relevant market*

44. As noted above, the objective of defining a relevant market is to determine the boundaries within which effective competition occurs and where market power

is allegedly being misused. Notwithstanding the assertions of the complainants, it can be generally observed that there are different aspects to the various payment options available to merchants that suggests they are not direct substitutes, given the different operational patterns of various industries. For example:

- transaction amounts can be above the maximum value available for stored value cards, particularly for high cost items such as electrical equipment, furniture and jewellery;
- it can be impractical or inconvenient for customers to use cash, because of security reasons;
- cheques can be too risky for merchants, because of the possibility of default; and
- credit card transaction fees typically involving a 2% to 4% charge on the merchants, would substantially diminish the margins that some merchants work on. This could be a particular concern in industries where competition has squeezed margins to very low levels.

45. Debit cards on the other hand do not display the above concerns. Hence, competitive industries that typically involve large transaction amounts and are adverse to default risk may prefer debit cards as the payment method. In return, they may provide discount incentives to consumers. Given the high level of complaints by certain merchants regarding the EPS service, this could well be the case in those sectors where the complainants operate. The reason for this could be that their profit margins were already very low because of strong competition, and after the discounts offered to consumers using EPS.

46. In these circumstances it could be assumed that few of them would wish to shift to other payment methods that might mean a hike in prices or charges, or a further squeeze in margins, e.g. payments by credit cards. It has been difficult for the Council to verify the validity of that reason, which would require very detailed industrial information and statistics. It would also require determining the extent to which different transaction fees have been offered in the market, who the recipients of those fees are, and the results of any negotiations between EPSCO and certain merchants. Information of this sort would assist in ascertaining the full extent of demand elasticity by particular merchants when faced with a price increase by EPSCO.

47. A common method of more rigorously determining the boundaries of a relevant market, used by competition authorities in jurisdictions that have competition laws, is to test the point at which consumers (in this case merchants) react to price rises by switching from one service to another<sup>13</sup>. It stands to reason that

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<sup>13</sup>This approach is commonly called the 'hypothetical monopolist' test. This test poses the question of whether a hypothetical supplier of the service in question would be able to apply a small but significant non-transitory increase in price without causing an appreciable movement away from its service. See for example the Hong Kong Telecommunications Authority's 'Analysis and Conclusions on the proposed acquisition of Hong Kong Star Internet Limited by Hong Kong Telecom IMS Limited' 23 December 1998, (Public Version) page 16.

not all consumers will be willing to switch products or find alternatives when prices are raised. However, in antitrust analysis it is sufficient that enough customers are willing to make such substitutions to affect the conduct of sellers in the market.<sup>14</sup>

48. As noted, it has been difficult for the Council to verify the extent to which different transaction fees have been offered in the market, who those recipients are, and the results of any negotiations between EPSCO and certain merchants. However, anecdotal evidence by both HKJGA and the TIC was that if their members could not prevent EPSCO from imposing the new charge, they had few options but to comply. EPSCO itself stated that over 90% of affected merchants had agreed to the new fee structure<sup>15</sup>. The general survey of merchants carried out by the Office of Mrs. Selina Chow, Member of the Legislative Council, noted that 70% of respondents had signed the new agreement.<sup>16</sup>

49. In increasing the rate from \$2.00 per transaction to 0.75% on transaction value, EPSCO's increase in price was, according to some users, as much as 11 times the fee under the former charging scale. This is obviously a significant price increase for the EPS service. Whether the affected merchants actually 'agreed' with the increase (as stated by EPSCO) is a moot point. The fact that EPSCO was in a position where it could seek such an increase and the end result of its solicitation was (according to EPSCO) a substantial fulfilment, is in itself the important fact to note when considering, on the demand side, whether EPSCO has market power. While this fact gives important clues, resolving the issue of what is the relevant market, and whether there is market power, also rests with an analysis of the supply side, and the important issue of barriers to entry.

#### **Supply side**

50. There is no other organisation in Hong Kong, other than EPSCO that operates a ubiquitous electronic payment system at point of sale where customers' bank deposits are debited directly from their bank accounts to those of a merchant. EPSCO stated to the Council that although it is currently the only supplier of a debit card payment system, it believes the EPSCO infrastructure could be duplicated. EPSCO pointed to the fact that the technology it employs is readily available in the market.

51. However, while in theory the remaining banks that are not in EPSCO could start their own payment system, this is unlikely for a number of critical reasons; none of which are related to the availability of technology.

#### **Network effect**

52. While a certain degree of market power is necessary for a network to emerge, once a network is well established it might be difficult for another network to be

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<sup>14</sup> Shenefield John H. Stelzer Irwin M. 'The Antitrust Laws - A Primer' The AEI Press, Washington USA, 1998, page 30.

<sup>15</sup> Op Cit. EPSCO Media Release

<sup>16</sup> Op Cit. Office of Mrs. Selina Chow Media Release 1 June 2000.

created, to generate effective competition, because of a barrier to entry commonly termed the 'network effect'<sup>17</sup>. In terms of network payment systems, this refers to the situation where the incumbent holds two distinct advantages. First, customers faced with a choice will usually prefer to use the larger more established network, other things being equal. Second, many end users will already own or use equipment or cards connected to the existing network and the cost of changing to a new system could outweigh any yet to be tested benefits. Cards of established networks gain value as more retail outlets join the established scheme, as do retailers in relation to growing numbers of customers holding cards belonging to the scheme.

53. Establishing a network also incurs substantial initial costs that act as barriers to entry. There are fixed costs, e.g. the capital costs incurred in establishing an electronic network and IT processing systems. There are also promotional and developmental costs involved through attracting both merchants and their customers to use the network. This can result in a period of negative returns at the outset in order to develop the network by building a critical mass of customers and merchants, with the intention of reaping the benefits of incumbency in the future. To compete, a new entrant has two choices. It must either make a risky investment to replicate the benefits of the existing network, and attempt to take merchants and their customers away from that network, or it can gain access as an additional party to the existing installed base of infrastructure.
54. In effect, it appears to the Council that this is what the potential entrants in Hong Kong have done. Rather than engage in the costly and risky endeavour of competing with each other in the provision of a debit card network service, the potential competitors have joined together to form one debit card network payment system. Such a co-operative arrangement between competitors, who are fixing prices (merchants' transaction fees) between each other, raises a concern that the aggregation will result in the creation of substantial market power. This concern is increased when it is recognised that the same entities that make up EPSCO, and agree on the price for its services to merchants, have commercial interests, to varying degrees, across the range of other payment systems available in Hong Kong (see Appendix 1). The same payment systems that the EPSCO members claim are direct competitive substitutes for the EPSCO product.

#### **Market power**

55. It is commonly understood that a firm will not normally be able to exercise market power if it is subject to strong and effective competition from actual or potential rivals. The discipline of a competitive market means that it would not be possible for a firm to raise its prices unilaterally without a significant loss of

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<sup>17</sup> Cruickshank D, 'Report to the Chancellor of the Exchequer - Competition in UK Banking', March 2000 pages 64 - 65.

business<sup>18</sup>. Moreover, it would need to keep its unit costs no higher than its competitors' and ensure that the quality of its service is at least equal to theirs if it is to survive in the longer term.

56.If EPSCO is facing direct competition from other payment systems in setting its transaction fees for merchants, it needs to have regard to the actual and potential competition that exists for its product from other service providers. Moreover, if the EPSCO service is indeed facing competition, in the usual sense of the word, it can be assumed that those offering the competing service would be attempting to take market share away from EPSCO's service and vice versa. For example, at the very least, because the cost of the service would be a major factor for merchants, it would be expected that the price for the EPS service should not be higher than that for competing services. By the same token if EPSCO was competing with other payment service providers, it would be expected, in order to maximise its return, to take advantage of any lower operating costs it has for its service, (in comparison to the best price that its competitors could offer) in order to take market share away from those competitors.

57.It is relevant, therefore, in assessing whether EPSCO's alleged market power, to ascertain what actually has driven, and continues to drive the pricing decisions of EPS.

58.In comparison with credit cards, the EPS percentage rate transaction fee of 0.75% is considerably lower than the 2% to 4% charged by credit card companies. In terms of cost therefore, it seems highly unlikely that merchants would readily switch between credit cards and debit cards. Further, if credit cards are actually direct substitutes for, and compete with debit cards, as claimed by EPSCO, its strategy lacks a clear commercial logic.

59.First, it seems unlikely that the consortium of banks who are financing EPSCO's operation would combine with their banking competitors to form an entity to directly compete against their own credit card services; i.e. Visa and Mastercard<sup>19</sup>. Second, if it is true that credit cards face a competitive discipline from a much cheaper service (i.e. EPSCO's payment service offering a 0.75% merchant transaction fee compared to 2% to 4% merchant transaction fee) credit cards could not be expected to remain viable at that price point. To remain viable, using price as a determinant, and accepting for the moment the theoretical proposition that merchants will readily switch between having one card or the other, the credit card service would have to lower its transaction fees closer to that of EPS.

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<sup>18</sup> This approach to the definition of market power is equivalent to the definition of "dominant" found in the sector specific competition law provisions found in the Hong Kong Telecommunication (Amendment) Bill 1999 s.7L (3) and the Broadcasting Bill s.14(3).

<sup>19</sup> As far as the Council is aware, member banks of EPSCO are also member banks of the two credit card associations of banks, Visa and Mastercard. For example, out of the twenty member banks of Mastercard, 15 are also members of EPSCO (including HSBC, Standard Chartered and Bank of China).

60. By the same token, if debit card services were in direct competition with credit card services, it would be logical for a debit card service provider, to maximise its return on investment, to charge for its services at or slightly below the charges used by its competitors. In the absence of such pricing parity between debit cards and credit cards, there is a strong assumption to be drawn that in setting the transaction fee for debit cards, the banks operating the EPS service perceived little or no cross elasticity of demand by merchants, between a debit card facility and a credit card facility, when merchants consider what retail payments systems they should invest in for their customers' use.
61. In correspondence with the Council, EPSCO stated that its percentage charge has remained unchanged since the mid 1980s (when EPSCO first began its operations) and that only a small number of merchants had been paying a flat fee of HK\$2 per transaction; for various historical reasons. EPSCO stated that this fee did not cover costs and was loss making. It further stated that it had been subsidising the merchants paying a flat fee and effectively cross subsidising them at the expense of their competitors. EPSCO's stated intention behind the recent change to the fee structure was aimed at "simply bringing these into line with all merchants and their peers within the retail industry"<sup>20</sup>.
62. As noted in the survey carried out by the Office of Mrs. Selina Chow, 70% of respondents in the furniture, cosmetics, electrical appliances and computer industry indicated that they had signed the new agreement with the 0.75% transaction fee, but only 22.7% accepted the new fee. The fact that EPSCO is in a position where it can unilaterally impose a substantial fee increase simply in furtherance of a policy to bring fees in line with peers, is a strong indication that it is not facing the discipline of a competitive market.
63. The members of EPSCO are banks that, as far as the Council is aware, compete with each other across a range of various other financial services to consumers<sup>21</sup>. However, in negotiating the fee that a merchant is required to pay for using the EPS service, banks do not compete with each other by offering competing fees to attract merchants. The banks agree amongst each other, through the vehicle of EPSCO, on the terms and conditions that their merchant customers are required to pay.
64. There were, and apparently still are some merchants that are able to negotiate a fee different to the 0.75% standard currently set by EPSCO. However, the Council believes that the ability for some merchants to negotiate a rate lower than that offered to others does not emanate from the existence of choices presently available in other competitive payment services. Neither does it emanate from the potential threat of entry from other debit card payment systems that would be encouraged to enter the market in competition with EPSCO if it were to charge higher fees. The ability to negotiate a rate lower

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<sup>20</sup> Letter to Consumer Council from EPSCO dated 30 May 2000.

