

BEYOND INTERCHANGE FEE CAPS: RETHINKING MERCHANT CHOICE AND COMPETITION IN EUROPEAN PAYMENTS*

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May 2026

ABSTRACT

This article examines the persistent challenges in European payment markets a decade after the EU Interchange Fee Regulation. Despite fee caps on debit and credit card transactions, merchants continue to face limited choice and high, often opaque costs, as international card schemes raise non-regulated fees and consumer reliance on cash diminishes. We argue that regulation focused solely on price caps has proven insufficient to address structural imbalances at the point of sale and, possibly to a lesser extent, in e-commerce. While we also set out proposals for adjusting fee regulation, the core of our analysis is a shift in policy towards strengthening merchants' effective choice of payment instruments. Two complementary approaches are developed: first, enabling merchants to initiate direct debit transactions directly from payment card data, thus creating a genuine outside option that disciplines card-based fees; second, breaking single-homing of cardholders by requiring banks to issue multiple branded debit cards or by preventing (quasi-)exclusive issuing arrangements. We also explore tentative remedies in e-commerce and mobile payments, where merchants may, on the one hand, enjoy a wider choice, but digital wallets and intermediaries may also create new “must-have” bottlenecks. Overall, the paper advocates structural reforms to restore competition rather than relying exclusively on fee regulation.

Keywords: Payment Systems; Card Schemes; Interchange Fee Regulation;
Mobile Payments; E-Commerce

JEL: E42; K21; L41; L51

* We thank Mark Falcon, an Associate Editor, and two referees for helpful comments. Tommaso Valletti was a member of the board of the Payment Systems Regulator (2020-2025). Roman Inderst and Christoph Wentzien advise the association of German savings banks (DSGV) on matters related to follow-on claims regarding an alleged girocard infringement up to 2014. The views expressed here are our own. We have no conflicts of interest to disclose.

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I. Introduction

The regulation of card-based payments in Europe has a long history of competition concerns and enforcement. In response, the European Union introduced interchange fee caps in 2015. While these measures were expected to strengthen competition, their impact has been more limited than anticipated. Merchants continue to face restricted choice and remain constrained in their ability to steer consumers towards lower-cost payment methods. As a result, payment networks retain significant market power at the point of sale. This paper examines these limitations and explores alternative policy approaches to restore effective competition.

To set the stage, we briefly recall some basic terminology. Card-based payment systems typically involve four distinct parties: the cardholder, the merchant, the issuing bank that provides the payment card to the consumer, and the acquiring bank that supplies payment services to the merchant. Interchange fees are wholesale fees set by card schemes and paid by the acquiring bank to the issuing bank for each card transaction, and they form a key component of the merchant service charges ultimately borne by merchants. Interchange fees will feature prominently throughout our analysis, as they have become the key object of regulation. Card schemes – most prominently the international networks Visa and Mastercard – operate the payment infrastructure and set core rules governing transactions, including interchange fees.

European competition authorities have mainly been concerned with the setting and size of interchange fees. We review the core cases, involving both Mastercard and Visa, in the subsequent section. Ultimately, the European Union imposed regulatory caps on these fees in 2015 through the Interchange Fee Regulation (henceforth, IFR).¹ Following a first review in 2020, a new, dedicated review of the IFR is currently featured in the European Commission’s biennial plan for reviewing EU laws and policies.²

In Europe, the payment market has also been subject to successive legislative initiatives aimed at ensuring openness and competition, notably the Payment Services Directive (PSD1), the revised Payment Services Directive (PSD2), and the currently negotiated third Payment Services Directive (PSD3).³ Finally, some of the actors active in the mobile payments space are subject to the Digital Markets Act, which applies

¹ *Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on Interchange Fees for Card-Based Payment Transactions* (2015) O.J. (L 123) 1.

² European Commission, *Commission Work Programme 2025*, Annex III (2025).

³ *Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on Payment Services in the Internal Market (PSD1)*, 2007 O.J. (L 319) 1; *Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on Payment Services in the Internal Market (PSD2)*, 2015 O.J. (L 337) 35; *Proposal for a Directive on Payment Services and Electronic Money Services (PSD3)*, COM(2023) 366 final (June 28, 2023); *Proposal for a Regulation on Payment Services in the Internal Market (Payment Services Regulation)*, COM(2023) 367 final (June 28, 2023). The first Payment Services Directive established a harmonised legal framework for payment institutions; the revised Payment Services Directive introduced strong customer authentication and mandated access to account data for third-party providers; and the currently negotiated package of a third Payment Services Directive and the Payment Services Regulation aims to modernise and consolidate the EU framework for payment services and e-money.

to designated gatekeeper platforms, most relevant here being Google and Apple. Though competition concerns related to the regulation of interchange fees will be at the heart of our analysis, where appropriate, we will also refer to this legislation. This is also appropriate because the European payments landscape has become increasingly digitalised over the last decade. This has not only triggered a shift at the point of sale (henceforth, POS) from cash to card transactions, but also a growing use of mobile payments, including digital wallets such as Apple Pay. Through this development, large technology companies have become key gatekeepers of mobile device functionalities, shaping entry and competitive conditions. The European Commission recently pursued proceedings against Apple concerning restrictions on access to the iPhone’s near field communication (henceforth, NFC) chip, which ultimately resulted in commitments designed to ensure non-discriminatory access for rival wallet providers.⁴ In a recent report, the OECD dedicated a detailed analysis to digital payments and their competition implications. There, digital payments are defined as transactions in which value is transferred electronically through digital infrastructures, displacing cash. The scope of this definition encompasses card-based transactions, mobile money, e-wallets, and account-to-account transfers via online banking.⁵ Importantly, digitalisation encompasses all aspects of e-commerce, whether conducted through mobile devices or on desktops. This payment landscape appears more fluid than at the POS – a core issue to which we will return in detail.

This short discussion serves to justify the structure of the paper. For analytical purposes, we distinguish between payments at the POS and online (e-commerce) transactions. While we cannot do justice to all complexities and recent developments in the markets for e-commerce and mobile payments, both at the POS and online, we still aim to highlight key properties. Throughout, our focus is on the European Union. We offer different policy conclusions, focusing on interventions that ensure effective merchant choice, thereby directly targeting the fundamental competition problem that justified the price regulation of interchange fees in the first place. We also propose modifications to such price regulation.

With respect to POS payments (or “card-present”), our conclusions and proposals are as follows. The key market characteristics that originally justified regulation remain unchanged. If anything, merchant choice has become more limited, as consumers increasingly carry less cash and prefer cashless payment methods. Moreover, domestic card schemes appear to have lost relevance and market share relative to Visa and Mastercard. In addition, while consumers maintain multiple banking relationships, many remain effectively single-homed in terms of the card they use at the POS. The prohibition on surcharging gives merchants little room to steer even those customers who could, and would, use alternative cards. While

⁴ See European Commission, Commission Decision of January 9, 2024, Case AT.40452 – Apple Mobile Payments. In January 2025, the UK Competition and Markets Authority launched Strategic Market Status (SMS) investigations into Apple and Google’s mobile ecosystems, comprising the operating system, distribution of apps and the browser on mobile devices. See Competition and Markets Authority, *CMA to Investigate Apple and Google’s Mobile Ecosystems*, GOV.UK (Jan. 23, 2025), <https://www.gov.uk/government/news/cma-to-investigate-apple-and-googles-mobile-ecosystems>.

⁵ Organisation for Economic Co-operation and Development, *Competition in Mobile Payment Services*, OECD Roundtables on Competition Policy Papers, No. 324, 36-56 (OECD Publishing 2025).

there is an increasing tendency to use other digital payment forms via mobile devices, such as instantaneous account-to-account payments (account-to-account (SEPA) instant credit transfers), often based on QR code reading, such developments remain limited at the European level. In short, compared to ten years ago, when the IFR came into force, the situation at the POS remains largely unchanged for most merchants in Europe. Regulation also appears to have fallen short of its objective, namely to protect merchants from the exercise of quasi-monopolistic market power at the POS. While interchange fees have been capped for most card transactions, there is evidence that card schemes have increasingly introduced or raised additional fees. This has decreased the effectiveness of the regulation.

Against this backdrop, our key proposal is to not rely exclusively on fee regulation. We suggest shifting the focus to strengthening merchant choice. We outline two approaches to achieve this. The first proposal seeks to ensure competition and choice in relation to any given card presented. Drawing inspiration from Germany, where such rules have governed the use of physical debit cards of the national card scheme (girocard), we suggest that merchants should be granted the right to access a customer's relevant banking details from the card's chip in order to initiate a SEPA direct debit transfer (or an equivalent in countries outside the euro area). At the POS, consumers would authorise the merchant to debit their account for the corresponding amount. We provide details on how this could function, even in predominantly contactless (physical "card-present") environments, and whether and how this can and should be extended to mobile payments. Such SEPA direct debit payments are not only advantageous to consumers – providing them with statutory refund rights – but would also constitute a genuine outside option for merchants. Evidence from Germany again suggests that merchants can ensure these payments at reasonable costs. Such an outside option for merchants would thus impose an upper limit on what can be charged for other payment options, including debit cards. We also discuss how instantaneous account-to-account transfers could provide an alternative, albeit less likely, given that their access is controlled by the issuers of cards. A genuine outside option would limit the costs of other payment services to the additional value they actually provide to the merchant.

Our second proposal addresses what we consider a widespread practice: banks maintaining (quasi-)exclusive issuing arrangements with either Visa or Mastercard. For most consumers, this results in single-homing and, in practice, a virtual lock-in with the respective card network. Even if merchants had sufficient freedom to steer consumers through discounts or surcharges based on the payment method (which they currently do not have), under these conditions, even large merchants would find such efforts largely ineffective. By contrast, if consumers could obtain both a Visa and a Mastercard debit card from their main bank at no significant additional cost, then, particularly in a reformed landscape where merchants provide incentives to use one card over another depending on their respective acquiring arrangements, consumers might benefit from holding and using two cards rather than just one (which might be particularly feasible in the form of virtual cards in their mobile device). We stress throughout that both proposals will only be effective if either merchants can actively steer

consumers or when the ultimate choice, e.g., whether to conduct a transaction by debit card or, using the obtained account information, by SEPA direct debit, lies with the merchant and not the consumer, as is the case in the German example.

Given the uncertainty and immediacy of the success of such structural reforms, we also suggest revising and expanding the current fee-cap framework. Our more detailed proposals refer to (card) payments at the POS. For those cards and transactions that are presently covered by the IFR, we propose broadening the scope of the cap to prevent the so-called “waterbed effect” – that is, card networks offsetting capped interchange fees by raising or introducing other charges. Admittedly, the practicability of such a proposal requires scrutiny, especially in cases where merchants pay their acquirer a single blended fee, which may also include remuneration for acquiring services. Transparency in the breakdown of total payment service costs is crucial for determining the portion that ultimately accrues to the card network and the issuing bank. Expanding the scope of the regulation in this way naturally raises the question of what the overall fee cap should be for debit card payments. We do not propose a definitive answer to this question. However, we make the following observations. Conceptually, the current cap on interchange fees is grounded in the idea that, by aligning the fee with the overall cost of card acceptance to the merchant, the merchant would be made indifferent between accepting card and cash payments. The European Commission has conducted empirical studies to estimate the typical costs associated with cash transactions.⁶ Looking ahead, we identify three key differences that any future test – and with it, any revised overall fee cap – would need to take into account. First, the limited or diminishing role of cash as an alternative payment method; second, the need to impose a cap on the total cost of card payments rather than on a single component; and third, the practical challenge that observed fees may still reflect bundling of multiple services. Regarding the first point, we propose a new benchmark: the costs that a merchant would incur to process SEPA credit transfers. As with cash handling costs, these may vary between merchants. Existing evidence suggests that a cap based on this benchmark would not exceed the currently applied 0.2% interchange fee cap on debit card transactions. We also note that such a threshold would still allow both merchants and payment service providers (henceforth, PSPs) to retain part of the efficiency gains generated by card payments – particularly as card transactions can also bring operational advantages for merchants, as we discuss further below.

We now turn to our conclusions concerning the online payments market (“card-not-present” transactions), which we refer to as e-commerce – albeit some of the discussion there also refers to mobile payments at the POS. The current IFR also applies to this segment. Yet, available evidence suggests that merchants’ total costs might well exceed the regulated cap, because PSPs such as PayPal are exempt from such regulation. However, several differences between POS and online payments warrant attention.

⁶ See European Commission, *Survey on Merchants’ Costs of Processing Cash and Card Payments – Final Results* (2015), <https://op.europa.eu/en/publication-detail/-/publication/f3e89fa4-f7e8-11e5-b1f9-01aa75ed71a1>.

First, there are distinct differences in the services that online payments provide to merchants and consumers. In a physical POS transaction, consumers typically leave the store with the purchased goods. By contrast, online payments often entail greater risk for consumers, underscoring the importance of additional protective mechanisms. Second, online transactions more frequently involve additional intermediaries or independent PSPs, such as PayPal. When a consumer pays through such an intermediary, the payment is made to the intermediary, which negotiates terms with card schemes and charges its own fee to merchants. These intermediaries also provide certification and guarantee functions to both sides of the market. Another difference from the POS market is the role of platforms such as Amazon, which perform multiple functions – including acting as providers of payment services (e.g., Amazon Pay) to competing online retailers. Taken together, the particular features of online payments may mitigate some traditional concerns about market power in payments, but they also introduce new risks, including potential foreclosure.

Our proposals, now with respect to e-commerce, again concern both potential structural remedies in the market and fee regulation. However, the lack of publicly available data severely limits the ability to assess current market performance with confidence. Subject to these constraints, we suggest that, at present, merchants in e-commerce may have more payment options at their disposal than at the POS. However, the effectiveness of these choices may be only apparent, masking similar competition concerns as found at the POS. We point to potential concerns in mobile payments, where hard-wired convenience advantages may lead consumers to prioritise a particular digital wallet. The merchant then has no further choice, even when the consumer has listed more than one payment option in the wallet. In the mobile phone environment, the merchant also cannot steer the consumer – for example by highlighting particular payment options (behavioural steering) – as on its own webpage. The merchant’s choice is equally limited when the consumer, using a mobile device or a browser, defaults to PSPs such as PayPal at checkout. In fact, the merchant pays PayPal the same fee regardless of whether, for instance, a SEPA direct debit or a debit card transaction is undertaken.

