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**The Court of Justice holds that the General Court could not properly conclude that the pricing measures adopted by the French Groupement des cartes bancaires had as ‘their object’ the restriction of competition**

EU law<sup>1</sup> prohibits agreements, decisions by associations of undertakings or concerted practices which have as their ‘object’ or ‘effect’ the prevention, restriction or distortion of competition within the internal market. Such measures constitute a restriction of competition ‘by object’ if they reveal in themselves a sufficient degree of harm to competition, such as horizontal price-fixing by cartels for example. Measures which restrict competition because of their object can be prohibited by EU competition law without the need to examine the actual effects that those measures may have on the market.

The ‘Groupement des cartes bancaires’ (‘the Grouping’) was created in 1984 in France so that the holders of a CB card issued by a member of the Grouping may make payments to affiliated traders and/or make withdrawals from automatic teller machines operated by the members of the Grouping. In 2002, the Grouping adopted three pricing measures: (i) a fee under MERFA (‘Mécanisme de regulation de la fonction acquéreur’ or ‘mechanism for regulating the acquiring function’), payable by the members of the Grouping whose CB-card issuing activity exceeded their activity in affiliating new traders to the system, (ii) a reform of the membership fee for new members, which consisted in a fixed sum and a supplementary membership fee for members whose number of CB cards in stock exceeded a certain threshold at a given moment and (iii) a fee per CB card issued, payable by ‘dormant’ members, that is those members of the Grouping who were inactive or not very active before the date of entry into force of the new pricing measures.

By decision of 17 October 2007<sup>2</sup>, the Commission concluded that the pricing measures adopted by the Grouping were contrary to EU competition law because of both their object and their anti-competitive effects and required the Grouping to bring that infringement immediately to an end and to refrain from adopting any similar measure in the future. The Grouping brought an action before the General Court for the annulment of that decision. The General Court dismissed the action<sup>3</sup> on the ground that the Commission could properly conclude that the pricing measures at issue restricted competition because of their anti-competitive object and constituted an unlawful decision of an association of undertakings. In those circumstances, the General Court found that it had no need to examine the effects of the measures on the market. The Grouping brought an appeal before the Court of Justice against the judgment of the General Court. Before the Court of Justice, the Grouping submitted, *inter alia*, that the General Court had erred in law in the application of the concept of the restriction of competition by object.

In its judgment today, **the Court of Justice finds that the General Court did not correctly assess whether there was a restriction of competition ‘by object’**. The Court of Justice considers that the General Court failed to have regard to the fact that the essential legal criterion

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<sup>1</sup> Article 101(1) TFEU.

<sup>2</sup> European Commission Decision C (2007) 5060 final of 17 October 2007 relating to a proceeding under Article [81 EC] (COMP/D1/38606 — Groupement des cartes bancaires ‘CB’)

<sup>3</sup> Case [T-491/07](#) *CB v Commission*.

for ascertaining whether coordination between undertakings involves a restriction of competition 'by object' is the finding that such coordination reveals in itself a sufficient degree of harm to competition. In its judgment, the General Court had inferred that the object of the measures at issue is to impede the competition of new entrants on the market for the issue of payment cards in France, since they require the banks subject to them either to pay a fee or to limit their issuing activities. The Court of Justice holds that, although **the General Court** thereby set out the reasons why the measures at issue, in view of their formulas, are capable of restricting competition, it **in no way explained in what respect that restriction of competition reveals a sufficient degree of harm in order to be characterised as a restriction 'by object'**.

The Court of Justice considers that the General Court was entitled at the most to infer that the measures at issue had as their object the imposition of a financial contribution on the members of the Grouping which were content to benefit from the acquisition efforts of other members. Such an object cannot be regarded as being, by its very nature, harmful to the proper functioning of normal competition, all the more so since the General Court took the view that combatting free-riding in the CB system was a legitimate objective.

In addition, the Court of Justice finds that, while purporting to examine the 'options' left open to the members of the Grouping by the measures at issue (namely payment of a fee or limiting the issue of CB cards), the General Court in fact assessed the potential effects of the measures, not their object. It therefore indicated itself that the measures at issue cannot be considered 'by their very nature' harmful to the proper functioning of normal competition.

In the light of those errors, **the Court of Justice annuls the judgment of the General Court and refers the case back to it so that it may examine whether the measures at issue could be prohibited on account of their anti-competitive 'effects'**.

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**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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