



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1266/7/7/16

BETWEEN:

**WALTER HUGH MERRICKS CBE**

**Class Representative**

- and -

**(1) MASTERCARD INCORPORATED**

**(2) MASTERCARD INTERNATIONAL INCORPORATED**

**(3) MASTERCARD EUROPE S.A. (formerly Mastercard Europe S.P.R.L)**

**Defendants**

- and -

**INNSWORTH CAPITAL LIMITED**

**Intervener**

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**ORDER**

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**UPON** the Class Representative and the Defendants filing an application for a collective settlement approval order on 17 January 2025 (**the “CSAO Application”**) together with the fourth witness statement of the Class Representative (**“Merricks 4”**) (together, **“the Documents”**)

**AND UPON** the Order of 23 January 2025 granting Innsworth Capital Ltd permission to intervene in the proceedings limited to the determination of the CSAO Application

**AND UPON** reading the Class Representative’s application by letter dated 21 January 2025 seeking an order as against the Intervener concerning the confidential versions of the Documents (**“the Documents Application”**)

**AND UPON** reading the letters from the solicitors for the Intervener dated 27 January 2025, and the solicitors for the Class Representative dated 28 January 2025

**IT IS ORDERED THAT:**

1. The Documents Application is refused.
2. For the avoidance of doubt, any documents filed and served by the Intervener for the purpose of the CSAO Application shall be prepared in confidential and non-confidential versions, with redactions on the same basis as in the Documents.
3. The Class Representative shall pay the Intervener's costs of and occasioned by the Documents Application, such costs to be summarily assessed by the President after the determination of the CSAO Application.

**REASONS:**

1. The confidential version of the Documents constitutes "Project Information" within the terms of the restated Litigation Funding Agreement dated 4 August 2023 between the Intervener and the Class Representative ("the LFA"). Pursuant to cl 9.4(v) of the LFA, the Intervener is expressly entitled to disclose such information to its advisors for the purposes of the operation or evaluation of the LFA, and consideration of the reasonableness of the proposed settlement of the proceedings which the Intervener is funding comes within those purposes. That is subject to the Intervener remaining liable for any breach of confidentiality by its solicitors and counsel, but there is no indication that the Intervener's legal representatives intend to disclose the Documents to third parties.
2. Further and in any event, I consider that disclosure of confidential or privileged documents to a litigation funder in connection with the proceedings which it is funding (or to its affiliate which is authorised to provide management services to the funder, including evaluating any aspect of the proceedings), by implication permits the funder (or its affiliate) to take legal advice upon that information from its own lawyers, subject to their preserving the confidence in the documents. Here, I consider that the Class Representative is obliged to disclose the Documents to Innsworth Advisors Ltd, an

affiliate of the Intervener providing the Intervener with such services, pursuant to cl 4.3(iv) and/or cl 4.8 of the LFA.

3. The Class Representative has filed the confidential version of the Documents with the Tribunal in support of the CSAO Application, indicating (i) what passages are confidential and privileged as regards the Defendants and (ii) what passages are confidential and privileged as regards as regards third parties only. The Intervener has made clear that it intends to use the confidential version of the Documents only for the purpose of its intervention on the CSAO Application and not for any ulterior purpose. Provided that it does not by its statement of intervention or evidence disclose or reveal the substance of the information in (i) to the Defendants or in (ii) to third parties, the Intervener will not be breaching the confidence or violating the privilege.
4. The Tribunal is likely to have to consider the confidential versions of the Documents and will, as usual, take appropriate measures to protect that confidence. There is no disruption to the conduct of the proceedings if not only the Class Representative but also the Intervener is able to refer to the confidential passages, subject to the same protective measures.

**The Honourable Mr Justice Roth**  
Acting President of the Competition Appeal Tribunal

Made: 29 January 2025  
Drawn: 29 January 2025