



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No. 1287/5/7/18

BETWEEN:

- (1) ASDA STORES LIMITED  
(2) ~~ARCADIA GROUP BRANDS LIMITED and others~~  
(3) ARGOS LIMITED and others  
(4) WM MORRISON SUPERMARKETS PLC

Claimants

- v -

- (1) MASTERCARD INCORPORATED  
(2) MASTERCARD INTERNATIONAL INCORPORATED  
(3) MASTERCARD EUROPE SA (formerly known as MASTERCARD  
EUROPE SPRL)  
(4) MASTERCARD/EUROPAY UK LIMITED

Defendants

---

**CONFIDENTIALITY RING ORDER**

---

**UPON HEARING** Counsel for the parties at a Case Management Conference on 16 December 2020;

**AND UPON READING** the documents on the file recorded as having been read;

**AND UPON** noting the Confidentiality Ring Order of the High Court dated 5 September 2014, made in these proceedings before the cases were remitted to the Tribunal, as amended or supplemented (a) by the Court in its orders of 15 September

2014 and 24 May 2016, and (b) by the agreement of the parties (following the letters of Stewarts Law dated 5 July 2016, Jones Day of 7 July 2016, and Stewarts Law of 8 July 2016) (“**the High Court Order**”);

**AND UPON** the terms of this Order as set out below having been agreed between the Parties;

**IT IS ORDERED BY CONSENT THAT:**

1. This Order replaces the High Court Order, as between the Parties. All documents disclosed by the Parties in the context of these proceedings, in both Phase 1 and Phase 2, shall be covered by the terms of this Order.
2. For each of the persons named in Part A1 and B1 of the Schedule to this Order that have given a written undertaking pursuant to the terms of the High Court Order, such undertakings shall continue to apply in respect of this Confidentiality Order, and they will thereby be designated as an Inner Confidentiality Ring Member and Outer Confidentiality Ring Member as indicated in the Schedule.
3. For the avoidance of doubt, nothing in this Order shall prevent Confidential Information from being shown to an individual employed by the party who disclosed that information.

DEFINITIONS

4. For the purposes of this Order:
  - 4.1 "**Confidential Document**" means any document containing Confidential Information (whether in whole or in part), which are disclosed in these proceedings by any Party. For the avoidance of doubt, any notes, copies, reports, submissions or other documents containing, reproducing or reflecting the content of Confidential Documents are themselves Confidential Documents unless all Confidential Information contained in them has been redacted.

Documents that use Confidential Information in Confidential Documents (for example, to provide an aggregation of Confidential Information) but which do not reveal the content of Confidential Information shall not be Confidential Documents.

4.2 “**Confidential Information**” means Inner Confidentiality Ring Information and Outer Confidentiality Ring Information.

4.3 “**Inner Confidentiality Ring Information**” means a Confidential Document or Confidential Documents disclosed in these proceedings, including any part of those Confidential Documents and any information contained within those Confidential Documents, which (a) the disclosing party designated as confidential and to be shared with Inner Confidentiality Ring Members only, and (b) has not subsequently been re-designated as Outer Confidentiality Ring Information or as not confidential, either by consent or by order of the High Court or the Tribunal;

4.4 “**Outer Confidentiality Ring Information**” means a Confidential Document or Confidential Documents disclosed in these proceedings, including any part of those Confidential Documents and any information contained within the Confidential Documents, which (a) the disclosing party has designated as confidential but has not requested be confined to Inner Confidentiality Ring Members, and (b) has not subsequently been re-designated as not confidential, either by consent or by order of the High Court or the Tribunal;

4.5 “**Confidentiality Ring Members**” means Inner Confidentiality Ring Members and Outer Confidentiality Ring Members;

4.6 “**Inner Confidentiality Ring Members**” are persons who:

(a) are external legal or professional advisers;

- (b) are listed in Part A and Part A1 of the Schedule to this Order, as amended from time to time in accordance with the provisions of paragraph 7 below or by an order of the Tribunal; and
- (c) who have also given a signed undertaking to the Tribunal in the terms of Part C of the Schedule to this Order or in the terms of the High Court Order which is to be treated as an undertaking to the Tribunal in accordance with paragraph 2 above;

4.7 **“Outer Confidentiality Ring Members”** are:

- (a) the Inner Confidentiality Ring Members; and
- (b) those persons listed in Part B and Part B1 of the Schedule to this Order, as amended from time to time in accordance the provisions of paragraph 7 below or by an order of the Tribunal, who:
  - (i) are in-house lawyers at the Parties who do not perform any commercial or business role;
  - (ii) have given a signed undertaking to the Tribunal in the terms of Part D of the Schedule to this Order or in the terms of the High Court Order which is to be treated as an undertaking to the Tribunal in accordance with paragraph 2 above; and
  - (iii) only have access to the Outer Confidentiality Ring Information which has been identified pursuant to paragraph 8 below;

4.8 **“Settled Party”** means any party whose claim has been withdrawn.

