



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1266/7/7/16

BETWEEN:

WALTER HUGH MERRICKS CBE

Class Representative

- v -

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

Defendants

- and -

AMERICAN EXPRESS SERVICES EUROPE LIMITED

Rule 102 Applicant

ORDER

UPON the Tribunal’s order dated 14 October 2022 (the “**Order**”) requiring the Defendants to *inter alia* disclose, to the extent relevant to the issues in these proceedings, documents: (i) from the OFT’s case file for the entire duration of the OFT investigation into Mastercard’s multilateral interchange fees in the UK (the “**OFT File**”) (paragraph 1(h) of the Order); and (ii) from the EC’s case file in Case COMP/34.579 relating to the EC’s investigation into Mastercard (the “**EC File**”) (paragraph 1(i) of the Order)

AND UPON the Defendants’ solicitors’ letter dated 9 December 2022 confirming to American Express Services Europe Limited (“**American Express**”) that 10 documents confidential to American Express from the OFT File had been disclosed into the confidentiality ring in these proceedings and that three documents confidential to American Express from the EC File would be disclosed into the confidentiality ring in these proceedings on 22 December 2022 (together, the “**Specified American Express Documents**”)

AND UPON the application made by American Express after hours on 21 December 2022 (“the **Application**”) and without notice to the Class Representative seeking an order restricting the disclosure alternatively use of the Specified American Express Documents

AND UPON reading the witness statement of Paul Gilbert dated 21 December 2022

IT IS ORDERED THAT:

1. Until determination of this application or further order:
 - (a) Insofar as not disclosed prior to service upon them of this Order, the Defendants shall not disclose any of the Specified American Express Documents to the Class Representative
 - (b) The Class Representative shall not use the Specified American Express Documents which have been disclosed to him whether in these proceedings or otherwise
2. American Express shall forthwith serve a copy of the Application and supporting evidence on the Class Representative save that exhibit PG2 shall be served in a non-confidential version
3. The Class Representative and the Defendants shall serve any evidence on which they wish to rely relating to the Application by 4 pm on 9 January 2023
4. American Express shall serve any evidence in reply by 4 pm on 13 January 2023
5. The Application will be heard on the first available date after 17 January 2023
6. The Class Representative and/or the Defendants may apply on 48 hours’ notice in writing at any time after 3 January 2023 to discharge or vary this order.
7. Costs reserved.

The Honourable Mr Justice Roth
Chair of the Competition Appeal Tribunal

Made: 23 December 2022
Drawn: 23 December 2022