

1990 No. 2158

MONOPOLIES AND MERGERS

The Credit Cards (Merchant Acquisition) Order 1990

<i>Made - - - -</i>	<i>31st October 1990</i>
<i>Laid before Parliament</i>	<i>1st November 1990</i>
<i>Coming into force</i>	<i>28th February 1991</i>

Whereas the Secretary of State, in accordance with section 91(2) of the Fair Trading Act 1973(a), published on 25th April 1990 a notice stating his intention to make this Order, indicating the nature of the provisions to be embodied in it and stating that any person whose interests were likely to be affected by it and who was desirous of making representations in respect of it should do so in writing before 31st May 1990;

And whereas the Secretary of State has considered the representations made to him in accordance with that notice:

Now, therefore, the Secretary of State, being the appropriate Minister within the meaning of section 56 of the said Act, in exercise of the powers conferred by sections 56(2) and 90(2), (3) and (4) of, and paragraphs 1, 2 and 4 of Schedule 8 to, the said Act, and for the purpose of remedying or preventing adverse effects specified in a report of the Monopolies and Mergers Commission entitled "Credit Card Services—a report on the supply of credit card services in the United Kingdom"(b), hereby makes the following Order:—

Citation and Commencement

1. This Order may be cited as the Credit Cards (Merchant Acquisition) Order 1990 and shall come into force on 28th February 1991.

Interpretation

2.—(1) In this Order—

"credit card" means a payment card the holder of which is permitted under his contract with the issuer of the card to discharge less than the whole of any outstanding balance on his payment card account on or before the expiry of a specified period (subject to any contractual requirements with respect to minimum or fixed amounts of payment), other than:

- (a) a payment card issued with respect to the purchase of the goods, services, accommodation or facilities of only one supplier or of suppliers who are members of a single group of interconnected bodies corporate(c) or who trade under a common name,
- (b) a payment card with respect to which the payment card account is a current account, or
- (c) a trading check;

"merchant acquirer" means a person who contracts with suppliers of goods, services, accommodation or facilities to reimburse them for supplies made on the production of a payment card, and "merchant acquisition" shall be construed accordingly;

(a) 1973 c.41.

(b) Cm 718.

(c) See section 137(5) of the Fair Trading Act 1973 for the definition of "group of interconnected bodies corporate".

“ payment card ” means a card, the production of which (whether or not any other action is required) enables the person to whom it is issued (“ the holder ”) to discharge his obligation to a supplier in respect of payment for the acquisition of goods, services, accommodation or facilities, the supplier being reimbursed by a third party (whether or not the third party is the issuer of the card and whether or not a fee or charge is imposed for such reimbursement);

“ payment card issuer ” means a person who issues payment cards for use by the holder in accordance with the terms of a contract between them, and “ credit card issuer ” shall be construed accordingly;

“ payment card organization ” means a body which authorizes other persons to act as payment card issuers in respect of payment cards bearing the trade mark or service mark of the body or the trade mark or service mark of another such body which has so authorized its use.

(2) In the case of a person falling within paragraph (a), (b) or (c) of section 90(3) of the Fair Trading Act 1973, this Order shall extend to his acts and omissions outside the United Kingdom.

(3) This Order shall extend so as to prohibit the carrying out of agreements already in existence on the making of this Order as it prohibits the carrying out of agreements made subsequently.

Prohibition

3.—(1) Subject to paragraphs (2) and (4) below, on and after 7th March 1991, if a payment card organization permits any payment card issuers to act as merchant acquirers in the United Kingdom with respect to credit cards bearing a trade mark or service mark of (or authorized for use by) the payment card organization, then it shall be unlawful for the payment card organization:

- (a) to make or carry out any agreement(a) relating to payment cards to the extent that it prevents or has the effect of preventing a person authorized by the payment card organization to carry on business as a payment card issuer in the United Kingdom from acting as a merchant acquirer in the United Kingdom any time after that person commences to carry on business as a credit card issuer in the United Kingdom pursuant to that authorization;
- (b) to make or carry out any such agreement to the extent that it requires or has the effect of requiring a person authorized by the payment card organization to carry on business as a payment card issuer in the United Kingdom to issue any payment cards before that person can act as a merchant acquirer in the United Kingdom; or
- (c) to withhold or to agree to withhold or to threaten to withhold, or to procure others to withhold or to agree to withhold or threaten to withhold, from a person authorized by the payment card organization to carry on business as a payment card issuer in the United Kingdom, any supplies or services which would usually be provided by the payment card organization to a merchant acquirer authorized to carry on business as such in the United Kingdom, any time after that person commences to carry on business as a credit card issuer in the United Kingdom pursuant to that authorization.

