

OPUS 2

INTERNATIONAL

Sainsbury's Supermarkets Ltd v (1) MasterCard Inc, (2)
MasterCard International Inc, (3) MasterCard Europe S.P.R.L.

Day 18 Redacted

February 29, 2016

Opus 2 International - Official Court Reporters

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1 Monday, 29th February 2016
 2 (10.30 am)
 3 (Open session)
 4 Housekeeping
 5 MR JUSTICE BARLING: Good morning.
 6 MR BREALEY: Good morning, sir.
 7 MR JUSTICE BARLING: Good morning, Mr Cook.
 8 MR COOK: Sir, the next witness is Mr Harman.
 9 Before that, one small matter of housekeeping, which
 10 is Mr Smith asked last week if we could produce
 11 a collection of historic MIF rates. We have had a go at
 12 doing so. There are dozens of tables throughout the
 13 period, and what we have tried to do is identify --
 14 I think it ends up being about six of them -- but give
 15 it a reasonable cross-section of the period on the basis
 16 that there are, as we will see, dozens of MIF rates in
 17 total and we didn't think the Tribunal was necessarily
 18 going to want to see every time a minor rate changes;
 19 you will, I presume, want to see the broad spread of
 20 what takes place.
 21 So I was going to hand up -- initially, I was going
 22 to suggest we handed up one to Mr Smith and he have
 23 a look at it perhaps over lunchtime. If that's what the
 24 Tribunal was hoping for, then we will then finalise
 25 bundles on that basis. If you look at this and think we

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1 have given you too little detail, sir, then obviously we
 2 can go away and add a bit more detail to it.
 3 MR JUSTICE BARLING: Thank you very much, Mr Cook. Thanks
 4 to your team as well.
 5 MR COOK: Sir, Mr Harman.
 6 MR GREG HARMAN (sworn)
 7 Examination-in-chief by MR COOK
 8 MR JUSTICE BARLING: Good morning, Mr Harman.
 9 A. Good morning.
 10 MR COOK: Mr Harman, if you can be given bundles D3
 11 and D3.1, please.
 12 Mr Harman, I understand you have produced five
 13 reports for these proceedings; is that correct?
 14 A. That is correct.
 15 Q. If you turn to bundle D3, please, tab 2, you will see
 16 there it is called "The expert report of Mr Harman", but
 17 it is the first report, and if you could turn to
 18 page 137, please.
 19 A. Yes.
 20 Q. Is that your signature?
 21 A. It is.
 22 Q. If you look at chapter 10 of this report, which starts
 23 at page 122, that's the section of your report dealing
 24 with the effect of a lower MIF on the benefits to
 25 Sainsbury's from Sainsbury's Bank.

2

1 Is that an area of your analysis which has moved on
 2 from the analysis carried out in your first report?
 3 A. Yes. In my first report I set out an analysis of
 4 Sainsbury's Bank at a relatively high level -- that
 5 analysis was advanced by Mr von Hinten-Reed -- which
 6 I then reply to in my third report and then subsequently
 7 in my fifth report.
 8 So I think it is fair to say that in the subsequent
 9 reports the analysis has been refined.
 10 Q. If you can turn now to bundle D3.1, please, and tab 4 in
 11 that bundle.
 12 A. Yes.
 13 Q. It is headed your second report. If you could turn to
 14 page 503, is that your signature?
 15 A. It is.
 16 Q. This report concerns interest. Is that an area of your
 17 analysis which has stayed the same?
 18 A. It's changed a little bit. Again, in this report
 19 I've flagged that my calculation of the cost of debt and
 20 the interest rate on cash balances was something that
 21 I didn't have a full set of information on. And
 22 I caveated that if further information was made
 23 available then I would refine that analysis, which
 24 I subsequently did, yes.
 25 Q. If you turn to tab 5 please. That is your third report.