We try to shed light on this more complex landscape by decomposing it as follows. Akin to the so-called “tourist test”, we first consider the hypothetical scenario in which a consumer makes a single online purchase on the merchant’s homepage, abstracting from other intermediaries. In this hypothetical situation, merchants are less likely than at the POS to be exposed to the market power of particular payment methods, such as the debit card of a given card scheme. For instance, in this hypothetical scenario, it would be equally convenient for the consumer to key in (or use autofill for) their account details, allowing the merchant to bypass card-based payment systems and conduct a transaction. With increasing consumer access to alternative payment schemes, such as SEPA credit transfers through a banking app, the merchant’s choice set would expand further. We then argue, however, that introducing more realism – and the convenience advantages offered to consumers by digital wallets or independent PSPs such as PayPal or Amazon Pay – may render a merchant’s potential choice more apparent than

real, masking quasi-monopolistic situations in which a merchant is exposed to a “must-have” payment method when facing a specific consumer using a specific device.

This complexity is aggravated not only by the limited availability of public information, such as market share data, but also by significant national differences in e-commerce and mobile payment methods. For these reasons, our suggestions are therefore necessarily more tentative. They also come with the caveat that authorities still need to procure reliable information on potential “must-have” payment options. Against this backdrop, we again discuss whether intervention is needed to ensure that merchants have access to potentially cheaper SEPA transfers, as in our proposal for the POS. We consider whether it may be necessary to ensure that merchants gain automatic access to the respective information, or whether – unlike in the case of physical cards at the POS – such information could be transferred in an alternative way. We also discuss how merchants could steer consumers towards this option. Finally, we briefly refer to more specific proposals for mobile payments, taking into account the regulatory interventions already in place that aim to keep the interface between merchants and mobile devices open.

We are more sceptical about the potential of fee regulation when it comes to e-commerce or mobile payments (whether at the POS or in e-commerce). Fees paid by merchants to independent PSPs such as PayPal fall completely outside the scope of the IFR. In fact, the interchange fee in this case is only part of the total payment that, for instance, PayPal itself charges for using a debit card. We submit that providers such as PayPal or Amazon Pay enjoy significant bargaining power, such that the scope of any fee regulation at this point may be limited. What is more, it is questionable whether a fee cap would be passed on to the merchant, whose fee is independent of the underlying payment instrument ultimately used. If the regulatory objective is to limit the overall costs of payments, as these are ultimately borne by consumers, then the scope of regulation would need to be much broader than under the present IFR. Yet this immediately raises practical problems, including the fact that independent PSPs or merchant wallets also provide additional services, such as merchant acquisition and payment insurance. A decomposition of the value added by these and other services appears difficult. Restricting regulation to a single component of a single instrument – namely, card payments – seems to have only very limited value and scope in this environment.

These observations on the limitations of fee regulation in e-commerce and mobile payments underscore the crucial importance of structural remedies to secure effective merchant choice and competition. Detailed national-level data on potential “must-haves” and the total costs of different payment instruments are essential, along with a clear understanding of how lower-cost alternatives, such as SEPA transactions, are effectively excluded from merchants’ choice sets. It is also important to understand how emerging alternatives, such as instant account-to-account transfers, provide competition or whether they themselves generate additional “must-haves”. These may also suffer from conflicts of interest on the part of their operators, which, in the case of banks, may simultaneously be issuers of cards and therefore have little incentive to promote alternatives that are less profitable than interchange fees.

Reliable data on potential “must-haves” and total costs are crucial to understand how competition can and does function in this complex environment. Such data would allow policymakers to cut through claims of effective competition arising solely from the presence of new and diverse players, including bank consortia and their apps for direct transfers, independent PSPs and merchant wallets, or Big Tech companies through digital wallets. If concerns can be validated in this way, our proposal to strengthen the use of SEPA direct debit represents a viable policy option, also applicable to e-commerce and mobile payments more generally. Lastly, consideration should be given to merchants’ ability to steer consumers. Surcharges are not applied to regulated payment instruments, notably card payments and SEPA transfers. Merchants are also prohibited from imposing them by contractual provisions of PSPs such as PayPal. Revisiting these restrictions on merchant steering may represent an important complementary intervention to ensure merchant choice and competition.

II. Payments at the POS (“card-present”)

II.i Taking stock

We begin with a brief description of the market and regulatory framework for payments at the POS, a term we use interchangeably with “card-present” transactions. Our focus is on the European Union. The analysis is confined to debit cards and does not address the credit function. This permits relatively clear-cut policy proposals and allows abstraction from payment forms in which the credit function is central. We also acknowledge that a comprehensive account of the market is beyond the scope of this article, not least because of the significant national differences. For example, several national card schemes remain in operation.⁷ These differences are further amplified in e-commerce, as we subsequently report.

In a four-party card system, the transaction involves the cardholder, the issuing bank, the acquiring bank, and the merchant. When a customer pays by card, the merchant’s acquirer transfers the transaction amount to the merchant minus the merchant service charge, which includes the interchange fee paid to the issuing bank and the acquirer’s own fee. The card scheme sets the interchange fee which flows from the acquirer to the issuer, creating a two-sided market in which the scheme and issuers compete for cardholders while acquirers compete for merchants. Because merchants cannot easily refuse a widely

⁷ These include girocard (Germany), Bancomat/PagoBancomat (Italy), Cartes Bancaires (France), Bancontact (Belgium), Dankort (Denmark), Multibanco (Portugal), and Sistema de Tarjetas y Medios de Pago (Spain). In most cases these schemes still dominate domestic debit transactions: girocard, Bancomat/PagoBancomat, Cartes Bancaires, Bancontact, Dankort, and Multibanco account for the majority of in-country debit payments, while in Spain international brands have a stronger share but the domestic system still processes a large volume via co-branded cards.

held card brand, the market power lies with the issuer side, leading to high interchange fees and total merchant service charges, a structure that prompted the EU's IFR to cap such fees.⁸

As described in the introduction, over the last few decades, important cases have been brought against international card schemes, leading to the IFR. We briefly review them. The Mastercard cases mark the central line of authority, beginning with the European Commission's prohibition decision against cross-border multilateral interchange fees (henceforth, MIFs) and related network rules, and subsequently upheld on appeal.⁹ These cases collectively established the core competition law framework governing interchange fees in payment card systems, finding that Mastercard's cross-border multilateral interchange fees and related network rules were restrictive under Article 101 TFEU. Visa matters followed a different path, with commitments accepted by the European Commission to lower MIFs.¹⁰ This jurisprudence and policy debate culminated in legislative intervention in the EU – specifically, the IFR, which set caps on interchange fees for consumer debit and credit transactions in 2015.¹¹ As with many other EU regulations, the IFR is subject to periodic mandatory reviews to ensure it remains effective and adapts to evolving payment markets. This includes a formal review by the European Commission, comprising both the mandated study on the application of the IFR¹² and the report on its impact submitted to the European Parliament and the Council pursuant to Article 17 of the IFR.¹³ As noted in the Introduction, and serving as a key motivation for this article, the European Commission is currently undertaking a second review.¹⁴

We note that potentially anticompetitive interchange fees have also led to a considerable wave of follow-on and private damages actions in Europe. In the UK, the most prominent proceedings arose before the Competition Appeal Tribunal (CAT) following the European Commission's 2007 Mastercard decision, with claims brought by retailers such as Sainsbury's and Asda.¹⁵ Parallel claims were brought against

⁸ See, for instance, European Commission, Commission Staff Working Document, *Impact Assessment Accompanying the Proposal for a Regulation on Interchange Fees for Card-Based Payment Transactions*, SWD (2013) 288 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=swd:SWD_2013_0288.

⁹ European Commission, Commission Decision of 19 December 2007, Case COMP/34.579 – MasterCard; Case COMP/36.518 – EuroCommerce; Case COMP/38.580 – Commercial Cards; Case T-111/08, MasterCard & Others v. Commission, ECLI:EU:T:2012:260; Case C-382/12 P, MasterCard & Others v. Commission, ECLI:EU:C:2014:2201.

¹⁰ European Commission, *Antitrust: Commission Makes Visa Europe's Commitments to Cut Interbank Fees for Debit Cards Legally Binding*, Press Release IP/10/1684 (Dec. 7, 2010), https://ec.europa.eu/commission/presscorner/detail/en/ip_10_1684. Across the Atlantic, enforcement likewise targeted network rules and steering constraints, first via the U.S. Department of Justice's (DOJ) 2010 action against Visa and Mastercard (settled), followed by subsequent U.S. Supreme Court litigation concerning American Express's anti-steering provisions, and, most recently, a DOJ monopolisation action focused on Visa's debit practices (United States v. American Express Co., No. 10-cv-04496 (E.D.N.Y. filed Oct. 4, 2010); Ohio v. American Express Co., 585 U.S. 529 (2018); United States v. Visa Inc., No. 1:24-cv-07214 (S.D.N.Y. filed Sept. 24, 2024)).

¹¹ *Regulation (EU) 2015/751 of the European Parliament and of the Council*, *supra* note 1.

¹² Copenhagen Economics & EY, *Study on the Application of the Interchange Fee Regulation (IFR)*, Final Report to the European Commission (2020), <https://op.europa.eu/en/publication-detail/-/publication/79f1072d-d6c2-11ea-adf7-01aa75ed71a1>.

¹³ European Commission, *Report on the Application of Regulation (EU) 2015/751 on Interchange Fees for Card-Based Payment Transactions*, COM(2020) 83 final (June 29, 2020).

¹⁴ European Commission (2025), *supra* note 2. The European Commission's 2025 Work Programme lists the IFR review under its scheduled evaluations, aimed at assessing whether the current scope of interchange fee caps remains adequate in light of market developments, notably in e-commerce and mobile payments.

¹⁵ The CAT in *Sainsbury's Supermarkets Ltd v. MasterCard Incorporated & Others* (Competition Appeal Tribunal, Case 1241/5/7/15 (I), Judgment of 14 July 2016) found that Mastercard's MIFs restricted competition, awarding damages to Sainsbury's. On appeal, aspects of liability and quantum were adjusted by the Court of Appeal and ultimately resolved by

Visa.¹⁶ Beyond the UK, national courts in Spain, Italy, and the Netherlands have also seen significant private damages litigation based on the Commission's findings.¹⁷ Similar concerns have also led to extensive antitrust litigation in the United States, most notably in the long-running *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*,¹⁸ which further illustrates the scale and persistence of these issues across jurisdictions.

The ongoing review of the IFR, as well as the persistence of the regulatory cap, indicate that the structural problems that induced the European Commission to undertake these actions remain, as merchants have limited choice and find themselves unable to steer consumers to the method of payment that they would prefer. Two factors are responsible for this. With respect to cards, consumers still frequently single-home, that is, they hold and use only one brand of payment card, which limits merchants' ability to influence card choice through acceptance policies. In fact, a very recent analysis of microdata from the European Central Bank Consumer Expectations Survey shows that a clear majority of euro area consumers use only one payment card. The study finds that multi-homing with several debit cards is rare and concentrated in a small segment of the population. These patterns have been stable in recent years and show only minor variation across countries.¹⁹ On top of this, merchants in the EU cannot steer through surcharges because the revised Payment Services Directive prohibits surcharging for consumer card payments covered by the IFR in order to ensure uniform pricing.²⁰

Not all fee components in the (debit) card system fall under the IFR: scheme fees (charged by card networks to issuers and acquirers) and acquirer margins remain unregulated, and some cards are entirely exempt from the caps.²¹ We discuss below in detail how the development of other fee components bears testimony to the still-existing and unresolved structural problems. Before doing so, we also note the UK's evidence since it left the EU at the end of 2020. Since then, EU fee caps no longer apply to cross-

the UK Supreme Court in *Sainsbury's Supermarkets Ltd v. Visa Europe Services LLC & Others*; *Sainsbury's Supermarkets Ltd & Others v. MasterCard Incorporated & Others*, UKSC 24 (2020), 2 All E.R. (Comm) 865.

¹⁶ Here, the High Court and appellate courts have addressed both historic MIF levels and issues of pass-on: *Arcadia Group Brands Ltd & Others v. Visa Inc. & Others* (2015), EWCA Civ 883, Q.B. 695; *Asda Stores Ltd & Others v. Visa Europe Services LLC & Others* (2017), EWHC 93 (Comm), Bus. L.R. 882; *see also Various Claimants v. Visa Europe Services LLC & Others* (2018), EWCA Civ 1536.

¹⁷ *See, for instance*, Audiencia Provincial de Madrid (Section 28), Judgment, Appeal No. 470/2013 (Mar. 18, 2016) (MasterCard interchange fees, follow-on damages claim); Corte Suprema di Cassazione (Italy), Sezioni Unite Civili, Judgment No. 29810 (Dec. 12, 2017), *Banca Monte dei Paschi di Siena v. MasterCard Europe*.

¹⁸ *See In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, 55 F.4th 95 (2d Cir. 2023); for subsequent proceedings concerning a proposed injunctive relief, *see also In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, No. 05-MD-1720, 2024 WL 3159450 (E.D.N.Y. June 25, 2024).

¹⁹ *See* Thomas Meyer & Federica Teppa, *Consumers' Payment Preferences and Banking Digitalisation in the Euro Area*, ECB Working Paper Series No. 2915 (2024).

²⁰ *See* Directive (EU) 2015/2366, *supra* note 3.

