



IN THE COMPETITION
APPEAL TRIBUNAL

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

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

06 June 2023

Before:

SIR MARCUS SMITH
(President)
THE HON MR JUSTICE ROTH
BEN TIDSWELL

Sitting as a Tribunal in England and Wales

BETWEEN:

THE MERCHANT INTERCHANGE FEE CLAIMANTS

- v -

THE UMBRELLA INTERCHANGE FEE DEFENDANTS

CONSEQUENTIAL MATTERS (COSTS)

UPON the Order of the Tribunal made and drawn on 16 March 2022 following the Case Management Conference on 1 and 2 March 2022

AND UPON the Tribunal hearing of 23 and 24 May 2022 regarding the method for determination of the issue of pass-on in these proceedings and the Tribunal having handed down its Judgment on Pass-On Methodology on 6 July 2022 (*[2022] CAT 31*)

AND UPON the application from the Visa Defendant dated 27 July 2022 seeking its costs of the Pass-On Methodology issue and payment on account of a percentage of those costs by the Claimants

AND UPON the solicitors for the Claimants represented by Humphries Kerstetter and Scott+Scott and Stephenson Harwood filing responses dated 16 September 2022 to the Visa application, the Mastercard Defendants also filing a response dated 19 September and the letter from solicitors for the Class Representative dated 5 September 2022

AND UPON the reply from the Visa Defendant dated 26 September 2022 to the responses of the Claimants

AND HAVING REGARD TO the Tribunal’s powers under Rule 104(4)(c), (e) and (f) of the Competition Appeal Rules 2015

IT IS ORDERED THAT:

1. Costs be in the case.

REASONS

1. The case management objectives in these proceedings include the just and expeditious determination of claims at proportionate cost in accordance with the Tribunal’s governing principles as set out in the Competition Appeal Tribunal Rules 2015. As per paragraph 20 of the Order of the Tribunal dated 16 March 2022, the Tribunal perceived a real lack of clarity as to how “pass on” questions are to be resolved at a substantive hearing and, as per paragraph 32, took the view that the Tribunal would benefit from a better understanding of the overall shape of the evidence which parties propose to lead in order to identify the most advantageous approach to the issues. As such, the Tribunal chose to accelerate consideration of the “pass on” issue to enable the parties to provide detailed submissions as to how this particular issue might be substantively resolved at an early stage, which in turn would inform later case management directions in furtherance of the overarching case management objectives.

2. On 23 and 24 May 2022, a hearing was held to assist the Tribunal in determining the types of evidence to resolve the pass on issues in these proceedings. Having benefitted from hearing a range of submissions, the Tribunal took the view that a form of tightly controlled, expert-led disclosure could be appropriate in the circumstances. Whilst this was the position articulated by the Visa Defendants in their submissions, the Tribunal derived benefit from all of the submissions it heard.
3. In paragraph 11 of the Pass-On Judgment dated 6 July 2023, the Tribunal stressed that the purpose of that Judgment was to ensure that all parties to the proceedings gained some clarity as to how the question of pass on will be determined so as to enable decisions to be taken as to the evidence they will adduce in due course. This view constituted guidance to the parties as to the case management approach to the pass on, which guidance will have significant substantive import for the conduct of the proceedings and was arrived to after having allowed the parties to be heard, as was appropriate in the circumstances.
4. In such circumstances, the making of adversarial costs orders is not helpful to the parties, and might well act as a deterrent to raising important case management questions in what is a difficult and challenging circumstances. Accordingly, there are no and should not be any cost consequences attendant on these matters, save for an order that costs be costs in the case, in the usual way.

Sir Marcus Smith
President of the Competition Appeal Tribunal

Made: 6 June 2023
Drawn: 6 June 2023