



## EU AND COMPETITION

# MASTERCARD'S MULTILATERAL INTERCHANGE FEES

By decision of 19 December 2007, the European Commission ("Commission") declared the multilateral interchange fees ("MIF") applied under the MasterCard card payment system to be contrary to competition law.

The MIF corresponds to a portion of the price of payment card transactions that reverts, in general, to the card-issuing bank. However, the cost of the MIF is charged to merchants in the more general context of the fees which they are charged for the use of payment cards by the financial institution which handles their transactions – the so-called "merchant service charges" ("MSC").

The Commission considered that the MIFs applicable within the European Economic Area had the effect of setting a floor for MSC and thus constituted a restriction of price competition. 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. Therefore, the Commission ordered MasterCard to bring the infringement to an end by formally repealing the MIFs within six months, failing which it would be heavily fined.

MasterCard brought an action before the General Court for annulment of the Commission's decision. It submitted inter alia that the MIFs were objectively necessary for the

operation of its payment system. 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.

However, given the importance of, e.g., revenues and commercial benefits other than MIFs which the financial institutions derive from their payment card issuing business, the General Court considered, in its judgment of 24 May 2012, 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.

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Thus, since the MIFs were considered 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 was also endorsed by the General Court and thus the Commission was legitimately entitled to conclude that, without the MIF, merchants would be able to exert greater competitive pressure on the amount of the MSC.

On the other hand, despite the changes that took place following MasterCard Inc.'s initial public offering on the stock exchange, MasterCard had remained an institutionalised form of coordination of the conduct of the participating financial institutions. Hence, the Court considered that the Commission was entitled to continue to characterise the MIF as decisions of an association of undertakings.

Finally, MasterCard claimed that the Commission should have granted an exemption to its MIF, given 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 (e.g., payment guarantee, speed of settlement of transactions and increase in the number of transactions).

The General Court rejected this line of reasoning also, observing, *inter alia*, that the methods of setting the MIF tended, on the one hand, to overestimate the costs borne by the financial institutions on issuing payment cards and, on the other hand, to inadequately assess the advantages which merchants derive from that form of payment.

The General Court thus dismissed completely MasterCard's appeal and confirmed the Commission's decision. An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court.

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