



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

Case Nos: 1517/11/7/22 (UM)  
1266/7/7/16

BETWEEN:

**THE UMBRELLA INTERCHANGE FEE CLAIMANTS**

- v -

**THE UMBRELLA INTERCHANGE FEE DEFENDANTS**

(“the Merchant Interchange Fee Umbrella Proceedings”)

- and –

**WALTER HUGH MERRICKS CBE**

The Merricks Class Representative

- v -

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

The Merricks Defendants

(“the Merricks Collective Proceedings”)

(together, the “Proceedings”)

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**ORDER**

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**UPON READING** the Orders of the Tribunal made on 2 February 2021, 23 March 2021, 3 August 2021, 24 December 2021 and 15 February 2022 regarding the timetable for the filing and service of pleadings in case numbers 1306-1325/5/7/19(T), 1349-1350/5/7/20(T) and 1383-1384/5/7/21 (T) (the “**Related HK Claims**”)

**AND UPON READING** the various requests for extensions to the deadlines for the filing of Defences (and Replies) in relation to various claims in the Merchant Interchange Fee Umbrella Proceedings<sup>1</sup> to be aligned with the pleading amendment timetable in the Related HK Claims (the “**Extension Applications**”)

**AND UPON READING** the Tribunal’s letter dated 25 October 2022 staying any upcoming deadlines for Defences in cases to which certain of the Extension Applications relate, until further order by the Tribunal

**AND UPON** a case management conference in the Proceedings taking place on 7 and 8 November 2022 (the “**CMC**”)

**AND UPON READING** the Tribunal’s letters dated 5 December 2022, 12 December 2022 and 15 December 2022 in relation to the future conduct of the Proceedings, the Extension Applications and other deadlines for the filing of pleadings in the Merchant Interchange Fee Umbrella Proceedings

**AND UPON READING** the letter of Linklaters LLP dated 22 December 2022

**BY CONSENT IT IS ORDERED THAT:**

***The Volvo Limitation Hearing***

1. The hearing to determine the implications of the Court of Justice of the European Union’s judgment in *Volvo and DAF Trucks*, Case C-267/20 (the “**Volvo Judgment**”) on limitation in the Merchant Interchange Fee Umbrella Proceedings (the “**Volvo Limitation Hearing**”), shall take place on mutually agreeable dates in March/April 2023 with a time estimate of 3 days before the President, Mr Justice Roth and Mr Tidswell.
2. The following directions shall apply to the Volvo Limitation Hearing:
  - (a) The precise hearing dates to be confirmed following further consultation with the parties and subject to the Tribunal’s availability.

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<sup>1</sup> Case Nos: 1385-1390, 1392-1400, 1445-1451, 1453-1456, 1471, 1519-1520 and 1534-1535.

- (b) The Volvo Limitation Hearing will be confined to points of law regarding the effect of the Volvo Judgment and the Tribunal will not consider any related factual points.
- (c) The relevant parties shall liaise and file with the Tribunal an agreed list of the relevant legal questions requiring resolution at the Volvo Limitation Hearing by 4pm on 20 January 2023.
- (d) To the extent there are any areas of disagreement for the Tribunal to resolve in relation to the matter at paragraph (c) above, these should be outlined by the parties in brief submissions to accompany the filings. The parties should endeavour to limit these submissions to no more than 10 pages, unless additional pages are strictly necessary.

### ***The Pass-on Evidential Hearing***

- 3. There shall be a hearing in relation to evidential issues in relation to pass-on (the “**Pass-on Evidential Hearing**”) in May 2023 with a time estimate of 3 days.
- 4. The following directions shall apply to the Pass-on Evidential Hearing:
  - (a) The precise hearing dates to be confirmed following further consultation with the parties and subject to the Tribunal’s availability.
  - (b) The parties in the Merchant Interchange Fee Umbrella Proceedings and the Merricks Collective Proceedings shall participate in the Pass-on Evidential Hearing.
- 5. The parties shall liaise to agree further directions leading up to the Pass-on Evidential Hearing by 4pm on 20 January 2023.

### ***Trial 1***

6. A six-week liability trial (“**Trial 1**”) shall take place in the first quarter of 2024 to deal with all Article 101(1) TFEU liability issues in relation to UK and Irish domestic MIFs (Issues 1-5 and 7-13 in Column 2 of the Table<sup>2</sup>).
7. The following directions shall apply to Trial 1:
  - (a) The precise hearing dates to be confirmed following further consultation with the parties and subject to the Tribunal’s availability;
  - (b) The parties shall liaise to agree a draft timetable to Trial 1; and
  - (c) The parties in the Merchant Interchange Fee Umbrella Proceedings only shall participate in Trial 1.
8. The following shall be excluded from Trial 1:
  - (a) The “Trial 2” issues (defined below);
  - (b) Article 102 TFEU issues (Issues 16-20 in Column 2 of the Table); and
  - (c) Non-UK/Irish domestic MIFs (Issue 6 in Column 2 of the Table), save in respect of Italian MIFs, as to which the parties shall exchange letters setting out their positions by 20 January 2023 and, if and to the extent that there remains disagreement as to the inclusion of Italian MIFs in Trial 1, the parties shall file submissions limited to 5 pages by 27 January 2023 for a decision on the papers by the Tribunal.