²¹ Commercial cards and cards issued under three-party schemes such as American Express and Diners Club are exempt from the IFR. Some national three-party systems, like the German girocard system, have been included through an explicit decision of the national banking supervisor, in which case the cap has been applied to the total fee charged to merchants. Where caps did not apply, fees seem to have largely remained unchanged in recent years. *See* Competition Appeal Tribunal, *Merchant Interchange Fee Umbrella Proceedings*, Case No. 1517/11/7/22–1529/11/7/22 (2022), CAT 37 (UK).

border transactions between the EU and the UK, leading Visa and Mastercard to raise outbound card-not-present interchange fees sixfold, from 0.2% to 1.15% for debit cards.²²

The available evidence suggests that the European Commission's intention to reduce merchants' costs through capping interchange fees was largely offset by increases in other fees. Commission data indicate that while interchange fees indeed decreased after the introduction of the regulation, non-regulated components such as scheme fees and acquirer margins increased. The European Commission's study reports that weighted average acquirer scheme fees for debit cards rose from the outset of the regulation, from 0.020% in 2015 to 0.036% in 2017.²³ EuroCommerce figures suggest that from 2018 to 2022, international card schemes raised their overall fees by around 34%, an average annual increase of 7.6%.²⁴ Based on a large yearly survey of German merchants, we can provide additional evidence. Since the adoption of the IFR in 2015, the unregulated scheme fees for Visa and Mastercard transactions initially rose sharply and stabilised in recent years. In 2024, debit cards accounted for approximately one-third of the total merchant service charge for Mastercard transactions (an average scheme fee of about 0.19%) and about one-quarter for Visa transactions (an average scheme fee of about 0.11%).²⁵

Two developments may have worsened merchants' position since the inception of the IFR. First, the use of cash at the POS has declined significantly, reducing merchants' access to a widely accepted alternative payment method. Second, the international four-party card schemes Visa and Mastercard have increased their share of transactions at the POS. We turn to these developments separately.

As for cash use, between 2019 and 2024, the share of cash at physical points of sale in the euro area fell from 72% to 52% of transaction volume.²⁶ A recent driver of this shift is the rapid uptake of contactless payments, which in the second half of 2024 accounted for 81% of card-present transactions.²⁷ Merchants benefit from card payments, particularly contactless, as they can speed up the checkout process; the cost of holding cash is reduced, and in fully cashless operations, fixed cash-handling costs are eliminated. This, however, is only the case if the cost of card payments for merchants remains unchanged.

Second, the role of international card schemes in POS transactions has increased over time. According to the European Central Bank, their share of card payments in the euro area rose from about 56% in

²² See Payment Systems Regulator, *Market Review of UK-EEA Consumer Cross-Border Interchange Fees: Final Report*, Version MR22/2.7 (2024), <https://www.psr.org.uk/media/vrcimoxw/mr22-27-xbif-final-report-dec-2024-v3.pdf>.

²³ The technical report was commissioned by the European Commission. See Copenhagen Economics & EY (2020), *supra* note 12. The study collected scheme fee data directly from acquirers and card schemes across the EU. The weighted averages were computed by weighting each fee by the corresponding transaction volumes, so that larger markets had a proportionally greater impact on the EU-wide average.

²⁴ For a summary of the expert report written by The Brattle Group, commissioned by EuroCommerce and large retailers, see Foo Yun Chee, *Retailers Urge European Commission to Crack Down on Visa, Mastercard*, REUTERS (May 14, 2025, 11:52 PM), <https://www.reuters.com/sustainability/boards-policy-regulation/retailers-urge-european-commission-crack-down-visa-mastercard-2025-05-14/>.

²⁵ See EHI Retail Institute, *Zahlungssysteme im Einzelhandel 2025*, 57-70 (EHI Retail Institute 2025).

²⁶ See European Central Bank, *Study on the Payment Attitudes of Consumers in the Euro Area (SPACE) – 2024* (2024), https://www.ecb.europa.eu/stats/ecb_surveys/space/shared/pdf/ecb.space2024~19d46f0f17.en.pdf.

²⁷ See European Central Bank, *Payments Statistics: Second Half of 2024*, Press Release (July 23, 2025), <https://www.ecb.europa.eu/press/stats/paysec/html/ecb.pis2024h2~5ada0087d2.en.html>.

2017 to around 61% in 2022, while the share of national schemes fell from roughly 44% to 39% over the same period.²⁸ Several national debit schemes have lost substantial share or ceased operations altogether, such as the Finnish domestic debit scheme Pankkikortti, which was phased out in the mid-2010s in favour of Visa- and Mastercard-branded debit cards, and the Portuguese scheme Multibanco, whose card issuing activities have been largely replaced in recent years by Visa Debit and Debit Mastercard. We cannot, however, conclude that a potential strengthening of the market share of the two international card schemes would necessarily be to the detriment of merchants. Consumers already frequently single-home, so it is unclear to what extent a possible increase in the share of the two international card schemes would affect the overall outcome. There may be various (also country-specific) reasons for the increasing share of international card schemes in POS transactions. From a demand-side perspective, the growth of cross-border commerce and e-commerce favours globally interoperable payment schemes. On the supply side, compliance with evolving regulatory and technological requirements may favour large international card schemes.

Alternative payment methods at the POS that have developed more recently do not seem to have altered this situation. When a consumer pays with a card stored in a mobile wallet, there is, *prima facie*, little difference for the merchant compared with the use of a physical card. Some mobile wallets have traditionally imposed additional fees on issuers, part of which may indirectly affect merchant costs.²⁹ We return to this later. Beyond debit and credit cards, most alternative payment methods, such as open banking transfers or instant payments, remain rare at the POS, accounting for only around 6% of POS transactions in the euro area in 2024.³⁰ There are several reasons why payment methods other than cards and cash are not widely used at the POS, including the lack of a broad acceptance infrastructure, the absence of consistent regulatory and technical standards, and the fact that they offer consumers no additional benefits.

We acknowledge, however, recent initiatives such as Wero, a European account-to-account instant payment solution developed under the European Payments Initiative, which is planned to be used for in-store payments as well. At present, however, the relevance of this payment method is very limited.³¹ In Poland, instant account-based payments at the POS have become common. The system used is BLIK, a national payment solution operated by Polski Standard Płatności, a company owned by a consortium of leading Polish banks. This solution allows consumers to authorise POS transactions through their mobile banking app by entering a one-time code or scanning a QR code. The payment is settled instantly

²⁸ See European Central Bank, *Most EU Countries Rely on International Card Schemes for Card Payments, ECB Report Shows*, Press Release (Feb. 28, 2025), https://www.ecb.europa.eu/press/pr/date/2025/html/ecb.pr250228_1~7f0697af45.en.html.

²⁹ See Tim de Vries, Sebastian Maus & Paul le Manh, *Third-Party Access to Apple Pay Could Alter Mobile Payments in Europe*, OLIVER WYMAN (Feb. 6, 2025), <https://www.oliverwyman.com/our-expertise/insights/2025/feb/how-apple-pay-third-party-access-could-alter-mobile-payments-europe.html>.

³⁰ See European Central Bank (2024), *supra* note 27.

³¹ On the coordination challenges and delayed rollouts faced by the European Payments Initiative and its wallet Wero, see also OECD (2025), *supra* note 5.

via the national clearing system. As a final example, in Italy, Satispay is a mobile payment system independent of international card schemes and based on SEPA account-to-account transfers. It is used for both peer-to-peer and merchant payments, including at the POS, mainly for low-value transactions. While precise POS market share data are not publicly available, industry estimates place it in the low single digits.³² Satispay originally imposed no merchant fee for transactions up to 10 euro and 0.20 euro per transaction above that threshold. Since mid-2025, the company seems to charge a uniform fee of 1% for all POS transactions.³³

Finally, we should mention the ongoing efforts by the European Central Bank (ECB) to curb the market power of global card networks, exploring public alternatives and strengthening competition in Europe's payments landscape. A key component of this is the digital euro, a central bank digital currency that the ECB is currently assessing how it could "fit into the payment ecosystem".³⁴ The digital euro could act as a common acceptance layer for instant account-to-account payments across POS and online platforms, support interoperability with existing European schemes without proprietary fees, and enhance the bargaining power of European PSPs and merchants relative to global wallet and card networks.³⁵

We thus conclude our taking stock of the situation at the POS as follows. Structural competition problems persist, as merchants must accept the payment method chosen by the consumer, who, by now, frequently does not hold cash and, with respect to debit cards, still mostly uses single-home cards. Even where consumers in principle hold multiple cards, at the POS they present their preferred choice, and merchants cannot steer – not even by providing incentives – as surcharges are prohibited. These ongoing structural problems have also manifested themselves empirically in that the costs of non-regulated cards have not declined, and, where interchange fees are regulated, other fee components have increased. Finally, while there have been recent initiatives for mobile payments that do not involve debit

³² See Politecnico di Milano, *Osservatorio Innovative Payments* (2024), <https://eng.osservatori.net/innovative-payments-eng/>.

³³ See Pier Francesco Caracciolo & Fabrizio Gorla, *Satispay, arrivano le commissioni su tutti i pagamenti. Ma in vista ci sono anche nuovi servizi*, LA STAMPA (Feb. 8, 2025), https://www.lastampa.it/cronaca/2025/02/08/news/satispay_commissioni_pagamenti_da_aprile-14991386/.

³⁴ See European Central Bank, *Fit of the Digital Euro in the Payment Ecosystem: Report on the Dedicated Euro Retail Payments Board (ERP) Technical Workstream* (2025), https://www.ecb.europa.eu/euro/digital_euro/timeline/profuse/shared/pdf/ecb.deprep251030_digital_euro_fit_payment_ecosystem_report.en.pdf.

³⁵ While in Europe this is still in its infancy, similar central-bank-led payment initiatives have emerged outside Europe. In Brazil, the Pix system, launched by the Central Bank of Brazil in 2020, created a unified instant-payments service that now reaches the majority of the population and processes a large share of daily transactions by enabling real-time settlement with zero fees for users. See Jeff Alvares, *The Political Economy of Brazil's Pix Payment System*, PROMARKET (Dec. 3, 2025), <https://www.promarket.org/2025/12/03/the-political-economy-of-brazils-pix-payment-system/>. In India, the Unified Payments Interface (UPI), a central public payments "rail" operated by the National Payments Corporation of India, has similarly reshaped the market by enabling interoperable, instant, low-cost transfers between bank accounts through a wide range of third-party apps. UPI has become the world's largest real-time payment system by transaction volume, underpinning digital payments across retail and peer-to-peer use cases and significantly lowering costs relative to card networks. However, while UPI's public infrastructure promotes competition at the rail level, its market dynamics at the application layer are highly concentrated: two dominant apps, Google Pay and PhonePe (owned by Walmart), account for a large share of transactions, illustrating that replacing one duopoly (Visa or Mastercard at the card network level) with another form of concentration (front-end platforms) remains a regulatory challenge even in payment systems anchored in public infrastructure. See Bank for International Settlements, *Faster Digital Payments: Global and Regional Perspectives*, BIS Papers No. 152 (Dec. 18, 2024), https://www.bis.org/publ/bppdf/bispap152_e_rh.pdf.

or credit cards, such as those based on instant payments, their relevance varies nationally, and it remains unclear whether EU-wide adoption will be achieved in the near future.

In principle, high total fees for merchants may not be sufficient evidence either of a failure of competition or of a negative welfare effect. In a two-sided market it may be efficient that payments made by the two sides are asymmetric, for example if one side needs to be incentivised and potentially subsidised in order to participate. This could justify high fees for merchants on the one side and high benefits for cardholders on the other.³⁶ At least for debit cards, however, such direct benefits for consumers do not appear to be pervasive, and the argument that consumers need to be incentivised to hold cards instead of cash, or to adopt cards in the first place, seems outdated. The transition to digital wallets likewise appears to be driven mainly by consumer convenience rather than by additional inducements. Moreover, in the case of debit cards – as distinct from credit cards – reward schemes such as bonus points are relatively rare, aside from those linked to retailer-specific or retailer-group loyalty programmes. For the purpose of this article, we cannot ascertain whether the higher margins and profits associated with higher merchant fees are required to fund innovations at card schemes or issuing banks. However, for debit cards, we would be sceptical. This scepticism is also supported by the following observation: a European Commission study from 2024 on card-based payment markets shows that national debit schemes, such as Cartes Bancaires, PagoBancomat, and Multibanco, implemented the same regulatory and security adjustments as international schemes but kept scheme fees stable or only increased slightly. This suggests that in the past, rising security and compliance requirements did not necessarily justify the significantly higher fee increases observed with Visa Debit and Debit Mastercard.³⁷

Our evaluation of the problem at stake is in line with that of the European Commission. In the next section, we address possible remedies, and that is where we differ in certain respects from the European Commission. We argue that it is possible to introduce concrete structural measures. These measures should be prioritised, but they do not appear to be on the Commission's current agenda. Since the Commission is still more oriented towards caps, we then also discuss how the cap could be adjusted, both in terms of its scope, in particular to cover total costs for merchants, and its level, drawing on our preceding discussion of the outdatedness of a comparison with the costs of cash under the tourist test.

³⁶ See Jean-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Markets*, 1(4) J. EUR. ECON. ASS'N. 990 (2003). The economics literature on cards is very rich and goes back at least to the early contribution of William F. Baxter, *Bank Interchange of Transactional Paper: Legal and Economic Perspectives*, 26(3) J. L. & ECON. 541 (1983). For a survey, see Marianne Verdier, *Interchange Fees in Payment Card Systems: A Survey of the Literature*, 25(2) J. ECON. SURV. 273 (2011).

³⁷ For the study prepared by Valdani Vicari & Associati & Global Data Collection Company, see European Commission, *Study on New Developments in Card-Based Payment Markets, Including as Regards Relevant Aspects of the Application of the Interchange Fee Regulation – Final Report* (2024), <https://op.europa.eu/en/publication-detail/-/publication/ed0da3f4-c57a-11ee-95d9-01aa75ed71a1>.

II.ii Empowering merchants

The European Commission decided to impose regulations to cap card fees. This amounts to acknowledging that, due to deep-rooted competition problems in the market, no other remedy but that of price regulation would be sufficient. The core problem is that merchants can neither choose between different payment systems, whether card-based or non-card-based, nor steer customers between cards issued by different issuers. As a consequence, there is a lack of competition for the merchant.

However, instead of price regulation, the most immediate point of departure should be to ensure that merchants can steer consumers and encourage competition, thereby lowering the fees that they need to pay. We discuss various ways to foster such competition. In doing so, we acknowledge the diminishing relevance of cash payments and focus on alternative payment methods. Although we lack detailed knowledge of national markets, we still consider our proposals practical and preferable to price regulation, which often risks being circumvented (e.g., through the introduction of other fees and cost components). We will also return below to an assessment of the relative merits of these proposals and price regulation.

