



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1266/7/7/16

B E T W E E N :

WALTER HUGH MERRICKS CBE

Class Representative

- and -

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

Defendants

ORDER

UPON a Case Management Conference taking place on 20 and 22 September 2022.

AND UPON the parties lodging an agreed List of Issues with the Tribunal attached at Annex A.

AND UPON the Defendants agreeing to give disclosure and inspection to the Class Representative of:

- (a) the disclosure that Mastercard UK Members Forum Limited (the “**MMF**”) provided to the claimants in Case No: 1287/5/7/18: *Asda Stores Limited, Argos Limited and others and WM Morrison Supermarkets plc v Mastercard Incorporated, Mastercard International Incorporated, Mastercard Europe SA and Mastercard/Europay UK Limited* (the “**AAM Proceedings**”) under the terms of a settlement agreement, which was subsequently provided to the Mastercard defendants in those proceedings in 2014 (the “**MMF Documents**”);
- (b) the settlement agreement between the claimants in the AAM Proceedings and MMF pursuant to which the MMF Documents were provided to Mastercard (the “**AAM-MMF Settlement Agreement**”);

AND UPON the Class Representative’s applications to:

- (a) amend the Amended Collective Proceedings Claim Form to allow the class members to recover the loss it is alleged they suffered as a result of the Infringement and which arose after the end of the Full Infringement Period (the “**Run-Off Application**”); and

- (b) amend the Amended Collective Proceedings Claim Form and the Reply to correct inadvertent errors (“**Correction Amendment Applications**”)

(together referred to as the “**Amendment Applications**”).

AND UPON a confidentiality ring having been agreed by the parties in the form set out at Annex C to this Order (the “**Confidentiality Ring**”).

AND UPON the defined terms having the same meaning as in the draft Re-Amended Collective Proceedings Claim Form filed with the Class Representative’s Amendment Applications.

AND FURTHER UPON hearing Leading Counsel for the Class Representative and the Defendants.

IT IS ORDERED THAT:

Disclosure

1. The Defendants shall give disclosure and inspection of:
 - a. the least redacted version of the European Commission Decision dated 19 December 2007 (COMP/34.579) (the “**EC Decision**”) they hold by no later than **4pm on 4 October 2022**;
 - b. the **MMF Documents** by no later than **4pm on 4 October 2022**;
 - c. a schedule specifying, chronologically: (i) the level of each EEA MIF for Mastercard branded consumer credit cards or Maestro debit cards set during the period 22 May 1992 to 21 June 2010 (the “**Claim Period**”); and (ii) the dates for which each of the EEA MIFs applied, with accompanying underlying documentation from which the schedule is compiled, by no later than **4pm on 4 October 2022**;
 - d. aggregated transaction data for purchases made in the UK:
 - (i) in respect of EEA cross-border transactions (i.e. all such purchases to which an EEA MIF applied, on Mastercard consumer credit cards and Maestro debit cards; and
 - (ii) in respect of domestic transactions, on Mastercard consumer credit cards and (to the extent it is within Mastercard’s possession) on Solo debit cards,showing total transaction volumes and, to the extent available, transaction volumes at each applicable interchange fee for the Claim Period over time with an accompanying explanation of what aggregated transaction data is (or is not) available by no later than **4pm on 14 October 2022**;
 - e. the EDC cost studies as set out in item 1 of the disclosure schedule at Annex B to this Order by **4pm on 14 October 2022**;