<sup>21</sup> An exception would be the publicly acknowledged agreement concerning interest rates by Hong Kong banks, i.e. the 'Interest Rate Rule' applying to Savings and Cheque accounts; due to be liberalized on 1 July 2001.



than the 'standard' 0.75% arises from the countervailing bargaining power enjoyed by a minority of merchants. This comes about because EPSCO needs the exposure for its system that particular merchants such as retail chains for example could provide, in order to fully exploit the network effects of its incumbency which it has developed over the years of its operation. The application of a substantial increase in transaction fees to be paid by the complainants, who have now reached the state where their need for the EPSCO service is important for them to operate competitively, is a demonstration of how the banks that have formed EPSCO can exploit that incumbency.

***Collective boycott***

65. In the course of finalising this report, collective boycotts of the EPS system were organised and planned by some merchants, as a protest against the increases in transaction fees, and a general dissatisfaction against the use of percentage based fees. The Council is unaware whether the action has secured any change for some merchants on the transaction fee. However, there are a number of points that can be made in relation to the boycotts.
66. The use of collective action by merchants in putting forward a defensive demand to EPSCO seems at first glance to be a reasonable reaction to the collective demand that EPSCO's members have put to them. After all, the EPSCO member banks have joined together in one entity, and combined their bargaining power, rather than compete with each other individually for the patronage of merchants. The collective action, and the use of alternatives to debit cards, may well result in a better deal for those merchants who can organise such a mobilisation.
67. However, the effect of EPSCO's conduct is felt throughout many businesses in the Hong Kong retail sector, not just computer retailers and travel agents. Merchants who might not have the ability to arrange a collective boycott of EPS services would therefore be at a disadvantage. Accordingly, the costs to merchants in those sectors, which would presumably be higher than those charged to collective groups who can secure better deals, will inevitably be passed on in higher prices to consumers, than would have otherwise been the case.
68. Joint ventures between co-operative buying groups, or sellers, where participants can take advantage of economies of scope and scale can provide benefits to the economy. However, it is not in the interests of economic efficiency that in order to negotiate optimal purchase prices, all buyers in the economy must join together into collective groups and engage in a primary boycott to counteract the market power of a collective group of competitor suppliers. In a market economy, the means by which optimal supply prices are achieved is ideally through the interplay of competitive forces by market participants negotiating on the strengths of their relative economic efficiencies.

## OVERSEAS EXPERIENCE

69. Network payment systems, similar to EPS, exist overseas and are under the scrutiny of competition authorities and other regulatory bodies because they are agreements between competitors and therefore give rise to substantial market power. Noted below are brief descriptions of how similar payment systems are regulated in a number of jurisdictions.

### *United States*

70. In the United States, the *Sherman Act* provides federal legislation regulating the operations of corporate trusts and monopoly abuse. There is also various State antitrust legislation. The *Sherman Act* declares illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." The Act has been amended by several subsequent enactments, including the *Clayton Act*. These antitrust laws set a legislative framework to address collective price fixing and collusive agreements.

71. There are two recent court cases under this legislation, of which the Council is aware, that relate to allegations of misuse of market power in the supply of network payment systems. In 1996, Judge John Gleeson, ruling in a private action brought under the *Sherman Act*, certified a class of about 4 million retailers in the US including Wal-Mart, who claimed that Visa and MasterCard conspired to charge 'extortionate' interchange fees for off-line point-of-sale debit cards. Judge Gleeson noted that "in order to protect their positions in the growing market for debit payments, Visa and MasterCard set out to eliminate the competition offered by the cheaper, faster, safer on line POS debit networks."<sup>22</sup>

72. In May 2000, the US Department of Justice sought court orders under the *Sherman Act* in relation to an allegation that Visa and MasterCard controlled the US credit card market by going easy on each other and by delaying innovations so that neither company acquired an advantage.<sup>23</sup> In its opening statements the Department of Justice alleged that the two credit card networks conspired to stifle competition by rival cards, American Express and Discover. Orders have been sought to abolish the rule imposed by Visa and MasterCard on its 6,000 member banks that bars them from issuing most other cards.

### *Canada*

73. In Canada, the *Competition Act* governs the operation of agreements between competitors. An example of how competition law in Canada works in addressing issues of market power in network payment systems can be found in an action taken by the Canadian competition authority against major Canadian financial intermediaries in March 1996 in which consent orders were obtained

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<sup>22</sup> Case details can be found at <http://www.lawnewsnetwork.com/prac...ratelaw/news/A16887-2000Feb23.html> for details.

<sup>23</sup> Case details can be found at <http://www.usdoj.gov/atr/cases/index57.htm>.

from the respondents<sup>24</sup>. In that case the authority alleged that the financial intermediaries who were members of a consortium known as the 'Interac Association', that administered a network payment system, had engaged in anti-competitive conduct. The successfully challenged conduct was a refusal to provide access to the Interac network by certain other financial intermediaries. The allegation was that the refusal had the effect of substantially lessening competition in the market for the supply of network services required for a financial intermediary to provide a consumer with on-line electronic access to an account held by the financial institution from which funds are payable on demand by the consumer, at either an automated teller machine or point of sale terminal.

74. One of the consent orders obtained by the competition authority required that Interac's revenue shall be derived entirely from a 'switch fee'. The switch fee is the fee paid by each member of the network to the other network member on a 'per message' (i.e. transaction) basis and calculated to recover the sum of:

- the costs Interac incurs to deliver the services; and
- the costs incurred by Interac in the development of the network (the quantum of which was specified in the orders).

As for merchant transaction fees, the Council understands that Interac itself does not set transaction fees for merchants, but fees can be negotiated individually with banks, in a bundled arrangement with credit card fees. For example, a fee package negotiated by the Retail Council of Canada with Scotiabank offers merchant members a package deal 1.7% to 2.25% percentage based credit card fees (termed 'discount rates') and a flat 10 cents Canadian for point of sale debit card transactions.<sup>25</sup>

75. In addition to oversight by the competition authority, it is currently proposed that the Board of Canadian Payments Association (CPA) will also have a role to oversee the operation of Canadian network payments systems. The Government requires that the CPA contain five banks, six non bank users, three independent members and the central bank. The CPA also has a stakeholder advisory council. The Canadian Ministry of Finance must approve CPA rules within 30 days and has the authority to designate payment systems for oversight. In effect, this gives the Ministry of Finance the power to direct a payment system to change any by-law, rules or practices which the Minister deems to be against the public interest.

### **Australia**

76. In Australia, prohibitions under the *Trade Practices Act* exist against anti-competitive agreements between competitors. The governance of the Australian network payments system is undertaken by a company, the

<sup>24</sup> 'Application by the Director of Investigation and Research under sections 79 and 105 of the *Competition Act*, R.S.C. 1985, c. C-34'

<sup>25</sup> See <http://www.retailcouncil.org/membership/benefit1.asp>

shareholders of which are a consortium of banks and other financial intermediaries, called the Australian Payments Clearing Association Ltd (APCA). Because the company is a consortium of competitors in the finance industry, its operations are subject to oversight by the Australian Competition and Consumer Commission (ACCC) which administers the *Trade Practices Act*. There is also a Government agency, the Payment Systems Board of the Reserve Bank (the Australian central bank) which plays an oversight role.

77. APCA's function is to oversee the clearing and settlement of finance transactions in Australia and to facilitate agreement between members on the means by which payment transfers can take place. Under the APCA rules for debit card transactions, merchants negotiate the terms and conditions for accepting debit cards bilaterally with individual banks, in an ostensibly competitive environment within APCA, to obtain a favourable rate. This is because APCA is prevented by Australian competition laws, that prohibit price fixing between competitors, from imposing standard fees on merchants. Where transaction fees are paid by merchants for accepting debit cards issued by APCA members, they are almost always all 'flat fees' i.e. there are very few percentage transaction fees paid by retailers. For a number of large merchants, such as retail chains, APCA members pay those merchants to use the payment system, rather than the reverse.
78. The means by which competition is used to determine the level of fees between merchants and banks, rests on the premise that a debit card issuing bank competes in the first instance for depositors. Once a depositor has an account he/she is issued with a debit card and the assumption is that in order to use the card, the account will be kept at a reasonably high level in order to be used for point of sale transactions with a merchant. When a transaction is made by the customer, the card issuer bank has to transfer the sale amount into the merchant's bank account, which could be another bank. In this case, under the Australian system (which apparently differs to other countries) the card issuer bank pays a flat rate 'interchange' fee to the merchant's bank; for example twenty cents. The merchant's bank (termed the merchant acquirer bank) then either pays the merchant a percentage of that 20 cent interchange fee, or the merchant has to pay the merchant acquirer bank a previously negotiated flat rate transaction fee.
79. The reason why some merchants might be paid a percentage of the interchange fee while others have to pay a transaction fee is that there is an incentive for merchant acquirer banks to have merchants with large transaction volumes as their customers. This is because merchant acquirer banks receive an interchange fee for each transaction made at their merchant customers. Having a small merchant as a customer, with lower volumes, is not as valuable, as having a large merchant with large volumes, and therefore the smaller merchants' bargaining power is weaker. In their case, the rationale is that they will pay for the benefit of having debit card transaction facilities on their premises in order to attract customers.

