



applying to the new electronic cheque processing termed the “*Echange d’Images Chèques*” (EIC), the cheque image exchange system.

In March 2008, the French Competition Authority sent notification of a complaint to the twelve members of the committee – including HSBC France – for the introduction of interbank fees when the EIC was set up.

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.

On 23 February 2012, the Paris Court of Appeal overturned the decision of the French Competition Authority, finding that the authority had failed to demonstrate a restriction by subject. The Paris Court of Appeal cleared the banks of wrongdoing and ordered the repayment of fines paid by the banks. The French Competition Authority is appealing to the Court of Cassation against the decision.

#### **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 and the GIE Cartes Bancaires 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, accepted the opening of commitment proceedings.

On 7 July 2011, the Competition Authority announced its decision to make the commitments proposed by the GIE under this procedure mandatory. To our knowledge, no appeal has been made against this decision.

As regards interbank fees applied to payment methods other than cheques and cards, the French Competition Authority agreed to an undertakings procedure. On 14 March 2012, it set out its competition concerns and in response to those concerns, the banks have drawn up a draft set of undertakings.

#### **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.

HSBC France systematically brings proceedings against those investors with loan repayments due but the hearings are in abeyance because of the criminal procedure underway. However, in order to settle the financial aspects of the matter, without waiting for the outcome of criminal proceedings, out-of-court settlements have already been reached with some borrowers and talks are continuing with other borrowers. Proceedings have also been commenced against the

## Risk management (continued)

notaries involved and their insurer MMA. These proceedings have also been adjourned.

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

### Euribor enquiry

In October 2011, the European Commission carried out unannounced on-site inspections of several banks, including HSBC France, operating in Euribor (Euro Interbank Offered Rate) derivatives. The European Commission suspects that employees of the banks in question may have infringed European laws prohibiting anti-competitive collusion and commercial practices that restrict competition, through the possible co-ordination of daily information used to calculate Euribor. On the same matter, HSBC France has received requests for information from the *Autorité des Marchés Financiers* and the US Commodities and Futures Trading Commission (CFTC). HSBC France is providing all appropriate co-operation, and is not currently able to foresee the potential outcome of these enquiries given the current state of information.

To date, as far as HSBC France is aware, it is not threatened by any other regulatory, civil law or arbitration 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.

This department assists HSBC France's various business lines, along with its subsidiaries, to prevent and control tax risks.

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

### 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

#### Missions and scope

HSBC France's IT Function is divided between production IT (IT Operations – ITO) and development IT (Software Delivery – SWD). Their main missions are to:

- respond to requests from internal partners, integrating and giving preference, in France, to the HSBC Group systems and solutions;
- provide internal partners with the level of reliability that they are entitled to expect given HSBC France's market position;
- help implement the HSBC Group's projects and services.

These missions are supported by the Change Delivery, Quality, Change Management, Security and Fraud, Purchasing and HR Functions, and also fall within the scope of IT risk supervision.

The missions of the IT Function are covered by the following HSBC Group manuals:

- Group Standard Manual (GSM): 10.6 Information Technology;
- Functional Instruction Manual (FIM IT).

The IT risk function aims to implement an IT risk reduction strategy that is consistent with the information system strategy. This strategy also aims to meet the information system's confidentiality, integrity and availability requirements with respect to the bank's business lines. IT risk management often involves standard arrangements such as the IT Recovery Plan (IRP), data back-up and the Business Recovery Plan (BRP). However, it is also more extensive, since it requires implementation of the HSBC Group's risk assessment methodology, which is handled in France by the Internal Control and Operational Risks Department (DCIRO), and the preparation of a risk management plan commensurate with the potential financial damage.