- f. the least redacted version of the OFT Decision of 6 September 2005 (No. CA98/05/05) (the “**OFT Decision**”) they hold, to be disclosed into the confidentiality ring; and a less-redacted version of the OFT Decision retaining redactions for Mastercard and third-party confidential information, to be disclosed outside of the confidentiality ring, by no later than **4pm on 14 October 2022**;
 - g. a schedule specifying, chronologically: (i) the level of each UK domestic MIF for Mastercard branded consumer credit and debit cards and (to the extent it is within Mastercard’s possession or control) Solo branded cards set during the Claim Period; and (ii) the dates for which each of the UK MIFs applied, with accompanying underlying documentation from which the schedule is compiled, by no later than **4pm on 28 October 2022**;
 - h. (to the extent relevant to the issues in these proceedings) documents from the OFT’s case file for the entire duration of the OFT investigation and documents submitted by Mastercard to the OFT in response to RFIs sent by the OFT between 18 November 2004 and 21 June 2009 regarding Mastercard’s setting of the UK MIF (together, the “**OFT Documents**”) by no later than **4pm on 28 October 2022**;
 - i. (to the extent relevant to the issues in these proceedings) documents from the EC File by no later than **4pm on 9 December 2022**; and
 - j. items 2 to 11 of the disclosure schedule at Annex B to this Order by no later than **4pm on 16 December 2022**.
2. The Defendants shall carry out a reasonable and proportionate search for documentation relating to (i) the levels of domestic (bilateral) interchange fees for Mastercard branded consumer credit and debit cards and (to the extent it is within Mastercard’s possession or control) Solo branded cards set during the Claim Period; and (ii) the dates for which each of the domestic (bilateral) interchange fees applied and shall, if possible, provide a schedule setting out (i) and (ii) by no later than **4pm on 16 December 2022**.
 3. All material shall be disclosed outside of the Confidentiality Ring, save that documents may be disclosed in the first instance into the Confidentiality Ring provided that the Defendants supply a specific and particularised reason for doing so at the time of the disclosure. The Class Representative shall have the right to challenge any such confidentiality ring designations in accordance with the Confidentiality Ring Order set out in Annex C to this Order.

Experts’ meeting

4. As soon as practicable, and in any event by **11 November 2022**, a meeting of experts is to take place to discuss the disclosure at paragraphs 1(c), (d), (e) and (g) above.

Amendments to the Statements of Case

5. The Class Representative has permission to make:

- a. amendments to the Amended Collective Proceedings Claim Form and Reply in accordance with the Correction Amendment Application; and
 - b. amendments to the Amended Collective Proceedings Claim Form in accordance with the Run-Off Application, save that:
 - (i) the MSC Run-Off Overcharge claim is to be limited to 21 June 2010;
 - (ii) the Domestic IFs Run-Off Overcharge claim is to be limited to 21 June 2009; and
 - (iii) consequential amendments to paragraphs 105B onwards of the Amended Collective Proceedings Claim Form may be made in light of subparagraphs (i) and (ii).
6. The Class Representative is to file and serve his Re-Amended Claim Form and Amended Reply by no later than **4pm on 28 September 2022**.
 7. The Defendants have permission to make amendments to their Defence consequential upon those amendments made by the Class Representative in accordance with paragraph 3, with any such Amended Defence to be filed and served by no later than **4pm on 28 October 2022**.
 8. The Class Representative has permission, if so advised, to make amendments to his Amended Reply consequential upon any amendments made in the Amended Defence, with any such Re-Amended Reply to be filed and served by no later than **4pm on 11 November 2022**.

Limitation / Applicable Law and Exemptibility

9. There shall be a hearing to determine the issues set out in paragraphs 1 to 3 of Annex A to this Order (“**Limitation/ Applicable Law Issues**”) and paragraph 4 of Annex A to this Order (“**Exemptibility Issue**”) on 12, 13 and 16 January 2023, with 1 day in reserve on 17 January 2023 and a pre-reading day on 11 January 2023.
10. The parties will file an agreed statement of facts addressing what information relevant to limitation was in the public domain by no later than **4pm on 11 November 2022**.
11. The parties will file a joint memorandum setting out the following, and noting any areas of agreement or disagreement, by no later than **4pm on 18 November 2022**:
 - a. The principles of applicable English law that apply to the determination of the Limitation Issue; and
 - b. The principles of Scottish and / or Northern Irish law applicable to the determination of the Limitation Issue.
12. The Class Representative shall file and serve his skeleton argument on the Exemptibility Issue, and the Defendants shall file and serve their skeleton argument on the Limitation/ Applicable Law Issues, by no later than **4pm on 16 December 2022**.

