



EUROPEAN COMMISSION

MEMO

Brussels, 11 September 2014

Antitrust: Commission welcomes Court judgment confirming that MasterCard's payment card interchange fees are anti-competitive

The European Commission welcomes today's judgement by the European Court of Justice in the MasterCard case (case [C-382/12P](#)). The judgment confirms that MasterCard's inter-bank fees for cross-border payment transactions in the European Economic Area (EEA) restrict competition in the Internal Market, in breach of EU competition rules.

Multilateral interchange fees ("MIFs") are paid indirectly by a retailer to a cardholder's bank each time when a cardholder pays with a payment card. Such fees, of which consumers (cardholders) are generally unaware, inflate the cost of card acceptance for merchants. The fees are then passed on to all consumers as they are included in the prices charged by the merchants. The large variety of fees between Member States hinders the development of an internal market in card payments and related markets, such as internet and mobile payments.

The Court holds in particular that MIFs are a restriction of competition since they limit the pressure which merchants can exert on acquiring banks when negotiating the costs charged by those banks and that MIFs are not objectively necessary to operate the MasterCard system. It also holds that MasterCard is an association of undertakings even after the Initial Public Offering (IPO) of MasterCard Incorporated in 2006. Finally, the Court confirms that MasterCard produced insufficient evidence that MIFs create efficiencies that are passed on to consumers and that any advantages flowing from the MIFs to cardholders cannot compensate their disadvantages.

Today's judgment is important, because it endorses over 20 years' work by the Commission and national competition authorities to create a well-functioning cards market in the EU and bring the MIFs into line with competition rules.

The assessment upheld in today's judgment is also the basis of the Commission's on-going investigations into MasterCard's MIFs applicable to inter-regional transactions (i.e. when consumers from outside the EEA pay by card in Europe) and MIFs applicable to cross-border acquiring (i.e. when an acquiring bank provides services to a merchant in another EEA country). The judgment is also likely to have a bearing on other competition proceedings in the EU against MasterCard. Indeed, several court appeals in France, Italy and Hungary have been stayed awaiting today's judgment. In the UK an investigation by the National Competition Authority was put on hold and in Germany, Cyprus, and Hungary there are on-going investigations by the National Competition Authorities. The judgment will indirectly also have a bearing on actions for damages launched against MasterCard in the UK.

Interchange Fee Regulation

In July 2013, the Commission proposed to the Council and the European Parliament to adopt European legislation to cap the level of interchange fees payable by merchants in open, so-called four-party card schemes (the so-called "Interchange Fee Regulation", see [IP/13/730](#)). The proposal is part of a legislative package within the EU payments framework, together with a proposal for a revised Payments Services Directive (PSD2). The aim is to create a single payments market in the EU to lower costs for users, facilitate innovation and make cross-border payments, which are essential for the single market, as cheap and easy as domestic payments. A rapid adoption of the Interchange Fee Regulation will help to provide the payments industry with legal certainty on how to set their interchange fees.

Background to today's judgment

On 19 December 2007, the Commission adopted a Decision ordering MasterCard to withdraw its intra-EEA cross-border MIFs within six months, or to adopt a MIF that fulfilled Article 101(3) TFEU ([IP/07/1959](#)). MasterCard appealed the Decision to the General Court and in April 2009 unilaterally undertook to set its cross-border MIFs at 0.2% for debit cards and 0.3% for credit cards and amending other rules and practices ([IP/09/515](#)). On 24 May 2012, the General Court upheld the Commission's Decision ([Case T-111/08](#)). Today's judgment from the European Court of Justice follows on MasterCard's appeal of the General Court's judgment.

The European Court of Justice's judgement is available on the Court's website ([C-382/12 P MasterCard and others v Commission](#)).