



## Case summary

8 September 2017

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### ATM withdrawal fees

Sector:	Financial services
Ref.:	B4-13/10; B4-117/15
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The Bundeskartellamt has examined ATM withdrawal fees in detail over the past few years following consumer complaints about fee levels or cards being locked at individual ATMs. In light of this, the Bundeskartellamt in its capacity as a competition authority conducted two cartel administrative proceedings, which have now been concluded.

### I. Background to the terms of use applying to the German ATM system

Germany has a large number of ATMs with over 60,000 across the whole of Germany. The majority are operated by banks with the rest being provided by independent ATM operators. The use of ATMs is based on various agreements relating to the German ATM system which grew over time.

In 1979, the leading associations of the German banking sector concluded an agreement that forms the organisational and technical basis for the interbank use of ATMs for withdrawals by debit card (e.g. the girocard issued by the German Banking Industry Committee). This allows customers of a payment service provider participating in the system to use their debit card and PIN in all of the system's ATMs. All participating ATM operators comply with the ATM agreement. However, the ATM agreement does not oblige operators to accept credit cards.

According to this agreement, ATM operators are permitted to charge a fee for the use of their ATMs (withdrawal fees for customers of other banks). The level of the fee is no longer governed by a single agreement between participating payment service providers.

In 1982, the leading associations of the German banking sector and the former Deutsche Bundespost (German Federal Post Office) had originally agreed a maximum fee of 3 German marks for the use of interbank ATMs. This interbank fee was charged to the card-issuing bank. From 1993, the agreed maximum fee was 4 German marks for amounts up to 400 German marks

and no more than 1% of the transaction for higher amounts. The German Savings Banks Association (Deutscher Sparkassen- und Giroverband e.V.) terminated the agreement on maximum fees at the end of 1996 because many of its members wanted to charge their competitors from the private banking sector much higher fees. In order to maintain the maximum fee system, the leading associations of the German banking sector agreed that banks operating ATMs would be able to charge no more than 7 German marks between banks for ATM withdrawals by customers of other banks. However, an agreement between competitors that would have allowed them to set much higher fees for customers of other banks failed to materialise because of concerns expressed by the Bundeskartellamt. Since then, the German Savings Banks Association has given its members the option to charge higher interbank fees for ATM withdrawals by customers of other banks. The other companies in the German banking sector at first continued to adhere to the maximum fee system dating from 1993.

Today, debit card withdrawals from ATMs are subject to withdrawal fees for customers of other banks that are set by the ATM operator autonomously. The member banks of the Association of German Banks (Bundesverband deutscher Banken e.V.) had initially agreed to limit the fee for withdrawals from their ATMs by customers of other banks to 1.95 euros before abolishing this limit again later. The majority of direct customer fees charged by the banks are currently between 3 and 5 euros; the use of ATMs operated by specialised providers may be subject to substantially higher fees depending on the location of the ATM.

On the basis of the ATM agreement, ATM networks were established in Germany through agreements between participating banks. The participating banks group their ATMs in a network to provide services for their own and each other's customers. Within the ATM networks, customers of the member banks pay no or minimal fees for debit card withdrawals from another member bank's ATM. There are four ATM networks in Germany at present: one maintained by the cooperative banks, one maintained by the savings banks, one maintained by several large private banks (*Cash-Group*) and a small network whose members include private banks and several banks belonging to the cooperative banking sector (*Cash-Pool*). A small number of banks, including some direct banks, are currently not members of an ATM network. Independent ATM operators without their own banking business generally do not belong to any network.

In addition to using debit cards to withdraw cash from an ATM, customers in Germany can also use their credit cards at other banks' ATMs provided the relevant credit card company has concluded agreements with the ATM operator. This applies to credit cards issued by VISA or Mastercard, for example. Customers incur no direct costs if the ATM operator is prevented from charging direct customer fees for the use of their ATM because of contractual agreements (e.g.

with VISA). Banks that are not members of an ATM network can therefore issue their customers with a credit card to give them access to a large network of ATMs (including those operated by other banks) without customers having to pay withdrawal fees.

## **II. Results of the cartel administrative proceedings and further action**

In its cartel administrative proceedings, the Bundeskartellamt investigated the extent to which the interaction between existing agreements in the German ATM system led to restrictions on competition and hence excessive ATM withdrawal fees for customers of other banks and how the competition authorities should respond, if necessary. Having conducted extensive investigations, the Bundeskartellamt developed the following recommendations for further action:

### **1. Creation of cost transparency**

Competitive fees require the creation of transparency on the customer side. Customers should be made aware of withdrawal fees by the ATM operator before using another bank's ATM.