80. A question arises however, as to the basis for calculating the quantum of the interchange fee. Under the Australian system, this is negotiated bilaterally between banks and would vary between different banks. Part of the quantum of the interchange fee is derived from the cost of investment in developing the network. There is bargaining power between those banks with a large merchant and depositor customer base (and the revenues that can accrue from transactions) that can also play a part in determining the interchange fee between banks. However, in the open network system there is also a disparity in bargaining power between large established banks that are part of the system, and smaller banks. For example, a merchant acquirer bank that has a customer base of large merchants would be in a better position to negotiate a higher interchange fee with a new entrant, than another established bank member that has a smaller base of merchants and depositors<sup>26</sup>.

81. Because APCA is a co-operative arrangement between competitors (competing with each other for the custom of merchants) and even though they do not explicitly agree on interchange fees, they are still at risk of breaching competition law. This is because the various agreements between the shareholders on terms and conditions that govern the conduct of members affect services that could be provided competitively, and the means by which the interchange fees are set, raise competition concerns. APCA has, accordingly, sought exemption<sup>27</sup> from certain prohibitions in Australian competition law through a legislated authorisation process, which exempts conduct; but only where there are demonstrated public benefits that outweigh the anti-competitive detriments.<sup>28</sup>

82. The ACCC, which administers Australian competition law, and the authorisation process, therefore has the ability to scrutinise the rules of the APCA payment schemes and require appropriate changes to protect competition in the market and consumer interests.

### ***The United Kingdom***

83. In the UK, competition laws have only recently undergone changes to improve their effectiveness. Anti-competitive agreements are now governed by the *Competition Act*. There are network payment schemes for credit and debit cards that were put in place some years ago before the *Competition Act* came into being. The schemes are run by the Association for Payment Clearing

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<sup>26</sup> Under the Australian network payment system, the payment of interchange fees for credit cards is actually the reverse of payments for debit card transactions. With credit cards, the merchant acquirer bank pays the card issuer bank an interchange fee when a card issuer bank's customer uses its card.

<sup>27</sup> Applications for Authorization to the Australian Competition and Consumer Commission A30176, A30177, A90620.

<sup>28</sup> The Australian authorization process is similar to the exemptions process that the Consumer Council recommended as forming part of a general competition law framework in its report 'Competition Policy: The Key to Hong Kong's Future Economic Success', November 1996, page 77. See also Book One: Part IX-Sectorial Application of E.C. Competition Rules, Clause 40 - 43 which set rules for exemption procedures for Multilateral Interchange Fees. The Rules note: "Where there is limited or no inter-system competition, a multilateral interchange fee will normally be considered to have the effect of restricting competition to an appreciable extent, and thus to fall within the prohibition of Article 85(1).

Services (APCS) as a form of industry self regulation.

84. A recent report to the Chancellor of the Exchequer entitled 'Competition in UK Banking' noted that there were

"...profound competition problems and inefficiencies in the market for money transmission services. Some of these problems will be only too familiar to bank customers: slow clearing cycles for cheques and automated payments, and high charges for cash withdrawals. Others are less evident, but just as important: for example the three quarters of a billion pounds of interchange fees paid in the UK each year, and the way in which full participation in payment schemes is nearly always restricted to banks. "Many of these problems can be traced back to the structure of the UK payment systems market which consists of a series of unregulated networks, mostly controlled by the same few large banks who in turn dominate the markets for services to small and medium enterprises and personal customers."<sup>29</sup>

85. Transaction fees and interchange fees for debit cards, and credit cards, are all percentage based. The report noted that default fees (termed tariffs in the report) are set where a card issuer and a merchant cannot agree on a price. Cost studies were carried out to determine the rate to be charged, and the details of the studies were kept secret from non members and not disclosed. The report stated the default rates were extremely influential in determining the actual rates charged between members, and it was estimated that over 90 per cent of interchange payments by UK merchant acquirers for credit and debit card transactions were charged at default rates. In this regard, the report noted that:

"Setting interchange fees is generally closer to a regulatory than a competitive model. But differences exist even here. First and most importantly, the interchange price is set collectively by suppliers rather than by an independent government body and self regulation is not renowned for being tough on participant firms. Second, the customers of the service (in this case retailers) have fewer rights than with formal economic regulation. Price setting is not transparent and there is no right of appeal over disagreements."<sup>30</sup>

86. The report concluded that the existing framework of competition law in the UK was not sufficient to deal with network industries such as payment systems and stated that there was "an overwhelming case for robust and decisive government intervention in these markets". Accordingly, it recommended that the Government set up a payment systems commission - PayCom - a new regulator with strong powers to deliver competitive outcomes in the network payment market.<sup>31</sup> It was recommended that PayCom should be vested with powers to administer payment systems, and the regulatory environment should have the following features:

- Participation in the payment systems should be a licensed activity.

<sup>29</sup> Op Cit. 'Competition in UK Banking' page xv.

<sup>30</sup> Op Cit. 'Competition in UK Banking' page 78.

<sup>31</sup> Op Cit. 'Competition in UK Banking' page xvi

- All participants in the payment system should be subject to a class license.
- The controlling body should be granted effective powers to monitor compliance with the class license and impose sanctions.
- There should be a process of appeal to decisions of the controlling body.

The Government would have the role of putting in place license conditions to secure the following outcomes:

- price transparency;
- good governance;
- non discriminatory access;
- efficient wholesale pricing; and
- fair trading.

### **THE COUNCIL'S VIEW**

87. The Council appreciates that in launching any network that employs new technologies, co-operative arrangements among potential competitors may be necessary to provide incentives for risky investments and promoting efficiencies. Such efficiencies can be achieved through setting network software and hardware standards and agreeing on common procedures. However, a balance needs to be achieved in setting an appropriate level of standardisation and allowing for an appropriate level of rivalry between competitors, in order to maximise competition across the three dimensions of price, product, and performance characteristics. Moreover, it is also important to ensure that the market power that may emanate from the development of a new technological product, and from an aggregation of competitors, is kept in check, and is not exploited.

#### ***Competition in the relevant market***

88. EPSCO believes it faces competition from two main sources. Existing card schemes such as credit cards services, and potential entrants who may develop their own debit card schemes. The Council does not consider these to be viable sources of existing or potential competition in the relevant market. The relevant market in this matter is considered by the Council to be the market for the supply of debit card network payment services to merchants.

89. Information provided to the Council, indicated that a significant number of jewellers, goldsmiths, travel agents, and computer retailers, in addition to retailers of furniture, cosmetics and electrical appliances generally felt they had little choice but to accept the price increase, so as to maintain the service for their customers. EPSCO itself noted that a significant number of merchants had 'agreed' to the increase in the \$2.00 flat fee. The fact that EPSCO can demand a significant price increase from merchants for using the EPS service is a strong indication that it is not facing the discipline of a competitive market in setting the fee. From the supply side, the Council has strong doubts that there is much likelihood of a viable competitor emerging to provide a separate debit card network payment system to compete against the major banks that are in the EPSCO consortium. Experience from overseas indicates that the incumbency of

an established network payment system is a substantial hurdle for new entrants to overcome. Accordingly, the Council believes that EPSCO was in a position of substantial market power when it changed the terms and conditions in merchant agreements, to increase the transaction fee paid by merchants, and continues to have that market power.

90. The means by which costs are determined and fees are set between a service provider in the position of EPSCO, and a purchaser of its services, should not be simply taken on trust. Economic efficiency cannot be enhanced when an entity with substantial market power, derived from an aggregation of competitors, is able to extract the returns it deems fit.

#### ***Recovering costs and consumer welfare***

91. EPSCO states that there have been increases in costs, and that because the system is not profitable, fees need to be increased and set at a percentage level. The complainants on the other hand are of the opinion that economies of scale, through increased use of the payment system since its inception, can be presumed to make the costs of operation come down. They also query why they cannot negotiate transaction fees between the individual banks that have formed EPSCO, unlike the situation with credit cards, where fees are negotiated and, on the face of it, are subject to competition between banks for the custom of merchants.

92. High transaction fees raise the cost to merchants of card based payments which can reduce the acceptance of particular payment methods. If transaction fees are kept low, credit and debit cards are likely to be accepted in a wider range of retail outlets (such as smaller retailers) or in more non retail contexts (such as for paying bills). Lower merchant fees for debit cards in particular could promote the use of this more efficient method of effecting payments in the economy; as compared to cash, cheque, and credit card.

#### ***Debit cards/Currency***

93. An important issue when considering impediments to the use of electronic network payment systems, is the cost to the community that arises from a failure to fully utilise these technological advances. The alternative to network (or online) payment systems is currency. Currency is akin to non-interest bearing deposit assets held by the community. The counterpart liability is an interest free borrowing by the currency issuing banks. Holding currency is therefore unprofitable for consumers, and the interest earnings 'lost' by them can be substantial, especially when interest rates are high<sup>32</sup>.

#### ***Inflationary effects***

94. High transaction fees can also have an inflationary effect on retail prices, as retailers pass on the costs to customers. This can in turn lead to a reduction in output and economic welfare. There is a strong assumption to be drawn that if card issuers agree amongst each other on the way in which they should recover

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<sup>32</sup> See for example "Australian Retail Payments System – Some Unresolved Issues" April 1999 circulated by Peter Mair (pmair@ezy.net.au)



costs for a payment system, that ultimately benefits their commercial interests, this will weaken the incentive for card issuers to cut costs through greater efficiency. Inflated transaction fees protect inefficient suppliers from the full force of competition.

95. The Council agrees in principle with the position of the complainants in this matter. In the absence of any audited information on the costs of EPSCO's operation there is little reason to believe that economies of scale, through increased use of the payment system since its inception, have not made the costs of operation come down.

96. Moreover, of particular interest in examining the costs of EPSCO's operation would be 'interchange fees' that the Council understands are paid between banks in debit and credit card transactions for making transfers to and from accounts. These fees would eventually be passed on to consumers in higher prices due to their calculation as part of transaction fees paid by merchants, and their corresponding costs. Such fees have been described in the United States as "the banking industry's billion dollar secret".<sup>39</sup>

#### ***Percentage based fees***

97. Complaints have been made regarding the concept of percentage based fees, and whether they are necessary to fund cost recovery for a service that is little different to an automated teller machine. While the cost of providing credit card services to merchants can involve variable costs that reflect the cost of credit and therefore may need to be reflected through a percentage of the transaction, this is not the case with debit card transactions.

98. Moreover, as EPSCO have noted, some merchants have negotiated percentage based fees lower than 0.75%, based on the volume of transactions that the merchant processes. The Council also understands from information provided by merchants, that some merchants other than those who had the \$2.00 flat fee, have been allowed to negotiate flat rate monthly fees. This indicates that a primary variable in determining the cost to EPSCO of providing the service is not the amount of the transaction, but the volume of transactions. In these circumstances, those merchants who might be concerned that flat per transaction fees would absorb the low margin on transactions of a small amount, and would therefore prefer percentage transaction fees, could be satisfied with flat rate monthly fees. In any event, the dilemma that arises from these circumstances can be traced to the lack of competitive choices available to merchants when dealing with EPSCO.

