



COMPETITION APPEAL TRIBUNAL

**NOTICE OF A CLAIM FOR DAMAGES UNDER  
SECTION 47A OF THE COMPETITION ACT 1998**

**CASE NO. 1240/5/7/15**

Pursuant to rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648), the Registrar gives notice of the receipt of a claim for damages (the “Claim”) on 21 October 2015, under section 47A of the Competition Act 1998, by several hundred claimant companies within the Deutsche Bahn, Inditex, ASOS, Metro, AE and Hertz groups (together, the “Claimants”) against (1) MasterCard Incorporated; (2) MasterCard International Incorporated; and (3) MasterCard Europe SPRL (together, the “Defendants”). The Claimants are represented by Hausfeld & Co. LLP, 12 Gough Square, London EC4A 3DW (Reference: Nicola Boyle).

The Claim arises from a decision of the European Commission (the “Commission”) (Cases COMP/34.579 MasterCard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards) dated 19 December 2007 relating to a proceeding under Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union (“TFEU”)) and Article 53 of the Agreement on the European Economic Area (the “EEA Agreement”) (“the Decision”).

In the Decision, the Commission found that, from 22 May 1992 until 19 December 2007, the MasterCard payment organisation and the legal entities representing it, that is, the Defendants, had infringed Article 81 of the EC Treaty and, from 1 January 1994 until 19 December 2007, Article 53 of the EEA Agreement by in effect setting a minimum price which merchants had to pay to their acquiring bank for accepting payment cards in the EEA, by means of the intra-EEA fallback interchange fees for MasterCard branded consumer credit and charge cards and for MasterCard or Maestro branded debit cards (Article 1 of the Decision).

According to the Claim, each time a customer made a purchase of services from one of the Claimants by means of a MasterCard and/or Maestro branded payment card (unless the banks had agreed different terms or the acquiring bank was the same bank as the issuing bank), the customer’s bank (the issuing bank) would charge the Claimant’s bank (the acquiring bank) an interchange fee; and the Claimant’s bank would charge the Claimant a merchant service charge (“MSC”). The Claimants contend that the MSCs they paid to their acquiring banks were inflated in consequence of the interchange fees paid by the Claimants’ acquiring banks to issuing banks in respect of certain specified categories of transactions.

The Claimants claim:

- (1) Damages for breach of Article 101 TFEU and/or Article 53 of the EEA Agreement; and/or
- (2) Damages for breach of Article 1382 of the Belgian Civil Code and/or the Belgian Act on the Protection of Economic Competition consolidated on 15 September 2006; and/or
- (3) Further or alternatively, damages for breach of the relevant applicable law giving effect to the EU/EEA competition provisions in each of the EEA States; and/or
- (4) Interest on a compound alternatively a simple basis on such sums as may be due to the Claimants or any of them, at such rate and over such period as the Tribunal thinks fit; and/or
- (5) Costs; and/or
- (6) Such further or other relief as the Tribunal may think fit.

It is stated in the claim form that the parties to the Claim are already in litigation in the Chancery Division of the High Court (consolidated under Claim No. HC-12-E04911), and that the Claimants bring this Claim in the Tribunal in order to protect their position as regards limitation, insofar as it affects the follow-on element of their existing claims. The Claim is limited to those claims which could have been brought under section 47A prior to that section’s amendment by the Consumer Rights Act 2015. The Claimants rely on the Claim

only if and to the extent that their existing claims in the High Court are time-barred under any applicable law of limitation (which is denied).

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post at Victoria House, Bloomsbury Place, London WC1A 2EB, or by telephone (020 7979 7979), fax (020 7979 7978) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*  
Registrar

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