



Case No: 1517/11/7/22 (UM)

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

THE UMBRELLA INTERCHANGE FEE CLAIMANTS

- v -

THE UMBRELLA INTERCHANGE FEE DEFENDANTS

(“the Merchant Interchange Fee Umbrella Proceedings”)

ORDER

UPON the Tribunal’s Order made on 23 December 2022 giving directions regarding the future conduct of the Merchant Interchange Fee Umbrella Proceedings (the “**Future Conduct Order**”)

AND UPON the Tribunal considering the written submissions filed on behalf of the Umbrella Interchange Fee Claimants represented variously by Humphries Kerstetter LLP and Scott+Scott UK LLP and on behalf of the Umbrella Interchange Fee Defendants pursuant to paragraph 8(c) of the Future Conduct Order and the Tribunal directing by letter dated 20 February 2023 to the parties in the Merchant Interchange Fee Umbrella Proceedings that Italian MIFs are to be excluded from Trial 1

AND UPON the Umbrella Interchange Fee Claimants variously represented by Humphries Kerstetter LLP, Scott+Scott UK LLP and Stephenson Harwood LLP (the “Active Umbrella Interchange Fee Claimants”) and the Umbrella Interchange Fee Defendants having agreed to amend paragraphs 6 and 8 of the Future Conduct Order as set out below in order to clarify the scope of Trial 1

BY CONSENT IT IS ORDERED THAT:

1. Paragraph 6 of the Future Conduct Order shall be varied so that it reads:

“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, as particularised by Issues 1-5 and 7-13

in Column 2 of the Table² (save for the sub-Issues identified in paragraph 8(d) to (g) as to be excluded from Trial 1).

2. Paragraph 8 of the Future Conduct Order shall be varied so that it reads:

“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);
- (c) Non-UK/Irish domestic MIFs (Issue 6 in Column 2 of the Table);
- (d) Issues 1.1, 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 4.5, 5.1, 5.2, 5.3, 5.4, 8.1, 8.2, 8.3, 8.4, 8.8, 8.9, 9.1, 9.2, 9.3, 9.4, 10.1, 10.2, 11.1, 11.2, 12.1 12.2 and 13 in Column 2 of the Table, insofar as they relate to markets other than the UK and Irish acquiring markets;
- (e) Issue 2.3 in Column 2 of the Table, in relation to whether any of the relevant foreign domestic MIFs were set by an entity other than the Visa Defendants, and whether Visa has a defence on that basis;
- (f) Issue 2.6 in Column 2 of the Table, in relation to when Mastercard started setting Swiss and German MIFs, and whether Mastercard is liable in relation to those MIFs; and
- (g) Subject to the Tribunal’s decision following the Volvo Limitation Hearing, any issues which pre-date 5 December 2007 (being six years prior to the date of the earliest claim form of the Active Umbrella Interchange Fee Claimants participating in Trial 1).”

3. Costs in the Proceedings.

4. There shall be liberty to apply.

Sir Marcus Smith

President of the Competition Appeal Tribunal

Made: 10 May 2023

Drawn: 10 May 2023