

Brussels, 24 May 2012

## **Antitrust: Commission welcomes General Court judgment in MasterCard case**

*The European Commission welcomes today's judgment by the General Court (case [T-111/08](#)) dismissing an action brought by MasterCard against a Commission decision of 2007 prohibiting MasterCard's cross-border inter-bank fees (see [IP/07/1959](#) and [MEMO/07/590](#)). The judgment is important because it confirms the Commission's finding that these fees restrict competition as they inflate the cost of card acceptance by merchants without leading to benefits for consumers. The judgment confirms that banks, in the framework of a card payment scheme, cannot restrict competition by agreeing on certain charges to the detriment of consumers.*

MasterCard's business model includes a mechanism through which banks indirectly determine a minimum price that merchants must pay for accepting the organisation's payment cards. This mechanism comprises a complex network of multilaterally agreed inter-bank fees which industry refers to as "interchange fees".

In December 2007, the Commission prohibited MasterCard's collectively agreed interchange fees because they inflate the base on which acquiring banks charge prices to merchants, as the interchange fees account for a large part of the final price merchants pay for accepting MasterCard's payment cards. This restriction of price competition was found to harm businesses and their customers, in breach of Article 101 of the Treaty on the functioning of the EU (TFEU) that prohibits anticompetitive business practices. There was also no evidence that such fees generated benefits that were passed on to consumers.

### **The General Court judgment**

The General Court rejected MasterCard's claims and upheld the Commission's findings of an infringement. In particular, the Court endorsed the Commission's view that inter-bank fees constitute a restriction of competition by effect. It rejected MasterCard's argument that such fees are objectively necessary to operate its system. In line with the Commission's position, the Court held that MasterCard constitutes an association of undertakings in the sense of Article 101(1) TFEU even after the company's listing at the New York Stock Exchange in 2006. The Court also took the view that the Commission has not committed procedural errors and the prohibition it imposed was proportionate.

This judgment confirms that banks, in the framework of a card scheme, cannot restrict competition in the market by agreeing on certain charges to the detriment of consumers.

MasterCard had sought to annul the Commission's decision. It claimed *inter alia* that the Commission committed errors of law and fact in finding a restriction, in assessing the necessity of interchange fees in the MasterCard system and in assessing the conduct under Article 101(3) TFEU. According to MasterCard, the Commission also erred in holding that MasterCard constitutes an association of undertakings within the meaning of EU competition law. In addition, it claimed that the Commission infringed procedural requirements and that the remedy and enforcement measures it imposed were disproportionate.

In April 2009, MasterCard offered unilateral Undertakings to reduce its cross-border MIFs for debit and credit cards and to adopt certain measures to make the market in card payments more transparent. These Undertakings expire today.