#### ***Competitive pressure***

99. There is no publicly transparent way in which the claims of EPSCO, as to increased costs and the need for percentage based fees, can be verified. Moreover, the aggregation of major Hong Kong banks into the one single debit card network supplier, has denied merchants the opportunity to take advantage

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<sup>39</sup> David A Balto 'The Problem of Interchange Fees: Costs without Benefits' E.C.L.R. 21 (Issue 4) April 2000 page 216.

of the rivalry that would be expected to arise between those banks, for the competitive supply of debit card services to merchants. This aggregation has resulted in a situation where EPSCO does not face pressure from other existing or potential competitors in the price levels that it sets for the supply of debit card network services to merchants. Because the member banks of EPSCO have agreed not to compete with each other on debit card transaction fee levels for merchants, and because they are also involved to varying degrees in the supply of other payment options, there is little opportunity for competition to play its part in:

- determining appropriate fee levels; and
- offering choices as to fee calculation.

100. It can be seen from the experience of Australia for example, that flat fees for debit cards are an acceptable means of cost recovery. In fact, as reported in the Australian case, in which there is competition between network members on debit card transaction fees paid by merchants (which can be either percentage based or flat fee), some large merchants are paid to accept debit cards.

101. The Council is aware that the current dispute between merchants and EPSCO may be resolved to some extent, particularly between certain groups of merchants using the threat of boycott. Certain large merchants might also be able to negotiate transaction fees with EPSCO that are acceptable to them. In fact, it appears from anecdotal evidence that some large merchants had been able to negotiate acceptable transaction fees other than the 0.75 percentage based fees before this dispute arose.

102. There might also be a resolution, as far as certain merchants are concerned, that plays on the fact that there is competition between banks on the supply of credit card services to merchants. In these circumstances, certain merchants might be able to negotiate credit card transaction fee levels to a level that reduces the pricing parity imbalance between credit and debit card transaction fees. As time progresses, the manner in which debit card services and credit card services are supplied to merchants might also be combined. Insofar as this would benefit consumer welfare, the trend towards resolution, using competitive mechanisms, would be welcomed.

103. However, whether the full extent of a competitive market in the provision of these services will emerge depends largely on faith in the workings of the market. The extent to which the market will find a competitive solution rests on the basic premise that inherent rivalry between market participants to take away market share, will as a matter of course ensure that goods and services will be supplied at a competitive market standard.

104. Nevertheless, the imperative of self preservation between market participants, in the face of the downward pressure on profits that is the inevitable consequence of strong competition, cannot be ignored. This self preservation can result in

market conduct, such as agreements between competitors, to limit the damage to profits that competition can bring about. The case books of competition authorities in similar advanced economies that have competition laws reflect that this imperative is very strong, even in the face of substantial penalties that attempt to reduce the prevalence of that behaviour. In the absence of such laws in Hong Kong, or some oversight, there is no certainty that faith in the market by itself will lead to optimal economic efficiency.

105. The Council considers that as a matter of principle, competition between service providers should be utilised as much as possible to determine an appropriate level for fees in payment networks and to offer competitive choices. Competition should be allowed, where possible, to play its part in achieving the objective of enhancing economic efficiency in the provision of network payment systems. This view reflects the Hong Kong Government's commitment to using competition as a means of achieving the objective of economic efficiency as noted in its May 1998 *Statement on Competition Policy*.<sup>34</sup>

#### ***The need for industry co-operation***

106. While the competitive process should be promoted and utilised, it is also clear from the nature of network payment systems, that co-operation is required to some extent between competing service providers on how the network payment systems are to be operated. The implications of this for economic efficiency have been addressed in other jurisdictions through the application of competition laws and oversight of a legislated exemption procedure (as in Australia) or with reference to a 'rule of reason' (as is the case in the USA)<sup>35</sup>. In some cases direct government involvement also exists in the way the systems are administered; as in the case of Australia, and proposed for Canada and the UK.

107. There are no competition laws of general application, and neither is there a legislated exemption procedure for parties potentially in breach of those laws in Hong Kong. Such a law and procedure was in fact recommended by the Council in its 1996 Report *'Competition Policy - The Key to Hong Kong's Future Economic Success'*<sup>36</sup>. If there were such a law, and a transparent exemption process, a mechanism would exist where an industry self regulatory body would be required to seek exemption from collusive conduct laws but only if the body could demonstrate that there is a public benefit that outweighs any anti-competitive detriment. In those circumstances an industry self regulatory body could be entrusted with administering an industry wide payment network system with regard to the interests of not only the finance sector, but the wider public interests of the retail sector and consumers.

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<sup>34</sup> Hong Kong Government *Statement on Competition Policy* May 1998, Paragraph 2.

<sup>35</sup> Op Cit. 'The Antitrust Laws - A Primer'. "Where arrangements with competitors in pursuit of some valid objective, designed not to fix or stabilise prices directly, but nevertheless still has that incidental effect, the antitrust courts are willing to listen to the defence and to apply the rule of reason to the evidence they hear". Page 46.

<sup>36</sup> Consumer Council - 'Competition Policy: The Key to Hong Kong's Future Economic Success'. Page 77.

## COUNCIL RECOMMENDATION

108. While this matter was initially brought to the attention of the Council by a particular group of merchants who were aggrieved at a substantial increase in their transaction fees, the issue at stake goes further than the interests of one particular group of merchants. The actions of EPSCO indicate that it does not face pressure from existing or potential competitors in setting pricing levels for the supply of debit card network services to merchants. While the complainants were aggrieved at a substantial increase in their transaction fees, questions arise as to the 'standard' fee set by EPSCO of around 0.75% and whether it is reasonable. Fees set by EPSCO's member banks will eventually find their way into retail prices for goods and services and will be borne by consumers.

***Recommendation 1: There should be competition between network members.***

109. As noted above, the Council considers that as a matter of principle, competition between service providers should be utilised as much as possible to exert pressure on fees in payment networks and to offer competitive choices to merchants. Accordingly, it considers that if merchants are to be charged network transaction fees, EPSCO's rules should allow for member banks to compete with each other on the quantum of merchant transaction fees and the method by which the fees can be calculated.

***Recommendation 2: There is a need for transparency and accountability.***

110. Given the strong indication of market power through the aggregation of competitors in the provision of the EPS network payment system, and in the absence of legislative safeguards to counter that power (by way of general or finance sector competition law) the Council considers there should be an appropriate degree of accountability in the operation of the debit card network payment system operated by EPSCO. In view of the importance of having efficient online network payment systems to the economy, and Hong Kong's ambitions to fully embrace innovative electronic information technology, consideration should also be given to providing a similar degree of accountability for other network payment systems.

111. The issues that need to be addressed to ensure accountability are:

- transparency as to the costs of operation for the systems; and
- representation of the interests of stakeholders (financial institutions, merchants, consumers and government) in the decision making processes that control the development and operation of the systems.

112. Competition between network members may introduce a certain degree of accountability. However, that fact alone would not address the important issue of transparency. In the absence of general competition laws, which is the Council's first preference, a code of practice developed by network members with government support and oversight, would seem to be an appropriate model to consider.

**Government response**

113. During the course of preparing this report, the Council held discussions with the Hong Kong Monetary Authority (HKMA) and provided a preliminary draft for its consideration. The Council made clear to the HKMA the limitations of the data and information that it had been able to obtain for its study. The HKMA subsequently announced on 1 August 2000 that it would conduct a comprehensive review of retail payment services in Hong Kong. Among the terms of reference for the review was that the HKMA would "consider the degree of competition that exists in the provision of retail payment services and to assess whether any deficiencies in competition that are identified operate significantly against the public interest". The Council welcomes the HKMA's initiative and trusts this report will assist it in its task.

Consumer Council  
10 August 2000

# Payment System Overview - Point of Sale Products for Merchants and Consumers -

POS Products	Credit / Charge* Cards	Debit Cards	Stored Value Cards	Cheque	Cash
<b>Issuer</b>	<p>23 Banks and Fin Instit'n (includes EPSCO members)</p> <p>20 Banks and Fin Instit'n (includes EPSCO members)</p> <p>Citibank (EPSCO member)</p> <p>AE (EPSCO member)</p> <p>35 Banks (form EPSCO)</p> <p>Creative Star Ltd **</p> <p>BOC &amp; STDC (EPSCO member)</p> <p>HSBC &amp; Hang Seng (EPSCO member)</p>	<p>35 Banks (form EPSCO)</p>	<p>HSBC &amp; Hang Seng (EPSCO member)</p> <p>BOC &amp; STDC (EPSCO member)</p> <p>Creative Star Ltd **</p>	<p>Licensed Banks (include EPSCO member)</p>	<p>3 note-issuing banks: HSBC, STDC &amp; BOC (EPSCO members)</p>
<b>Network System</b>	<p>VISA</p> <p>MasterCard</p> <p>AMERICAN EXPRESS</p> <p>Diners Club International</p>	<p>EPSCO</p>	<p>EPSCO</p>		
<b>Merchant Fee</b>	<p>2 - 4% Individual issuing bank negotiates merchant transaction fee</p>	<p>0.75% No individual bank / merchant negotiation</p>	<p>0.5 - 0.6% Individual issuing bank negotiates merchant transaction fee</p>	<p>NA</p>	<p>NA</p>
<b>Advantages for Merchant</b>	<p>✓ Efficient and secure: no worry of counting, balancing, storing and banking cash</p>	<p>✓ Efficient and secure: no worry of counting, balancing, storing and banking cash</p> <p>✓ Immediate fund transfer to merchant's account</p>	<p>✓ Efficient and secure: no worry of counting, balancing, storing and banking cash</p> <p>✓ Free terminal fee</p>	<p>✓ Efficient: no worry of counting of cash</p> <p>✓ No transaction fees</p>	<p>✓ Immediate fund collection</p> <p>✓ No transaction fee</p>
<b>Merchant's Concerns</b>	<p>⊗ Delayed fund collection</p> <p>⊗ Merchant fee high, when compared to debit and stored value cards</p> <p>⊗ Terminal fee (\$200 per month but negotiable)</p> <p>⊗ Might have to be responsible for customer default on fake or stolen credit cards</p>	<p>⊗ Merchant fee</p> <p>⊗ Terminal fee***</p>	<p>⊗ Merchant fee</p> <p>⊗ Tried to limited number of banks, therefore limited bank consumers</p> <p>⊗ Targeted for particular service</p>	<p>⊗ Counting, balancing, storing and banking of cheques</p> <p>⊗ Possible default</p>	<p>⊗ Security concerns</p> <p>⊗ Fake money</p>
<b>Advantages for Consumer</b>	<p>✓ Able to purchase without carrying cash or adequate balance at bank account</p> <p>✓ Secure and handy</p> <p>✓ Interest free credit period</p> <p>✓ Gain reward points</p>	<p>✓ Able to purchase without carrying large sums of cash</p> <p>✓ Secure and handy</p> <p>✓ Usually no annual fee</p> <p>✓ Maximum transaction value higher than stored value card</p>	<p>✓ Able to purchase without carrying cash and coins</p> <p>✓ Secure and handy</p> <p>✓ Fast transaction time, e.g. for transport (no need to key in PIN number)</p>	<p>✓ Able to purchase without carrying large sums of cash</p> <p>✓ Secure</p> <p>✓ No transaction limit</p>	<p>✓ Acceptable almost anywhere</p> <p>✓ No transaction limit</p>
<b>Consumer's Concerns</b>	<p>⊗ Credit limit</p> <p>⊗ High finance and late charge</p> <p>⊗ Annual fee (e.g. \$220 or above)</p> <p>⊗ Slow transaction time</p>	<p>⊗ Need adequate balance at the bank account</p> <p>⊗ No credit period</p> <p>⊗ No reward points</p> <p>⊗ Slow transaction time</p>	<p>⊗ Limit on maximum value (usually less than \$3,000)</p> <p>⊗ Need adequate balance in the card</p> <p>⊗ No credit period</p> <p>⊗ No reward points</p> <p>⊗ Annual fee (HK\$100)</p>	<p>⊗ Not widely accepted</p> <p>⊗ No credit period</p> <p>⊗ No reward points</p>	<p>⊗ Need to carry large sums of cash for large transaction</p> <p>⊗ Security concerns</p> <p>⊗ No credit period</p> <p>⊗ No reward points</p>