II.ii.1 Fostering competition “on the card” (through (SEPA) direct debit)

Suppose a consumer presents their debit card at the POS. The consumer usually has no other card or is reluctant to use it. Such reluctance may, in turn, hinder the merchant from inquiring about another card, apart from the fact that this would consume valuable time at the checkout. This is the “monopoly situation” faced by the merchant. Focusing on debit cards, when a consumer presents the card, a request for authorisation is sent to the bank. In addition to verifying that the card has not been reported as stolen, the bank also checks whether sufficient funds are available.³⁸ The service provided to the merchant is thus such authorisation and the undertaking of the transaction.

We are aware that in Germany, a merchant has, however, another option at this point, at least when a debit card of the domestic girocard system is presented: Without making payments to the card issuer, the merchant can read the account details from the card and use this to conduct a so-called “SEPA direct debit” transaction. We describe this possibility and its origins in what follows, before proposing it as a possible, more general structural remedy at the European level.

The German electronic direct debit (Elektronisches Lastschriftverfahren, henceforth, ELV) was collaboratively developed in the 1980s by the retail sector and the German banking industry (Deutsche Kreditwirtschaft). As ELV was developed independently of the German domestic debit scheme electronic cash (subsequently rebranded as girocard), it served as an alternative to debit card payments,

³⁸ If the merchant is not online, the chip on the physical card records the payments and updates the balance once another transaction is made at a merchant with an online connection.

with no scheme-related fees due for such payments.³⁹ Rather than constituting a standardised interbank product, it functioned as a contractual arrangement between merchant and customer, with the bank executing the payment instruction on behalf of the account holder. In its original configuration, the ELV system operated on the girocard's magnetic stripe, from which merchants extracted the customer's bank code and account number. POS terminals generated a paper slip that the customer authorised by handwritten signature, enabling the merchant to submit a direct debit through the banking system. This offline procedure provided no payment guarantee, thereby placing the default risk on the merchant, who sought to mitigate exposure through blocklists. By 2011, chip cards replaced magnetic stripes for secure PIN-based girocard transactions. The Payment Services Directive, together with the SEPA Regulation of March 2012, harmonised domestic direct debit schemes and mandated the conversion of ELV into the SEPA direct debit framework.⁴⁰ This migration was also accomplished, with the girocard continuing to serve as the data carrier for the information required to initiate a direct debit under a customer-signed mandate, without any payment being made to the issuing bank.⁴¹ The system has thus proven flexible in adapting to changing technological and institutional standards. This should be borne in mind in the following discussion, as we outline current challenges arising from contactless payments and digital wallets, and explain why these do not undermine our subsequent proposal centred on SEPA direct debit.

We first provide details on how a SEPA direct debit is conducted. Consumers authorise merchants or PSPs to initiate withdrawals from their bank accounts. As SEPA direct debit is governed by EU law, consumers benefit from regulated refund and dispute rights.⁴² Funds typically arrive at the merchant within one or two banking days. At the POS, the merchant cannot verify whether the consumer has sufficient funds to make the payment. In case the payment fails, to finally ensure payment, it is essential to obtain the consumer's address details. These are obtained from the bank, at a cost to the merchant, and the consumer agrees at the POS – traditionally through an electronic or handwritten signature – to the sharing of this information in the event of payment failure. Merchants or their service providers can flexibly steer individual consumers to either of the two payment methods. Importantly, merchants can also insure themselves against payment failures through intermediaries, which may be the acquirers or

³⁹ See Bank for International Settlements, *Payment, Clearing and Settlement Systems in Germany* (2012), https://www.bis.org/publ/cpss105_de.pdf.

⁴⁰ See Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001 as well as Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009; Deutsche Bundesbank, *Development* (2025), <https://www.bundesbank.de/en/tasks/payment-systems/services/sepa/content/development-626754>.

⁴¹ Although originally designed around magnetic stripe technology, the ELV system proved sufficiently adaptable to remain viable through both the migration to EMV chip technology and the subsequent transition to SEPA direct debit. This continuity demonstrates the resilience of ELV as a merchant-driven, cost-efficient payment instrument despite significant infrastructural and regulatory transformations. See BIS (2012), *supra* note 39.

⁴² While the legal foundation for SEPA direct debit was laid out in the revised Payment Services Directive (see Directive (EU) 2015/2366, *supra* note 3), the commercial and technical framework was developed by the European Payments Council (henceforth, EPC). The EPC is an association of European banks and defines the technical standards for SEPA direct debit transactions across its Member States. See European Payments Council, *SEPA Direct Debit Core Rulebook and Implementation Guidelines* (2025), <https://www.europeanpaymentscouncil.eu/what-we-do/epec-payment-schemes/sepa-direct-debit/sepa-direct-debit-core-rulebook-and-implementation>.

their technical partners. Such intermediaries may offer merchants a uniform per-transaction price combined with insurance, while internally deciding what share of transactions to process under each method. They may also negotiate the applicable debit card fees with issuers.

Summing up, the ability to read a consumer's account information from the card has generated an alternative at the POS. Furthermore, the decision on how to undertake the transaction, through the debit card system or as a SEPA direct debit, is left to the merchant or, when they wish to delegate it, to an intermediary. Since the market offers insurance – provided the merchant purchases it – the level of security for the merchant is comparable to that of a standard debit card transaction. We discuss the level of the associated costs for such insurance below. We note that the need for a customer signature may require additional time and organisation, although it is now standard for the signature to be done digitally, so there is no additional paperwork, and the respective files can be transmitted directly to, for example, the intermediary who also secures the transaction. Finally, for the merchant, another difference could reside in the speed of payment. Arrangements with third parties that provide insurance, however, may ensure that the retailer obtains payment even on the same day, while banks have to ensure that SEPA payments are credited within one working day.⁴³

The German market provides an example of the viability of this solution and how it constitutes a viable outside option for merchants at the POS.⁴⁴ We report below the costs of insurance for the merchant, as we propose this as a benchmark for capping total debit card fees. With respect to merchants' direct costs, SEPA direct debit charges are determined in the contractual negotiations between the merchant and its principal bank. We submit that this market does not suffer from severe competition concerns. Although no publicly available representative data exist, discussions with merchants indicate that these charges are typically structured as fixed amounts. Even for small merchants, such lump-sum costs appear to be lower than the fees associated with debit card transactions, at least for purchase values above approximately 10-15 euro.

As noted, to mitigate the risk of default, merchants frequently rely on factoring or insurance arrangements. Based on the large-scale annual survey of German merchants, the costs of SEPA direct debit in 2024 were estimated to range from 0.105% to 0.260% per transaction.⁴⁵ These costs also cover the ancillary costs in the case of non-payment, such as address inquiries and return fees. Where direct debits are returned due to insufficient funds, the resulting costs are typically passed on to the account

⁴³ *Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009* (2012) O.J. (L 94) 22.

⁴⁴ Though merchant-level data are confidential, an early, widely reported trade-press case in Germany is instructive. Even before fee regulation, petrol transactions under the girocard system attracted fees of about 0.2%. In 2009, BP/Aral introduced ELV, announcing that whereas previously 100% of their card payments ran over the girocard system, a large share would henceforth be steered via ELV. This shift evidently drove their average payment costs considerably below 0.2%, covering also switching costs, potentially longer check-out times, and administration costs related to paper signatures.

⁴⁵ These figures are based on the annual survey conducted by the German EHI Retail Institute, which, for POS data, uses a panel that in 2025 comprised almost 500 merchants, including many of the largest companies. *See* EHI Retail Institute (2025), *supra* note 25.

holder. In Germany, case law under the Civil Code limits fees to actual processing costs.⁴⁶ Banks remain obliged to process return transactions and, where legally mandated, provide address information. The stated insurance costs vary considerably, as they depend on a merchant's size, customer base, and transaction characteristics, with the latter two factors determining the risk of non-payment.

The described alternative for merchants relies on their ability to extract account information from the presented card to set up a SEPA direct debit transaction. Card issuers cannot charge merchants for reading and using the cardholder's account information in this way. This is due to a longstanding intervention by the German Federal Cartel Office (Bundeskartellamt). The Bundeskartellamt has repeatedly intervened to protect ELV as a low-cost, merchant-driven alternative to the electronic cash and girocard system. In the early 2000s, the authority even opposed attempts by the German banking industry to introduce collective interchange fees for ELV. Since 2010, it has consistently emphasised ELV's disciplining effect on transaction pricing, stressing that by allowing merchants to circumvent interchange fees, the scheme constrained oligopolistic tendencies in card acquiring. This position was reinforced in 2013, when the Bundeskartellamt publicly warned against a modification of the girocard data structure during the EMV migration, which would have replaced traditional bank account identifiers with a proprietary card number, thereby rendering ELV transactions impossible.⁴⁷ In its 2014 decision, the Bundeskartellamt described ELV as a "major rival product to the girocard and alternative for retailers", highlighting its role in preserving competitive pressure and limiting acceptance costs in the German payments market.⁴⁸

To our knowledge, the intervention of the Bundeskartellamt was directed exclusively at cards issued under the domestic girocard system. Recently, however, banks have increasingly issued debit cards branded solely under the Visa or Mastercard logo (namely, Visa Debit and Debit Mastercard). Merchants cannot read account information from these cards, nor can they access such information when the card is stored in a digital wallet. It is possible that, in light of the cap on interchange fees introduced by the IFR, the Bundeskartellamt does not consider it necessary to extend merchants' rights to these situations. Our proposal is more far-reaching. We propose extending these provisions across Europe, including internationally branded debit cards, potentially as an alternative to continued reliance on fee caps. We further discuss below whether and how this should be applied to mobile payments, and thereby to digital wallets, although the NFC technology currently in use presents additional challenges.

⁴⁶ The associated bank charges are not standardised, and neither competition law nor the Bundeskartellamt has imposed general fee ceilings across all debit card products to date. The authority has focused less on tariff regulation and more on preventing disproportionate or exclusionary cost practices from the German banking industry (*supra* note 48). For the court ruling regarding flat-rate fees, see Bundesgerichtshof (BGH), XI ZR 154/04 (Mar. 8, 2005), 162 BGHZ 67.

⁴⁷ See Bundeskartellamt, *Electronic Cash Card Payment System of German Banking Sector Raises Competition Concerns* (2013), https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2013/28_05_2013_EC-Cash.html.

⁴⁸ See, for instance, Bundeskartellamt (2013), *supra* note 47; Bundeskartellamt, *Standard Charges for Retailers in Electronic Cash Card Payment System Abandoned* (2014), https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2014/08_04_2014_EC-Cash.html; Bundeskartellamt, *Beschlussverfahren B4 – 64000 – Kc 9/11* (Apr. 8, 2014), <http://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Entscheidungen/Kartellverbot/2014/B4-9-11.pdf>.

Having described the working of SEPA (ELV), we briefly document its adoption in Germany. For this, we rely again on evidence from the large survey, which documents changes over the last few decades. The usage of SEPA direct debit has varied over time. It should also be noted that it serves as an important outside option in negotiations, as merchants can credibly threaten to route card payments through SEPA direct debit. In fact, as pure processing costs are arguably lower for a standard card transaction, the (Coasian) benchmark of efficient bilateral contracting between issuers and merchants would suggest that ELV is used only to a very limited extent. Still, when considering the estimated fraction of SEPA (ELV) payments among all debit card payment methods – in terms of turnover in euro at the POS – the fraction amounted to 18.24% in 2012, 15.92% in 2018, and 11.40% in 2024. Moreover, the large-scale annual survey of German merchants also notes that two-thirds of respondents report using SEPA direct debit as a payment option.⁴⁹

Before drawing such conclusions for potential future regulation across the European Union, we must return to two caveats, to which we have already referred. The first concerns the growing use of contactless and mobile payments. The second refers to consumers' and merchants' familiarity with SEPA direct debit at the POS.

Contactless payments have spread widely over the last few years, receiving an additional boost during the COVID-19 pandemic and the use of mobile payments. This speeds up payment, as it is no longer necessary to enter a PIN, though it introduces additional security risks when the transaction is made with a physical card. The need, under SEPA direct debit, to obtain a consumer's consent through a signature to inquire about the consumer's personal data in the event of payment failure presents an obvious obstacle to this method of payment. However, we are confident that this obstacle can also be overcome, as was the case with the previous technology- and regulation-induced changes (see above).⁵⁰ With respect to cards stored in digital wallets, an additional obstacle could be the transfer of account data from the wallet to the merchant. In this context, the relevant technique, NFC, operates by transmitting a token. The purpose of this tokenisation is precisely to withhold critical account information from the merchant, and current wallet solutions such as Apple Pay or Google Pay are designed so that merchants see only the token, not the underlying account or card data. As noted above, however, the Bundeskartellamt has intervened in the past to ensure that issuers of girocard employ technology that preserves this functionality. We acknowledge that, given the way NFC technology is currently in use, enabling

⁴⁹ See EHI Retail Institute, *Zahlungssysteme im Einzelhandel 2013*; EHI Retail Institute, *Zahlungssysteme im Einzelhandel 2019*; EHI Retail Institute (2025), *supra* note 25.

⁵⁰ For instance, German merchants have offered a SEPA direct debit-based contactless payment method known as "ELV Tap&Go" since 2021, under which, once a consumer has provided a SEPA mandate with a signature at the POS, all subsequent SEPA direct debit transactions can be processed in contactless form without requiring further authentication. See EHI Retail Institute, *Einmal für alle: SEPA-Lastschrift mit Tap & Go* (2022), <https://www.stores-shops.de/technology/payment/einmal-fuer-alle-sepa-lastschrift-mit-tap-go/>.

merchants to read account information would require significant changes and likely intervention by the European Commission.

