

# Back to the drawing board: General Court misinterprets the cartel prohibition

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The European Court of Justice recently rejected the General Court's short-cut analysis on when arrangements between companies have the object of restricting competition. According to the Court of Justice, agreements should not be found to have this object too easily. If the object of a commercial arrangement is anti-competitive, the cartel prohibition applies and the actual effects of the arrangement do not have to be assessed. Too wide an interpretation of object restrictions would exempt competition authorities from having to demonstrate the actual effects of arrangements which are not established to be, by their very nature, harmful to competition. This ruling thus provides companies with the safeguard that competition authorities must perform a detailed economic analysis of the majority of arrangements that do not involve hard-core restrictions.

This case relates to tariff measures adopted by *Groupement des cartes bancaires*, a French economic interest grouping that manages the interoperability of the payment and withdrawal systems of bank cards issued by its members.

In its [2007 decision](#), the Commission concluded that these measures were anti-competitive by object and by effect. The Commission found that the tariff measures imposed by Groupement on new members, and the 'sleeper member fee' for members that did not have a significant bank card business, shut out new entrants from the payment cards issuance market. On [appeal](#), Groupement argued that the tariff measures should not have been classified as a restriction 'by object' since they had the legitimate objective of combatting free riding. But the General Court denied the appeal and ruled that possible legitimate objectives do not prevent measures from restricting competition by their object.

The ECJ [found](#) that the General Court, in characterising the tariff measures, failed to consider that an object restriction applies only to those types of arrangements that reveal, in themselves, a sufficient degree of harm to competition. The General Court, Commission and competition authorities of member states must take the content of the arrangement into account, as well as its objectives and the economic and legal context of which it forms a part. When determining the economic and legal context, it is also necessary to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and structure of the market or markets in question. In addition, although the parties' intention is not a necessary condition in determining whether an agreement has an anti-competitive object, this aspect may also be taken into account.

According to the ECJ, the General Court was wrong to infer the anti-competitive object of the tariff measures from the wording of the measures alone. The General Court should have explained how the wording revealed the existence of an object restriction. Having acknowledged that the measures sought to establish a certain ratio between the issuing and acquisition activities of the Groupement's members, the General Court was entitled, at most, to infer that these measures had the object of imposing a financial contribution on members who benefit from the acquisition efforts of other members. Such an object cannot, by its very nature, be harmful to normal competition, especially since the General Court also found that combatting free-riding was a legitimate objective. The ECJ therefore set aside the General Court's ruling and referred the case back to the General Court to assess whether the tariff measures have anti-competitive effects.