\* American Express and Diners Club cards are "charge cards", as the balance has to be paid in full each month. However, they have now extended their product ranges to offer credit cards as well.  
 \*\* Except Octopus of Creative Star Ltd, issuers of all other POS payment products for consumers include, or are EPSCO member banks.  
 \*\*\*Compliments indicated to the Council that they paid a \$50 monthly terminal fee to EPSCO. However, EPSCO indicated to the Council that the terminals were provided free.

## Payment System Overview

### - Point of Sale Product Network Members -

#### **Credit / Charge Card:**

##### ***Visa International***

23 members in Hong Kong. Consolidated list of members not available.

##### ***MasterCard International***

20 members: Aeon, AIG Credit, BEA, BOC, Citibank, Dah Sing, Dao Heng, First Pacific, Fortis, Hang Seng, HSBC, HK Chinese, IBA, Chase, Online Credit, Wing Lung, Liu Chong Hing, Wing Hang, Shanghai Commercial and STDC.

##### ***American Express***

American Express Bank Limited.

##### ***Diners International***

Citibank.

#### **Debit Card:**

##### ***EPS***

35 member banks: American Express Bank Limited, BOA, BOC, Bank of Communications, Fortis Banque, Chekiang First, Chiyu Bank, Citibank, Dah Sing, Dao Heng, Hang Seng, HSBC, Hua Chiao Commercial, IBA, Kincheng, Kwong On, Liu Chong Hing, Nanyang, OTB, Po Sang, Shanghai Commercial, Sin Hua, STDC, BEA, Chase, China & South, China State, Ka Wah, Kwangtung Provincial, National Commercial, Yien Yieh, United Chinese, Wing Hang, Wing Lung and HK Chinese.

#### **Stored Value Card:**

##### ***Mondex***

HSBC and Hang Seng.

##### ***Visa Cash***

9 members including BOC and STDC.

##### ***Octopus***

Creative Star Limited jointly owned by: MTRC, KCRC, KMB, Citybus, NewWorld First Bus, New World First Ferry.

#### **Cheques:**

All licensed banks. At end-March 1999, there were 168 licensed banks in Hong Kong.

#### **Cash:**

3 note-issuing banks in Hong Kong: HSBC, STDC and BOC.

付款系統概覽  
- 商戶和消費者的售點付款產品 -

售點付款產品	信用卡 / 付款卡	支票卡	儲值卡	支票	現金
<p>發行者</p> <p>23家銀行和金 融機構 (包括「迅通」 成員)</p> <p>VISA</p> <p>20家銀行和金 融機構 (包括「迅通」 成員)</p> <p>美國運通 銀行 (「迅通」成員)</p> <p>高國寶通 銀行 (「迅通」成員)</p> <p>中國銀行 和渣打 銀行 (「迅通」成員)</p> <p>匯豐和恒生 銀行 (「迅通」成員)</p> <p>聯俊達 有限公司**</p> <p>網絡系統</p> <p>23家銀行和金 融機構 (包括「迅通」 成員)</p> <p>VISA</p> <p>20家銀行和金 融機構 (包括「迅通」 成員)</p> <p>美國運通 銀行 (「迅通」成員)</p> <p>高國寶通 銀行 (「迅通」成員)</p> <p>中國銀行 和渣打 銀行 (「迅通」成員)</p> <p>匯豐和恒生 銀行 (「迅通」成員)</p> <p>聯俊達 有限公司**</p>	<p>35家銀行 (組成「迅通」)</p> <p>0.75% 商戶未能與個別發卡 銀行商討交易費用</p>	<p>中國銀行 和渣打 銀行 (「迅通」成員)</p> <p>匯豐和恒生 銀行 (「迅通」成員)</p> <p>聯俊達 有限公司**</p> <p>0.5-0.6% 個別發卡銀行與商戶商討交易費用</p>	<p>持牌銀行 (包括「迅通」 成員)</p> <p>不適用</p>	<p>三家發鈔銀行： 匯豐、渣打和中國 銀行 (「迅通」成員)</p> <p>不適用</p>	
<p>對商戶的好處</p> <p>✓ 有效率和安全：無須擔心現金的核實、收支平衡、儲入銀行以及從銀行存取的問題</p>	<p>✓ 有效率和安全：無須擔心現金的核實、收支平衡、儲入銀行以及從銀行存取的問題</p> <p>✓ 交易款項直接轉賬至商戶的戶口</p>	<p>✓ 有效率和安全：無須擔心現金的核實、收支平衡、儲入銀行以及從銀行存取的問題</p> <p>✓ 免終端機費用</p>	<p>✓ 有效率：無須擔心現金的核實</p> <p>✓ 無需交易費用</p>	<p>✓ 交易款項直接收取</p> <p>✓ 無需交易費用</p>	
<p>商戶的關注</p> <p>⊗ 延遲交易款項的收取</p> <p>⊗ 交易費用比支票卡和儲值卡為高</p> <p>⊗ 終端機費用(每月約\$200，費用可以商討)</p> <p>⊗ 因偽卡或被盜用信用卡而顧客未能付款的情況下，可能要負擔有關損失</p>	<p>⊗ 交易費用</p> <p>⊗ 終端機費用***</p>	<p>⊗ 交易費用</p> <p>⊗ 只跟有限的銀行有聯系，因此只有該等銀行的客戶使用</p> <p>⊗ 只能用於某些服務上</p>	<p>⊗ 支票的核實、收支平衡、儲入和兌現的問題</p> <p>⊗ 支票未能兌現</p>	<p>⊗ 安全性的考慮</p> <p>⊗ 偽鈔的問題</p>	
<p>對消費者的好處</p> <p>✓ 免卻攜帶現金或戶口內有足夠存款的麻煩而能照常購物</p> <p>✓ 安全和方便</p> <p>✓ 免息信貸還款期</p> <p>✓ 優惠積分</p>	<p>✓ 免卻攜帶大量現金的麻煩</p> <p>✓ 安全和方便</p> <p>✓ 通常免收年費</p> <p>✓ 最高交易額比儲值卡為高</p>	<p>✓ 免卻攜帶現金零錢的麻煩</p> <p>✓ 安全和方便</p> <p>✓ 交易過程迅速，尤其在交通工具上(無需輸入密碼等)</p>	<p>✓ 免卻攜帶大量現金的麻煩</p> <p>✓ 安全</p> <p>✓ 沒有交易上限</p>	<p>✓ 任何地方都可以接受</p> <p>✓ 沒有交易上限</p>	
<p>消費者的關注</p> <p>⊗ 信貸限額</p> <p>⊗ 高財務費用和逾期手續費</p> <p>⊗ 年費(一般在\$20或以上)</p> <p>⊗ 所需交易時間較長</p>	<p>⊗ 戶口內需要足夠的存款</p> <p>⊗ 沒有信貸還款期</p> <p>⊗ 沒有優惠積分</p> <p>⊗ 所需交易時間較長</p>	<p>⊗ 最高交易額的限制(通常少於\$3,000)</p> <p>⊗ 儲值卡內需要足夠的餘額</p> <p>⊗ 沒有信貸還款期</p> <p>⊗ 沒有優惠積分</p> <p>⊗ 年費(\$100)</p>	<p>⊗ 未被廣泛接受</p> <p>⊗ 沒有信貸還款期</p> <p>⊗ 沒有優惠積分</p>	<p>⊗ 需要攜帶大量現金以應付大額交易</p> <p>⊗ 安全性的考慮</p> <p>⊗ 沒有信貸還款期</p> <p>⊗ 沒有優惠積分</p>	

\* 迅通卡和大來卡都屬「付款卡」，其賬項需要每月清付。然而，它們的產品項目已擴展至提供借貸服務。  
 \*\* 除了聯俊達的八達通卡外，其餘售點付款產品的發行者都包括或是迅通的成員銀行。  
 \*\*\* 投訴人向消委會指他們每月需要繳交\$50終端機費用予迅通，然而迅通則向消委會指所有終端機免費。



## 付款系統概覽

### - 售點付款產品網絡成員 -

#### 信用卡 / 付款卡：

##### VISA

本地有23家成員銀行和金融機構，消委會未能取得整份成員名單。

##### MasterCard

20家成員銀行和金融機構，包括：Aeon、友邦國際、東亞銀行、中國銀行、萬國寶通、大新銀行、道亨、第一太平、華比富通、恒生、匯豐、香港華人銀行、港基國際、大通銀行、Online Credit、永隆、廖創興、永亨、上海商業銀行和渣打。

##### 運通卡

美國運通銀行

##### 大來卡

萬國寶通

#### 支票卡：

##### 易辦事

35家成員銀行，包括：美國運通銀行、美屬(亞洲)銀行、中國銀行、交通銀行、華比富通、浙江第一、集友銀行、萬國寶通、大新銀行、道亨、恒生、匯豐、華僑商業、港基國際、金城銀行、廣安銀行、廖創興、南洋商業、海外信託銀行、寶生、上海商業銀行、新華銀行、渣打、東銀行、大通銀行、中南銀行、國華商業、嘉華銀行、廣東省銀行、浙江興業、鹽業銀行、中國聯合銀行、永亨、永隆和香港華人銀行。