We come next to the second caveat, that is whether the proposed intervention is feasible in all countries of the European Union. For SEPA direct debit, participation is restricted to euro-denominated accounts. All EU countries, regardless of their domestic currency, are formally part of SEPA. Still, if the local currency is not the euro (e.g., in Denmark, Poland, or Sweden), SEPA direct debit can only be used when the account is in euros. In those countries, domestic direct debit systems or other debit-based solutions (such as Betalingsservice in Denmark or Autogiro in Sweden) continue to operate in parallel, since SEPA direct debit does not replace non-euro direct debit schemes. Our proposal would then relate to the respective national alternative direct debit scheme. Furthermore, we are aware that the spread of SEPA direct debit usage differs substantially across countries in the European Union, and not only depending on their presence in the euro area.⁵¹ At the POS, SEPA direct debit may not be familiar to consumers at all. When a physical card is presented, consumers may perceive no major difference, as no PIN but only a signature is required, which – if not contactless – does not appear to involve more time or effort. Also, consumer protection is considerably higher under SEPA direct debit, as even an executed transfer can be revoked without stating a reason to the bank for up to eight weeks (although this would clearly trigger legal action by the merchant if done without good cause). For merchants, there may still be differences in speed and convenience between debit card use and SEPA direct debit, even after security differences are levelled by insurance for the latter. However, our argument is not that the two forms of payment are identical. Instead, the objective is to generate a viable alternative for the merchant “on the card”, which would then impose price pressure on card issuers. Importantly, this remains the case even when consumers no longer hold cash, depriving merchants of that alternative. We will return to this point when discussing the potentially adjusted size of a fee cap.

In a nutshell, for POS transactions, we would propose, as a remedy to the market failure, to ensure competition “on the card” by granting merchants the right to access the cardholder’s account data in order to initiate a (SEPA) direct debit transaction. While the current feasibility and practicability of such a measure may depend on the specifics of national payment infrastructures across Europe, our initial view is that merchants should not be charged for this service, and that card operators should be obliged to maintain this functionality even when technical or security features of the card are modified. In particular, it should be ensured that this option is available regardless of the card scheme, including both

⁵¹ Based on the ECB payments statistics, in the second half of 2024, 14.71% of all non-cash payment transactions in the European Union were executed as SEPA direct debit transactions. While overall usage remains moderate at the EU level, SEPA direct debit plays a significant role in several Member States, with the share of SEPA direct debit ranging from 32.0% in Germany and 17.3% in the Netherlands to 14.6% in France, 12.5% in Spain, and 9.0% in Italy, while remaining marginal in other countries. The ECB payments statistics are based on harmonised regulatory reporting by payment service providers and payment systems, collected by national central banks in accordance with Regulation ECB/2020/59 and related guidelines. The reported shares are calculated from the total number of executed non-cash payment transactions, for example POS and other merchant-initiated payments, as well as consumer-to-consumer transfers and bill payments. *See* European Central Bank (2025), *supra* note 27.

international and national schemes, and regardless of whether the card is presented physically or stored in a digital wallet in the case of mobile payments. The last requirement may pose the greatest obstacle, given the way NFC technology is currently in use for mobile payments. We also acknowledge that the European Commission would need to weigh the pros and cons in light of data protection and security. We would, however, suggest that sufficient evidence of any additional security risk would be necessary before sacrificing what may otherwise be a practical proposal to enhance competition and choice for merchants.

II.ii.2 Competition between card schemes (between physical cards, on the same card, or in the same wallet)

We now take a different stance and abstract from the regulatory framework designed to guarantee competition on the same card, such as SEPA direct debit. Consider POS transactions where the consumer physically presents a card. As mentioned, most consumers single-home or rely on a preferred debit card. Setting aside the SEPA solution, two preconditions are required to enable effective competition between debit cards at the POS: consumers must hold more than one card, and merchants must be able to steer them.

We start with consumer steering. We are not the first to take issue with the inability of merchants to add surcharges to payment forms that incur higher costs for them. The prohibition originates from the revised Payment Services Directive, with the stated reasons of ensuring price transparency, preventing consumer confusion, and avoiding fragmentation of the internal market.⁵² Several economists have argued against this ban, emphasising that surcharges would allow merchants to signal true costs and improve allocative efficiency. Rochet and Tirole, in particular, underline that surcharging is a key steering tool and that prohibiting it reduces transparency.⁵³ In other jurisdictions, surcharging has been permitted: in Australia, merchants have been allowed to impose surcharges since 2003 under Reserve Bank regulation, although the Reserve Bank of Australia has decided to remove surcharging by lifting the prohibition on no-surcharge rules for designated debit, prepaid and credit card networks with effect from October 2026,⁵⁴ while in the United States, surcharges on some credit cards were long prohibited by card scheme rules but became lawful for Visa and Mastercard at the federal level in 2013 following a

⁵² See Directive (EU) 2015/2366, *supra* note 20.

⁵³ See Jean-Charles Rochet & Jean Tirole, *Must-Take Cards: Merchant Discounts and Avoided Costs*, 9(3) J. EUR. ECON. ASS'N. 462 (2011). Similar concerns were raised early on in a report for the UK Office of Fair Trading, which noted that surcharges can strengthen price signals and increase welfare, see United Kingdom Department for Business, Innovation and Skills & HM Treasury, *Consultation on the Early Implementation of a Ban on Above Cost Payment Surcharges: Impact Assessment*, BIS/12/1009 (2012). The study prepared by Copenhagen Economics & EY for the European Commission on the application of the IFR also reported merchant concerns that the ban on surcharging limits their ability to manage payment costs, see Copenhagen Economics & EY (2020), *supra* note 12.

⁵⁴ See Reserve Bank of Australia, *Review of Merchant Card Payment Costs and Surcharging. Conclusions Paper* (2026), <https://www.rba.gov.au/payments-and-infrastructure/review-of-retail-payments-regulation/2026-03/conclusions-paper/pdf/conclusions-paper.pdf>. The main rationale is that surcharging no longer effectively steers consumers towards lower-cost payment methods, given the increasing prevalence of single-rate payment plans (which do not distinguish between card types), difficulties in enforcing surcharge rules, and consumers' reduced ability to avoid surcharges as cash use has declined.

court settlement, although merchants must still comply with contractual restrictions (especially for American Express), and a few States continue to ban them.⁵⁵ These mixed experiences highlight that surcharging alone may not be sufficient to generate effective competition. In line with this, our argument does not rely on surcharging as a standalone instrument. Rather, its effectiveness depends on the existence of meaningful cost differences and credible alternatives available to merchants. To the extent that regulatory design ensures transparency and supports merchant choice more directly, some of the limitations observed in other jurisdictions may be mitigated.

The relevant issue is not whether card payments are more costly than cash, but whether a merchant could impose a temporary surcharge on one card system and not another. So as not to mislead consumers, surcharges must be transparent (albeit one can doubt whether consumers are able or willing to then conduct the respective all-in price calculations at the POS). Surcharges need not arise (frequently) in equilibrium; as a threat, provided they are credible, they may constitute an element in negotiations. For merchants, they clearly entail costs, and it is doubtful whether, through such a disciplinary action, a small merchant could exert sufficient pressure on issuers or card schemes to secure lower fees. From this perspective, a more straightforward approach would be for merchants to adopt a pre-installed card preference. This could be communicated transparently at the checkout. Even if the customer could change this, inertia and the involved (potentially even small) hassle costs may be enough to accept the merchant's preference. Such hassle costs may include, for example, the need to request an override of the default card selection at the terminal, additional confirmation steps during checkout, longer transaction times, or the inconvenience of retrieving or activating an alternative card, particularly in time-sensitive retail environments.

Whether through surcharges or through default preferences, effective steering is, however, feasible only if consumers hold both cards; otherwise, merchants risk alienating a substantial share of customers who may feel discriminated against because they cannot avoid the higher charge. It is therefore necessary to break the (effective) single-homing bottleneck, to which we turn next.

To understand why most consumers hold only one type of card, it is necessary to examine how banks, as issuers, interact with international card schemes. When consumers maintain their main current account with one bank, it would, in principle, be possible for the bank to issue a card that is co-branded with both Visa and Mastercard, similar to the common practice of combining a national and an international scheme. In fact, note that cardholders interact primarily with their bank, not the scheme, in cases of loss, fraud risk, or billing, and that debit cards are directly debited from the account, while credit card statements are also handled by the bank. That is, at first sight, there seem to be no obvious

⁵⁵ See Reserve Bank of Australia, *Review of Card Payments Regulation* (2016), <https://www.rba.gov.au/payments-and-infrastructure/review-of-card-payments-regulation/pdf/review-of-card-payments-regulation-conclusions-paper-2016-05.pdf>; Laura Heller, *New Credit Card Swipe Fee Rules Are Good News for Shoppers*, FORBES (Jan. 30, 2013, 12:09 PM), <https://www.forbes.com/sites/lauraheller/2013/01/30/new-swipe-fee-rules-are-good-news-for-shoppers>.

reasons why a bank's customers should not hold cards of different schemes. To our knowledge, however, banks usually enter (quasi-)exclusive arrangements with one of the two international schemes, typically covering several years. Where an additional card is offered, it is often only at considerable extra cost to the consumer, provided it is feasible at all. Rather than intervening solely through price regulation by capping fees, an alternative would be to prohibit such exclusivity arrangements. If banks were issuing cards from multiple schemes, then – provided tacit collusion between Visa and Mastercard does not arise – competition should ensure that banks issue multiple cards or even a single physical card incorporating multiple brands. Note that this should be understood as consumer-level multi-homing rather than as a mere allocation of different card schemes across a bank's customer base. The relevant scenario is one in which a single consumer may hold two debit cards issued by the same bank but branded with different international schemes, or potentially a single physical card incorporating multiple scheme brands. By contrast, issuing Visa cards to some customers and Mastercard cards to others would leave consumers single-homing at the individual level and would do little to alter merchants' lack of effective choice at the POS. With the wider adoption of mobile payment solutions, consumers may hold multiple cards within their digital wallet, without the need for physical issuance or the associated production and distribution costs. If merchants adopt transparent practices of rewarding or surcharging specific card types, payment applications could enable consumers to pre-set their preferred payment method. In its simplest form, a "best execution" provision would let merchants choose the payment method at the POS. Mobile applications and digital payments, therefore, provide a low-cost and rapid means of implementing the proposed option, effectively undermining the (quasi-)exclusive arrangements that issuers maintain with international card schemes. We note, however, that mobile payments may entail additional costs, as illustrated by the recent antitrust case against Apple. The European Commission found that Apple restricted access to the iPhone's NFC interface, allowing only its own Apple Pay service to use the secure element for contactless payments. This effectively forced issuing banks wishing to offer mobile payments on iOS devices to participate in Apple Pay and to bear additional fees of around 0.15% of the transaction value (i.e., equal to almost the full size of the interchange fee, in the case of debit cards).⁵⁶ In this case, these costs are clearly not imposed on the merchant, but on the issuing side. From the consumer's perspective, however, at least in the longer term and in an otherwise sufficiently competitive market, this may make little difference, as either type of cost should then be passed on.

In sum, we have now delineated a second potential remedy to ensure competition from the merchant's perspective at the POS. Our first proposal, namely allowing merchants to conduct a SEPA direct debit transaction using the account information stored on the card, works even when consumers single-home. Our second proposal abstracts from the SEPA direct debit alternative and instead requires that

⁵⁶ In 2024, Apple offered commitments to grant third-party wallet providers access to the NFC functionality under fair, reasonable, and non-discriminatory terms, thereby addressing the Commission's competition concerns. *See* European Commission (2024), *supra* note 4.

consumers multi-home. Such multi-homing could emerge under competitive conditions when banks and card schemes are no longer permitted to engage in (quasi-)exclusive arrangements.

A proposal similar to ours was adopted in the United States through the 2010 Durbin Amendment, alongside a cap on debit card interchange fees for large banks. Issuers were required to ensure that every debit card could be processed on at least two payment networks, thereby giving merchants the ability to choose which network to route a debit transaction over. While the Durbin Amendment mandated formal access, it did not guarantee effective competition. In 2024, the DOJ sued Visa, alleging that it used volume-based pricing and incentives to discourage routing away from Visa and adopted technical standards that limited merchants' ability to route transactions to alternative networks, effectively neutralising merchant routing choice. The case is ongoing.

While the Durbin Amendment shares the objective of promoting competition between networks, it differs from our proposal in two respects. First, the Durbin framework operates within a given card, whereas our focus is on expanding merchants' ability to choose across payment instruments more broadly. Second, even where cards are technically multi-network, effective competition may remain limited if merchants are unable to steer transactions in practice. These considerations are particularly relevant in the European context, where the effectiveness of such measures depends on implementation and enforcement, including transparency over routing and fees, and ensuring that competition is not weakened through contractual or technical restrictions.

II.ii.3 Additional discussion

II.ii.3.a Discussion of direct transfers and other (QR- or NFC-based mobile) payment alternatives

Under SEPA direct debit, merchants do not receive payments instantaneously, while consumers benefit from strong protection, including the right to revoke transactions. In the event of non-payment or payment revocation, merchants can, of course, use legal instruments to secure payment and pass on the associated costs to consumers. Nonetheless, from a merchant's perspective, a SEPA credit transfer, rather than a debit transfer, would be preferable, particularly when funds are transferred instantly. At present, however, the use of such instant transfers at the POS is uncommon in most European countries. An illustrative exception is Poland's BLIK system, operated by a consortium of major banks. Payments are executed via a consumer's mobile banking app by scanning a QR code and are settled instantly through the national clearing system. Comparable solutions may emerge at the POS across Europe. Critically, however, banks compete for customers to hold current accounts and install their apps, not for merchants. As banks are also card issuers, it remains uncertain whether this approach resolves the competition concerns linked to two-sided market dynamics. Moreover, there is little evidence on the costs imposed on merchants or on the extent to which they steer consumers between alternative payment methods, such as direct transfers and debit card payments available in digital wallets. To our knowledge,

at the POS, other QR code or NFC-based solutions, including PayPal, have also not yet achieved wide adoption across Europe and may also involve, sometimes considerable, additional costs. We will return, in particular, to PayPal in the context of e-commerce below.