(2) Paragraphs (1)(a) and (c) above shall not apply in cases where the payment card organization has reasonable grounds to believe that the person in question is not capable of efficiently conducting the business of merchant acquisition in the United Kingdom or is unlikely to comply with the operating requirements of the payment card organization with respect to the conduct of such business.

(3) The parties to an agreement made before 7th March 1991, the carrying out of which is unlawful under the preceding provisions of this article on and after that date, shall, to the extent that the carrying out would be unlawful, terminate the agreement before that date.

(a) Agreement is defined in section 137(2) of the Fair Trading Act 1973 (c.41).

(4) Nothing in the preceding provisions of this article shall affect the right of a payment card organization to prohibit a person authorized by the payment card organization to carry on business as a payment card issuer from acting as a merchant acquirer with respect to suppliers who:

- (a) accept (or intend to contract with a merchant acquirer to accept) in respect of payment for supplies a payment card which bears a trade mark or service mark of (or authorized for use by) the payment card organization and which is not a credit card; but
- (b) do not accept (or intend to contract with a merchant acquirer to accept) in respect of payment for supplies a credit card bearing such a mark.

4. This Order does not restrict the right of a payment card organization to :

- (a) take action against a payment card issuer which has not fulfilled a reasonable plan for the issue of payment cards in the United Kingdom previously approved by the payment card organization as a condition of authorization of the payment card issuer so to act as long as such action does not have the effect described in sub-paragraph (a) of article 3(1) above (unless the issuer ceases or is required to cease carrying on business as an issuer in the United Kingdom pursuant to the authorization);
- (b) impose on merchant acquirers reasonable technical and administrative requirements with respect to the conduct of the business of merchant acquisition; or
- (c) require that an application or request for authorization to act as a merchant acquirer first be made by a person who wishes so to act as long as (and subject to paragraph (b) above) such authorization is granted within three months of the delivery of the application or request to the payment card organization or by the time that the person commences to carry on business as a credit card issuer (whichever is later).

5. This Order shall not apply in respect of an agreement so far as it is or, if made, would be an agreement to which the Restrictive Trade Practices Act 1976(a) applies or would apply, as the case may be.

31st October 1990

John Redwood
Parliamentary Under Secretary of State,
Department of Trade and Industry

(a) 1976 c.34.

EXPLANATORY NOTE

(This note is not part of the Order)

On and after 7th March 1991, this Order makes it unlawful for a payment card organization to make or carry out any agreement or arrangement to the extent that it requires or has the effect of requiring a person authorized to carry on business as a payment card issuer in the United Kingdom to issue any payment cards before that person can act as a merchant acquirer in the United Kingdom. It also prohibits a payment card organization from making or carrying out any agreement or arrangement to the extent that it prevents or has the effect of preventing a person authorized to carry on business as a payment card issuer from acting as a merchant acquirer after the person commences to carry on business in the United Kingdom as a credit card issuer, or from withholding supplies or services relative to the conduct of the business of merchant acquisition after that time, unless the payment card organization has reasonable grounds to believe that the card issuer is not capable of efficiently conducting the business of merchant acquisition or is unlikely to comply with the operating requirements of the payment card organization with respect to the conduct of such business. All such agreements or arrangements must be terminated before 7th March 1991.

Merchant acquisition with respect to suppliers who accept payment cards to which the "Honour All Cards Rule" does not apply and who do not accept credit cards is excluded from the Order.

The Order does not apply to agreements to which the Restrictive Trade Practices Act 1976 applies.

Copies of the Monopolies and Mergers Commission Report on Credit Card Services are available from Her Majesty's Stationery Office (Cm 718) at a price of £14.20.

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