3

1 If I could ask you to turn to page 566.
 2 A. Yes.
 3 Q. Is that your signature?
 4 A. It is.
 5 Q. And tab 7, please.
 6 A. Yes.
 7 Q. That's your fourth report. If you could turn to
 8 page 666.
 9 A. Yes.
 10 Q. Is that your signature?
 11 A. It is.
 12 Q. And tab 8, please. Your fifth report. If you turn to
 13 page 701.
 14 A. Yes.
 15 Q. Is that your signature?
 16 A. It is.
 17 Q. Subject to the points you have made about areas in which
 18 your analysis has moved on or developed as more
 19 information became available, do those represent your
 20 full and complete professional opinions?
 21 A. They do, yes.
 22 Cross-examination by MR BREALEY
 23 MR BREALEY: Good morning, Mr Harman.
 24 A. Good morning.
 25 Q. So I think you will need your first report, which is

4

1 at D3. You can put all the others away for the moment.
 2 A. Tab 2?
 3 Q. It is at tab 2, yes. In your first report -- you don't
 4 have to turn it up -- at 1.68, page 36, you say:
 5 "My opinions are limited to matters that fall within
 6 my expertise as an accountant and exclude questions of
 7 law."
 8 So that is what you are giving evidence on, matters
 9 that fall within your expertise as an accountant,
 10 correct?
 11 A. I do give evidence as an accountant. I also have
 12 a Masters in competition and regulatory economics, so
 13 where the two of those combine I can comment on
 14 economics. But a lot of the report that I'm focusing on
 15 is of an accounting nature, and the interpretation of
 16 the budgeting process that I see at Sainsbury's.
 17 Q. So you are giving evidence on economics as well, are
 18 you?
 19 A. I think when I get to the -- my report on interest,
 20 I think I may say as an economist and an accountant
 21 I would have to check that.
 22 Q. Okay. So on the basis that 168 is primarily the case,
 23 which is you giving your expertise as an accountant --
 24 A. Yes.
 25 Q. -- could you go to page 94 of your first report, please.

1 That is paragraphs 8.19 and 8.20.
 2 A. Yes.
 3 Q. Now, at 8.19, and this is under a heading "Political
 4 pressure to pass on lower MIFs to consumers", and at
 5 8.19 --
 6 MR JUSTICE BARLING: Mr Brealey, just to bear in mind, we
 7 are in open court at the moment. This is coloured, but
 8 I don't know to what extent you need to go into some of
 9 the detail, in which case you might want to consider
 10 whether it is possible to do so without --
 11 MR BREALEY: I think we did say that it was almost going to
 12 be exclusively in camera today.
 13 MR JUSTICE BARLING: I think you did say that.
 14 MR BREALEY: It is going to be blue and yellow.
 15 MR JUSTICE BARLING: I don't know whether there's anyone
 16 here who is okay to hear yellow? This is Sainsbury's.
 17 Those people who, I'm afraid, are not in the
 18 confidentiality ring will have to leave unless they are
 19 in the confidentiality ring for the -- Are you going on
 20 to blue soon, or is it a mixture of blue and yellow from
 21 the outset?
 22 MR BREALEY: It is probably a mixture of blue and yellow.
 23 MR JUSTICE BARLING: I'm afraid anyone who is not in the
 24 confidentiality ring, even those who are in it to
 25 a limited extent, will have to leave. I'm so sorry.

1 If it emerges that we can take the notice off, we
 2 will keep it under review as much as we can.
 3 MR BREALEY: On reflection, I am not sure that what I'm
 4 saying is necessarily blue.
 5 MR JUSTICE BARLING: Most of this report is yellow.
 6 MR BREALEY: Yes.
 7 MR JUSTICE BARLING: So if you are going to be on this for
 8 a bit ... So anyone, therefore, who is entitled to hear
 9 Sainsbury's material, even if they are not entitled to
 10 hear MasterCard's, may stay for the time being.
 11 (10.43 am)
 12 (End of open session)
 13 (Beginning of yellow confidential session - REDACTED)

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