#### 儲值卡：

##### Mondex

匯豐和恒生

##### Visa Cash

九家成員包括中國銀行和渣打

##### 八達通卡

聯俊達有限公司，由下列機構聯合組成：地鐵公司、九廣鐵路、九龍巴士、城巴、新世界第一巴士和新世界第一渡輪。

#### 支票：

所有持牌銀行。至1999年3月，本港共有168家持牌銀行。

#### 現金：

三家發鈔銀行，包括：匯豐、渣打和中國銀行。

## Consumer Council

### Executive Summary

#### Report on complaints against the 'Easy Pay System'

1. The Consumer Council has conducted inquiries into a complaint by certain merchants in Hong Kong, concerning the transaction fee that merchants have to pay in using the debit card network payment system known as 'Easy Pay System' (EPS), which is provided by the Electronic Payment Services Company (Hong Kong) Limited (EPSCO).
2. The complainants alleged that EPSCO is a 'monopoly' service provider and is taking advantage of its market power to levy unreasonable transaction charges from the complainants for using the EPS system. The complaints have two dimensions. First, some complainants had originally negotiated a flat fee of \$2.00 per transaction regardless of the amount, and EPSCO had moved to change that to a percentage based fee up to 0.75% calculated on the amount of the transaction. Second, there were complaints generally by merchants regarding the use by EPSCO of percentage based transaction fees rather than flat fees.
3. Hong Kong is a market economy. The process of competition is the means by which the objectives of economic efficiency and the free flow of trade are to be achieved. The intention behind the Council's report in this matter is not to consider the quantum of what a reasonable transaction fee should be, as the Council does not have access to commercially sensitive information and comprehensive data to do so. Its intention is to consider, on the basis of prima facie evidence provided to the Council by the complainants and EPSCO, two issues: whether there has been a lack of competition arising from market failure in the delivery of debit card network payment services to merchants; and what are the implications for the economy and ultimate consumer welfare. In effect, the merchants are the 'intermediate consumers' in this matter and the issue is whether they have viable competitive choices available to them. The Council's report consolidates the limited information that the Council has been able to obtain from the industry, including the complainants and EPSCO, and from research on money transmission systems overseas.
4. The Council's ultimate concern with this matter is that merchants that have to pay for the debit card network service through transaction fees, have to recover their costs of operation through prices charged to consumers. As such, to reduce the inflationary effect of such costs, it should be expected that the supply of these services to merchants would be provided at the lowest possible charges. Ideally it should be under competitive market conditions, in much the same way that merchants expect to obtain other inputs for the efficient operation of their business.

5. Moreover, there is a wider issue at stake for the economy as a whole. Electronic network payment systems can be an efficient means of providing retail payment services; when compared with traditional alternatives such as cash, or cheque. In these circumstances, it would be expected that the relevant authorities would encourage the efficient supply and use of electronic network payment systems in Hong Kong.
6. In pioneering any such system, initial market power might be natural as an incentive for a risky venture. However, the market power should not be allowed to develop to the extent that competition is stifled, or the pressure to enhance efficiency is artificially reduced or eliminated.

#### **EPS**

7. EPS is operated by the Electronic Payment Services Company (Hong Kong) Limited (EPSCO) which is a consortium of banks in Hong Kong, including the major note-issuing banks, which issue EPS debit cards to consumers. EPSCO has stated that it wants to bring transaction fee structures for debit cards into line with all merchants, to redress a historical anomaly where some merchants had, during the early stages of the EPS' development, negotiated flat rate transaction fees.
8. According to the complainants flat fees other than those they had been paying were also still being offered by EPSCO to other merchants. However, citing commercial confidentiality, EPSCO declined to provide the Council with information that would indicate the range of transaction fees that have been negotiated with different merchants. EPSCO stated that in any event, if the complainants who approached the Council are dissatisfied with the rise in their transaction fees, they could use substitutes such as cash, cheque or credit card.

#### **Complaints**

9. The complainants who approached the Council stated that the alternatives suggested by EPSCO are not viable substitutes and that EPSCO is acting as a 'monopoly' and misusing its market power to extract unreasonable fees from merchants.
10. Some merchants were of the opinion that the EPS terminals at merchants' premises were more or less automatic teller machines (ATMs). Moreover, unlike credit cards, where the cost of operation includes the cost of credit to banks, the cost of the EPS service was largely fixed, and was not affected by the size of the transaction. In these circumstances it was felt that if transaction fees were to be charged, a fixed transaction fee was more appropriate.
11. In the Council's opinion, if transaction fees for merchants are to be charged (bearing in mind that 'excessive' transaction fees could act to impede growth of the system by merchants) the matter comes down to the issue of choice. In particular whether merchants have competitive choices available to them for the product, and what competitive pressures exist to determine what the level of the fees should be.

### **Competition in the relevant market**

12. The question as to whether EPSCO has market power and whether it is using that power to levy fees on merchants requires an assessment of the relevant market from the demand and from the supply side, with reference to relevant product, geographic and functional dimensions. Defining the relevant market and evaluating the degree of power in that market are in effect part of the same process. The objective of defining a relevant market is to determine the boundaries within which effective competition occurs and where market power is allegedly being misused. From the demand side, merchants indicated that to provide a competitive service, various payment options had to be made available. Notwithstanding their assertions, it can be generally observed that there are different aspects to the various payment options available that suggest they may not be direct substitutes given the different operational patterns of various industries. For example:

- transaction amounts can be above the maximum value available for stored value cards, particularly for high cost items such as electrical equipment, furniture and jewellery;
- it can be impractical for customers to use cash, because of security reasons;
- cheques can be considered too risky for some merchants, because of the possibility of default; and
- credit card transaction fees, typically involving a 2% to 4% charge on the merchants, would substantially diminish the margins that some merchants work on. This could be a particular concern in industries where competition has squeezed margins to very low levels.

Debit cards on the other hand do not display the above concerns. Hence, competitive industries that typically involve large transaction amounts and are adverse to default risk may prefer debit cards as the payment method. In return, they may provide discount incentives to consumers. Given the high level of complaints by certain merchants regarding the EPS service, this could well be the case in those sectors where the complainants operate.

13. Notwithstanding the above observations, a common method of more rigorously determining the boundaries of a relevant market and the existence of market power, used by competition authorities in jurisdictions that have competition laws, is to test the point at which consumers (in this case merchants) react to price rises by switching from one service to another. It stands to reason that not all consumers will be willing to switch products or find alternatives when prices are raised. However, in antitrust analysis it is sufficient that enough customers are willing to make such substitutions to affect the conduct of sellers in the market.

14. In increasing the rate from a \$2.00 per transaction to 0.75% on transaction value, EPSCO's increase in price was, according to some users, as much as 11 times the fee under the former charging scale. This is obviously a significant price increase for the EPS service and an indication of market power. Moreover, survey information provided to the Council, and submissions by merchant associations indicated that a significant number of merchants, notably certain small to medium enterprises who felt compelled by market conditions to use the payment system, had little choice but to accept the price increase. The reason for this could be that their profit margins were already very low because of strong competition, and after the discounts offered to consumers using EPS. In these circumstances it could be assumed that few of them would wish to shift to other payment methods that might mean a hike in prices or charges, or a further squeeze in margins, e.g. payments by credit cards.
15. It has been difficult for the Council to verify the validity of that reason, which would require very detailed industrial information and statistics. It would also require determining the extent to which different transaction fees have been offered in the market, who the recipients of those fees are, and the results of any negotiations between EPSCO and certain merchants. Information of this sort would assist in ascertaining the full extent of demand elasticity by particular merchants when faced with a price increase by EPSCO. However, anecdotal evidence by both the Hong Kong Jewelers and Goldsmiths Association and the Travel Industry Council was that if their members could not prevent EPSCO from imposing the new charge, they had few options but to comply. EPSCO itself stated that over 90% of affected merchants had agreed to the new fee structure. Some collective boycotts of the EPS system have been organised or planned by some merchants, as a protest against EPSCO's actions. Whether the action will secure any change for some merchants on the transaction fee remains to be seen. However, the Council considers that in a market economy, the means by which optimal supply prices are achieved should ideally be through the interplay of competitive forces by market participants negotiating on the strengths of their relative economic efficiencies.
16. Whether merchants actually "agreed" with the increase (as stated by EPSCO) is a moot point. However, the fact that EPSCO was in a position where it could seek such an increase is in itself the important fact to note when considering, on the demand side, whether EPSCO has market power. While this fact gives important clues, resolving the issue of market power also rests with an analysis of the supply side, and the important issue of barriers to entry.
17. From the supply side, the Council doubts there is much likelihood of a viable competitor emerging as a separate supplier of a debit card network payment system, to compete against the major banks who are in the EPSCO consortium. Experience from overseas indicates that the incumbency of an established network payment system is a substantial hurdle for new entrants to overcome.
18. In effect, it appears to the Council that rather than engage in the costly and risky endeavour of competing with each other in the provision of a debit card

network service, potential competitors in the supply of debit card networks i.e. Hong Kong's major banks, have joined together to form one debit card network payment system. Such a co-operative arrangement between competitors, who are fixing prices (merchants' transaction fees) between each other, raises a concern that the aggregation will result in the creation of substantial market power. The concern on competition is particularly the case when the competitors include thirty five banks that make up a significant portion of the Hong Kong banking industry. This concern is increased when it is recognised that the same entities that make up EPSCO have commercial interests, to varying degrees, across the range of other payment systems available in Hong Kong (see Appendix 1) that the EPSCO members claim are direct competitive substitutes for the EPSCO product.

19. If EPSCO is facing direct competition from other payment systems in setting its transaction fees for merchants, it needs to have regard to the actual and potential competition that exists for its product from other service providers. Moreover, if the EPSCO service is indeed facing competition, in the usual sense of the word, it can be assumed that those offering the competing service would be attempting to take market share away from EPSCO's service and vice versa. For example, at the very least, because the cost of the service would be a major factor for merchants, it would be expected that the price for the EPS service should not be higher than that for competing services. By the same token if EPSCO was competing with other payment service providers, it would be expected that, in order to maximise its return, it would take advantage of any lower operating costs it has for its service, (in comparison to the best price that its competitors could offer) in order to take market share away from those competitors. The fact that EPSCO was in a position where it could unilaterally impose a substantial fee increase, simply in furtherance of a stated policy to bring fees into line with others, is a strong indication that it was not facing the discipline of a competitive market in setting merchants' transaction fees. This fact, coupled with the barriers to entry posed by the 'network effect' of EPSCO's incumbency, leads the Council to believe that EPSCO was, and in the absence of information to the contrary, currently is in a position of substantial market power when setting merchant transaction fees.

