



Press and Information

General Court of the European Union

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Judgment in Case T-111/08

MasterCard, Inc and Others v Commission

The General Court confirms the Commission's decision prohibiting the multilateral interchange fees applied by MasterCard

By decision of 19 December 2007¹ the European Commission declared the multilateral interchange fees (MIFs) applied under the MasterCard card payment system to be contrary to competition law.

The MIF corresponds to a proportion of the price of a payment card transaction that is retained by the card-issuing bank. The cost of the MIF is charged to merchants in the more general context of the costs which they are charged for the use of payment cards by the financial institution which handles their transactions.

The only MIFs affected by the Commission's decision were those applicable within the European Economic Area or the euro area, which apply in the absence of interchange fees agreed bilaterally between financial institutions or set collectively at national level.

The Commission found that the MIF had the effect of setting a floor under the costs charged to merchants and thus constituted a restriction of price competition that was to their detriment. The Commission also took the view that it had not been demonstrated that the MIF could generate efficiencies capable of justifying its restrictive effect on competition.

The MasterCard payment organisation and the companies representing it (MasterCard Inc. and its subsidiaries MasterCard Europe and MasterCard International Inc.) were therefore ordered to bring the infringement to an end by formally repealing the MIFs within six months, failing which they would be fined 3.5% of their daily consolidated global turnover.

The companies representing MasterCard brought an action before the General Court for annulment of the Commission's decision. A number of financial institutions intervened in their support (Banco Santander, SA, Royal Bank of Scotland plc, HSBC Bank plc, Bank of Scotland plc, Lloyds TSB Bank plc, MBNA Europe Bank Ltd). The United Kingdom and two merchants' associations (British Retail Consortium and EuroCommerce AISBL) intervened in support of the Commission.

In its judgment delivered today, **the General Court dismisses that action** and confirms the Commission's decision.

Thus, the General Court does not accept **the arguments relating to the objective necessity of the MIF to the operation of the MasterCard payment system**. It was, inter alia, submitted that if there were no collection of MIFs, financial institutions would find it necessary to offer their customers other types of payment cards or to reduce the benefits to cardholders, which would affect the MasterCard system's viability. Noting in particular the importance of revenues and commercial benefits other than MIFs which the financial institutions derive from their payment card

¹ Decision C(2007) 6474 final of 19 December 2007 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Cases COMP/34.579 – MasterCard, COMP/36.518 – EuroCommerce, COMP/38.580 – Commercial Cards).

issuing business, the General Court considers **it unlikely that, without a MIF, an appreciable proportion of banks would cease or significantly reduce their MasterCard card issuing business or would change the terms of issue to such an extent as to be likely to result in holders of those cards favouring other forms of payment or payment cards.**

Since the MIF is not objectively necessary for the operation of the MasterCard system, the Commission was entitled to consider its effects on competition independently rather than in conjunction with the effects of the MasterCard system to which the MIF relates. That analysis of **the effects of the MIF on competition** is also endorsed by the General Court; the Commission having been legitimately entitled to conclude that, **without the MIF, merchants would be able to exert greater competitive pressure on the amount of the costs they are charged for the use of payment cards.**

A further complaint against the Commission concerned its continued characterisation of the MIF in terms of a decision by an association of undertakings, even though, since its initial public offering on the stock exchange on 25 May 2006, MasterCard Inc. has ceased to be controlled by the financial institutions participating in the MasterCard system, and those institutions play no part in setting the level of the MIF. In response to those arguments, the General Court observes that the financial institutions continued, collectively, to exercise decision-making powers in respect of the essential aspects of the operation of the MasterCard payment organisation, both at a national and at a European level. It also notes that there is a commonality of interests between the MasterCard payment organisation and the financial institutions in the MIF being set at a high level. The General Court infers from this that, **despite the changes that took place following MasterCard Inc.'s initial public offering on the stock exchange, the MasterCard payment organisation had remained an institutionalised form of coordination of the conduct of the participating financial institutions. Consequently, the Commission was entitled to continue to characterise the MIF in terms of decisions by an association of undertakings.**

Lastly, referring to **the contribution of the MasterCard system to technical and economic progress** – and, in particular, to the objective advantages which MasterCard cards represent for cardholders and for merchants (payment guarantee, speed of settlement of transactions, increase in the number of transactions...) – the companies representing MasterCard and some financial institutions claimed that the MIF should have been granted an exemption by the Commission. The General Court rejects that line of reasoning also, observing, inter alia, that **the methods of setting the MIF tended to overestimate the costs borne by the financial institutions on issuing payment cards and, moreover, inadequately to assess the advantages which merchants derive from that form of payment.**

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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