13. The Class Representative shall file and serve his skeleton argument on the Limitation/ Applicable Law Issues, and the Defendants shall file and serve their skeleton argument on the Exemptibility Issue, by no later than **4pm** on **6 January 2023**.

Confidentiality Ring

14. A confidentiality ring is established on the terms as set out in the Order at Annex C to this Order.

General

15. Costs in the case.
16. Liberty to apply.

IT IS FURTHER DIRECTED THAT:

Solo

17. The Tribunal having indicated that the issue set out in paragraph 5 of Annex A of this Order (the “**Solo Issue**”) should be heard in the late spring, the parties are to liaise in relation to the duration and listing of the hearing, and to seek to agree a timetable for necessary steps in advance of that hearing.

Causation and value of commerce

18. The Tribunal having indicated that the issues set out in paragraph 6 of Annex A of this Order (“**Causation Issue**”) and paragraph 7 of Annex A of this Order (“**Volume of Commerce Issue**”) should be heard at a hearing to be listed before the end of the Trinity Term 2023, the parties are to liaise in relation to the duration and listing of the hearing, and to seek to agree a timetable for necessary steps in advance of that hearing.

The Honourable Mr Justice Roth
Chairman of the Competition Appeal Tribunal

Made: 14 October 2022
Drawn: 14 October 2022

ANNEX A: LIST OF ISSUES

LIMITATION/APPLICABLE LAW AND EXEMPTIBILITY TRIAL JANUARY 2023

Limitation/Applicable law

1. Insofar as the claims are governed by English law, are they time-barred to the extent that the cause of action arose prior to 20 June 1997? **(Defence §25; Reply §4)**
2. Insofar as the claims are governed by Scottish law or Northern Irish law, are any parts of those claims time-barred? If so, prior to which dates? **(Defence §25; Reply §6-7)**
3. As a matter of law, do the laws of England and Wales, Scotland and/or Northern Ireland govern the claims in relation to transactions at merchants which were based outside the UK, and/or do some other law(s) apply? This issue is to be considered in relation to the periods: (i) 22 May 1992 to 1 May 1996; (ii) 1 May 1996 to 11 January 2009; and (subject to pleading) (iii) 11 January 2009 to 21 June 2010? **(Defence §24; Reply §8)**

Exemptibility

4. As a matter of law, is Mastercard is entitled to advance a counterfactual based on an alternative exemptible EEA MIF pursuant to Article 101(3)? **(Reply §32-35)**

SOLO TRIAL SPRING 2023

5. During the period 22 May 1992 to 21 June 2009, did the Solo debit scheme operate under Mastercard interchange network rules in respect of domestic UK transactions? **(Claim Form §113; Defence §150)**

VOLUME OF COMMERCE AND CAUSATION TRIAL SUMMER 2023

Causation

6. During the period 22 May 1992 to 21 June 2009 was there a relevant causal link between the levels of EEA MIFs and the levels of domestic interchange fees?

Volume of commerce

7. During the period 22 May 1992 to 21 June 2010, what was the total value of commerce in the United Kingdom in which a relevant Mastercard card was used, i.e. to which a relevant interchange fee would have applied? **(Claim Form, §112(b); Defence, §137-139, Annex 1, Table 1; Reply, §68-69)**

ANNEX B: DISCLOSURE SCHEDULE

Unless otherwise specified, the temporal scope of each disclosure order below is 22 May 1992 up to, and including, July 2009.

Request number	Previous request number ¹	Disclosure request
PART 1: EDC COST STUDIES		
1.	13 and 26	<p>Standard disclosure of periodic cost studies, reports and other documentation prepared by the consultancy firm Edgar, Dunn & Company (“EDC”) including, but not limited to:</p> <p>(a) “Mastercard International 2005 Intra EEA Cross Border Cost Study – Domestic Study Results” (January 2006);</p> <p>(b) “Mastercard Worldwide 2008 UK Cost Study – Pay Later report” (October 2008); and</p> <p>(c) “Mastercard Europe 2006 – Mastercard Debit Cost Analysis UK” (June 2006).</p>
PART 2: FURTHER CATEGORIES OF DISCLOSURE		
2.	6	<p>(A) Complete copies of the rules of Mastercard International Incorporated (“MCII”) and Eurocard, as well as the UK Domestic Rules (or the UK domestic rule book), including complete copies of:</p> <p>(i) Eurocard rules dated 25 September 1991;</p> <p>(ii) MCII rules dated 12 April 1989;</p> <p>(iii) MCII rules dated December 1993;</p> <p>(iv) UK domestic rules dated 7 October 1996;</p> <p>(v) UK domestic rules dated June 1997; and</p>