In sum, these alternative payment forms do not yet constitute a widely adopted option. Moreover, in the longer run, they may also fail to resolve the competition problem from the merchants' perspective, instead exposing them once again to a quasi-monopolistic situation at the POS. In addition, they may involve additional costs. We note that the proposed intervention of enabling merchants to initiate a SEPA direct debit by accessing cardholders' information would, in any scenario, provide a viable alternative and would likely help keep costs down.⁵⁷

II.ii.3.b Summing up

The essence of our proposal is to strengthen – or, in some cases, to create – competition on the merchant side. Allowing merchants to initiate a SEPA direct debit by accessing the cardholder's account information would provide an outside option that constrains the market power of other payment systems. Adoption and success will inevitably depend on national market characteristics, such as the prevalence of SEPA direct debit. It may also take time for payment insurance markets to develop, which could enhance substitutability with debit card payments from the merchant's perspective. Our subsequent discussion of mobile payments also includes account-to-account (credit) transfers. Where access to this payment option is not controlled by other parties, notably the very issuers of cards (banks), it could provide a natural alternative outside option. Breaking single-homing, as in our second proposal, may require more far-reaching intervention, including the monitoring of contractual arrangements between issuers and major international card schemes. It also presupposes active competition within the international debit card duopoly, as banks that renounce the benefits of a (quasi-)exclusive agreement with one card company may ultimately offer their clients a single card operable on both systems.

The spread of direct payments via mobile applications may represent another option at the POS. The Polish example demonstrates that such systems can be implemented in a way that remains convenient for consumers. Establishing similar systems, even at the national level, may, however, depend on a sufficiently supportive stance from competition authorities. We also expressed doubts that such arrangements would genuinely empower merchants to reduce payment costs substantially, as long as fees, here paid to banks (who are also the issuers of cards), are underpinned by the same economic forces

⁵⁷ An example is BLIK, as mentioned above. The Polish BLIK system is subject to the same IFR as debit cards, with a statutory cap of 0.20% under Regulation (EU) 2015/751, Article 3(1), *supra* note 1. The actual interchange applied to standard BLIK transactions is 0.17%, below this ceiling, according to a market overview by Worldline. In addition to the interchange, however, merchants pay scheme and processing fees that are not capped. For example, at the physical POS, a face-to-face contactless BLIK transaction incurs a further scheme fee of 0.19% on top of the 0.17% interchange. See Worldline, *Scheme Fees Poland* (2025), <https://worldline.com/content/dam/worldline/global/documents/brochures/scheme-fees-poland.pdf>.

as with cards. Nevertheless, taken together, we would argue that viable alternatives to fee regulation do exist. We now turn to that regulatory approach.

II.iii Fee capping

We have already noted the European Union's cap on interchange fees, introduced by the IFR. Specifically, for debit card transactions, the interchange fee is capped at 0.2% of the transaction value. The interchange fee represents the most important component of the merchant service charge, as explicitly recognised in the Regulation's recitals. The cap applies irrespective of whether the transaction takes place at the POS or online. In what follows, we propose how to modify this cap. We concentrate on POS transactions. We later discuss how our arguments and proposals extend to online payments.

Various studies and industry surveys document that although the interchange fee cap has been enforced, its impact on the overall costs for merchants has been compromised, as other fee components have been introduced or increased. For small merchants in particular, it is fair to say that interchange fees often no longer constitute the largest cost component. If the regulatory objective was to impose a narrowly defined limit on the overall cost of accepting payments for merchants, thereby also levelling the playing field for small and large merchants, this objective may not have been fully achieved. For one piece of evidence, we rely again on data from the large-scale annual survey of German merchants, which show that large merchants – with annual international debit card turnover exceeding 5 million euro – have paid, and continue to pay, significantly lower effective fees for both Visa and Mastercard than smaller merchants – with annual international debit card turnover below 5 million euro – both before and after the adoption of the IFR in 2015. For the year 2024, the median debit card costs for large merchants range from 0.390% per transaction for Visa to 0.464% for Mastercard.⁵⁸ Large merchants generate higher card-based transaction volumes, which strengthens their bargaining position vis-à-vis acquirers and allows them to negotiate lower ad valorem fees or individualised pricing structures (for example, through lower annual fixed fees). Smaller merchants are generally dependent on standardised acquiring offers and blended fees.⁵⁹

The origin of the interchange fee cap was explicitly not cost-based from the perspective of issuers or card schemes. Rather, the underlying idea of the tourist test was to render merchants indifferent between a one-off payment made by card or by cash (as in the case of a tourist).⁶⁰ To this end, the European Commission commissioned a study on the costs of cash payments and, on that basis, set the cap at

⁵⁸ These figures correspond to median values among the 72 large merchants with annual turnover above 5 million euro that responded to this question in the large-scale annual survey of German merchants in 2024. For smaller merchants, the survey reports higher debit card costs per transaction but does not provide separate quantitative estimates. *See* EHI Retail Institute (2025), *supra* note 25.

⁵⁹ In the acquiring market, pricing models differ systematically by merchant size. Large merchants typically have access to more transparent and disaggregated pricing structures, whereas smaller merchants are generally offered blended fee models. *See* EHI Retail Institute, *Zahlungssysteme im Einzelhandel 2016*; EHI Retail Institute (2025), *supra* note 25.

⁶⁰ On this concept, *see* Jean-Charles Rochet & Jean Tirole (2011), *supra* note 53.

0.2%.⁶¹ We do not engage here with the question of whether this benchmark accurately reflected the costs of cash then or does so now. As cash usage declines while fixed costs may remain largely unchanged, the average cost per cash transaction – measured as total costs divided by the number or total volume of cash payments – may in fact have risen. Moreover, as cross-country differences in cash versus cashless use seem to widen across Europe, at least for now, a literal application of this benchmark would suggest that a differentiated cap might be more appropriate. Finally, the question arises of how the benchmark applies when merchants no longer accept cash at all – a trend that may be driven as much by consumers’ unwillingness or inability to obtain cash, given branch closures and a shrinking ATM network, as by merchant preferences.

We thus take the following as a given, at least for payments at the POS. First, the regulation aims to cap merchants’ overall costs of cashless payments. Second, the underlying rationale is an indifference test, according to which the merchant shall be made at least indifferent between accepting various methods of payment. Our proposal is twofold. First, we suggest extending the interchange fee cap so as to create a comprehensive cap on merchants’ costs, at least with respect to the activities and services of issuers and card schemes. We explicitly exclude additional cost components arising from acquirers or other intermediaries, such as fees for setting up, maintaining, or renting the necessary equipment. Second, we propose to replace cash as the benchmark for the merchant indifference test. We emphasise that we do not offer precise numerical thresholds, as the necessary data are not available to us.

The first element of our proposal is to extend the cap so as to encompass additional fee components levied by the card schemes. Since the original objective of the European Commission was to cap fees at the point of merchant indifference (i.e., the use of cash), it is only logical to include all relevant charges. It may be argued that such an approach risks inefficiencies, insofar as these additional fees are required to cover genuine costs. Yet to the extent that such costs relate to the acquisition strategies of issuers – most notably through (quasi-)exclusive arrangements with card schemes – we would reject the claim of efficiency. The mature state of the market does not seem to justify granting additional margins to recruit consumers or incentivise the use of cashless payments. A further argument is that fees may be necessary to finance compliance with security requirements. The introduction of the revised Payment Services Directive, which mandated enhanced security measures such as strong customer authentication, undoubtedly required investment. However, we are not aware of evidence indicating that overall margins in card payments were insufficient to absorb such costs, even at that time. As noted above, comparison with national schemes, which did not introduce or expand scheme fees to the same extent, likewise does not corroborate such claims.

The second element of our proposal concerns the choice of reference point. A straightforward option would be to retain the existing 0.2% cap but apply it to the overall fee. Our proposal to enable merchants

⁶¹ See European Commission (2015), *supra* note 6.

to read card information in order to initiate a SEPA direct debit offers a particularly relevant alternative in an increasingly cashless environment. As noted above, at least in Germany, a functioning market for such transactions already exists, and we have already documented evidence on the respective costs of insurance. There, we also documented how these costs varied between merchants, which is one reason why in this article we do not propose a precise numerical threshold. Rather, we limit ourselves to suggesting a new benchmark grounded in the costs of securing payments under SEPA direct debit. To the extent that our benchmark should mirror the merchant indifference test with respect to cash, appropriate adjustments may still be necessary. Debit card usage offers certain advantages for merchants – no signature is required, and transaction records, whether electronic or paper-based, for small merchants must be retained. Also, funds may be received somewhat later, as also discussed above, though the difference is small and factoring can also close this gap. If merchants are to be rendered truly indifferent, even when small, these added benefits of debit card transactions may have to be incorporated into the benchmark. Should merchants only realise a portion of these benefits, a smaller adjustment would be appropriate. At this point, however, it should also be recalled that the existing 0.2% cap was not solely based on academic or empirical evidence but was also shaped by the European Commission’s deliberations.⁶²

Extension to additional costs under mobile payments at the POS

As a final note on the applicability of fee caps, with the increasing use of mobile payments, new charges have emerged. While digital wallets such as Apple Pay and Google Pay do not charge merchants directly, they typically receive a share of the interchange fee from issuing banks. Publicly available estimates suggest that, in Europe, this amounts to approximately 0.15% of the transaction value for Apple Pay, while no public data are available for Google Pay.⁶³ By contrast, proprietary checkout providers such as PayPal or Amazon Pay charge merchants directly and at significantly higher levels, often exceeding 2% of the transaction value. A recent study conducted for the European Commission, which we discuss in more detail below, likewise suggests that merchant fees for PayPal transactions typically exceed this level, while also confirming that robust and comparable evidence across EU Member States remains scarce.⁶⁴

In the absence of representative and comparable EU-wide data, we accordingly refer to figures from the large-scale annual survey of German merchants, which indicate that, in 2023, large German merchants faced average effective PayPal fees of around 1.78%, with substantial dispersion ranging from 0.95% to 3.27%. Amazon Pay applies a similarly elevated pricing structure, charging 1.90% plus 0.35 euro per transaction for merchants processing fewer than 50,000 transactions per month, with larger merchants

⁶² A key consideration in these discussions was the observation that costs borne by merchants, including payment costs, tend to be passed on to consumers. *See* Copenhagen Economics & EY (2020), *supra* note 12.

⁶³ *See* European Commission (2024), *supra* note 11.

⁶⁴ The study covers fourteen countries over the period from 2018 to 2022. For the study prepared by Capgemini, Lear, and Verian, *see* European Commission, *Market Study on Competition in Online Payments: Final Report* (2025), <https://op.europa.eu/en/publication-detail/-/publication/880cff35-4cb5-11f0-a9d0-01aa75ed71a1>.

typically negotiating individualised fees.⁶⁵ Taken together, these examples illustrate that, unlike Apple Pay, proprietary checkout providers impose direct and often substantial merchant charges, even where they rely on underlying card- or account-based payment instruments.

The objective of this article is, however, too limited to include this additional component of total payment costs, here still at the POS, which in the longer run may fall on consumers, regardless of whether they are incurred by merchants or the other parties involved in the transaction, such as here the issuer bank. That said, in a review of the current cap, regulators should be careful to take into account all cost components that arise under the different payment forms at the POS, including those imposed by the Big Tech companies controlling access to devices.

At this point, we stress again that in our view, fee caps represent an inherently second-best response to the underlying problem identified here – namely that, at the POS, merchants face limited effective substitutability and therefore lack a credible outside option vis-à-vis dominant card schemes and payment networks. From a practical perspective, price regulation is difficult to calibrate and to maintain over time: the experience under the IFR shows that, even where the interchange fee is capped, rents can be reallocated into non-capped components of the fee stack, requiring continuous regulatory adjustment and expansion of the regulatory perimeter. Moreover, the benchmark underpinning the cap – the tourist test – has become increasingly difficult to apply as cash usage declines and cost structures diverge across Member States and merchant types, raising the risk of miscalibration and inefficient outcomes. For these reasons, our primary focus is on pro-competitive measures that restore merchant choice and create endogenous downward pressure on fees; our discussion of expanded capping should be understood as a complementary backstop, rather than a substitute, where effective competition is unlikely to emerge in the short to medium run.

III. E-commerce (online sales or “card-not-present”)

III.i An attempt to describe the payment landscape in e-commerce

By the time the interchange fee cap was introduced, online sales were already present. However, they still accounted for a relatively small share of overall retail turnover compared with today. Over the past decade, B2C e-commerce sales in Europe have grown strongly, increasing from approximately

⁶⁵ See EHI Retail Institute, *Online-Payment 2024* 24-26 (EHI Retail Institute 2024). PayPal itself publicly reports standard transaction fees of 2.99% plus a fixed fee for German merchants. See PayPal, *Händler- und Verkäufergebühren (Merchant Fees Germany)* (Jan. 22, 2026, 3:10 PM), <https://www.paypalobjects.com/marketing/ua/pdf/DE/de/de-de-merchant-fees-22-jan-2026.pdf>.

277 billion euro in 2013 to nearly 900 billion euro in 2022.⁶⁶ In 2023, almost one quarter of all companies and almost every second large company in the European Union conducted e-commerce.⁶⁷

The current regulatory framework imposes the same cap on interchange fees and prohibits online merchants from steering customers through surcharges, as it does for transactions at the POS. For completeness, we now briefly highlight regulatory differences that apply specifically to e-commerce.⁶⁸ In e-commerce, buyer protection is typically governed by EU-wide frameworks that ensure return rights, provide transparent information, and facilitate dispute resolution. At the same time, merchants must comply with consumer-protection and data-protection standards. By contrast, for transactions at the POS, buyer protection relies more on national legislation and is often confined to in-store policies, with less standardised rights for returns and compensation.⁶⁹ Another key aspect of e-commerce is the presence of large platform market players. In September 2023, the European Commission designated Amazon as a “gatekeeper” under the DMA in its role as an online marketplace, acknowledging its dominant position.⁷⁰ We do not focus on the market structure of the merchant or intermediary (platform) stage of the market, though we will briefly return to this. Instead, we focus on the payment side.

The payment landscape with respect to e-commerce is more complex, compared to that for POS transactions, and is quickly evolving. In e-commerce, consumers can, in principle, choose between debit and credit cards, digital wallets and independent PSPs such as PayPal, direct debit and direct bank transfers, buy-now-pay-later (henceforth, BNPL) solutions, or cryptocurrencies.⁷¹ In practice, this depends on what the merchant accepts. We come back later to the (scarce) evidence on what payment methods are in fact used.

