

The applicant also states that the Commission has erred in law and in fact by clearing the 'no-discrimination rule', according to which merchants are prohibited from charging their costs for the use of debit card by a customer to that customer. According to the applicant, this rule constitutes a restriction on competition, since it prevents the merchants from using the threat of such discrimination as pressure in order to bargain for lower merchant's fees. The applicant states that the Commission has made an incomplete market investigation on this point.

Likewise, the applicant claims that the Commission has erred in clearing several other rules with the contested decision. Thus the Commission clears the 'cross-border issuing rules' that require that a bank wishing to start issuing cards in another state must comply with the rules applicable in that state. According to the applicant, this partitions the market de facto and prevents less restrictive rules in one state from being used by issuing banks as a competitive advantage in another state. Furthermore, the Commission erred in clearing the 'cross-border acquiring rule', which prevents, according to the applicant, merchants in one state from seeking an acquiring bank in another state where the multilateral interchange fee is lower.

Finally, the Commission gives insufficient reasoning for its clearance of the 'No acquiring without issuing rule'. This rule requires that a bank, wishing to acquire merchants, must issue a certain number of cards to customers before it may begin its acquiring activities. This amounts, according to the applicant, to a market sharing agreement between the current issuers.

**Action brought on 3 January 2002 by Robert Polinsky
against Court of Justice of the European Communities**

(Case T-1/02)

(2002/C 84/117)

(Language of the case: French)

An action against the Court of Justice was brought before the Court of First Instance of the European Communities on 3 January 2002 by Robert Polinsky, residing in Thionville (France), represented by Juan-Ramón Iturriagoitia, lawyer.

The applicant claims that the Court should:

- annul the decision of the Court of Justice of 25 September 2001;

- order the defendant to pay to the applicant, by way of compensation for the damage suffered and to be suffered, EUR 350 000, fixed with all manner of reservations, together with default interest at the rate of 10 % *per annum* as from 7 October 1999 until the date on which it is actually paid;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant is suffering from an occupational disease contracted after working in the Court of Justice building which contained asbestos.

According to the applicant, the Court of Justice confuses two categories of damage: that covered by Article 288 of the EC Treaty and that covered by Article 73 of the Staff Regulations. The applicant is not seeking a finding under Article 73 of the Staff Regulations that his health has deteriorated but compensation, under Article 288 of the EC Treaty, for non-material damage as a result of his illness, damage which is non-medical and non-economic.

The applicant claims that all the conditions for the granting of such compensation are met in his case. In particular, he has suffered actual damage in that his family and social lives have been disrupted as a result of his illness. Secondly, there is, in the applicant's view, a causal link between the damage suffered and the act complained of in that the Court of Justice did not take appropriate protective measures. Thirdly, the damage is unusual and special in nature.

**Action brought on 10 January 2002 by Schlüsselverlag
J.S. Moser Gesellschaft m.b.H. and Others against the
Commission of the European Communities**

(Case T-3/02)

(2002/C 84/118)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 January 2002 by Schlüsselverlag J.S. Moser Gesellschaft m.b.H., established in Innsbruck (Austria), J. Wimmer GmbH, established in Linz (Austria), Zeitungs- und Verlags-Gesellschaft m.b.H., established in Bregenz (Austria), Eugen Russ Vorarlberger Zeitungsverlag und Druckerei Gesellschaft mbH, established in Schwarzach (Austria), 'Die Presse' Verlagsgesellschaft m.b.H., established in Vienna (Austria), and 'Salzburger Nachrichten' Verlags-Gesellschaft m.b.H. & Co KG, established in Salzburg (Austria), represented by M. Krüger, lawyer.