

On 20 September 2010, the French Competition Authority took an unfavourable decision as regards the scheme introduced in 2002. In substance, it found that the CEIC constituted an illegal scheme, the purpose of which included effects on the cost of processing cheques causing an increase in costs charged on “major remitter” customers. The banks involved in setting up this charging system were fined a total of EUR 384.9 million. HSBC France was ordered to pay a fine of EUR 9.05 million.

HSBC France, together with the other banks that were fined, except the Bank of France, decided to appeal this unfavourable decision. The banks actually contest as much the purpose as the anticompetitive effect of the CEIC and argue that it has no significant effect on the costs of banking services. The banks and HSBC France in particular further question the method used in calculating the fines imposed upon them. As the appeal does not suspend execution of the decision, the fine was paid.

The full hearing is expected on 6 October 2011 and the decision of the court of appeal will be taken at the end of 2011 or the beginning of 2012.

Enquiry by the French Competition Authorities on the interbank fees relating to all means of payment other than cheques

On 16 April 2009 and 22 September 2010, HSBC France along with some ten other banks received questionnaires from the French Competition Authorities on the interbank fees applied to means of payments used in France. This followed a complaint made by the “*Fédération des Entreprises du Commerce et de la Distribution*” (FCD) due to the existence, or due to levels considered excessive, of multilateral or bilateral interbank commissions related to the usage of means of payment. The French Competition Authority decided to conduct research into the practices of the largest French banks and bank card networks operating in France (Visa Europe, Mastercard Europe SPRL, Mastercard France, Mastercard International Inc., the GIE Cartes Bancaires CB and the GIE Carte Bleue Visa) on interbank fees paid and received for all means of payment used in France (direct debits, transfers, debit and credit cards) between 2000 and 2008.

The French Competition Authority, having expressed, “competition concerns,” with regard to the GIE Cartes Bancaires, in light of the replies to the questionnaires as much from the GIE as from the banks and having accepted the opening of commitment proceedings, the GIE Cartes Bancaires made an offer of commitments on 24 March 2011.

These proceedings do not imply any admission as to liability on the part of anyone and should allow for setting the level of interbank commissions concerning cards according to costs borne by the banks for the next 5 years. Said commitments shall initially be limited to operations performed using bank cards, the French Competition Authority having preferred to study interbank commissions related to the usage of other means of payment (other than cheques) in a separate procedure.

The consequences of the commitments made by the GIE should be very limited for HSBC France which is a net payer of interbank commissions pertaining to bank cards due to the structure of its clientele.

On 5 April 2011, the French Competition Authority submitted the offer of commitments to a “market test” intended to gather third party opinions concerning the content of said offer. This test shall end on 5 May 2011 and should allow the Authority in concert with the GIE Cartes Bancaires to adjust the level of the commitments as required.

The Apollonia case

As about twenty banks, HSBC was led to work during a limited period of time (from early 2006 to April 2007) and mainly in one branch, with a financial adviser and estate agent, Apollonia. The latter offered its clients (mainly independent professionals) “turnkey” tax efficient products of the “*Loueur Meublé Professionnel (LMP)*” (professional lessor of furnished accommodations) type and for a small number of investors “*Loi Robien*” type tax efficient products. Between April 2006 and April 2007, 184 property loan applications were approved, for a total of EUR 29 million, bearing in mind that different media have said the total amount of operations by Apollonia with all banks would be around EUR 2 billion.

At the end of September 2008, HSBC France became aware of the use of reprehensible marketing methods by Apollonia. Moreover, it appeared that most of the borrowers took out several loans through Apollonia from various banks without notifying HSBC France.

Five notaries have been indicted for conspiracy to commit organised fraud, forgery and use of forgeries. HSBC France is involved as a civil law party, giving it access to the criminal file. From this, it has become apparent that a very large proportion of the official agency authorisations signed by the buyers giving authority to sign purchase and sales deeds were not properly prepared.

Risk management (continued)

HSBC France has systematically brought proceedings against those investors with loan repayments due but the hearings are in abeyance because of the criminal procedure underway. Instead, a negotiated settlement is now being sought with the interested borrowers, to settle the financial aspect of this matter without awaiting the outcome of the criminal procedure. A case has also been brought against the MMA, the insurer for the notaries.

Adequate provisions have been recorded for the Apollonia case in the light of information available to Senior Management.

To date, as far as HSBC France is aware, it is not threatened by any other regulatory, civil law or arbitration proceedings, including any proceedings that are in progress or in suspense against it, that might have, or over the last 12 months have had, any significant effect on the financial situation or the profitability of the company and/or of the group.

Tax risk

The HSBC France Tax Department (DAF), which is responsible for the HSBC France group tax risk function, was set up at the beginning of 2010 by splitting the former Legal and Tax department. It reports directly to the Deputy CEO in charge of risks.

The department has analysed the major risks in the function and has mapped them.

It assists the various HSBC France group businesses in preventing and monitoring tax risks.

Prevention of tax risks

The DAF attends to the Legal and Tax Risks Committee, which is run by the DAJ, and also to the HSBC France group Complex and Structured Transactions Committee, the Product Examination Committee, and the ORIC (Operational Risk and Internal Control) and RMM (Risk Management Meeting) Committees.

Tax risk monitoring system

Each of HSBC France's subsidiaries, directly covered by regulation 97-02, prepares tax certificates half yearly for itself and for the companies that it controls.

On the basis of these certificates, HSBC France's Head of Tax draws up a half-yearly general certificate on the tax function's permanent control.

The whole of this framework is effective and a detailed description of it is given in a regularly updated circular.

IT systems risk

The responsibility of the IT systems risk function is to manage IT systems risks in the following number of fields:

- governance of the IT function;
- IT research;
- IT operations;
- IT projects management;
- the applications delivered by HTS;
- IT systems security.

To do this, the IT systems risk function has set up a permanent framework for analysing and supervising IT risks. This covers the generic risks inherent in this activity, which are:

- legal risk arising from non-compliance with legal and regulatory provisions;
- risk of non-retention of key data;
- risks arising from IT projects management, managing change, managing incidents or issues;
- risk of absence or failure of the IT or Business Recovery Plan;
- risk of failure in IT system security;
- risk of failure by main suppliers to provide essential IT services.

The system for supervising IT risks is set out in a circular that gives details of the governance of the function, the role of each person involved and of each committee, and the general structure of the permanent control framework for IT risks applicable to all entities in the HSBC Group in France.

Framework structure

In the HSBC Group, control of IT systems risk is the responsibility of the HSBC Technologies and Services Department (HTS), under the authority of the Chief Technology and Services Officer (CTSO). The head of HTS permanent control is the Head of HTS Finance and Controls Department. For all IT matters, he relies on the Head of HTS Internal Control (ORIC team), who reports to him. Within HTS Internal Control, the Head of HTS IT Internal Control defines and regularly maintains the control framework.

HTS IT internal control is intended to provide HTS IT management with reasonable assurance that the two following objectives are being achieved :

- compliance of the IT system with French laws and regulations;
- reliability, security and integrity of data processed.