¹ The request as numbered in: (i) the disclosure schedule exhibited to third witness statement of Boris Bronfentrinker, (ii) the disclosure schedule annexed to Mastercard’s submissions on 12 September 2022, and (iii) as referred to in the transcript of the CMC on 20 and 22 September 2022.

Request number	Previous request number ¹	Disclosure request
		<p>(vi) UK domestic rules dated 1999.</p> <p>(B)</p> <p>(i) Maestro UK Domestic Rules (August 2002 onwards); and</p> <p>(ii) any other iterations of Maestro, Switch or Solo rules implicitly or explicitly referred to in paragraph 95 of Mastercard’s Defence.</p>
3.	9	<p>Mastercard’s rules relating to UK MIFs for Debit Mastercard limited to the period from July 2006 up until and including July 2009; and the Maestro rules relating to EEA MIFs.</p>
4.	10	<p>Standard disclosure of documents regarding the setting of:</p> <p>(a) UK domestic interchange fees that are agreed on a bilateral basis;</p> <p>(b) intra-country UK interchange fees applicable pending arbitration from June 1992 onwards;</p> <p>(c) UK bilateral interchange fees agreed between banks from June 1994 onwards;</p> <p>(d) UK MIFs set by MasterCard Europay UK Limited (“MEPUK”) from April 1999;</p> <p>(e) UK MIFs applicable to chip transactions set by MEPUK from October 2001;</p> <p>(f) EEA MIFs applicable from 2002 and 2003;</p> <p>(g) UK MIFs set by Mastercard UK Members Forum Limited (“MMF”) from 1 October 2004;</p> <p>(h) UK MIFs set by Mastercard from 18 November 2004; and</p>

Request number	Previous request number ¹	Disclosure request
		(i) UK MIFs set by Mastercard from April 2006.
5.	11	Documents regarding any bilateral agreements agreed by issuing banks and acquiring banks in the UK for the Mastercard scheme.
Mastercard Card Scheme Information		
6.	19	Standard disclosure of all documents setting out and explaining the “hierarchy of rules”, including but not limited to, Mastercard (International) Rules, European Rules and UK Domestic Rules.
MIF/IF Setting Practices		
7.	20	<p>Standard disclosure of communications within and between Mastercard Europe S.p.r.l (“MC Europe”), Mastercard Incorporated (“MCI”) and MCII (together, “Mastercard entities”), and/or communications between Mastercard entities and any member forums, member banks and/or EDC regarding:</p> <p>(a) the setting and / or levels of interchange fees as relevant to the UK and /or EEA MIFs;</p> <p>(b) the consideration of the following, to the extent they played a role in the setting of interchange fees and/or levels of interchange fees as relevant to the UK and EEA MIFs:</p> <p>(i) UK domestic costs;</p> <p>(ii) competitive conditions in the UK market (including but not limited to comparable domestic interchange fees for Visa and Access, as well as competitive threats posed by Visa Debit, Switch, Solo, Amex, store cards and other payment methods);</p>

