



**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

4 December 2023

Before:

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

Sitting as a Tribunal in England and Wales

BETWEEN:

**UMBRELLA INTERCHANGE FEE CLAIMANTS**

Claimants

- v -

**UMBRELLA INTERCHANGE FEE DEFENDANTS**

Defendants

(the “Merchant Interchange Fee Umbrella Proceedings”)

AND BETWEEN:

**WALTER HUGH MERRICKS CBE**

Class Representative

- v -

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

Defendants

(the “Merricks Proceedings”)

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## PERMISSION TO APPEAL VOLVO LIMITATION JUDGMENT

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**UPON** the Tribunal hearing of 24-26 April 2023 (the “Volvo Limitation Hearing”) to consider the implications of Case C-267/20, Volvo AB and DAF Trucks NV v. RM EU:C:2022:494 (the “Volvo Decision”) and the Tribunal having handed down its Judgment on 26 July 2023 ([2023] CAT 49) (the “Volvo Limitation Judgment”)

**AND UPON** the claimants instructing Scott + Scott UK LLP, the claimants instructing Stephenson Harwood LLP and the claimants instructing Humphries Kerstetter LLP having filed a joint application on 4 October 2023 for permission to appeal the Volvo Limitation Judgment to the Court of Appeal pursuant to Rule 107 of the Competition Appeal Tribunal Rules 2015

**AND UPON** the Visa Defendants and the Mastercard Defendants having filed responses to the Application on 18 October 2023, each submitting that permission to appeal should be refused

**AND UPON** the claimants instructing Scott + Scott UK LLP and the claimants instructing Stephenson Harwood (“Claimants”) having indicated by letter to the Tribunal dated 31 October 2023 that they did not consider it necessary to file any reply to the responses by the Visa Defendants and Mastercard Defendants

**AND UPON** the claimants instructing Humphries Kerstetter having informed the Tribunal by letters dated 9 November 2023 that the entirety of their claims against the Visa Defendants and the Mastercard Defendants are withdrawn, and the Tribunal’s Orders dated 30 November 2023 ordering the withdrawal of those claims

**AND UPON** the Claimants and the Mastercard Defendants having indicated that they are content for the Tribunal to take the decision of whether to grant permission to appeal on the papers

## IT IS ORDERED THAT:

1. The Claimants' application for permission to appeal is granted.

## REASONS

2. The Claimants seek permission to appeal on the following grounds:
  - (1) **Ground 1:** The Tribunal erred in law in its construction and application of the judgment of the Court of Justice of the European Communities ('CJEU') in the *Volvo* Decision. The Tribunal should have concluded that the CJEU recognised the Cessation Requirement (the requirement specified in [61] of the *Volvo* Decision that "limitation periods applicable to actions for damages for infringements of the competition law provisions of the Member States and of the European Union cannot begin to run before the infringement has ceased") as a binding principle of European Union ("EU") law, and that such reasoning was an essential part of the holding in that case. The Tribunal should accordingly have found limitation periods applicable to a claim for damages for infringements of Article 101 of the Treaty on the Functioning of the European Union ("TFEU") cannot begin to run before the infringement has ceased.
  - (2) **Ground 2:** The Tribunal was wrong to find that it was not bound to enforce the Cessation Requirement in relation to the Claimants' rights accrued under EU law prior to the Implementation Period Completion Day ("IPCD") on 31 December 2020. Those rights arose pursuant to sections 2(1) and 3(1) of the European Communities Act 1972 ("ECA 1972") and were preserved by section 16(1) of the Interpretation Act 1978 ("IA 1978") in the absence of express words of abrogation in the European Union (Withdrawal) Act 2018.
  - (3) **Ground 3:** Even if the Cessation Requirement did not form part of the essential foundation of the operative part of the *Volvo* Decision and/or

the Tribunal was not bound to follow the *Volvo* Decision pursuant to sections 2(1) and 3(1) ECA 1972 and section 16(1) IA 1978, the Tribunal was wrong to find that it should not have regard to, and enforce, the Cessation Requirement pursuant to section 6(2) EUWA 2018.

- (4) **Ground 4:** In order to give effect to the Cessation Requirement, the Tribunal should either have adopted a conforming construction of sections 2 and/or 9 of the Limitation Act 1980 so that the six-year limitation period does not run before cessation of an infringement of Article 101; or it should have disapplied those limitation provisions. Its failure to do so was an error of law.
3. In considering whether to grant permission to appeal, the Tribunal applies the test in Civil Procedure Rules Rule 52.3(6). Permission to appeal may only be granted where: (a) the Tribunal considers that the appeal would have a real prospect of success; or (b) there is some other compelling reason why the appeal should be heard.
4. We consider that each ground of appeal raised by the Claimants has a real prospect of success, and is of sufficient importance to trouble the Court of Appeal.
5. The *Volvo* Limitation Judgment grapples with a difficult area of law. While the Tribunal was unanimous in its answers to the questions before it at the *Volvo* Limitation Hearing, Mr Justice Roth reached his conclusion on the implications of the Brexit legislation by reasoning somewhat different from that of the majority. This illustrates, we consider, the complexity of the issues for consideration by the Tribunal. We are satisfied that there is a real chance of the Court of Appeal reaching a different outcome on the grounds of appeal identified by the Claimants.
6. As stated by the Claimants in their application for permission to appeal, all four grounds either constitute or raise novel points of law with ramifications beyond the present proceedings. The findings by the Tribunal in the *Volvo* Limitation Judgment carry potential implications for the law of limitation applicable to

many competition law damages claims in the United Kingdom. They are therefore of sufficient public importance to merit consideration at an appellate level.

Sir Marcus Smith  
President

The Hon Mr Justice Roth

Ben Tidswell

Made: 4 December 2023  
Drawn: 4 December 2023