



Press and Information

Court of Justice of the European Union
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Judgment in Case C-382/12 P
MasterCard Inc. and Others v Commission

The Court of Justice confirms the judgment of the General Court and thus validates 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 (MIF) applied under the MasterCard card payment system to be contrary to competition law. The MIF correspond 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 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. The Commission also noted that it had not been demonstrated that the MIF could generate efficiencies capable of justifying their restrictive effect on competition. On the basis of those findings, the Commission ordered MasterCard and the companies representing it (MasterCard Inc. and its subsidiaries MasterCard Europe and MasterCard International Inc.) to bring the infringement to an end by formally repealing the MIF within six months. By judgment of 24 May 2012,² the General Court dismissed the action for annulment brought by MasterCard and confirmed the Commission's decision. MasterCard then brought an appeal before the Court of Justice by which it sought to have the General Court's judgment set aside.

In today's judgment, the Court of Justice dismisses the appeal and confirms the judgment of the General Court.

First of all, the Court of Justice confirms that MasterCard could be classified as an association of undertakings. The General Court correctly found that, when adopting decisions relating to the MIF, the undertakings in question intended or at least agreed to coordinate their conduct by means of those decisions, and that their collective interests coincided with those taken into account when those decisions were adopted, particularly as the undertakings in question pursued, over several years, albeit under different forms, the same objective of joint regulation of the market within the framework of the same organisation.

As regards the question whether the MIF were objectively necessary for the MasterCard system, the Court notes that the adverse consequences that could affect the functioning of the MasterCard system in the absence of the MIF do not, in themselves, mean that the MIF must be regarded as being objectively necessary, since the General Court duly found that the system was still capable of functioning without those fees.

As regards the assessment of the anti-competitive effects of the MIF, the Court of Justice notes that the General Court confirmed the Commission's hypothetical analysis according to which some

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).

² Case [T-111/08 MasterCard Inc and Others v Commission](#) (see also Press Release [No 69/12](#)).

of the problems created by elimination of the MIF could be resolved by prohibiting *ex post* pricing (whereby issuing and acquiring banks are prohibited from defining the amount of the interchange fees after a purchase has been made by a cardholder). In that respect, the Court of Justice finds that the General Court should have ascertained, in the context of its analysis of the effects of the MIF on competition, whether that situation was likely to arise otherwise than by means of a regulatory intervention. However, the Court of Justice finds that that error of law has no bearing on the analysis of the competitive effects of the MIF carried out by the General Court, or on the operative part of the judgment under appeal, since the General Court was in any event justified in relying on the Commission's hypothesis. The only other option which presented itself at first instance and which was capable of enabling the MasterCard system to operate without MIF was in fact the hypothesis of a system based on a prohibition of *ex post* pricing.

As regards the argument that the General Court did not sufficiently analyse the competitive effects of the MIF, the Court of Justice notes that the General Court carried out a detailed examination in its judgment in order to determine in particular whether the MIF limit the pressure which merchants can exert on acquiring banks when negotiating the costs charged by those banks. The General Court thus correctly concluded that the MIF had restrictive effects on competition.

Lastly, the Court of Justice finds that the General Court took into account the two-sided nature of the system, since it analysed the role of the MIF in balancing the 'issuing' and 'acquiring' sides of the MasterCard system, while recognising that there was interaction between those two sides. Furthermore, in the absence of any proof of the existence of appreciable objective advantages attributable to the MIF in the acquiring market and enjoyed by merchants, the General Court did not need to examine the advantages flowing from the MIF for cardholders, since such advantages cannot, by themselves, be of such a character as to compensate for the disadvantages resulting from those fees.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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