



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1517/11/7/2 (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”)

-and-

Worldpay (UK) Limited

Non-party

CONFIDENTIALITY RING ORDER

UPON the Tribunal listing a trial to address acquirer and merchant pass on to take place in two parts, with the first part to commence on 18 November 2024 and likely to run for five four-day weeks until 20 December 2024 and the second part to commence on a date to be determined but likely to fall between March and May 2025 (“**Trial 2**”).

AND UPON paragraph 12 of the Order of the Tribunal made on 5 December 2023, as amended on 8 December 2023, providing a direction to all parties in the Merchant Interchange Fee Umbrella Proceedings and the Merricks Collective Proceedings to seek the disclosure of certain data from Worldpay.

AND UPON the Trial 2 confidentiality ring order made on 28 February 2024 and amended on 21 October 2024 in the Merchant Interchange Fee Umbrella Proceedings and the Merricks Collective Proceedings (the “**Trial 2 Confidentiality Ring Order**”)

AND UPON the Order of the Tribunal dated 14 November 2024 (the “**Worldpay Disclosure Order**”) providing that Worldpay shall disclose and provide simultaneous inspection of the data provided by Worldpay and responsive to the request described in Appendix 1 of that Order to the individuals listed in Schedule A to this Order.

AND UPON the Parties and Worldpay agreeing that the Responsive Data shall be disclosed or shared between them for the purposes of Relevant Hearings in accordance with the terms of this Order.

AND UPON the Parties and Worldpay agreeing that the Responsive Data contain confidential information which shall be protected in accordance with the terms of this Order.

AND UPON this Order being binding upon all Parties who receive confidential information.

IT IS HEREBY ORDERED BY CONSENT THAT:

1. For the purposes of this Order:

1.1. “**Relevant Active Umbrella Party**” or “**Relevant Active Umbrella Parties**” shall mean the Merchant Interchange Umbrella Proceedings Claimants represented by Scott+Scott UK LLP and Stephenson Harwood LLP and the Merchant Interchange Umbrella Proceedings Defendants.

1.2. “**Non-Confidential Work Product**” shall mean work product and documents that contain summaries or the results of the analysis of Worldpay Confidential Information or any Secondary Work Product, but which do not reveal the content of the underlying Responsive Data and do not, in the reasonable opinion of the Party that has created the

Non-Confidential Work Product, enable the content of the underlying Responsive Data to be revealed for example as a result of redaction, anonymisation, or aggregation with other acquirer data.

- 1.3. **“Party”** or **“Parties”** shall mean any Relevant Active Umbrella Party and any party to the Merricks Collective Proceedings.
- 1.4. **“Relevant Hearing(s)”** shall mean Trial 2 and any other hearing in the Merchant Interchange Fee Umbrella Proceedings and/or the Merricks Collective Proceedings relevant to the resolution of acquirer pass-on issues in either of those proceedings.
- 1.5. **“Responsive Data”** shall mean the raw data provided by Worldpay in response to the request described in Appendix 1 of the Worldpay Disclosure Order.
- 1.6. **“Trial 2 Confidential Information”** is as defined in paragraph 1.7 of the Trial 2 Confidentiality Ring Order.
- 1.7. **“Trial 2 Permitted Persons”** are as defined in paragraph 1.5 of the Trial 2 Confidentiality Ring Order.
- 1.8. **“Tribunal”** shall mean the Competition Appeal Tribunal.
- 1.9. **“Worldpay”** shall mean Worldpay (UK) Limited and any affiliated entity.
- 1.10. **“Secondary Work Product”** shall mean work product and documents prepared by Worldpay Permitted Persons that summarise or analyse Worldpay Confidential Information in a way that reproduces or reflects the content of Worldpay Confidential Information. Any notes, copies, reports, submissions or other documents that reproduce or reflect the content of Worldpay Confidential Information are themselves Secondary Work Product.
- 1.11. **“Worldpay Confidential Information”** means any part of the Responsive Data and for the purposes of the Trial 2 Confidentiality Ring Order shall be afforded the same protections as Trial 2 Confidential Information.
- 1.12. **“Worldpay Permitted Persons”** shall mean:
 - 1.12.1. Those persons listed in Schedule A (as amended from time to time pursuant to the terms of this Order and/or by the Tribunal), each being an external legal or other professional adviser to a Party who has provided a signed confidentiality undertaking in the form set out in Schedule B to (i) the Tribunal, (ii) each of the Parties, and (iii) Worldpay.
 - 1.12.2. Necessary secretarial, business services or other support personnel, including internal providers of eDiscovery or litigation support services (excluding