This aim has already been achieved. In 2011, while cartel administrative proceedings were still ongoing, the banking associations agreed to abolish the interbank fees charged until then for ATM withdrawals by customers of other banks. The fees and the fee level were completely non-transparent to customers. They have been replaced by direct customer fees and customers are informed of the level of ATM fees before a transaction takes place. As a result, customers are now able to compare prices for withdrawals from other banks' ATMs and make an informed choice between them. This procedure was only found to be deficient in exceptional cases.

### **2. Safeguarding non-discriminatory access to existing ATM networks**

The ATM networks in Germany are based on the ATM agreement. These networks grew over time through agreements between competitors. The Bundeskartellamt raised no objections to their existence because as a whole they led to lower costs for consumers using their debit cards to withdraw cash from other member banks' ATMs within the relevant network. Membership of an ATM network allows banks to offer customers an important service linked to their current account.

However, as associations of competing companies the networks are obliged to grant interested companies non-discriminatory access and not unfairly hinder them. On the basis of these competition law criteria, the Bundeskartellamt is going to assess the

networks' decisions relating to the admission of new members and the admission criteria applied.

### 3. Review of withdrawal fees for customers of other banks on a case-by-case basis

In Germany, customers are charged withdrawal fees for using another bank's ATM only in a small number of cases, i.e. whenever they use their debit card at an ATM that is not operated by their own bank or within their own ATM network. If in these cases customers are unable to use the ATM free of charge with their credit card, they have to pay withdrawal fees that can at times be substantial.

The level of the fee that customers of other banks have to pay is not capped by German or European regulations and is set by the ATM operator autonomously. However, the level of autonomously set direct customer fees is limited by the provisions on abusive practices in the German Competition Act (GWB).

Operators of ATMs in locations where customers have no access to alternatives within a specific geographical area are subject to the competition authority's control when setting their fees as the party subject to the control of abusive practices under the GWB. Dominant ATM operators are therefore prohibited from charging users excessive fees without objective justification. ATM operators must not use withdrawal fees for customers of other banks to transfer a disproportionate share of their ATM infrastructure costs to these customers when dealing with other banks that they compete with.

If dominant operators continue to charge excessive fees for the use of their ATMs, the Bundeskartellamt or, in case of purely regional issues, the competition authorities of the Länder can initiate abuse proceedings against them. In each individual case, the review of the fees will take the costs of operating the ATM into account. Cost factors for operating an ATM include frequency of use, the distance to the nearest branch, the amount of location-related costs and security requirements. Should the Bundeskartellamt find evidence of excessive fees in future, it will initiate proceedings to examine these fees within its area of competence and its scope of discretion.

### **III. There is currently no need for regulation of withdrawal fees for customers of other banks**

At present, the Bundeskartellamt considers consistent (not case-by-case) regulation of the level of withdrawal fees for customers of other banks – as currently discussed in Germany and other

EU member states, where such regulation may already exist – to be neither necessary nor productive:

The investigation into the level of withdrawal fees for customers of other banks within the scope of the control of abusive practices has made it possible to examine fees in consideration of the particular circumstances. A general and consistent regulatory approach to fees would not be able to take account of the extent to which ATM operating costs vary from one another. Such a regulatory approach would also have to consider the fact that the operation of ATMs represents a unique business model to independent ATM operators with which they aim to generate revenue. For banks, it represents a service offered to customers as part of their current account and the associated costs are calculated within the overall current account package. A statutory single cap on ATM withdrawal fees for customers of other banks regardless of specific ATM operating costs would ultimately threaten to undermine incentives for investments in ATM infrastructure.

Consumers are already finding it difficult at times to get access to cash because an increasing number of bank branches, service centres and ATMs are being closed or removed. More recent developments, such as cash back (cash withdrawals at retail outlets and petrol stations) or the cooperation between different banks for the shared use of ATMs in rural areas, to which the German competition authorities raised no objections, go some way to address this problem. However, they are not able to eliminate it completely. If the regulated withdrawal fee for customers of other banks is set too low, the situation for consumers could deteriorate further because in this case there would be no ATMs in “expensive” or less frequented locations.