



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1287/5/7/18

BETWEEN:

- (1) ASDA STORES LIMITED
(2) ARGOS LIMITED and others
(3) WM MORRISON SUPERMARKETS PLC

Claimants

- v -

- (1) MASTERCARD INCORPORATED
(2) MASTERCARD INTERNATIONAL INCORPORATED
(3) MASTERCARD EUROPE SA
(4) ~~MASTERCARD UK MEMBERS FORUM LIMITED~~
(5) MASTERCARD/EUROPAY UK LIMITED

Defendants

ORDER

UPON the Order of the Court of Appeal dated 4 July 2018 remitting these proceedings to the Competition Appeal Tribunal (i) for reconsideration of whether the domestic multilateral interchange fees (“MIF”) of the Defendants satisfy the conditions for exemption pursuant to Article 101(3) TFEU, section 9 of the Competition Act 1998 and/or Article 53(3) EEA (“the exemption conditions”) and (ii) for determination of the quantum claim of the Claimants (“the quantum issue”)

AND UPON the Order of the Supreme Court dated 17 June 2020, varying the Order of the Court of Appeal such that it is declared that the Defendants have failed to prove that a relevant MIF set at any positive level would have satisfied the exemption conditions and that this issue was accordingly concluded

AND UPON the Claimants serving an amended request for information on the Defendants on 26 November 2020 (“the Amended RFI”)

AND UPON the Claimants serving a proposed draft Amended Particulars of Claim on the Defendants on 9 December 2020 (“the Proposed Amended Particulars of Claim”)

AND UPON the Defendants serving proposed draft Amended Defences on the Claimants on 11 December 2020 (“the Proposed Amended Defences”)

AND UPON the Defendants serving their response to the Amended RFI on the Claimants on 14 December 2020 (“the Amended RFI Response”)

AND UPON reading the skeleton arguments of counsel for the Claimants and for the Defendants

AND UPON hearing Counsel for the parties at the remote case management conference (“CMC”) on 16 December 2020

IT IS ORDERED THAT:

Pleadings

1. The Claimants be permitted to amend their Particulars of Claim in the form of the Proposed Amended Particulars of Claim (as corrected by footnote 2 of the skeleton argument of the Claimants’ counsel).
2. The Claimants shall file their amended Particulars of Claim (as modified to include their estimates of the total amounts they paid on account of the MIFs subject to the claims) by 8 January 2021.
3. The Claimants shall file and serve their written submissions in response to the Defendants’ Proposed Amended Defences and any outstanding issues relating to the Defendants’ Amended RFI Response by 4pm on the date 14 days prior to the CMC listed pursuant to paragraph 5 below.
4. The Defendants shall file and serve their written submissions by 4pm on the date 7 days prior to the CMC listed pursuant to paragraph 5 below.
5. A CMC with a time estimate of one day shall be listed for the first available date after 29 January 2021 to determine disputed issues on the application to amend the Defences and any outstanding issues relating to the Defendants’ Amended RFI Response.

Potential common issues CMC

6. A further case management conference shall be held following the determination pursuant to paragraph 5 of this order and the determination of the scope of the further proceedings in Case No. 1288/5/7/18 (*Sainsbury’s*

Supermarkets Ltd v Visa Europe Services LLC and others) and Case No. 1286/5/7/18 (*Sainsbury's Supermarkets Ltd v Mastercard Incorporated and others*), jointly with those two Sainsbury's cases, to determine whether there are any, and if so what, common issues that can be heard jointly in all three or any two of these cases.

Further/Supplemental Disclosure

7. The parties shall provide further and/or supplemental disclosure on the quantum issue by list by 4pm on 28 May 2021. Each party shall simultaneously provide copies in electronic form for inspection. The parties shall cooperate in advance regarding the means of provision of such inspection.

Trial

8. An eight week window shall be reserved for trial of the quantum issue, starting on 11 January 2023, with Fridays being non-sitting days and an additional week for pre-reading.

Miscellaneous

9. Costs in the case.
10. There be liberty to apply.

The Hon Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 16 December 2020
Drawn: 13 January 2021