trainee solicitors or paralegals), IT, reprographics staff and clerks, acting under the supervision and/or instructions of the persons identified at paragraph 1.12.1 above for the purposes of a Relevant Hearing, provided that such personnel have been informed of the confidential nature of the Worldpay Confidential Information and the terms of Schedule B to this Order.

- 1.12.3. Any external eDiscovery or litigation support provider engaged by any Party for the purpose of a Relevant Hearing to provide eDiscovery or similar services in support of those persons identified at paragraph 1.12.1 above, who may have access to the Worldpay Confidential Information as a necessary consequence of the provision of their services, provided that such providers have been informed of the confidential nature of the Worldpay Confidential Information and the terms of Schedule B to this Order.

Disclosure and designation of the Responsive Data

2. Upon receipt of the Responsive Data in accordance with paragraph 2 of the Worldpay Disclosure Order, the Responsive Data shall be designated as Worldpay Confidential Information by adding "Worldpay Confidential" to electronic file names and marking "Worldpay Confidential" on the Responsive Data (to the extent it is practical to do so), and sending the marked up documents comprising the Responsive Data to the other individuals listed at Schedule A of this Order through a secure file transfer system.

Disclosure and inspection of Worldpay Confidential Information

3. A Party receiving Worldpay Confidential Information shall permit that data to be inspected only by Worldpay Permitted Persons and only on the basis that:
 - 3.1. the recipient is a Worldpay Permitted Person;
 - 3.2. the Worldpay Confidential Information will be treated by each such Worldpay Permitted Person as confidential and will be used by each such person solely for the purpose of the proper conduct of a Relevant Hearing;
 - 3.3. no Worldpay Permitted Person will, save as expressly provided for below at paragraph 4, disclose, copy or distribute any Worldpay Confidential Information; and
 - 3.4. the Worldpay Confidential Information will be on a secure electronic platform which only Worldpay Permitted Persons are able to access and download Worldpay Confidential Information from.
4. Provided it is for the purpose of the proper conduct of a Relevant Hearing, nothing in this Order shall prohibit any Worldpay Permitted Person from:

- 4.1. making documents containing extracts of the Responsive Data (which extracts would themselves be Worldpay Confidential Information); and/or
 - 4.2. disclosing any Worldpay Confidential Information to any other person who is a Worldpay Permitted Person; and/or
 - 4.3. using the Worldpay Confidential Information to create Secondary Work Product or Non-Confidential Work Product. Secondary Work Product shall not constitute Worldpay Confidential Information but shall be designated as “Trial 2 Confidential Documents” (as defined in paragraph 1.6 of the Trial 2 Confidentiality Order) and may be shared with the Tribunal for any Relevant Hearing and any Trial 2 Permitted Person. For the avoidance of doubt, Secondary Work Product which does not reproduce or reveal the content of Worldpay Confidential Information (for example as a result of redaction, anonymisation, or aggregation with other acquirer data) shall not be designated as Trial 2 Confidential Documents.
5. Nothing in this Order shall prevent or prohibit a Party from taking any action (including in particular disclosing Worldpay Confidential Information to a person who is not a Worldpay Permitted Person and/or referring to such documents or information in open court) which has been expressly authorised in writing by Worldpay and the Parties, or which a Party in receipt of Worldpay Confidential Information is required to take by applicable law or by a court of competent jurisdiction.
 6. In the event that a regulatory or legal requirement requires a Worldpay Permitted Person to disclose Worldpay Confidential Information to any person or entity who is not a Worldpay Permitted Person, the Party that has engaged the Worldpay Permitted Person as an external adviser will inform Worldpay without undue delay by email to anna.morfey@ashurst.com / emile.abdul-wahab@ashurst.com / angus.rance@ashurst.com (unless that Party or the Worldpay Permitted Person is prohibited from doing so by any legislation, court order or legal or regulatory requirement).
 7. In the event of any disclosure of Worldpay Confidential Information other than in a manner authorised by this Order, including any unintentional or inadvertent disclosure, solicitors for the improperly disclosing Party shall notify the improper recipient(s) and Worldpay, and the improperly disclosing Party shall use all reasonable endeavours to prevent further unauthorised disclosure including (to the extent possible) seeking to retrieve all copies of the Worldpay Confidential Information from the improper recipient(s) thereof and seeking to secure the agreement of such recipient(s) not to further disseminate and to destroy copies of the Worldpay Confidential Information in any form.

