

Final Report of the Hearing Officer ⁽¹⁾**AT.40049 — MasterCard II****(Text with EEA relevance)**

(2019/C 185/06)

1. Case AT.40049 concerns two aspects of the Mastercard card payment system ⁽²⁾. The present report is made in connection with a draft decision (the 'Draft Decision') concerning one of these aspects: the previously applicable rules concerning 'cross-border acquiring' within that system ⁽³⁾.
2. Cross-border acquiring takes place when a merchant is located in a different country than its acquirer ⁽⁴⁾. Under the rules at issue, unless a cross-border acquirer located in a different EEA Member State from that of the merchant had previously agreed an interchange fee with the issuer, that cross-border acquirer was obliged to pay the issuer the domestic default multilateral interchange fee ⁽⁵⁾ of the merchant's country.
3. The Draft Decision is addressed to MasterCard Europe S.A., MasterCard Incorporated and MasterCard International Incorporated (together, 'MasterCard').
4. According to the Draft Decision, from 27 February 2014 to 8 December 2015 inclusive, MasterCard infringed Article 101 TFEU and Article 53 of the EEA Agreement when adopting decisions regulating the applicable multilateral interchange fee in respect of cross-border acquiring in the cards payments sector in the EEA.
5. On 9 April 2013, the Commission initiated proceedings in respect of MasterCard. On 9 July 2015, it adopted a statement of objections covering both aspects of Case AT.40049.
6. On 24 July and 3 August 2015, MasterCard was granted access to the non-confidential documents in the investigation file. Following requests from MasterCard in August 2015, DG Competition organised, with the consent of the information providers concerned, a data room procedure whereby specified external advisers of MasterCard advisers could access, in a 'data room', sensitive information obtained in the context of the Commission's investigation, albeit in anonymised form where relevant.
7. MasterCard objected to the level of redactions imposed by DG Competition on the draft report prepared for MasterCard's attention by its external advisers in the data room. In relation to a subset of these redactions, applied to a specific section of that report, MasterCard referred its objections to me in accordance with Article 7(1) of Decision 2011/695/EU. MasterCard also sought a deferral of the deadline for its written response to the statement of objections.
8. In my decision of April 2016, I disagreed with DG Competition's assessment as confidential of the redacted information in that section. I also set a revised deadline for MasterCard's written response to the statement of objections at two weeks following receipt by MasterCard of an unredacted version of that section. MasterCard's written response of 21 April 2016 respected that revised deadline.

⁽¹⁾ Pursuant to Articles 16 and 17 of Decision of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29) ('Decision 2011/695/EU').

⁽²⁾ In an 'open' (or 'four-party') payment system such as the Mastercard system, the parties involved in each purchase made by payment card are, besides the owner/licensor of the system: (1) the cardholder; (2) the financial institution which issued that card (referred to as the 'issuer'); (3) the 'merchant'; and (4) the financial institution providing the merchant with services enabling it to accept the card as a means of settling the transaction concerned (referred to as the 'acquirer').

⁽³⁾ Proceedings are ongoing in relation to the other aspect of Case AT.40049, namely inter-regional multilateral interchange fees payable by acquirers to issuers as a result of transactions involving merchants located in the European Economic Area ('EEA') that are settled with Mastercard-branded consumer debit or credit cards issued outside the EEA.

⁽⁴⁾ See footnote 2 above for a brief explanation of the terms 'merchant' and 'acquirer' in this context.

⁽⁵⁾ Multilateral interchange fees are sums that, in respect of transactions settled by way of a card payment in a system such as the Mastercard system, are typically payable to the issuer by the acquirer in default of an alternative 'interchange' arrangement made bilaterally between issuer and acquirer in respect of the type of card and transaction concerned.

9. On 22 April 2016, DG Competition provided MasterCard with the last instalment of other passages of the data room report whose confidential nature MasterCard had not referred to me for independent review and which DG Competition had undertaken to release if relevant third parties consented.
 10. MasterCard accordingly submitted an updated version of its response to the statement of objections on 6 May 2016.
 11. I admitted three interested third persons to the proceedings, the first two of which accounted for three entities representing the Visa card payment system. When admitting the third interested third person, I explained why its request to take part in an oral hearing had come too late for me to be able to accede to it.
 12. MasterCard developed its arguments at an oral hearing held on 31 May 2016. The two interested third persons representing the Visa card payment system took part.
 13. On 3 December 2018, MasterCard submitted a formal offer of cooperation with the Commission. Among other things, MasterCard acknowledged in this offer that it had received the statement of objections, been granted full access to the file and been given sufficient opportunity to make its views known to the Commission.
 14. Overall, I consider that the effective exercise of procedural rights has been respected during the present proceedings.
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