#### **Detriments to consumer welfare**

20. The means by which costs and fees are determined between a service provider with substantial market power such as EPSCO, and a purchaser of its services, i.e. merchants, should not be simply taken on trust. Economic efficiency cannot be enhanced when an entity with substantial market power, derived from an aggregation of competitors, is able to extract the returns it deems fit.

21. In contrast, the process of negotiating merchant transaction fees with banks for a credit card service is significantly different to that of negotiating fees for an EPS debit card service. The fee for using the EPS service is only negotiable between the merchant and EPSCO; which is a consortium of the banks that also offer credit card services. The fee paid by merchants to issuing banks for credit cards is negotiable between those individual banks that also issue EPS debit

cards. The Council understands that transaction fees for credit card usage currently fall between 2% to 4%. Transaction fees for credit cards are therefore determined to some extent through the competitive pressures that individual banks are under when supplying credit card services to merchants. The same competitive pressures do not apply, however, for debit card services.

22. High transaction fees raise the cost to merchants of card based payments which can reduce the acceptance of more efficient payment methods. High transaction fees also have an inflationary effect on retail prices, as no matter how competitive their industry is, retailers will eventually have to pass on the inflated costs to customers. This in turn leads to a reduction in output and economic welfare. There is a strong assumption to be drawn that if card issuers agree amongst each other on the way in which they should recover costs for a payment system, that ultimately benefits their commercial interests, this will weaken the incentive for card issuers to cut costs through greater efficiency. Inflated transaction fees protect inefficient suppliers from the full force of competition and have detrimental consequences for the economy as a whole.

#### **Overseas experience**

23. Similar network payment systems operate in comparable advanced economies overseas, and the Council has briefly examined the circumstances that exist in the United States, Canada, the UK and Australia. In those jurisdictions, because the networks are co-operative arrangements between competitors, they are, in the first instance, under the scrutiny of competition authorities that administer general competition law. In addition, some jurisdictions currently have, or are contemplating specialised payment systems control authorities that oversee the operations of such systems because of their importance to the economy.

24. There are also different approaches to recovering costs and applying fees. In Australia for example, there is competition between banks within one collective debit card network system for the custom of merchants, and thereby competitive choices as to fee levels and methods of calculation. Where transaction fees are paid by merchants for accepting debit cards issued by network members, they are almost always 'flat fees' i.e. there are very few percentage transaction fees paid by merchants. For a number of large merchants, such as retail chains, network members actually compete to pay those merchants to use the payment system, rather than the reverse.

#### **The need for competition**

25. The aggregation of major Hong Kong banks into the one single debit card network supplier, has denied merchants the opportunity to take advantage of the rivalry that would be expected to arise between those banks, for the competitive supply of debit card services to merchants. This aggregation has apparently resulted in a situation where EPSCO does not face any serious pressure from other existing or potential competitors, in the price levels that it sets for the supply of debit card network services to merchants. Because the member banks of EPSCO have agreed not to compete with each other on debit card transaction fee levels for merchants, and because they are also involved, to

varying degrees, in the supply of other payment options, there is little opportunity for competition to play its part in:

- determining appropriate fee levels; and
- offering choices as to fee calculation.

26. The Council considers that if transaction fees are to be charged for merchants to provide the debit card payment system, competition between service providers should be utilised as much as possible to exert downward pressure on the fee levels and to offer competitive choices to merchants. The costs that merchants are required to bear will inevitably be passed on to consumers. Competition should be allowed to play its part in achieving the objective of enhancing economic efficiency. This view reflects the Hong Kong Government's commitment to using competition as a means of achieving the objective of economic efficiency as noted in its May 1998 *Statement on Competition Policy*.

27. While the competitive process should be promoted and utilised, it is also clear to the Council, from the nature of network payment systems, that co-operation is required to some extent between competing service providers on how the network payment systems are to be operated. However, this requires that some form of accountability and transparency is provided that ensures consumers of the service have trust in the way in which the co-operative scheme is operated.

#### **Council recommendations**

28. Having regard to the above, the Council puts forward the following recommendations.

##### *Recommendation 1: There should be competition between network members.*

29. The Council considers that as a matter of principle, competition between service providers should be utilised as much as possible to determine an appropriate level of fees in payment networks, and to offer competitive choices to merchants. Accordingly, it considers that if merchants are to be charged network transaction fees, EPSCO's rules should allow for member banks to compete with each other on the quantum of merchant transaction fees and the method by which the fees can be calculated.

##### *Recommendation 2: There is a need for transparency and accountability.*

30. Given the prima facie indication of market power through the aggregation of competitors in the provision of the EPS network payment system, and in the absence of legislative safeguards to counter that power (by way of a general or finance sector competition law) the Council considers there should be an appropriate degree of accountability in the operation of the debit card network payment system operated by EPSCO. In view of the importance of having efficient online network payment systems to the economy, and Hong Kong's ambitions to fully embrace innovative electronic information technology,



consideration should also be given to providing a similar degree of accountability for other network payment systems.

31. The issues that need to be addressed to ensure accountability are:

- transparency as to the costs of operation for the systems; and
- representation of the interests of stakeholders (i.e. not only financial institutions, but merchants, consumers and government) in the decision making processes that control the development and operation of the systems.

32. Competition between network members may introduce a certain degree of accountability. However, that fact alone would not address the important issue of transparency. A code of practice developed by the network members, with government support and oversight (in the absence of a general competition law, which is the Council's first preference) would seem to be an appropriate model to consider.

#### **Government response**

33. During the course of preparing this report, the Council held discussions with the Hong Kong Monetary Authority (HKMA) and provided a preliminary draft for the HKMA's consideration. The Council made clear to the HKMA the limitations of the data and information that it had been able to obtain for its study. The HKMA subsequently announced on 1 August 2000 that it would conduct a comprehensive review of retail payment services in Hong Kong. Among the terms of reference for the review was that the HKMA would "consider the degree of competition that exists in the provision of retail payment services and to assess whether any deficiencies in competition that are identified operate significantly against the public interest".

34. The Council welcomes the HKMA's initiative and trusts this report will assist it in its task.

Consumer Council  
10 August 2000

# 消費者委員會

## 有關「易辦事」的調查報告

### - 報告摘要 -

1. 消委會接獲商戶投訴「易辦事」電子支賬卡系統的交易佣金收費，進行了調查。「易辦事」由「迅通電子服務(香港)有限公司」(以下簡稱「迅通」)提供。
2. 投訴人指「迅通」藉其作為本地唯一的支賬付款系統經營者，利用市場力量向投訴人收取不合理的服務費用。投訴有兩方面：(一)「易辦事」由以往每宗收取二元服務費，增收至按交易額百分之零點七五的費用。(二)「易辦事」採用按交易額比例收費的方式，替代按次固定收費。
3. 香港是一個市場經濟體系，而政府的政策目標也清楚顯示公平競爭是提高經濟效益和促進自由貿易的途徑。本報告的主旨並不在於研究怎樣的收費水平才是合理。目的乃研究支賬付款系統服務是否由於未能發揮市場作用而導致缺乏競爭，以及其對社會和消費者利益的影響。事件中，商戶的身份就是「中介的消費者」；因此，有沒有足夠和具競爭性的選擇供他們挑選才是問題的癥結，消委會未能取得商業上敏感的資料及數據來分析收費。本報告綜合消委會從投訴人和「迅通」等業內人士提供的有限資料，加上外地有關經驗而撰寫。
4. 消委會的最終關注是商戶把易辦事的新收費計算入運作成本內，再會從零售價中轉嫁給消費者。要減低因成本增加而造成的價格上漲，商戶所採用的應是最低成本的服務。支賬付款系統理應和其他投入業務的營商成本一樣，可以在有市場競爭的環境下讓商戶作比較和選擇。
5. 消委會更關注事件對香港經濟的整體影響。相對現金或支票的傳統付款方式，電子付款系統可以提高零售交易效率；因此有關部門應鼓勵和推動這類系統的有效率供應及使用。

6. 爲了吸引投資者作出有風險的投資，在這類系統開發初期經營者擁有市場力量是一個自然現象。然而，我們不能讓這股力量發展至壟斷市場競爭的地步，或者任由人爲因素減低甚或消除市場效率提昇的壓力。

### 「易辦事」

7. 「易辦事」由「迅通」推行。「迅通」的成員由香港的銀行集團組成，包括主要發鈔銀行。使用者必須擁有一張「迅通」成員銀行發行的支賬卡。「迅通」表示，由於公司成立初期，曾與部份商戶訂下每宗交易兩元之收費，是次價格調整實爲劃一這些商戶與其他商戶之收費水平。

8. 根據投訴人的資料，除了這些商戶外，「迅通」仍有向其他商戶提供固定收費。然而，「迅通」以商業秘密爲理由，沒有向消委會提供有關不同商戶交易收費的資料。「迅通」又表示，假如投訴人不滿是次的價格調整，可以用其他交易方法代替「易辦事」，例如：現金、支票和信用卡等。

### 對「易辦事」的投訴

9. 投訴人認爲「迅通」提出的其他交易方法並不是可行的代替品，「迅通」作爲本地唯一的電子支賬付款系統經營者，有濫用市場力量，從而收取不合理費用之嫌。

10. 投訴人又指「迅通」所提供的「易辦事」終端機，其運作與銀行自動櫃員機 (automatic teller machines) 相若。加上「易辦事」是支賬卡，並無信貸風險，運作成本不會隨交易金額的大小而改變。由此觀之，若要徵收交易費，以定額收費是比較合適的收費模式。

11. 消委會認爲若向商戶收取交易費（並考慮及「過高的」交易費是有礙系統的廣泛推行），關鍵問題在於商戶是否有選擇。尤爲重要的是商戶有沒有其他同類且具競爭性的選擇，以及交易費是在有競爭的情況下釐訂。

## 在所屬市場內之競爭

12. 就「迅通」是否具有市場力量和「迅通」有沒有利用其市場力量向商戶徵取費用等問題，我們需要根據有關商品的特色、地理和功能上的特性，從需求和供應兩方面來界定所屬的市場。為有關市場定義和評估市場力量的程度實際為同一過程。為市場定義目的是界定有效競爭的範圍以決定當中市場力量是否被濫用。從需求方面分析，商戶表示他們需要提供各樣的付款系統讓顧客選擇具競爭性的付款服務。無論商戶說法為何，從觀察所得，我們亦可見到各行業有不同的營運模式，令到不同的付款方法未能直接互相取代。例如：

