



**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1266/7/7/16

B E T W E E N :

WALTER HUGH MERRICKS CBE

Applicant /
Proposed Class Representative

- and -

**(1) MASTERCARD INCORPORATED
(2) MASTERCARD INTERNATIONAL INCORPORATED
(3) MASTERCARD EUROPE S.P.R.L.**

Respondents /
Proposed Defendants

COLLECTIVE PROCEEDINGS ORDER

UPON the Application of the proposed class representative for a Collective Proceedings Order pursuant to section 47B of the Competition Act 1998 (the “**Act**”)

UPON reading the evidence and material submitted by the parties

UPON hearing Leading Counsel for the proposed class representative and Leading Counsel for the proposed Defendants

AND HAVING REGARD TO the Tribunal’s powers under section 47B(5) of the Act and Rule 77 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “**CAT Rules**”)

AND UPON the Proposed Defendants seeking permission to appeal against and having indicated that they may also seek judicial review against the decision of the Tribunal (in

[2022] CAT 13) that the domicile date be 6 September 2016 (“**Mastercard’s Appeal**”)

IT IS ORDERED THAT:

Authorisation

1. The claims identified at paragraph 3.4 below (the “**Claims**”) are authorised to be continued as collective proceedings for the purposes of section 47B of the Act (the “**Collective Proceedings**”).
2. Walter Hugh Merricks CBE is authorised to act as the class representative in the Collective Proceedings in accordance with Section 47B(8) of the Act and Rule 78 of the CAT Rules.

Details of the Collective Proceedings

3. It be recorded, for the purposes of Rule 80 of the CAT Rules, that:
 - 3.1 the class representative’s address for service is: Willkie Farr & Gallagher (UK) LLP (Attention: Boris Bronfentrinker / Nicola Chesaites), Citypoint, 1 Ropemaker Steet, London, EC2Y 9AW;
 - 3.2 the Defendants are (1) Mastercard Incorporated; (2) Mastercard International Incorporated; and (3) Mastercard Europe S.P.R.L.;
 - 3.3 the class of persons whose claims are to be included in the Collective Proceedings shall be: “Individuals who between 22 May 1992 and 21 June 2008 purchased goods and/or services from businesses selling in the United Kingdom that accepted Mastercard cards, at a time at which those individuals were both (1) resident in the United Kingdom for a continuous period of at least three months, and (2) aged 16 years or over; together with the personal/ authorised representative of the estate of any individual who meets that description and was alive on 6th September 2016, but subsequently died”¹ (the “**Class**”);
 - 3.4 the Claims certified for inclusion in these Collective Proceedings are so-

¹ Individuals who died prior to 6 September 2016 are not included within the Class.

called “follow-on” claims under s 47A of the Act for breach of statutory duty in respect of the Defendants’ infringement of Article 101 TFEU (then Article 81 EC), as determined in the European Commission’s Decision (COMP/34.579 MasterCard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards) of 19 December 2007, seeking compensation for loss and damage alleged to have been suffered by the individuals in the Class (or by deceased persons whose estates are represented in the Class) as a result of (i) the interchange fees paid by acquiring banks to issuing banks, on both cross-border transactions and domestic transactions, being higher than they would have been absent the Defendants’ infringement of Article 101 TFEU; and (ii) these higher interchange fees being passed on to consumers by businesses, that accepted Mastercard cards, with those businesses then charging to the members of the Class prices for goods and/or services that were higher than they would otherwise have been had the Defendants not committed the infringement of Article 101 TFEU;

- 3.5 the remedy sought is an aggregate award of damages, together with simple interest, and/or costs and/or any such further relief or other relief as the Tribunal may order; and
- 3.6 the Collective Proceedings shall be opt-out collective proceedings within the meaning of section 47B(11) of the Act.

Domicile date, opting-in and opting-out

- 4. The domicile date for the purposes of section 47(B)(11)(b)(i) of the Act and Rule 80(g) of the CAT Rules shall be 6 September 2016, and:
 - 4.1 any member of the Class who was domiciled in the United Kingdom as at the domicile date and who wishes to opt-out of the Collective Proceedings must do so by the date to be specified in the Notice annexed to this Order, such date to be determined following the final determination of Mastercard’s Appeal (including the determination of any further appeal arising therefrom) and will allow for a period of 12 weeks; and

- 4.2 any member of the Class who was not domiciled in the United Kingdom as at the domicile date and who wishes to opt-in to the Collective Proceedings must do so by the date specified in the Notice annexed to this Order, such date to be determined following the final determination of Mastercard's Appeal (including the determination of any further appeal arising therefrom) and will allow for a period of 12 weeks.
5. The method by which any member of the Class (on their own behalf and/or as a personal/authorised representative of the estate of a deceased person) may opt-out of or opt-in to the Collective Proceedings, in accordance with paragraph 4 above, shall be as set out in the Notice annexed to this Order.

Publicity

6. The class representative shall publish a Notice to the Class in accordance with Rule 81 of the CAT Rules and as approved by the Tribunal in the annexed form within 7 working days of the determination of Mastercard's Appeal (including the determination of any further appeal arising therefrom) and the date in the notice to be specified in accordance with para 4 of this Order.

Forum

7. These Collective Proceedings shall be treated as proceedings in England and Wales for the purposes of Rule 18 and 52 of the CAT Rules.

Statements of case

8. The Defendants are to file and serve their Defence to the Amended Claim Form by 4pm on 9 May 2022.
9. The class representative is to file and serve any Reply, if so advised, by 4pm on 27 June 2022.
10. The class representative is to serve supplementary information making any adjustments to the quantum of the amounts claimed in view of the size of the class (including in view of: the exclusion of claims of persons who fall within the class definition but died before 6 September 2016; the exclusion of claims of persons

who were domiciled in the UK on the domicile date and opt out of the proceedings; and the inclusion of claims of persons who were domiciled outside the UK on the domicile date and who opt in), within 2 months of the dates specified in paragraphs 4.1 and 4.2 of this Order.

Other

11. There be liberty to apply.

The Honourable Mr Justice Roth
Chairman of the Competition Appeal Tribunal

Made: 18 May 2022
Drawn: 18 May 2022