Request number	Previous request number ¹	Disclosure request
		<p>(iii) the Visa commitment decision and/or Visa exemption decision; and</p> <p>(iv) the interests and/or reactions of stakeholders (acquirers and issuers), as well as merchants and consumers.</p>
8.	34	Disclosure of documents relevant to the setting of the UK MIF from 2004 to 21 June 2009.
Governance Documents		
9.	21	<p>Standard disclosure of minutes of board and committee meetings for the following entities and for the time periods for which they were involved in the setting and/or approving of UK interchange fees and/or EEA MIFs:</p> <ul style="list-style-type: none"> (a) MEPUK; (b) MMF; (c) MCI; (d) MCII; (e) MC Europe; and (f) Mastercard Worldwide.
Market analyses, studies, surveys and reports produced by/for the benefit of Mastercard		
10.	22	Standard disclosure of market analyses and memoranda referred to in any board and/or committee meetings referenced in any of the “Governance Documents” in request #9 above.
11.	27	<p>Standard disclosure of all documents recording information about the EDC cost assessments including:</p> <ul style="list-style-type: none"> (a) the letter of instructions to EDC; (b) all reports published by EDC;

Request number	Previous request number ¹	Disclosure request
		<p>(c) any document recording a decision to depart from EDC's calculations and/or recommendations;</p> <p>(d) any documents recording the role of EDC cost studies or EDC more generally;</p> <p>(e) any documents recording why EDC was engaged to carry out the cost studies (including whether this was for antitrust purposes).</p>



ANNEX C: CONFIDENTIALITY RING

Case No: 1266/7/7/16

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

WALTER HUGH MERRICKS CBE

Class Representative

and

**(1) MASTERCARD INCORPORATED
(2) MASTERCARD INTERNATIONAL INCORPORATED
(3) MASTERCARD EUROPE SA (formerly Mastercard Europe S.P.R.L)**

Defendants

ORDER

UPON the Class Representative’s application dated 5 September 2022 for disclosure of, *inter alia*, the Commission File in Case COMP/34.579 (the “**Commission File**”), the OFT Decision of 6 September 2005 (No. CA98/05/05) (the “**OFT Decision**”) and the OFT File arising from the OFT Decision (the “**OFT File**”)

AND UPON Mastercard’s understanding that the OFT Decision, and certain documents in the Commission File and the OFT File, are likely to contain confidential information

AND UPON confirmation from the European Commission by email of 22 August 2022 that disclosure of the Commission Decision and File should take place only under an Order from

the Competition Appeal Tribunal (the “**Tribunal**”) which takes into account of any need for appropriate protections for confidential information

AND UPON the Competition and Markets Authority’s view in the letter of 13 September 2022 that the OFT Decision and documents in the OFT File may contain confidential information from third parties, and that it may be appropriate for some or all of the OFT Decision and Case File be disclosed into a confidentiality ring

AND UPON the Tribunal’s decision at the Case Management Conference on 20 September 2022 that any documents provided by Mastercard in these proceedings containing confidential information be subject to the confidentiality terms contained in this Order and the Schedule to this Order

IT IS ORDERED THAT:

1. This Order becomes effective in respect of each of the persons named in **Part A** of the Schedule to this Order (including persons subsequently admitted to the Confidentiality Ring pursuant to paragraph 4 of this Order) only upon receipt by the Tribunal of a signed undertaking in the terms of **Part B** of the Schedule to this Order.
2. For the purposes of this Order:
 - a. “**Confidentiality Ring**” means all those Relevant Persons who have signed an undertaking to the Tribunal in the terms of Part B of the Schedule to this Order, of which a copy has been provided to the Tribunal.
 - b. “**Confidential Information**” means:
 - i. information the disclosure of which would be contrary to the public interest;
 - ii. commercial information the disclosure of which would or might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - iii. information relating to the private affairs of an individual the disclosure of which could significantly harm his / her interestsbeing the material contained in the Relevant Documents in respect of which Mastercard considers justify the requirements for confidential

treatment in accordance with Rule 99 and / or Rule 101 of the Competition Appeal Tribunal Rules 2015.

