



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1288/5/7/18

BETWEEN:

SAINSBURY'S SUPERMARKETS LTD

Claimant

- v -

(1) VISA EUROPE SERVICES LLC
(2) VISA EUROPE LTD
(3) VISA UK LTD

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 (“MIFs”) 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 issue”) and (ii) for assessment of the quantum claim of the Claimant (“the quantum issue”)

AND UPON the Order of the Supreme Court dated 17 June 2020, varying the Order of the Court of Appeal

AND UPON the parties having resolved for the purpose of these proceedings the exemption issue on the basis that MIFs at 0.2% for debit cards and 0.19% for credit cards satisfy the criteria for exemption

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

AND UPON hearing Leading Counsel for the Claimant and Leading Counsel for the Defendants at a case management conference (“CMC”) heard remotely on 16 December 2020

IT IS ORDERED THAT:

1. Subject to paragraph 18 below, the quantum issue in these proceedings shall be heard separately from the further proceedings in Case No. 1286/5/7/18 *Sainsbury's Supermarkets Ltd v Mastercard Incorporated and others* ("*Sainsbury's v Mastercard*").

Statements of Case

2. The Claimant shall produce its Statement of Case on the quantum issue by 8 January 2021.
3. The Defendants shall produce their Statement of Case in response on the quantum issue by 22 January 2021.

Disclosure

4. The parties shall identify the specific categories of further documents that they are seeking by 8 February 2020 and seek to agree those specific categories by 22 February 2021. Insofar as there is any dispute as to those categories of documents that shall be dealt with at the CMC provided for in paragraph 19 below.
5. The supplemental disclosure shall be made by 23 April 2021.
6. Documents disclosed shall be made available for inspection by each party by delivery of an electronic production of all disclosed documents within seven days of the date of disclosure.

Witnesses of fact

7. Signed statements of witnesses of fact, and hearsay notices where required by CPR 33.2, shall be exchanged simultaneously and filed by 4pm on 17 September 2021.
8. Reply witness statements, if any, and hearsay notices where required by CPR 33.2, shall be exchanged simultaneously and filed by 4pm on 5 November 2021.

Expert evidence

9. The parties' proposals for expert evidence, identifying the experts they wish to call and the issues which those experts are to address, shall be filed and served by 4pm on 8 February 2021.
10. The question of permission to adduce such expert evidence as proposed shall be dealt with at the CMC provided for in paragraph 19 below.
11. The parties shall agree a list (or lists) of questions to be asked of each relevant expert by 4pm on 17 December 2021.
12. The experts of like discipline shall meet on a without prejudice basis and without the presence of lawyers to discuss the nature of the evidence that they will give and the methods used for any quantification by 14 January 2022.
13. Signed reports of experts shall be exchanged simultaneously and filed by 4pm on 4 March 2022.
14. Any rebuttal or supplemental experts' reports shall be exchanged simultaneously and filed by 4pm on 13 April 2022.
15. The experts of like discipline shall meet on a without prejudice basis and without the presence of lawyers by 4pm on 27 April 2022 for the purpose of:
(i) identifying the issues in dispute between them; and (ii) where possible, reaching agreement on those issues.
16. The Joint Memorandum of Experts shall be completed and filed by 4pm on 9 May 2022 showing: (i) those issues on which they agree; and (ii) those issues on which they disagree and a summary of their reasons for disagreeing.
17. If the experts' reports cannot be agreed, the parties shall be at liberty to call expert witnesses at the trial, limited to those experts whose reports have been exchanged pursuant to paragraph 13 of this Order.

Next CMCs

18. A further CMC shall be held following the determination the scope of the further proceedings in *Sainsbury's v Mastercard* and in Case No. 1287/5/7/18 *ASDA Stores Limited and others v Mastercard Incorporated and others* (“*AAM v Mastercard*”), jointly with the *Sainsbury's v Mastercard* and *AAM v Mastercard* 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.
19. A CMC (in this case alone) shall be held on a date in March 2021, subject to counsel's availability, with a time estimate of half a day, to deal with any issues concerning disclosure, the question of expert evidence and to give further directions for the timetable to trial, including the listing of a pre-trial review.

Quantum Trial

20. The trial of the quantum issue shall be listed to start on 20 June 2022, with a time estimate of three weeks and a week of pre-reading commencing the week of 13 June 2022.

Miscellaneous

21. There be liberty to apply.
22. Costs in the case.

The Hon Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 16 December 2020
Drawn: 13 January 2021