



**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**

**The Merricks Defendants**

(the “**Merricks Collective Proceedings**”)

(**together, the “Proceedings”**)

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**ORDER**

**(DOCUMENT REQUEST PROCESS – FURTHER ORDER)**

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**UPON** the Order of the Tribunal made on 30 July 2024 setting out the process for document requests following exchange of positive cases on merchant pass-on (the “Document Request Process Order”)

**AND UPON** the Redfern Schedules produced by the parties pursuant to the Document Request Process Order

**AND UPON** hearing the submissions of counsel at the CMC on 16 September 2024 in respect of the document request process

**IT IS HEREBY ORDERED:**

1. Separate processes will apply to (i) the Requests made by the Mastercard Defendants to which the party that was the subject of the Request (the “Responding Party”) refused to respond on the basis that it had settled its claim against the Mastercard Defendants excluding such Requests made of Marks and Spencer (the “Refused Mastercard Requests”), and (ii) the remainder of the Requests (including Requests made by the Mastercard Defendants) to which the relevant Responding Party did provide a substantive Response (the “Answered Requests”).
2. As to the Answered Requests:
  - (a) By 4pm on 23 September 2024, the Umbrella Interchange Fee Defendants and the Merricks Class Representative (the “Requesting Parties”) shall provide to the Responding Parties revised Redfern Schedules (the “Revised Redfern Schedules”) containing only the Requests which are being pursued. In respect of each Request, the Revised Redfern Schedules should include the Requesting Parties’ replies to the Responses (if any) (the “Replies”). The Replies shall not contain requests for information or documents going beyond the scope of the original Requests.
  - (b) By 4pm on 30 September 2024, the Responding Parties shall:
    - (i) respond to the Replies in a further column in the Revised Redfern Schedules (the “Rejoinders”), including, where a Reply includes a concern about the adequacy of the searches undertaken by the Responding Parties, an explanation of the searches undertaken and the extent of solicitor supervision of those searches. Those explanations of searches may be self-contained in the Revised Redfern Schedules or may cross refer to a separate document provided to the Requesting Parties at the same time; and
    - (ii) produce any further requested documents that they have identified as responsive to the Requests which are being pursued and agree to provide in the Proceedings.
  - (c) By 4pm on 7 October 2024, the Requesting Parties shall file with the Tribunal a version of the Revised Redfern Schedules consolidated into a single document and containing only the Requests in respect of which the Requesting Parties seek a determination from the Tribunal (the “Pursued Requests”) and the corresponding Responses, Replies and Rejoinders, along with a brief statement from the relevant Requesting Party as to why, in light of the Rejoinder, the Request remains live.
3. As to the Refused Mastercard Requests:
  - (a) By 4pm on 23 September 2024, the relevant Responding Parties shall provide the Mastercard Defendants with Responses to the Refused Mastercard Requests.
  - (b) By 4pm on 27 September 2024, the relevant Responding Parties shall produce any documents requested in the Refused Mastercard Requests that they agree to provide.
  - (c) Thereafter, the process in respect of the Refused Mastercard Requests shall follow the steps set out in paragraph 2 above save that (i) references in paragraph 2 above to the Requesting Parties are to be read as references to the Mastercard Defendants only; (ii) the live Refused Mastercard Requests shall be addressed in a separate Redfern Schedule rather than in the consolidated Redfern Schedule, and (iii) the deadlines for the steps shall in each case be one week later than those set out in paragraph 2 above.
4. Any Pursued Requests (including, for the avoidance of doubt, Pursued Refused Mastercard Requests) that the Tribunal is unable to decide on the papers will be determined at the CMC listed for 22 October 2024.

5. By 4pm on 30 September 2024, the Umbrella Interchange Fee Claimants listed in appendix 1 to this Order (the “Holland and Barrett Claimants”) shall conduct a reasonable search in consultation with their Trial 2 witnesses for a representative sample of documents showing what factors are taken into account in (i) the exercise described at paragraph 13 of Mr Dixon’s witness statement, (ii) the Holland and Barrett Claimants’ weekly / monthly pricing decisions, and (iii) the Holland and Barrett Claimants’ planning and performance reviews (if different to (i)), and produce the representative sample of documents identified (if any).
6. Costs reserved.
7. There shall be liberty to apply.

**Ben Tidswell**

Chair of the Competition Appeal Tribunal

Made: 26 September 2024

Drawn: 26 September 2024

## **APPENDIX 1**

Holland & Barrett Retail Limited

Holland & Barrett Group Limited