### ***Trial 2***

9. A seven-week trial shall take place, commencing in October or November 2024 (“**Trial 2**”), to address all issues relating to acquirer and retailer pass-on.
10. The following directions shall apply to Trial 2:

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<sup>2</sup> As defined in the Tribunal’s Order dated 16 March 2022.

- (a) The precise hearing dates to be confirmed following further consultation with the parties and subject to the Tribunal's availability;
- (b) The parties shall liaise to agree a draft timetable to Trial 2; and
- (c) The parties in the Merchant Interchange Fee Umbrella Proceedings and the Merricks Collective Proceedings shall participate in Trial 2.

### ***Trial 3***

- 11. All other issues in the Merchant Interchange Fee Umbrella Proceedings shall be the subject of a further order for a "**Trial 3**".

### ***Pleadings***

- 12. The Defendants shall file and serve any applications pursuant to CPR 17.2 by 4pm on 16 February 2023.
- 13. The stay on the deadlines for Defences (amended or otherwise) to be filed and served in case numbers 1312-1325, 1350, 1384 -1390, 1392-1400, 1445-1451, 1453-1455, 1456-1463, 1465-1467, 1469-1470, 1471, 1507 1519-1520 and 1534-1535 is lifted. For the avoidance of doubt, the deadlines for the Defences in each of these claims will be determined by reference to paragraphs 15 – 17 below.
- 14. By 19 January 2023, the Claimants that have already filed Particulars of Claim shall confirm whether they will:
  - (a) Seek to amend their Particulars of Claim to either: (i) adopt or align any existing pleadings (or parts thereof); or (ii) plead by reference to the List of Issues; and/or
  - (b) Seek to amend their Particulars of Claim, if the Tribunal finds in the Claimants' favour at the Volvo Limitation Hearing, to plead any relevant limitation arguments arising out of the Volvo Judgment in a manner consistent with the

pleading of that issue in Cases 1469-70/5/7/22 (T) and the SH Claims<sup>3</sup> (the “Volvo Amendment”).

15. In the event that any Claimants confirm an intention to amend in accordance with paragraph 14(b) above then, upon determination of the Volvo Limitation Hearing:
  - (a) Those Claimants shall: (i) if the Tribunal finds in their favour at that hearing, provide draft amended Particulars of Claim reflecting the Volvo Amendment and any others that the relevant Claimants intend to make; alternatively, (ii) if the Tribunal finds in the Defendants’ favour at that hearing, provide draft amended Particulars of Claim reflecting any amendments that the relevant Claimants seek to make excluding the Volvo Amendment;
  - (b) Following agreement of those amendments, or permission to amend being given, directions for filing and service of Particulars of Claim, Defences and Replies (each as amended or otherwise) shall be set.
  
16. In the event that any Claimants do not intend to amend in accordance with paragraph 14(b) above but do indicate an intention to amend in accordance with paragraph 14(a) above, the following timetable for pleadings shall apply:
  - (a) The Claimants shall provide the Defendants with any draft amended Particulars of Claim, indicating which draft amendments they are seeking consent to, by 4pm on 2 February 2023;
  - (b) The Defendants shall confirm to the relevant Claimants which draft amendments they consent to by 4pm on 23 February 2023;
  - (c) Where the draft amended Particulars of Claim are agreed, the Claimants shall file and serve any amended Particulars of Claim by 4pm on 16 March 2023; the Defendants shall file and serve any Defences (amended or otherwise) by 4pm on 6 April 2023; the Claimants shall file and serve any Replies (amended or otherwise) by 4pm on 27 April 2023; and

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<sup>3</sup> Case Nos. 1445 – 1451, 1453 – 1455, 1456 – 1463, 1465-1467 and 1471.

- (d) To the extent that any draft amendments are not agreed, the Claimants shall file and serve any applications to amend their Particulars of Claim by 4pm on 16 March 2023; directions for the filing and service of Defences and Replies shall be set upon determination of those applications.
17. In respect of those Claimants that have already filed Particulars of Claim, and do not intend to amend their Particulars of Claim in accordance with paragraphs 14(a) or 14(b) above, the following timetable for pleadings shall apply:
- (a) The Defendants shall file and serve any Defences (amended or otherwise) by 4pm on 16 February 2023; and
- (b) The Claimants shall file and serve any Replies (amended or otherwise) by 4pm on 16 March 2023.
18. The costs of the CMC be in the cases.
19. There be liberty to apply.

**Sir Marcus Smith**  
President of the Competition Appeal Tribunal

Made: 23 December 2022  
Drawn: 13 January 2023