- c. **“Relevant Documents”** means all documents provided by Mastercard to the Tribunal or the Class Representative in these proceedings.
- d. **“Relevant Persons”** are those persons:
 - i. Listed in Part A of the Schedule to this Order who have given a signed undertaking to the Tribunal in the terms of Part B of the Schedule to this Order;
 - ii. Subsequently added to the lists in Part A after being admitted to the Confidentiality Ring in accordance with paragraph 5 below and who have given a signed undertaking to the Tribunal in the terms of Part B of the Schedule to this Order;
 - iii. Necessary secretarial and other support personnel (not including trainee solicitors and paralegals) under the supervision of those persons identified in paragraphs 2(d)(i) and 2(d)(ii) above, provided that such personnel have been informed of the confidential nature of the Confidential Information and the terms of Part B of the Schedule to this Order; and
 - iv. Any external eDisclosure or litigation support provider engaged by any of the Parties in connection with these proceedings to provide eDisclosure or similar services in support of those persons identified in paragraphs 2(d)(i) and 2(d)(ii) above, who may have access to the Confidential Information as a necessary consequence of the provision of their services, provided that such provider has been informed of the confidential nature of the Confidential Information and the terms of Part B of the Schedule to this Order.
- e. **“these proceedings”** means Case No: 1266/7/7/16.

Designation of documents

- 3. Mastercard shall designate Relevant Documents as containing Confidential Information where appropriate. The following procedure shall apply:

- a. Designation of a document as containing Confidential Information must be made in writing to the Class Representative and must comply with paragraph 7.46 of the Tribunal's 2015 Guide to Proceedings.
 - b. Failure to provide a designation for a document at the time the document is provided shall mean that the document in question does not contain Confidential Information. Mastercard may alter the designation of a document to correct any erroneous designation by notice in writing to all Parties that received such document. The other Parties shall not be responsible for any action taken in the meantime in good faith reliance on the original designation of a document as not containing Confidential Information.
 - c. The Class Representative may request that Mastercard amend the designation of a document that it has provided to "not confidential". The Class Representative must provide a written request to Mastercard specifying the following:
 - i. The relevant Confidential Information; and
 - ii. Why the designation of the Confidential Information should be amended.
 - d. Mastercard may consent in writing to amend the designation of Confidential Information, with such consent not to be unreasonably withheld and, in any event, a response should be provided within 5 working days of having initially received the written request referred to at paragraph 3(c) above; and
 - e. Should the consent referred to in paragraph 3(d) above not be obtained, the Class Representative may apply to the Tribunal for an order that the Confidential Information should be designated as not confidential, provided that prior written notice is given of that application to Mastercard.
4. Any Relevant Documents which are designated as containing Confidential Information shall be disclosed to, and may be inspected by, only the Relevant Persons listed in Part A of the Schedule to this Order and who have signed an undertaking in the terms of Part B of the Schedule to this Order (such undertaking having been provided to the Tribunal and to the parties), on the basis that the recipient Confidentiality Ring Member holds the Confidential Information on the terms set out in Part B of the Schedule to this Order.

Addition and removal of Confidentiality Ring Members

5. If any Party wishes to add any additional person as a Relevant Person for the purposes of paragraph 2(d) of this Order, they shall write to the other party seeking written consent to the admission of that individual to the Confidentiality Ring (such consent not to be unreasonably withheld).
6. Upon receipt of a request under paragraph 5 above, the other party shall respond to the Party seeking to add an additional person as a Relevant Person promptly, and in any event within 3 working days of receiving the request. Where the other party does not consent to the additional person becoming a Relevant Person, the other party shall provide reasons.
7. Once the consent of the other party has been obtained, the Party seeking to add an additional person as a Relevant Person shall inform the Tribunal in writing accordingly (copying the representatives of the other parties).
8. If the other part does not consent to the additional person becoming a Relevant Person, the Party may apply to the Tribunal for an order authorising the admission of that individual to the Confidentiality Ring. Any such application shall be made on notice and shall include the reasons given by the other party for withholding consent.
9. If any party wishes a Relevant Person to be removed from the Confidentiality Ring, they shall inform the Tribunal in writing (copying the representatives of the other parties).
10. When a Relevant Person is admitted to or removed from the Confidentiality Ring, the relevant party will provide to the Tribunal (and circulate to the parties) an up-to-date list of the persons in Part A of the Schedule to this Order.