Addition or removal of Worldpay Permitted Persons

8. The maximum number of Worldpay Permitted Persons falling within category 1.12.1 at any given time will be limited to:

- 8.1. three legal advisors; and
 - 8.2. the appointed economic expert teams of the Parties.
9. A Party seeking to designate a person as a Worldpay Permitted Person by adding that additional person to Schedule A must:
 - 9.1. request permission from Worldpay and other Parties in writing;
 - 9.2. provide in such request details of that proposed Worldpay Permitted Person's role and an explanation of why their designation as a Worldpay Permitted Person is necessary; and
 - 9.3. upon the agreement of Worldpay and other Parties to the designation of the additional Worldpay Permitted Person, provide the Tribunal, Worldpay and other Parties with a copy of the Schedule B confidentiality undertaking signed by the proposed Worldpay Permitted Person and an up-to-date list of the Worldpay Permitted Persons in Schedule A.
10. Worldpay and each Party (other than the Party requesting that the additional person be designated as a Worldpay Permitted Person) shall confirm in writing within five (5) business days of the request pursuant to paragraph 9.1 whether they consent to the additional person being designated as a Worldpay Permitted Person. Such consent shall not be unreasonably withheld.
11. If Worldpay or a Party refuses consent to the additional person being designated a Worldpay Permitted Person in accordance with paragraph 10, then they must provide written reasons (copying in Worldpay and other Parties) for why consent is refused together with its refusal.
12. If Worldpay or a Party neither confirms nor refuses consent in accordance with paragraphs 10 and 11 above, then following the expiry of five (5) business days, the additional person shall be designated as a Worldpay Permitted Person upon provision to each of the Tribunal, Worldpay, and the Parties a copy of the Schedule B confidentiality undertaking signed by the proposed Worldpay Permitted Person and an up-to-date list of the Worldpay Permitted Persons in Schedule A.
13. If there are any disputes which cannot be resolved by Worldpay and the Parties, the Party seeking to include the additional person as a Worldpay Permitted Person may apply to the Tribunal to have the issue determined, provided written notice of such application is given to the Worldpay and other Parties. The additional person will become a Worldpay Permitted Person if the Tribunal so orders and upon provision to the Tribunal, Worldpay, and other Parties a copy of the Schedule B confidentiality undertaking signed by the proposed Worldpay Permitted Person and an up-to-date list of the Worldpay Permitted Persons in Schedule A.

14. If Worldpay or a Party wishes a Worldpay Permitted Person to be removed from Schedule A, they shall (as necessary) inform Worldpay and the Parties and provide those persons with an up-to-date list of the Worldpay Permitted Persons in Schedule A. For the avoidance of doubt, a Party may only remove a Worldpay Permitted Person that was added by that Party.
15. There shall be no requirement to amend this Order upon the addition or removal of Worldpay Permitted Persons.

Destruction of documents

16. Upon any Party ceasing to be a party in respect of either the Merchant Interchange Fee Umbrella Proceedings or the Merricks Collective Proceedings (or, in the case of the Mastercard Defendants, both proceedings), that Party shall take all practical and proportionate measures to ensure that all hard copies or extracts of the Worldpay Confidential Information within that Parties' custody are destroyed.
17. Upon any Party ceasing to be a Party in respect of either the Merchant Interchange Fee Umbrella Proceedings or the Merricks Collective Proceedings (or, in the case of the Mastercard Defendants, both proceedings), that Party shall take all practical and proportionate measures to ensure that any copy or extract of the Worldpay Confidential Information is securely deleted or rendered inaccessible from any computer systems, disk or device so that the material is not available to any person (save where the relevant copy or extract of the Worldpay Confidential Information is contained in an electronic file created pursuant to any routine backup or archiving procedure so long as such file is not generally accessible beyond the need for disaster recovery or similar operations).
18. For the avoidance of doubt, paragraphs 16 and 17 shall not require any Worldpay Permitted Person to destroy any documents insofar as they have reasonable need to retain those documents for the purposes of compliance with the professional regulatory requirements of their profession, managing professional liability exposures or as required under law, regulation or court order. Paragraphs 16 and 17 shall not prevent any Worldpay Permitted Person from complying with any regulatory requirement of their profession, professional indemnity insurance or requirement under law, regulation or court order.