5. When Inner Confidentiality Ring Information is disclosed in the context of these proceedings, it is to be provided or made available solely to the Inner Confidentiality Ring Members (without prejudice to paragraph 3 of this Order), to be held by them on the terms set out in Part C of the Schedule to this Order, subject to the following paragraphs of this Order.
6. When Outer Confidentiality Ring Information is disclosed in the context of these proceedings, it is to be provided or made available to Confidentiality Ring Members (without prejudice to paragraph 3 of this Order), to be held by them on the terms set out in:
  - 6.1 if the individual is also an Inner Confidentiality Ring Member, Part C of the Schedule to this Order, subject to the following paragraphs of this Order;
  - 6.2 if the individual is not also an Inner Confidentiality Ring Member, Part D of the Schedule to this Order, subject to the following paragraphs of this Order.
7. If a Party (“**the Proposing Party**”) wishes to add an additional person as an Inner Confidentiality Ring Member or as an Outer Confidentiality Ring Member:
  - 7.1 it shall notify the other Parties in writing, and they may consent in writing, with such consent not to be unreasonably withheld;
  - 7.2 if any Party objects to the proposed addition as an Inner Confidentiality Ring Member or an Outer Confidentiality Ring Member (as applicable), they shall notify the Proposing Party in writing within 5 days that they so object, giving reasons;
  - 7.3 if no Party raises an objection in accordance with paragraph 7.2 above, then following the expiry of 2 clear days, the additional person shall be designated

as an Inner Confidentiality Ring Member or an Outer Confidentiality Ring Member (as applicable);

7.4 on the sooner of consent being provided in accordance with paragraph 7.1 above or deemed in accordance with paragraph 7.3:

(a) the additional person will be required to give the written undertaking to the Tribunal in the terms of Part C or Part D (as appropriate) of the Schedule to this Order; and

(b) the Proposing Party will provide the written undertaking referred to in paragraph 7.4(a) above and an amended version of Part A or Part B (as appropriate) to this Order to the Tribunal and the other Parties;

7.5 if any objection referred to in paragraph 7.2 above is received, the Proposing Party may apply to the Tribunal, on notice, to include the person as a Confidential Ring Member (as applicable).

8. A Party disclosing a document in connection with these proceedings may designate that the document is confidential or not confidential. The following procedures shall apply:

8.1 designation of a document as confidential must be made in writing to the Parties receiving the disclosure. Failure to provide a designation for a document at the time the document is disclosed shall be deemed to be a designation that the document in question is not confidential;

8.2 Each Party shall be responsible, in respect of any document containing Confidential Information belonging to them which is disclosed, for labelling and highlighting any Confidential Documents and Confidential Information in a way that the designation of any document or part of any document is clear;

8.3 upon written request, within 7 days of the date of disclosure the Party providing the disclosure must provide a written explanation of the confidential designation, sufficient to make the basis of that designation clear. The

requesting Party shall not unreasonably withhold consent to an extension of time for this purpose, where it is reasonably required in view of the nature and/or number of documents which are the subject of the request.

8.4 a Party receiving disclosure of documents may request that the disclosing Party amend the designation of a document that it has disclosed. The following procedure shall apply:

- (a) the requesting Party must provide a written request to the disclosing Party, copied to the other Parties, specifying the relevant Confidential Information and explaining why it is reasonable and necessary for the designation of the Confidential Information to be amended. The Parties will make reasonable endeavours to ensure that any such requests are brought, as far as possible, in manageable batches;
- (b) the disclosing Party may consent in writing to amend the designation of the Confidential Information. Such consent shall not be unreasonably withheld;
- (c) a response should be provided within 7 days of the written request referred to at paragraph 8.4(a) above being received, save that requesting Party shall not unreasonably withhold consent to an extension of time for this purpose, where it is reasonably required in view of the nature and/or number of documents which are the subject of the request. If no response is provided within 7 days of receipt of a written request, or the extended time period that the Parties have agreed, consent shall be deemed to have been given and the document in question shall be deemed not to be a Confidential Document; and
- (d) should an objection be received within the 7 day period referred to in paragraph 8.4(c) above, the requesting Party may apply to the Tribunal, on notice, for an order that the designation of the Confidential Information should be changed. Any such application must be made as soon as reasonably possible but in any event within 7 days following

