

Case T-28/02

First Data Corp. and Others

v

Commission of the European Communities

(Competition — Article 81 EC — Visa payment card scheme — The ‘no-acquiring-without-issuing’ rule — Negative clearance — Rule abolished during the proceedings — Legal interest in bringing proceedings — No need to adjudicate)

Order of the Court of First Instance (Third Chamber), 17 October 2005 . . . II - 4122

Summary of the Order

1. *Actions for annulment — Interest in bringing proceedings — Disappearance of such an interest on account of an event occurring after the application was lodged — No need to adjudicate*

2. *Actions for annulment — Interest in bringing proceedings — Commission decision granting negative clearance pursuant to the competition rules — Application for partial annulment concerning a provision of the agreement which was granted clearance — Withdrawal of the provision at issue during the proceedings — No vested and present interest in pursuing the action — Interest relating to future and uncertain situations — Not included*
 (Arts 81(1) EC, 230 EC and 233 EC)

1. An action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure. In order for such an interest to be present, the annulment of the measure must of itself be capable of having legal consequences or, in other words, the action must be liable, if successful, to procure an advantage for the party who has brought it.

ment of a decision, he must retain a personal interest in the annulment of the contested decision.

(see paras 34-38)

2. An applicant in proceedings seeking the annulment of negative clearance issued by the Commission to a third party pursuant to Article 2 of Regulation No 17 no longer has a present and certain legal interest in bringing proceedings where his action relates to that clearance only in so far as it concerns a provision of an agreement between undertakings and that provision has in the meantime been withdrawn by the parties to the agreement.

In that respect, the conditions governing the admissibility of an action must be judged at the time when the application is lodged. However, in the interest of the proper administration of justice, the Court may find of its own motion that there is no longer any need to adjudicate on the action in the event that an applicant who initially had a legal interest in bringing proceedings has lost all personal interest in having the contested decision annulled on account of an event occurring after that application was lodged. For an applicant to be entitled to pursue an action seeking the annul-

First, a judgment of the Court of First Instance pronouncing the annulment that the applicant seeks could no longer bring about the consequences prescribed by Article 233 EC, since the Commission is no longer able to take a new, different decision on a provision which no longer exists.

Second, the possibility of inserting in the agreement, in the future, a clause similar to the one withdrawn is not sufficient to enable the applicant to rely on a vested and present, and not merely hypothetical, interest in obtaining the annulment which he seeks.

Finally, the annulment sought is not necessary as a basis for the applicant's possible action for damages against the parties to the agreement before the national courts. Negative clearance does not bind the national courts, even if it constitutes a fact which national courts must take into account. It merely expresses the Commission's opinion that, in the light of the evidence in its possession, there is no need for it to intervene. Negative clearance does not constitute a definitive assessment, nor in particular the adoption of a position

which falls within the exclusive competence of the Commission. Since Article 81(1) EC is directly applicable, individuals may rely on it before national courts and derive from it rights and, as national courts may also have other information on the particular circumstances of the case, they are naturally bound to reach their own opinion, on the basis of the information in their possession, on the applicability of Article 81(1) EC to certain agreements. In any event, they may refer a question to the Court for a preliminary ruling on the validity of negative clearance, so that, in the event of a dispute, the applicant would by no means be deprived of the possibility of asserting his rights before the national court.

(see paras 40, 42-43, 47-51)