Again, our focus will still be largely on debit cards or, more generally, payments without a true credit function.⁷² We are now also somewhat more explicit with respect to digital wallets and other PSPs. The

⁶⁶ B2C (business-to-consumer) e-commerce comprises online sales where businesses sell goods or services directly to end consumers and is to be distinguished from B2B (business-to-business) e-commerce, where both parties are companies or institutional clients. See EuroCommerce, *European E-Commerce Report 2024* (2025), <https://www.eurocommerce.eu/app/uploads/2024/10/european-e-commerce-report-2024-light-version.pdf>.

⁶⁷ According to Eurostat, the share of European individuals who reported a purchase via e-commerce channels in the 12 months prior rose from 59% in 2014 to 77% in 2024. During the COVID-19 pandemic, the annual increase was even greater. See Eurostat, *E-Commerce Statistics for Individuals* (2025), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce_statistics_for_individuals.

⁶⁸ Particularly relevant in this regard are the revised Payment Services Directive, the Digital Markets Act, the Digital Services Act, and the General Data Protection Regulation.

⁶⁹ One important guarantee for consumers in e-commerce is the 14-day right of withdrawal under the Consumer Rights Directive (Directive 2011/83/EU), which allows buyers to return goods purchased online for any reason within 14 days of receipt and receive a full refund from the merchant. Another example is the General Data Protection Regulation (Regulation (EU) 2016/679), which sets out the requirements for the protection of personal data in digital transactions, *supra* note 68.

⁷⁰ See European Commission, *Designation of Gatekeepers Under the DMA* (2023), https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_23_4328/IP_23_4328_EN.pdf.

⁷¹ For the study commissioned by the European Central Bank, see Kantar Public, *Study on New Digital Payment Methods* (2022), https://www.ecb.europa.eu/euro/digital_euro/timeline/profuse/shared/pdf/ecb.dedocs220330_report.en.pdf.

⁷² We also note that credit cards may not be equipped with a revolving function but are settled in full at the end of the month. At the end of 2024, more than 196 million payment cards were in circulation in Germany, 34 million of which were credit cards. Less than a fifth of these credit cards had a revolving function. See Deutsche Bundesbank, *Zahlungsverkehrs- und*

most popular and widely accepted digital wallets include Apple Pay and Google Pay. Apple Pay is a mobile payment and digital wallet system that allows users to make contactless payments in stores and online. Apple Pay functions as a wallet-based interface rather than an independent payment system. Apple receives a share of the interchange fee from issuing banks. By contrast, PayPal operates differently. When the consumer uses a card payment via PayPal as a means of payment, PayPal sends the money to the merchant immediately after the order, without transmitting the consumer's card details, and the consumers themselves do not engage in a direct payment relationship with the merchant. Rather, both buyer and merchant enter into separate contractual relationships with PayPal. PayPal charges merchants. This is why PayPal is typically not referred to as a digital wallet in a technical sense, but rather as an independent financial service provider (or a proprietary checkout provider). This also applies to Amazon Pay, which is somewhat distinct again. It is directly linked to consumers' Amazon accounts, allowing users to employ the payment instruments stored within their Amazon profile, also for transactions on third-party websites.⁷³ Contractually, both buyer and merchant maintain separate relationships with Amazon Payments (Amazon's online payments processing service). While the service is free of charge for consumers, merchants are subject to transaction fees. As with PayPal, Amazon Pay also fulfils the role of acquirer, aggregating transaction flows and remitting funds to merchants net of fees. We will discuss below whether and how this may generate additional scope for competition and merchant choice. A specific aspect of Amazon Pay is that these payment functions are fulfilled by a platform that can be in direct competition with the third-party website. Merchants present on Amazon's website have no alternative payment choice.⁷⁴

We already referred to SEPA direct debit, which enables consumers and businesses within the SEPA region to make euro-denominated bank-to-bank payments via direct debit. We also referred to private initiatives operating in various European countries. Examples include BLIK and Bancontact, as well as other services such as SOFORT (Klarna), iDEAL, and Trustly. For the purpose of this article, we do not cover BNPL solutions. They offer consumers the flexibility to split purchases into instalments or defer payments without traditional credit checks.⁷⁵ As these (credit-based) payments are becoming more popular, the European Union is investigating the sector with regard to consumer protection measures.⁷⁶

Wertpapierabwicklungsstatistiken (July 23, 2025), <https://www.bundesbank.de/resource/blob/804036/fe71db970028abb37f79ff29da098e27/472B63F073F071307366337C94F8C870/i-zahlungsverkehrsstatistik-data.pdf>.

⁷³ Consumers log in with their Amazon credentials during checkout and authorize the payment using the instruments already registered in their Amazon accounts. The merchant receives an immediate payment confirmation from Amazon, without ever accessing the consumer's underlying card or bank details.

⁷⁴ On Amazon's own marketplace, Amazon Pay is embedded within the platform's checkout architecture, so that order placement and payment execution are treated as a single, platform-integrated transaction. See Amazon Payments, *Amazon Pay* (2025), <https://pay.amazon.co.uk/?ld=1>.

⁷⁵ The most popular providers in the European Union include Klarna, PayPal Pay Later, Scalapay, and RatePay.

⁷⁶ In 2023, the European Commission adopted a revised Consumer Credit Directive (CCD2) to extend consumer-protection rules to credit agreements falling within the scope of BNPL arrangements. Under CCD2, BNPL providers must provide consumers with standardized information free of charge, disclose the annual percentage rate of charge, and assess the consumers' creditworthiness. Moreover, the consumer is allowed to cancel the agreement within 14 days and can repay the

Which of these payment options is offered at the merchant's own website is ultimately at the merchant's discretion. This should, however, not mask the fact that by now some options may have become "must-haves". On a merchant's website, payment options may include SEPA direct debit, debit or credit cards, or PayPal, the latter being provided largely for consumer convenience, as card or bank account details are already stored there. Below, we discuss in detail how digital or merchant wallets, such as Apple Pay, PayPal, or Amazon Pay, can both expand and restrict the range of choices available to merchants,⁷⁷ and they may introduce additional competition concerns. We acknowledge that our discussion is much restricted by the dearth of publicly available evidence on market shares and costs. In fact, market shares are difficult to determine as wallet transactions, including PayPal and Amazon Pay, often rely on underlying debit or credit card payments. A recently conducted study for the European Commission shows marked differences in the structure of online payments across the fourteen countries analysed.⁷⁸ The evidence documents that while card-based payments continue to dominate in many markets, PayPal and similar merchant wallets hold substantial market shares in others, with bank transfer solutions such as iDEAL in the Netherlands, and SEPA direct debit in Germany, also playing an important role.⁷⁹ With respect to merchant costs, the study confirms that robust and comparable evidence remains scarce, as fees are highly heterogeneous and often opaque. Nonetheless, the report provides some indicative figures, albeit their representativeness is unclear. Merchant service charges for debit card payments range between 0.2 and 0.6% of transaction value. PayPal transactions, by contrast, seem to exceed 2%.⁸⁰ We can augment this with details from a German survey, where the estimated average charges are of similar magnitude.⁸¹

In addition to the large differences between European countries in the use of online payment methods, this evidence shows that merchants' costs for e-commerce payment services, even for options not linked to credit functions, may far exceed the 0.2% interchange fee cap. Whether this should, as in the case of POS payments, call for a broadening of the cap beyond interchange fees to limit or reduce overall merchant costs is, however, a different question, as we must also take into account potential differences in market structure and possible innovations in e-commerce payments.

credit at any time. See European Commission, *Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on Credit Agreements for Consumers and Repealing Directive 2008/48/EC* (2023), O.J. (L 305) 1.

⁷⁷ Merchant wallets may lower checkout friction and increase conversion by enabling one-click payments, especially for mobile, cross-border, and first-time transactions. They also combine payment processing with fraud prevention, authentication, and dispute resolution, shifting risks away from merchants in ways that are difficult to price transaction by transaction.

⁷⁸ See European Commission (2025), *supra* note 64.

⁷⁹ Interestingly, this also differs for a large retailer like Amazon. Searching Amazon's own retail sites across Europe shows, for instance, that SEPA direct debit is not uniformly available across the euro area. While in countries such as Germany and Austria consumers may pay directly via SEPA direct debit, in other euro area countries where this would also be technically feasible, including France, Italy, Spain, or the Netherlands, Amazon does not list this option. This shows that Amazon sometimes, but not always, allows the use of SEPA direct debit on its own retail platforms.

⁸⁰ See European Commission (2025), Table 1.24, *supra* note 64.

⁸¹ For 2023, large German retailers reported average merchant costs of 1.78% for PayPal. The reported transaction fee that Amazon Pay charges amounts to 1.90% plus 0.35 euro per transaction for retailers with fewer than 50,000 transactions per month. Larger retailers typically negotiate merchant-specific fees. See EHI Retail Institute (2024), *supra* note 65.

We address the greater complexity of e-commerce payments in steps. We first conceptually reconsider the market structure and its participants, from the perspective of merchants' choice and potential competition problems, deliberately first ignoring digital or merchant wallets and focusing, in the spirit of a tourist test, on a consumer who visits a merchant's homepage once. We then expand the picture by introducing intermediaries, discussing how they both enhance and reduce merchants' choices. Finally, we return to the issue of whether reform of the current interchange cap may be warranted.

III.ii A (conceptual) reconsideration of merchants' payment choices

III.ii.1 A first hypothetical scenario

We begin by reviewing the market structure for e-commerce. Compared to POS transactions, additional complexities arise, particularly due to the greater role of digital wallets and independent PSPs, such as PayPal. For the present analysis, however, it is useful to first abstract from these services. We start from a hypothetical market scenario in which each merchant operates its own online presence and determines individually which payment methods to accept. From this perspective, it is also convenient initially to assume that consumers access merchants' sites via desktop browsers and that, in line with the aforementioned hypothetical tourist test (at the POS), they only shop online once.

At the POS, recall that the key issue was that consumers largely single-home on one card. Once cash is no longer available as an alternative, the merchant becomes exposed to a quasi-monopoly, which constitutes the central market failure. At first sight, the situation appears different in our hypothetical scenario of online shopping through a consumer's desktop. Suppose we hypothetically assume that the consumer makes only a single online purchase. In that case, she may be indifferent between entering card details and providing account details, the latter enabling the merchant to execute a SEPA direct debit transaction. Although presently not yet widespread across all European countries, it may also become equally straightforward to initiate a direct transfer in the form of an instant SEPA credit transfer. Both card payments and credit transfers require similar two-factor authentication. We acknowledge, however, national differences. As already discussed, in some countries, consumers are accustomed to granting merchants a SEPA direct debit mandate. In contrast, in others, this is rare, which may restrict the merchant's effective choice set. Even when at the POS, consumers typically have a single preferred card. They may indeed carry only one, but those consumers who have multiple accounts and possibly more than one debit card associated with them may be able to access them more easily when shopping online from their home. Overall, in our hypothetical scenario, merchants thus appear to have greater choice and discretion in e-commerce than at the POS. Even though they cannot steer consumers through surcharges, they may not lose the customer when declining certain cards or payment options. And they may also engage in behavioural steering through design and prominence of payment options – something not realistically possible at the POS. At first sight, therefore, competition concerns should be less acute in e-commerce than at the POS.

III.ii.2 Introducing intermediaries and consumer convenience

Matters change, however, once we move away from this hypothetical, somewhat clear-cut scenario. The most immediate practical difference arises when consumers conduct online transactions on their mobile phones. The use of a digital wallet, such as Apple Pay, offers greater convenience due to the hard-wired advantages (such as authorisation with Face ID) it provides compared to other forms of payment outside the wallet environment. Yet even when remaining on the desktop, convenience may again become the decisive factor in a less hypothetical and more realistic scenario, since consumers make repeated online purchases across different merchants. Payment services that allow registration of payment instruments – whether through one-time entry of details or by storing virtual card credentials – and thereafter enable rapid and secure checkout may be generally preferred to the repeated manual entry of all required information at each merchant’s own website. Services such as PayPal offer this form of convenience. Merchants may therefore hesitate to deny consumers their preferred or standard payment option. Requiring the consumer to enter account details in order to conduct a SEPA direct debit may impose additional costs. The convenience effects are particularly salient in light of the growing importance of mobile commerce. Recent EU-level evidence indicates that over half of all e-commerce transactions (51.2%) are now conducted via mobile devices rather than desktop browsers (47.3%), a marked shift that amplifies the relative attractiveness of mobile payments and the use of digital wallets and proprietary checkout services.⁸²

Taken together, in this richer and more realistic environment, the introduction of digital wallet services or independent PSPs, such as Apple Pay or PayPal, might initially appear to expand the merchant’s range of options. In practice, however, once these become the preferred or default choices of consumers – whether for reasons of convenience or because of hard-wired prioritisation, such as on mobile devices – the supposed broadening of options is only apparent. Instead, these alternatives quickly turn into “must-haves” for the merchant. We turn to the respective implications next.

Given our focus on direct debit alternatives, even where such an instrument is used, the merchant may nevertheless face significantly higher costs when an additional payment service is involved. For instance, under PayPal, SEPA direct debit can be offered as the consumer’s default method. Yet, the merchant is still charged PayPal’s full merchant fee, irrespective of whether payment is made in this way or, say, by a debit card. While it is true that PayPal in turn assumes the associated risks, as it is PayPal that enters into a payment contract with the consumer, the merchant has no choice whether to bear those risks himself or to insure them – potentially at lower cost – through another party.

⁸² In 2024, smartphone-based transactions surpassed browser-based purchases for the first time, and projections suggest that this gap will widen further, reaching approximately 11.5 percentage points by 2030 (with 55.3% of transactions to be conducted via smartphones, compared with 43.8% via browsers). See Statista, *Market Insights eCommerce EU-27* (Oct. 29, 2025), <https://www.statista.com/outlook/emo/ecommerce/eu-27>.