General

11. The costs of compliance with and of drafting this Order shall be costs in the case.
12. There shall be liberty to apply.

SCHEDULE

PART A

This part contains the names of Relevant Persons for the purposes of this Order:

Claimant

Claimant
Walter Merricks CBE (Class Representative)
External Counsel
Marie Demetriou, KC (Brick Court Chambers)
Victoria Wakefield, KC (Brick Court Chambers)
Paul Luckhurst (Blackstone Chambers)
Anneliese Blackwood (Monckton Chambers)
Crawford Jamieson (Brick Court Chambers)
Allan Cerim (Brick Court Chambers)
External Solicitors (Willkie Farr & Gallagher UK LLP)
Boris Bronfentrinker
Nicola Chesaites
Adele Behles
Anthony Hadjiantoniou
Charlotte Martin
Aadil Master
Oliwia Siutkowska
Kate Lawrence-Smith
Ellie Byrne
Experts

Justin Coombs (Compass Lexecon)

Urs Haegler (Compass Lexecon)

Hamid Aghadadashli (Compass Lexecon)

Nathan Viles (Compass Lexecon)

Shikha Bhaskar (Compass Lexecon)

Xinyan Lao (Compass Lexecon)

Defendants

Defendants
James Masterson (Mastercard)
Susan Kennedy (Mastercard)
External Counsel
Mark Hoskins KC, Brick Court Chambers
Sonia Tolaney KC, One Essex Court
Matthew Cook KC, One Essex Court
Hugo Leith, Brick Court Chambers
Jon Lawrence, Brick Court Chambers
Sophie Bird, Brick Court Chambers
External Solicitors (Freshfields)
Mark Sansom
Nicholas Frey
Ricky Versteeg
Alexandra Holroyd
Johanna McDavitt

Jonathon Oldfield
Laura Trigg
Fernando Bazzana
Experts
Fraser Davison, Frontier Economics
David Parker, Frontier Economics
Robert Bowdery, Frontier Economics
Anna Mitteregger, Frontier Economics

PART B

In respect of any Confidential Information disclosed to them, each Relevant Person referred to in paragraph 2(d)(i) of the Tribunal's Order of September 2022 undertakes that they will comply with the following requirements in the following terms:

I, [name], of [firm, company or establishment] being [legal or other qualification] undertake to the Tribunal as follows:

1. I have read a copy of the Tribunal's Order and understand the implications of the Tribunal's Order and the giving of this undertaking.
2. I will not disclose the Confidential Information (as defined in the Tribunal's Order) to any person who is not a Relevant Person (as defined in the Tribunal's Order) or to the Tribunal without the express written consent of the person which originally disclosed the Confidential Information ("the Disclosing Person") or the permission of the Tribunal.
3. I will use the Confidential Information only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever without the express consent of the Disclosing Person.
4. The Relevant Documents (as defined in the Tribunal's Order) containing the Confidential Information will remain in my custody or the custody of another Relevant Person at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
5. The production of further copies by me of the Relevant Documents containing the Confidential Information shall be limited to those required for the use of the Relevant Persons for the purposes of these proceedings and shall be held in accordance with paragraph 4 of this undertaking.
6. Save where the written consent of the Disclosing Person has been obtained, any and all copies of the Relevant Documents in paper form containing the Confidential Information will either be returned to that Disclosing Person at the conclusion of the present proceedings, or be destroyed at the conclusion of the present proceedings (it being the discretion of the Relevant Person whether the Relevant Documents are to be destroyed or returned to the Disclosing Party); any copies of the Relevant Documents containing the Confidential Information in electronic form will be deleted or, where that

is not possible, will be rendered inaccessible from any computer systems, disk or device so that the Confidential Information is not readily available to any person.

7. The present proceedings for these purposes shall include any further appeals from the Tribunal to a higher court and/or any references to the European Courts, save in so far as that higher court orders otherwise.
8. Save that none of the requirements listed at paragraphs 2 to 5 above shall prevent Relevant Persons from disclosing Confidential Information to persons who have already legitimately seen it.

Signed:

Name:

Date: