



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1441/7/7/22
1442/7/7/22
1443/7/7/22
1444/7/7/22

BETWEEN:

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS I LIMITED v
MASTERCARD INCORPORATED & OTHERS**

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS II LIMITED v
MASTERCARD INCORPORATED & OTHERS**

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS I LIMITED v VISA INC.
& OTHERS**

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS II LIMITED v VISA INC.
& OTHERS**

(together, the “Proposed Collective Proceedings”)

REASONED ORDER (CONFIDENTIALITY)

UPON the Tribunal’s Order made on 13 December 2022 setting out case management directions

AND UPON considering correspondence dated 16 and 17 February from the solicitors for the Visa Proposed Defendants providing the Tribunal with inter partes correspondence, a draft confidentiality ring order in a form proposed by the Mastercard and Visa Proposed Defendants and a draft confidentiality ring order in a form proposed by the Proposed Class Representatives in the Proposed Collective Proceedings, and requesting on behalf of the Parties to the Proposed Collective Proceedings that the Tribunal determines the appropriate form of confidentiality ring order in the proceedings

AND HAVING REGARD TO the Tribunal’s powers under pursuant to Rule 53(2)(h) of the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”)

IT IS ORDERED THAT:

1. A confidentiality ring shall be established by separate order in the form proposed by the Proposed Class Representatives.

REASONS

2. In these Proposed Collective Proceedings, there is a dispute between Commercial and Interregional Card Claims I Limited and Commercial and Interregional Card Claims II Limited (the “PCRs”) and the Mastercard and Visa Proposed Defendants about the form of the Confidentiality Ring Order. The PCRs seek the inclusion of their sole director, Mr Stephen Allen, as an “External Permitted Person” in the Confidentiality Ring Order, regulating who may see what levels of confidential information. The Proposed Defendants object to Mr Allen’s inclusion in that grouping, on the basis that: (i) employees of the Proposed Defendants are (as is usually the case) excluded from designation as External Permitted Persons (which grouping usually only contains external lawyers and experts); (ii) the material which is being provided shortly by the Proposed Defendants in response to the CPO applications relates to sensitive settlement negotiations and may disclose the Proposed Defendants’ settlement strategies; and (iii) Mr Allen is engaged in a book-building exercise for the purposes of the Proposed Collective Proceedings, to which the settlement information may have some relevance. The Proposed Defendants also point to a mechanism in their proposed Confidentiality Ring Order which allows for the PCRs’ lawyers to challenge the designation of documents which they wish to show people who are not External Permitted Persons. They say it is open to the PCRs’ lawyers to pursue this if they think it necessary, having seen the information and that this mechanism is proportionate in view of the risk of disclosure of information protected by the confidentiality arrangements.
3. The PCRs submit that Mr Allen is not in the same position as employees of the Proposed Defendants and that he needs to see the documents in order properly to understand the case and instruct his legal team. The PCRs rely on the decision of the Court of Appeal

in *OnePlus Technology (Shenzhen) Co., Ltd v Mitsubishi Electric Corporation* [2020] EWCA Civ 1562 (“*OnePlus*”), which considered the principles applicable to disclosure in the context of intellectual property litigation and emphasised that restricting a receiving party from seeing documents in litigation is an exceptional step and requires proper justification by the disclosing party.

4. I agree with the PCRs. The approach in *OnePlus* reflects the principles applicable to disclosure in the Competition Appeal Tribunal under Rule 101 of the Tribunal Rules and paragraph 1(2) of Schedule 4 to the Enterprise Act 2002, which requires the Tribunal to have regard to the need to exclude commercial information that would or might significantly harm the legitimate business interests of an undertaking. Mr Allen is not a competitor of the Proposed Defendants. His interest in the information arises solely through his involvement as a director of the PCRs and there is no reason to think that he would disregard the terms of the Confidentiality Ring Order or Rule 102 of the Tribunal Rules by misusing the information. The information is apparently being supplied to the PCRs’ legal team by the Proposed Defendants, notwithstanding that it may disclose negotiations of strategic significance to those advising the PCRs. I see no reason why Mr Allen should not also be permitted to see that information as well.
5. Accordingly, I have made a separate order establishing the confidentiality arrangements in the Proposed Collective Proceedings in the form of the draft Confidentiality Order proposed by the PCRs.

Ben Tidswell
Chair of the Competition Appeal Tribunal

Made: 21 February 2023
Drawn: 21 February 2023