



Case No. 1266/7/7/16

IN THE COMPETITION APPEAL TRIBUNAL

BETWEEN:

WALTER HUGH MERRICKS CBE

Class Representative

- and -

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

Defendants

(the *Proceedings*)

ORDER

UPON the Tribunal's Order of 10 February 2023 setting out a timetable for the s32 and s6(4) Hearing, as varied by the Tribunal's Order of 3 July 2023, the Tribunal's Order of 21 September 2023 and the Tribunal's Order of 6 November 2023

AND UPON the application by the Defendants to the Proceedings dated 9 November 2023

AND UPON reading the correspondence from the solicitors to the parties and the fourth witness statement of Mr Mark Sansom dated 9 November 2023

IT IS ORDERED THAT:

1. A request for international judicial assistance to the French Ministère de la Justice pursuant to Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence

Abroad in Civil or Commercial Matters (the *Hague Convention*) be hereby issued in the terms of the attached request (*Request for Assistance*).

2. Mr Alexander Blumrosen (the *Commissioner*) of Polaris Law, Paris, France be appointed as Commissioner, pending the approval of the Ministère de la Justice, to take the evidence (and, if applicable, any reply evidence) of Mr Vincent Jean Bellis, who is located in France. The evidence sought from Mr Bellis is to be provided in the form of signed and dated written statements reflecting his personal knowledge of the facts relating to the claims raised in the Proceedings.
3. The following directions apply to the giving of evidence by Mr Bellis:
 - (a) if they have not already done so, then no later than 4pm on Tuesday, 14 November 2023, the Defendants are to provide the Commissioner with a final unsigned draft of the first witness statement of Mr Bellis;
 - (b) the Defendants are to provide the Commissioner forthwith with the signed Order, Request for Assistance and, as soon as practicable, with a French translation of the Order and the Request for Assistance;
 - (c) the Commissioner will provide the French Ministère de la Justice with the Request for Assistance, Order and translations as soon as possible thereafter;
 - (d) the Defendants are to liaise with the Commissioner to determine an appropriate time for the taking of evidence;
 - (e) the Commissioner may take the evidence of Mr Bellis remotely via video-link (or in person);
 - (f) the appropriate place for the taking of evidence is remotely via video-link or in person at the offices of the Defendants, whether located in England or France;
 - (g) Mr Bellis is to sign his witness evidence under the observation of the Commissioner (whether by video-link or in person);
 - (h) The Defendants are to provide the Commissioner with an electronic version of Mr Bellis' signed witness evidence;
 - (i) the Defendants are to procure that the Commissioner returns the electronic version of Mr Bellis' signed witness evidence to them or their solicitors, formally releasing the witness evidence to the UK; and
 - (j) the Defendants are to act with all due expedition in order to complete the process set out in paragraphs 3(a) to 3(i) above, including requesting that the French Ministère de la Justice expedite the process to the greatest extent possible.
4. The Commissioner is given discretion to conduct any part of the evidence process envisaged under the directions set out above remotely provided that this can be done to the satisfaction of the Defendants.
5. This Order and the Request for Assistance will be provided to the Defendants who will within 2 working days request the Commissioner to file this Order and the Request for Assistance, along with French translations of such documents, with the Ministère de la

Justice, Direction des Affaires Civile et du Sceau, Département de l'entraide, du droit international privé et européen, 13, Place Vendôme, 75042 Paris Cedex 01, France.

6. All costs of this Hague Convention process, including, without limitation the fees of the Commissioner, the expenses of the French authorities, translation fees and any other documents will be borne by the Defendants.
7. Neither this Order nor the Request for Assistance nor any steps taken by the Commissioner or by the Defendants pursuant to the Hague Convention shall waive, or be deemed or argued to have waived, legal privilege or any other privileges, rights, protections or prohibitions that may apply to the evidence to be obtained under the laws of France or England.
8. This Order is without prejudice to the question whether the Defendants will be given permission to adduce the evidence obtained by this process from Mr Bellis in the trial before the Tribunal.
9. Costs of this Application shall be in the case.

REASONS :

This order concerns the taking of evidence from Mr Bellis under the procedure governed by the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. It does not extend the time for the Defendants to file and serve their evidence. Accordingly, it does not prejudice the Class Representative.

NOTE TO THE PARTIES :

1. Since the Tribunal by Order of 6 November 2023 directed that evidence must be filed and exchanged by 10 November 2023, when the evidence of Mr Bellis becomes available the Defendants will need to apply for permission to adduce that evidence out of time.
2. The Defendants should take into account that among the factors to which the Tribunal will have regard in determining any application for the late admission of Mr Bellis' evidence under (1) are:
 - (a) the extent to which that application is out of time;
 - (b) the reasons why the application is made late;
 - (c) whether the Defendants have served a draft of the statement which Mr Bellis is expected to make by way of his evidence; and if not, whether service of such a draft would give rise to a realistic, as opposed to a theoretical, risk that either the Defendants (as the persons providing that draft) or Mr Bellis (who has not yet signed that statement) would be prosecuted under the French "blocking statute" in the circumstances of this case: see the judgment of the Court of Appeal in *Secretary of State for Health v Seriver Laboratories Ltd* [2013] EWCA Civ 1234. In that regard, the Defendants will be expected to serve an expert's report complying with CPR Part 35 on the position as regards French law and prosecutorial practice, and the Class Representative will have permission to serve an expert's report in response;

- (d) the content of the evidence and whether its late service would cause real prejudice to the Class Representative.

The Honourable Mr Justice Roth
Chair of the Competition Appeal Tribunal

Made: 13 November 2023
Drawn: 13 November 2023