



**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 BETWEEN:

WALTER HUGH MERRICKS CBE

Class Representative
(“the Merricks Class Representative”)

- v -

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

Defendants
(“the Merricks Collective Proceedings”)

-and-

PAYMENT SYSTEMS REGULATOR

Non-party

ORDER

UPON paragraph 6 of the Order of the Tribunal made on 23 December 2022, as varied by the Order of the Tribunal made by consent on 10 May 2023 (the “Future Conduct Order”), providing that a six-week liability trial (“Trial 1”) shall take place in the first quarter of 2024

AND UPON paragraph 9 of the Future Conduct Order providing that a seven-week trial (“Trial 2”) to address all issues relating to acquirer and retail pass-on in the Merchant Interchange Fee Umbrella Proceedings and the Merricks Collective Proceedings shall commence in October or November 2024

AND UPON the Tribunal’s request to the Payment Systems Regulator (“the PSR”) for voluntary disclosure of documents pursuant to Rule 53(3)(c)-(d) of the Competition Appeal Tribunal Rules 2015 SI 2015/1648 (“the Rules”) by letter dated 18 July 2023 (“the Request”)

AND UPON hearing Leading Counsel for the Humphries Kerstetter Claimants, the Scott+Scott Claimants and the Stephenson Harwood Claimants, the Visa Defendants, the Mastercard Defendants, and the Merricks Class Representative, and Counsel for the PSR at a CMC on 21 September 2023

AND UPON the Tribunal holding in its ruling dated 5 October 2023 [2023] CAT 59 (the “Ruling”) that there is no statutory requirement or obligation on the PSR to withhold inspection of the material referred to as the “Rule 63 Material” in the Ruling (comprising the PSR Materials as defined at paragraph [3] below)

AND UPON the parties who have indicated that they intend to participate actively in Trial 1, being the Scott+Scott Claimants,¹ the Stephenson Harwood Claimants,² the Visa Defendants and the Mastercard Defendants (together the “Trial 1 Active Parties”), having agreed to the terms of this Order

AND UPON the Merricks Class Representative having agreed to the terms of this Order

AND UPON the PSR having agreed to the terms of this Order

AND UPON this Order being binding upon all parties to Trial 1 and Trial 2, including for the avoidance of doubt (i) those Claimants whose claims are stayed pursuant to an Order of the Tribunal and (ii) those Claimants who are not Trial 1 Active Parties but whose claims are not stayed by Order of the Tribunal

AND HAVING REGARD TO the Tribunal’s powers under Rule 63 and 106 of the Rules

IT IS ORDERED BY CONSENT THAT:

1. The Trial 1 Active Parties and the Merricks Class Representative shall seek to agree a Confidentiality Ring Order into which the PSR Materials may be disclosed for the purposes of Trials 1 and 2 (the “PSR CRO”) as soon as possible.
2. The Trial 1 Active Parties and the Merricks Class Representative shall send a draft of the PSR CRO to the PSR once they have settled on its proposed form. The Trial 1 Active Parties, the Merricks Class Representative and the PSR shall then seek to agree the terms of the draft PSR CRO to provide to the Tribunal for its approval. If there are disagreements between the parties, or between the parties and the PSR as to the terms of the PSR CRO, the parties will

¹ Save for the Claimants in Case No. 1391/5/7/21 (T).

² Save for the Claimants in Case Nos 1472/5/7/22 (T) and 1473/5/7/22 (T), and certain Claimants in Case Nos 1447/5/7/22 (T), 1448/5/7/22 (T), 1458/5/7/22(T) and 1459/5/7/22 (T).

provide an annotated composite draft to the Tribunal for it to make the determination as to the form of the final order to be made.

3. The PSR shall, in accordance with paragraph [7] below, disclose and provide simultaneous inspection of:

(a) the confidential version of the final report entitled “*Market review into the supply of card-acquiring services*”, published on 3 November 2021, including all of its annexes (“PSR Final Report”); and

(b) the underlying econometric analyses and calculations used in the PSR Final Report,

(together, the “PSR Materials”),

by the Disclosure Date (as defined at paragraph [5] below). The PSR shall be entitled to apply redactions to the PSR Materials for (a) legal professional privilege; and (b) personal data (within the meaning of the data protection legislation) provided that any redactions for personal data do not adversely impact the ability to understand the PSR Materials.

4. The PSR shall serve a disclosure statement within two weeks of the Disclosure Date (as defined at paragraph [5] below), which shall include details of the steps it has taken in conducting its reasonable searches.

5. The “Disclosure Date” shall mean the date two weeks after the date of this Order or, if the PSR CRO has not been made by that date, the date three working days after the date the PSR CRO is made.

6. The PSR shall, where practicable, disclose and provide simultaneous inspection of the PSR Materials on a rolling basis in advance of the Disclosure Date, provided that no disclosure shall be given before the PSR CRO is made.

7. The PSR shall disclose and provide simultaneous inspection of the PSR Materials by providing them electronically to Douglas Campbell and Cian Mansfield (“the Receiving People” and each a “Receiving Person”) on behalf of the legal representatives of the Trial 1 Active Parties and the Merricks Class Representative.

8. Upon receipt of the PSR Materials, a Receiving Person shall disclose the PSR Materials into the PSR CRO in accordance with the PSR CRO.

9. The Trial 1 Active Parties and the Merricks Class Representative shall be jointly and severally liable to pay the PSR’s reasonable costs of and occasioned by (i) responding to the Request, including attending the CMC on 21 September 2023; (ii) the settling the draft form of this Order and the draft form of the PSR CRO; and (iii) complying with this Order and the PSR CRO, to be summarily assessed by the President on the papers if not agreed. Those costs shall be apportioned between the parties to the Merchant Interchange Fee Umbrella Proceedings and the Merricks Collective Proceedings in proportions to be determined by the Tribunal in due course. In the event that any of the Trial 1 Active Parties or the parties to the Merricks Collective Proceedings reach a settlement of their claims after the date of this Order, those parties will remain jointly and severally liable for the PSR’s reasonable costs up until the date that their proceedings are dismissed or discontinued by order of the Tribunal.

10. There shall be liberty to apply (including, for the avoidance of doubt, for the PSR to apply to extend the deadline referred at paragraph [5] above).
11. Costs of seeking disclosure of the PSR Materials be costs in the case of the Merchant Interchange Fee Umbrella Proceedings and Merricks Collective Proceedings.

Sir Marcus Smith

President of the Competition Appeal Tribunal

Made: 6 November 2023

Drawn: 7 November 2023