receipt of the disclosing Party's response pursuant to paragraph 8.4(c) above. For the avoidance of doubt, a document in respect of which an application is made shall continue to be designated a Confidential Document until such time as the Tribunal orders that the designation should be changed.

8.5 If a Party considers that particular Confidential Information, contained in a document or any part thereof, needs to be shown to a person who is not a Confidentiality Ring Member, or that Inner Confidentiality Ring Information needs to be shown to an Outer Confidentiality Ring Member:

- (a) the requesting Party must provide a written request to the disclosing Party, copied to the other Parties, specifying the relevant Confidential Information and explaining the person or persons to whom it is proposed that the document should be shown, and why it is necessary to show the document to that person or those persons;
- (b) the disclosing Party may consent in writing to the Confidential Information being shown to the additional person or persons concerned, upon them providing written undertaking to the Tribunal in the terms of Part C or Part D (as appropriate) of the Schedule to this Order. Such consent shall not be unreasonably withheld;
- (c) a response should be provided within 7 days of the written request referred to at paragraph 8.5(a) above being received, save that the requesting Party shall not unreasonably withhold consent to an extension of time for this purpose, where it is reasonably required in view of the nature and/or number of documents which are the subject of the request. If no response is received within 7 days, or the extended time period that the Parties have agreed, consent shall be deemed to have been given; and
- (d) should an objection be received within the 7 day period referred to in paragraph 8.5(c), the requesting Party may apply to the Tribunal, on notice, for an order that the Confidential Information may be disclosed



to the additional person or persons concerned. Any such application must be made as soon as reasonably possible but in any event within 7 days following receipt of the disclosing Party's response pursuant to paragraph 8.5(c) above. For the avoidance of doubt, no Confidential Information may be disclosed to the additional person or persons concerned until such time as the Tribunal orders that the request pursuant to paragraph 8.5(a) should be granted.

- 8.6 Where a Party has previously agreed in writing that Confidential Information, contained in a document or any part thereof, may be shown to a person who is not a Confidentiality Ring Member, or that Inner Confidentiality Ring Information may be shown to an Outer Confidentiality Ring Member, that agreement shall be deemed to have been provided pursuant to paragraph 8.5(b) of this Order.
9. When Inner Confidentiality Ring Information or Outer Confidentiality Ring Information is disclosed in the context of these proceedings after a Party has become a Settled Party, that Inner Confidentiality Ring Information or Outer Confidentiality Ring Information will not be provided to Confidentiality Ring Members who act for or on behalf of the Settled Party.
10. The obligations contained in the undertakings provided pursuant to this Order or the High Court Order and CPR Rule 31.22 and/or Rule 102 of the Competition Appeal Tribunal Rules 2015 shall continue to apply upon conclusion or discontinuance of the Claimants' claims, or any of them, and each Party to this Order (including any party who has become a Settled Party) shall continue to treat all Confidential Information in accordance with this Order unless it has confirmed to all the other Parties that all Confidential Information held by it or on its behalf has been destroyed.
11. During any hearing in respect of these proceedings, each Party wishing to refer to a Confidential Document shall be responsible for indicating to the Tribunal

that the document contains Confidential Information and (i) asking the Tribunal to go into private, or (ii) inviting the Tribunal to silently read the Confidential Document so that submissions can thereafter be made by a Party in a public hearing without expressly revealing the contents of that Confidential Document.

12. Nothing in this Order shall prevent or prohibit a receiving Party from taking any action (including in particular disclosing Confidential Information and/or Confidential Documents to a person who is not a Confidentiality Ring Member and/or referring to such documents or information in a public hearing) which has been authorised in writing by the disclosing Party or which a receiving Party is required to take by applicable law or by a court of competent jurisdiction.

13. There shall be liberty to apply, if appropriate.

14. Costs in the case.

**The Hon Mr Justice Roth**  
President of the Competition Appeal Tribunal

Made: 16 December 2020  
Drawn: 17 December 2020