In certain scenarios, the merchant may thus be left without any genuine choice, much as at the POS, and in contrast to our first hypothetical scenario. For a given consumer – or, more precisely, for a given consumer–merchant interaction – only one payment option may become truly relevant, a “must-have”. This is the case, for example, where the consumer accesses the merchant’s website via a mobile device and is accustomed to using Apple’s digital wallet. Within the wallet itself, moreover, the consumer designates a preferred instrument. Even if, on the merchant’s webpage, payment options are presented in a manner that ostensibly allows steering between card and wallet, if the same card is already selected within the wallet, the choice is, in substance, only apparent rather than real. In such a case, consumer multi-homing between card and wallet channels does not confer any benefit on the merchant. Limited available evidence suggests that when consumers rely on services such as PayPal, rather than paying directly with a debit card, merchants do not, in fact, face lower costs.⁸³ In our stepwise construction of a more realistic e-commerce scenario, one element still missing is the role of platforms such as Amazon. Where a merchant sells on Amazon’s marketplace, our understanding is that the merchant cannot determine which payment methods are accepted; the consumer chooses these from among the alternatives that Amazon makes available in each country. Moreover, it appears that the costs of payment are not disclosed separately to the merchant but are bundled within the overall commission that Amazon charges. Where a merchant instead integrates Amazon Pay as a payment method on its own website, our understanding is that the merchant may have some discretion to block certain instruments that consumers have registered in their Amazon account. In such cases, however, Amazon Pay itself becomes an independent contractual counterparty vis-à-vis the consumer, in the same way as described earlier for PayPal. An interesting additional feature of this scenario is that Amazon may simultaneously act as a competitor to the merchant through its own retail platform.

III.iii The limited potential of fee regulation, and its consequences

It is essential to take stock of the total costs of payment, including all layered-on services. As noted repeatedly, there is a lack of research and data, particularly on the costs of e-commerce payments. This is especially problematic given that total costs, borne both by merchants and by other parties such as card issuers, are not subject to regulation.

III.iii.1 The limited scope of the current (interchange fee) regulation

At the POS, for traditional payment methods such as physical cards, the objective of the IFR was to address what was perceived as the most important cost component, namely the interchange fee. We argued that following the imposition of the cap, unregulated fee components such as scheme fees increased, and in some cases were newly introduced. We further noted that the Regulation does not

⁸³ Also, mobile digital wallets tend to add an additional layer of cost. Even where these costs are not levied directly on merchants but instead on issuing banks – for example when a debit or credit card is used – they nonetheless contribute to overall payment costs.

extend to the costs of alternative payment schemes, which have gained prominence with the rise of mobile payments at the POS. PayPal's merchant fee is a prominent example. Where the consumer ultimately pays with a debit card stored in PayPal, the capped interchange fee applies only to the transaction between the issuing bank and the card scheme. The consumer, however, has entered into a payment contract with PayPal, while PayPal, in turn, deals with the relevant card scheme as any other merchant would. It may be expected that PayPal, like other large merchants, succeeds in negotiating low overall fees regardless of interchange regulation. The merchant's contract with PayPal, by contrast, is not itself covered by the Regulation. Available evidence suggests that the fees charged are a multiple of the regulated cap. Moreover, the Regulation does not apply to any fee levied by, for instance, a digital wallet on third parties, including issuing banks. Given the lack of reliable data, it is futile to attempt to calculate the total payment costs that may accumulate through the involvement of additional parties, whether in e-commerce or mobile payments at the POS. It is therefore unrealistic to assume that capping the interchange fee provides significant leverage over overall payment costs, whether borne by merchants or by other parties, and ultimately passed on to consumers.

III.iii.2 Limitations of a fee regulation with extended scope

For the POS, we proposed extending the scope of regulation to cover additional fee components, such as scheme fees. That proposal was primarily directed at the "old" world in which physical cards are presented at the POS, which remains the most prevalent form of cashless payment in that setting. The situation is different in e-commerce. Recall also our proposal to benchmark a cap on merchants' total fees against the costs of processing SEPA direct debit payments, at least for transactions without a credit component. The question then arises whether such a proposal would be both realistic and economically justified for e-commerce, and more generally for mobile payments.

Independent PSPs such as PayPal perform additional functions. From the merchant's perspective, they provide a form of payment insurance irrespective of the underlying payment instrument used by the consumer, although the effective scope of such insurance depends on how PayPal resolves disputes. PayPal also undertakes merchant acquiring, thereby introducing a degree of screening. Where the consumer pays by card, such acquiring and screening functions are effectively duplicated, being performed both by the card acquirer and by PayPal. The regulatory question then arises: what value should be attributed to these services in order to determine an appropriate cap on what PayPal or comparable PSPs may charge merchants? Should such a cap vary according to the payment method ultimately used by the consumer, be it debit card, credit card, or SEPA direct debit? Moreover, one must also consider the case where the consumer pays out of a PayPal balance. Recall also that in e-commerce, and more generally in mobile payments, other options are gaining importance, in particular direct transfers. In several European countries, these take the form of instant account-to-account payments, routed through the national clearing system and often operated by a consortium of banks.

It is to be expected that, in light of such complexities, the current IFR will not be extended to capture these PSPs or alternative schemes. A superficial justification might be that their market share remains limited, although this is not uniformly the case across Europe. Alternatively, it could be argued that their presence ensures competition vis-à-vis card-based solutions, which, if accepted, would also undermine the rationale for regulating card fees in the first place. Neither line of reasoning is convincing if the original presumption of the Regulation continues to hold in the context of e-commerce and mobile payments: namely, that when facing an individual consumer, a merchant may be confronted with a “must-have” situation in relation to a given payment instrument or card scheme, irrespective of its aggregate market share.

III.iv Policy intervention in the presence of an apparent lack of research and data

Before turning to potential intervention, we must return to the reason why our proposals for e-commerce were more cautious and accompanied by an important caveat: the lack of information. In particular, there is no evidence as to whether certain payment forms have become so-called “must-haves”. Unfortunately, a recent study conducted for the European Commission fails to shed light precisely on this important topic: the authors only received responses from less than 20 merchants in the European Union, so that, in fairness, we do not know which payment options have become “must-haves”, in the various countries, for desktop or mobile, or for different types of merchants.⁸⁴

Such a lack of knowledge, if it extends also to the responsible agencies, is a matter of concern. The payments landscape is evolving, with differences across European countries. The presence of diverse providers – international card schemes, banks promoting instant payment solutions, and digital wallets (in the broad sense used above) – and their varying growth trajectories may suggest competition. Yet, as the experience at the POS demonstrates, what ultimately matters is that competition also operates “for the merchant” by ensuring effective choice. Whether market dynamics move in this direction is questionable. There is a clear risk that competitive forces concentrate on capturing the consumer and then placing the provider’s own service in a monopolistic position vis-à-vis the merchant. This position may be monetised not only through the imposition of high (unregulated) fees on merchants, but also through securing payments from the issuer of the underlying payment instrument, such as the issuing bank of a debit or credit card. Such structures further generate incentives to prioritise, within digital wallets, those payment methods that yield a larger “fee pool” to be shared. Merchants, by contrast, may be left with little scope to steer consumers towards lower-cost alternatives. In essence, the dilemma long observed at the POS threatens to unfold once more.

⁸⁴ Among the merchants that responded to this question, 14 (13) stated that Visa (Mastercard) credit cards are a “must-have”, 10 did so for the respective debit cards of either card scheme, 14 for PayPal, and 7 for Big Tech companies’ digital wallets. See European Commission (2025), *supra* note 64.

III.v Ensuring effective merchant choice

In our discussion of policy options at the POS, our priority was to ensure that merchants retained effective choice. Once cash ceases to be available, single-homing on one card may leave the merchant with no alternative at all. We noted, however, that in several European countries, local alternatives such as instant, QR code-based payments have gained in importance. We also observed the growing significance of mobile payments, and with them the use of digital wallets and proprietary checkout services. We argued that, apart from their still limited market share across Europe, such wallets do not necessarily increase competition “for the merchant”, while their associated fees remain largely, if not entirely, outside regulatory control. We therefore did not regard these developments as undermining our first proposal for POS, namely to grant merchants the right to initiate a SEPA direct debit as an alternative. We now need to reconsider these statements and, with this, also our policy proposals in light of our description of e-commerce.

As discussed above, the apparently wider set of payment options available to merchants in e-commerce may in practice be much narrower. Against this background, we now turn to the merchant’s option of relying on SEPA direct debit. At the POS, direct debit without reading the information from the card is not a practical option, since the consumer cannot realistically key in account details. In e-commerce, by contrast, such an option appeared more feasible. Crucially, it does not delay other customers or tie up the cashier’s time. On desktop, automatic form fill-out is possible, though this may involve privacy trade-offs vis-à-vis browsers such as Google Chrome. On mobile devices, autofill functions are likewise available. Password and data managers, including specialised applications, can securely store and retrieve sensitive information such as a consumer’s IBAN.

At the same time, we also observed that, from the consumer’s perspective, direct debit may suffer from hard-wired disadvantages in mobile settings. Apple Pay, for example, is built directly into the operating system, such that selecting it at checkout and confirming with Face ID occurs in a single seamless step. This speed and convenience are not replicated for alternatives such as direct debit, but also not for other payment services, such as PayPal, where the consumer must be redirected to confirm payment. Importantly, however, if a direct debit transaction is executed as the underlying instrument within PayPal, and if PayPal is itself the preferred option within Apple Pay, then such a transaction benefits from the same one-step Face ID checkout. For the merchant, however, the cost structure of such a payment is entirely different.

It should therefore be determined whether, also in mobile payments and e-commerce, measures are needed to ensure that merchants have access to an option with low intermediation intensity and therefore without the accumulation of additional margins and costs, as exemplified by SEPA direct debit. We acknowledge that such intervention may face additional obstacles, notably those related to mobile NFC technology. In this context, it should also be considered to what extent merchants ought to be able to

determine or steer consumers' choices. In the German girocard case, for example, the merchant decides at the POS, when presented with a debit card, whether the transaction is routed through the card scheme or processed via SEPA. By contrast, when a consumer places both a debit card and account information in a digital wallet, the merchant currently cannot influence this choice. Similarly, when a consumer uses an independent PSP such as PayPal, the merchant, to our knowledge, pays the same fee regardless of the underlying payment instrument, and this fee, based on available evidence, significantly exceeds the cap.

Under EU law, merchants' possibility to impose surcharges is restricted, though this covers only regulated instruments, namely card payments and SEPA. Note that this also applies to account-to-account instant transfer systems, which are increasingly used in some European countries, as they are based on a SEPA credit transfer. These prohibitions should be reviewed. Note, however, that the surcharge prohibition does not apply to PSPs such as PayPal, even when, for instance, the payment is ultimately made via a debit card. However, PayPal's general terms and conditions forbid such surcharging. At least when PSPs are considered a "must-have", such provisions should be put under regulatory scrutiny. At the same time, we suggest allowing merchants or groups of merchants to devise programmes that reward particular payment methods, similarly to existing loyalty programmes that are, however, not tied to particular payment choices.

Further regulatory measures

We first single out policy options with respect to mobile payments. Digital wallets, through which Google and Apple provide access to payment options, create a hard-wired convenience advantage for consumers. Moreover, these companies, which provide the software and, in the case of Apple, also the hardware, can make access for other PSPs more difficult. We are not the first to demand, therefore, that such access has to be kept as open as possible, and in fact, regulation and competition enforcement have already addressed this issue. In Germany, the new Section 58a of the German Payment Services Supervisory Act (PSSA) provides that as of January 2020, PSPs gain access to the iPhone's contactless payment chip (NFC interface).⁸⁵ We already discussed above the recent case brought up by the European Commission against Apple.⁸⁶

Another instrument in keeping markets open is to impose standardisation, in this case, how information is exchanged between the mobile device and the merchant, notably at the POS. We noted that at the POS in Europe, apart from mobile phone NFC technology, at the national level, we observe some spread of QR-based account-to-account instant payment schemes. We note that it is precisely the objective of

⁸⁵ Jens-Uwe Franck & Dimitrios Linardatos, *Germany's 'Lex Apple Pay': Payment Services Regulation Overtakes Competition Enforcement*, 12(2) J. EUR. COMP. L. & PRAC. 68 (2021).

⁸⁶ European Commission, Commission Decision of 11 July 2024, Case AT.40452 – Apple NFC.

the EU’s regulatory framework in the form of the revised Payment Services Directive and that of the upcoming PSD3/Payment Services Regulation to harmonise standards and open banking access.⁸⁷

Summing up, the market for mobile payments and e-commerce needs to be carefully reviewed, providing evidence on two important issues. First, one needs to take stock of which payment methods have become “must-haves” in different European countries. Second, one needs timely and precise information on the costs of the different payment systems. The European Commission may use its powers to engage in a representative data-gathering exercise, covering different types of merchants. Alternatively, it may draw on extant surveys that, for instance, associations of merchants conduct amongst their members. Based on such evidence, the aforementioned policy options can be reviewed and fine-tuned.

IV. Conclusion

This article reviews the state of competition in European payment markets a decade after the IFR. Fee caps were meant to ease the burden on merchants, yet the underlying problem has remained: merchants still lack real choice over which payment instruments they accept. Other cost components have risen, while structural features such as single-homing continue to limit competition. We have argued that policy should not stop at fee regulation. Structural remedies are needed to create credible outside options for merchants. Enabling the use of SEPA direct debit and addressing potential (quasi-)exclusivity in card issuing are two concrete steps in this direction. As the effectiveness of such policy measures is neither certain nor immediate, fee caps continue to play a role. Where applied, they should target overall merchant costs rather than a narrow subset of fees.

For e-commerce and mobile payments, our conclusions are necessarily more cautious. The evidence remains limited, particularly on whether certain instruments have become unavoidable “must-haves” for merchants and on the total costs once all layers of intermediation are considered. What appears as a broader choice – through digital wallets or independent PSPs and proprietary checkout providers such as PayPal or Amazon Pay – may in practice be only apparent. Future policy should therefore begin with the collection of reliable data. At the same time, any intervention in e-commerce and mobile payments should remain guided by the objective of preserving or restoring effective merchant choice, for example, by securing access to an outside option with low intermediation and potentially lower costs, which could then operate as a natural cap on the charges of other payment instruments.

⁸⁷ See OECD (2025), *supra* note 5.