- (一) 一些高價貨品如電器、傢俬和首飾等，其交易金額往往超過儲值卡所容許的儲值上限；
- (二) 基於安全理由，顧客未必能夠攜帶大量現金在身；
- (三) 因為支票有可能不兌現，商戶覺得支票付款有一定的風險；
- (四) 信用卡一般收取2至4%的交易費用，會將商戶的盈利削減，特別是對那些因競爭激烈令盈利率已降至很低水平的行業而言。

支賬卡則沒有以上問題。因此，對於交易額高而不欲冒收款風險的行業，其商戶一般認為支賬卡是一個比較可取的交易方法。這些商戶可能給予顧客折扣優惠作為回報。就某些商戶投訴「易辦事」之眾多個案，可以說大都是在那類行業內所發生的情況。

13. 雖然有以上的觀察，在一些有公平競爭法的地方，其公平競爭政策機關對市場定義和評估市場力量所採用的會是一個比較嚴謹的方式。這就是測試消費者(即本個案中的商戶)在價格上升至哪一個水平時會從一種服務轉換至另一種服務。其理論在於當價格上升時，不是所有的消費者都願意轉換服務或尋找其他代替方法。然而在壟斷分析中，只要有足夠的顧客願意用其他方法代替原先的服務，便足以影響原先市場服務供應者的行為。

14. 「迅通」調高「易辦事」的交易佣金收費，由以往每宗收取二元服務費，增收至按交易金額百分之零點七五的費用。根據部份投訴人的資料，新的收費比舊的高逾11倍。這毫無疑問是一個可觀的增幅，亦顯示「迅通」的市場力量。另一方面，從轉交予

消委會的問卷調查結果和商戶所提交的資料中，大量的商戶表示除了接受加價外，其他選擇不多。這可能由於他們本身行業內已經有很大的競爭，導致盈利水平偏低。在此情況下，很少商戶願意改用其他付款方法，因為轉換另一種付款方法（例如信用卡）會增加價格或收費，或令利潤更為低降。

15. 消委會難以引証這個解釋是否合乎實況。它需要十分詳盡的行業資料和數據。消委會亦須確定市場上有哪幾種交易收費，哪些商戶哪種交易費用，以至「迅通」與部份商戶商討收費的結果。唯有這些資料才有助深入衡量商戶對「迅通」加價的需求彈性。然而，港九珠石玉器金銀首飾業商會和旅遊業議會提供的例子顯示，他們的會員如果不能阻止「迅通」加價，除了接受加價外，其他選擇不多。「迅通」本身亦表示超過九成受影響的商戶已經同意接受新的收費制度。為表達對「迅通」的不滿，部份商戶進行杯葛和罷用易辦事的行動。這些行動會否改變「迅通」向這些商戶收取的佣金則有待觀察。然而，消委會認為，在市場經濟體系下，最佳的供應價格應該由市場參與者在有競爭的環境下去決定，參與者都會基於自己的經濟效益實力去討價還價。

16. 商戶是否真的「同意」新的收費制度是有爭論的一點。然而，「迅通」能夠顯著調高收費是一個重要的參考。當我們從需求方面去研究「迅通」是否具有支配市場力量時，必須加以考慮。不過，這個事實雖然提供了線索，要解決市場力量的疑問，我們亦要從供應方面和入市障礙這個重要課題來分析。

17. 從供應方面來看，消委會相信市場上不容易有新的經營者入市。外國的經驗顯示，現有的收費網絡系統是造成新經營者進入市場的重大障礙。

18. 為了減低投資的風險和費用，香港的主要銀行不單沒有在支賬收費網絡服務供應上進行競爭，更聯合組成一個支賬收費系統。由於系統牽涉到銀行之間的協議，各成員銀行通過「迅通」向商戶訂立劃一收費，所產生明顯的市場力量值得關注，尤其是「迅通」的35家成員銀行佔香港銀行業的大部份。更令人關注的是有些「迅通」成員在不同程度上也擁有香港其他付款系統的商業利益（見附件一）。「迅通」卻認為，這些系統與其付款系統產品之間互有競爭亦可直接代替。

19. 倘若「迅通」是直接受到其他付款系統的競爭去釐訂交易費，它需要考慮其他供應商對其產品的實際及可能競爭。再者，如果「迅通」真的面對競爭，一般可以理解為競爭對手的供應 將會嘗試去奪取「迅通」的市場佔有率，相反亦然。舉例來說，由於成本是商人主要考慮因素，「易辦事」的費用理應不高於其他競爭對手。同樣地，倘若「迅通」是與其他付款系統競爭，可以想像它要達到最大的收益，必定會利用其較廉宜的運作成本（與其對手最好的價錢作比較）去奪取競爭對手的市場。「迅通」以劃一商戶的收費方式為理由，而能夠單方面大幅調高收費，是有力的証據顯示它未有受到市場競爭的壓力去釐訂交易費用。這個事實，連同「迅通」現有營運的「網絡效應」所構成的入市障礙，令消委會相信「迅通」在釐訂交易費用時具有顯著的市場力量。消委會在撰寫報告的過程裏，未有取得相反結論的資料。

#### 對消費者利益的損害

20. 我們不能輕易地信任一個像「迅通」那樣具有市場力量的服務提供者與服務購買者在訂定其成本和收費時所採用的方法。因為一個由競爭者組合而成又擁有支配市場力量的集團是可以從顧客身上謀取利益，另一方面卻沒有提高經濟成效。

21. 兩者比較，商討信用卡與商討支賬卡的交易費用的方式大大不同。雖然各家銀行有各自的支賬卡或提款卡，但使用「易辦事」的商戶只能與「迅通」商討交易收費。而信用卡方面，商戶則可直接與各發卡銀行商討，議定不同的費用。據消委會理解現時信用卡一般的交易收費由2至4%不等。因此在一定程度上信用卡的服務收費受到發卡銀行競爭的影響，但「易辦事」方面卻未受到相同的競爭壓力。

22. 過高的付款卡交易費用影響商戶的運作成本，這減低了對更有效率的付款方法的接受程度。另一方面，成本的增加帶來通脹後果，因為無論行業內的競爭程度有多高，零售商最終亦將要把成本轉嫁到消費者身上，從而造成生產減少，經濟福利受損。假設容許發卡銀行協議訂價，以保證收回成本，最終保障其商業利益，這只會減低各發卡銀行透過提高效率來降低成本的誘因。藉增大交易成本以保護低效率的供應商，讓他們不須在市場上作全面競爭，結果會對整個經濟造成損害。

## 外國的經驗

23. 消委會簡要地參考了外國經驗，包括美國、加拿大、英國和澳洲的情況。這些國家的電子付款系統，由於存在競爭者之間的協議，有違反競爭的性質，因此受到公平競爭政策當局的監管。一些地方現有或打算設有專門監管付款制度的機關，負責監察各種收費系統的運作。

24. 外地針對如何收回成本和釐訂網絡系統交易收費也有不同的做法。以澳洲為例，為爭取商戶成為其顧客，即使同屬一個支賬網絡系統，銀行之間亦互相競爭，向商戶提供不同的收費和計算方法。交易若要收費，大部分採用按次定額形式，絕少以交易額之百分比收取。反過來，有些收費系統甚至付款予一些大型商號如連鎖店等以爭取他們使用其系統。

## 市場競爭的需要

25. 把香港主要的銀行齊集起來組成唯一的支賬系統，結果令商戶無法從銀行之間的競爭得益。就表面證據來看，這組合使「迅通」在訂定交易費多寡之時毋須面對現有或潛在對手的激烈競爭。因為各支賬卡銀行協議在支賬卡交易費上不會進行競爭，而他們又可在各程度上牽涉其他付款系統的供應，那麼市場競爭就很難發揮於下列領域：

- 釐訂合理交易費；或
- 提供收費計算方案以供商戶選擇。

26. 消委會認為如果支賬卡服務要收取費用，應該利用和促使服務提供者之間的競爭，產生壓力去降低服務收費的水平，以及讓商戶有所選擇。商戶承擔的交易費最終會轉嫁到消費者身上，競爭應該開展，以達到提高經濟效益的目標，這正好符合政府在一九九八年五月所頒佈的「競爭政策綱領」。綱領內清楚指出公平競爭是提高經濟效益和促進自由貿易的途徑。

27. 一方面服務提供者之間的競爭應予以鼓勵和利用；另一方面，基於付款網絡系統的特性，消委會明白到要達到經濟效益的目的，服務提供者之間若干程度的合作是在所

難免。可是，某種形式問責性及透明度亦有需要，好讓消費者對這個合作制度的運作持有信心。

#### 消委會的建議

28. 就以上研究，消委會作出如下之建議：

##### 建議(一)：網絡系統成員應互相競爭

29. 消委會認為服務提供者之間的競爭這個原則應盡量的利用，讓市場決定合適的服務收費水平和讓商戶有競爭性的選擇。因此，如果系統需要徵收費用，「迅通」應該容許其成員銀行在商戶交易收費和計算方法上進行競爭。

##### 建議(二)：需要透明度和問責性

30. 基於表面証據，競爭者組成「易辦事」付款網絡系統顯示出市場力量。由於香港沒有足夠的法定措施去抗衡（通過整體競爭法或金融行業競爭法），消委會認為「迅通」在經營「易辦事」方面應該承擔適當的問責性。另一方面，鑑於聯線付款系統對經濟效益的重要性，加上香港有意提倡電子資訊科技，其他系統也應考慮建立同樣程度的問責性。

31. 要確保問責性，各收費網絡系統服務經營者：

- 必需提高有關係統運作成本的透明度；以及
- 在制訂有關係統的發展和運作決策時，必需照顧各方面（包括金融機構、商戶、消費者和政府）的利益。

32. 網絡系統成員之間的競爭可以引入一定程度的問責性。然而這並未能解決系統透明度的問題。要增加透明度和問責性，行業要制定營商守則，並加上政府的支持和



監察。消委會一向以來主張應有整體的競爭法例，但在未有法例之前，這種方式不失為一個值得考慮的模式。

#### 政府的回應

33. 在撰寫報告期間，消委會與香港金融管理局（金管局）進行了討論並提交報告初稿予該局考慮。金管局隨後於今年八月一日宣布將會進行全面檢討本港的零售支付服務，其中職責範圍包括「評估現時零售支付服務的市場競爭形勢，以及確定此市場形勢是否存在任何嚴重影響公眾利益的問題」。

34. 消委會歡迎金管局此舉，並相信這個報告將有助其評估工作。

消費者委員會

二〇〇〇年八月十日