General provisions

19. The production of further copies of the Worldpay Confidential Information shall be limited to those required by the Worldpay Permitted Persons to whom the Worldpay Confidential Information have been provided.
20. The confidentiality terms in this Order are intended to apply unless or until superseded or set aside by a subsequent order of the Tribunal.

Variation of the Confidentiality Ring Order

21. Worldpay and the Parties may agree and/or may apply to the Tribunal to vary the terms of this Order, remove any document from the category of Worldpay Confidential Information, or vary the lists of Worldpay Permitted Persons in Schedule A (in accordance with paragraph 9 of this Order, as appropriate).
22. Nothing in this Order or the terms of the Schedule B confidentiality undertaking shall prevent or prohibit any Worldpay Permitted Persons (as may be extended from time to time) from acting in other interchange fee related proceedings.
23. If any Party becomes aware of, or suspects that there has been, a breach of any Schedule B confidentiality undertaking, that Party shall notify Worldpay immediately by email to anna.morfey@ashurst.com / emile.abdul-wahab@ashurst.com.
24. The costs of drafting this Order and complying with it shall be costs in the case.
25. There shall be liberty to apply.

Mr Ben Tidswell
Chair of the Competition Appeal Tribunal

Made: 14 November 2024
Drawn: 14 November 2024

SCHEDULE A WORLDPAY PERMITTED PERSONS

SSU Claimants' Worldpay Permitted Persons

Worldpay Permitted Persons

SH Claimants' Worldpay Permitted Persons

Worldpay Permitted Persons

Mastercards Defendants' Worldpay Permitted Persons

Worldpay Permitted Persons

Visa Defendants' Worldpay Permitted Persons

Worldpay Permitted Persons

Merricks Class Representative's Worldpay Permitted Persons

Worldpay Permitted Persons

SCHEDULE B - CONFIDENTIALITY UNDERTAKING

The terms used but not defined in this document shall have the meaning given in the Order for the proceedings that this document is attached to or accompanies.

I, [NAME], of [ORGANISATION], being a Worldpay Permitted Person [and regulated so far as my professional conduct is concerned by [insert regulatory body]], undertake to Worldpay, to the Parties and to the Tribunal that:

1. I have read a copy of the Order and understand the implications of the Order and the giving of this undertaking.
2. I will treat all and/or any Worldpay Confidential Information made available to me for the purpose of the proceedings as secret and confidential and will use any such Worldpay Confidential Information only for the purpose of the proper conduct of the proceedings.
3. Except as expressly permitted by the Order, I will not use, disclose, discuss, copy, reproduce or distribute any such Worldpay Confidential Information or authorise, enable or assist any person to do so.
4. The Worldpay Confidential Information will remain in my custody or the custody of another Worldpay Permitted Person at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
5. I will take all such steps as may be necessary or expedient on my part to comply with any request made under or pursuant to the terms of the Order.
6. I will otherwise comply with the terms of the Order and/or, as the case may be, take all steps within my power to ensure that the terms of the Order are complied with (including by not disclosing, other than to other Worldpay Permitted Persons, any Worldpay Confidential Information, or assisting or enabling any person to do so).
7. The present proceedings for these purposes shall include any further appeal from the Tribunal to a higher court, save in so far as that higher court orders otherwise.
8. Save that none of the requirements listed above shall prevent Worldpay Permitted Persons from disclosing Worldpay Confidential Information to persons who have

already legitimately seen it.

PROVIDED ALWAYS that nothing in this document shall prevent or prohibit me from taking any action which has been authorised in writing by Worldpay or which I am required to take by applicable law or by a court of competent jurisdiction.

Signed:

Dated:
