



Neutral citation [2025] CAT 21

Case No: 1517/11/7/22 (UM)

IN THE COMPETITION
APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

10 March 2025

Before:

THE HONOURABLE MR JUSTICE MICHAEL GREEN
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

THE UMBRELLA INTERCHANGE FEE CLAIMANTS

Claimants

- and -

THE UMBRELLA INTERCHANGE FEE DEFENDANTS

Defendants

AND BETWEEN:

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS I AND II
LIMITED**

Class Representative

- and -

MASTERCAD INCORPORATED & OTHERS

Defendants

AND BETWEEN:

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS I AND II
LIMITED**

Class Representative

-and-

VISA INC. & OTHERS

Defendants

AND BETWEEN:

WALTER HUGH MERRICKS, CBE

Class Representative

- and -

(1) MASTERCARD INCORPORATED
(2) MASTERCARD INTERNATIONAL INCORPORATED
(3) MASTERCARD EUROPE SA
(formerly known as MASTERCARD EUROPE SPRL)

Defendants

Heard at Salisbury Square House on 10 March 2025

RULING (MERRICKS TRIAL 2 COSTS)

APPEARANCES

Matthew Cook KC and Owain Draper on behalf of Mastercard (Instructed by Jones Day)

Daniel Jowell KC, Isabel Buchanan and Aislinn Kelly-Lyth on behalf of Visa (Instructed by Linklaters)

Philip Woolfe KC, Flora Robertson and Oscar Schonfeld on behalf of the Merchant Claimants and the CICC Class Representatives (Instructed by Stephenson Harwood, Scott and Scott and Marcus Parker)

Jack Williams on behalf of Walter Merricks (Instructed by Wilkie Farr & Gallagher)

UPON the application of Mr Walter Merricks dated 6 March 2025 seeking that the Tribunal make no order as to costs as between him and each of the Visa Defendants and the Merchant Claimants

AND UPON hearing Counsel for the parties at the Trial 2B Pre-Trial Review on 10 March 2025

A. INTRODUCTION

1. The Merricks proceedings were designated as Host Cases in the Merchant Interchange Umbrella Fee as regards the Ubiquitous Matter of Pass-On by Order of the Acting President made and drawn on 1 July 2024. A hearing was held before a separate Settlement Tribunal on 19 to 21 February 2025 to determine the joint application of Mr Merricks and Mastercard for a collective settlement approval order. The Settlement Tribunal reserved judgment and indicated that issues of costs liability in respect of Trial 2 in the Merchant Interchange Fee Proceedings was not a matter for that Settlement Tribunal. On 24 February 2025, the Merricks Class Representative informed the Tribunal of its imminent withdrawal from the Merchant Interchange Umbrella Fee Proceedings and its intention to address the issue of costs liability in respect of Trial 2 at the Pre-Trial Review for Trial 2B in the Merchant Interchange Fee Umbrella Proceedings. By Application dated 6 March 2025, the Merricks Class Representative sought an order of no costs in the Merchant Interchange Umbrella Proceedings. The Claimants and the Visa Defendants responded in oral submissions at the Pre-Trial Review.

B. RULING

2. I fully understand the desire for Mr Merricks to be completely out of this ongoing litigation and to incur no further costs. I cannot possibly decide at this stage, on the back of this application issued late on 6 March, subsequent to the settlement hearing that took place on 19 to 21 February, that Mr Merricks would not be liable for any of the costs incurred in relation to a trial in these proceedings in which they participated and in which the other parties, albeit not necessarily the parties to the Merricks claim, have incurred costs. I do not think that the analogy with an intervener is a good one. Mr Merricks came into this trial with eyes wide open and inevitably parties will have incurred extra costs as a result.

3. Mr Williams submitted that because of the way the Merchant Claimants are putting their case on costs, namely that, if they win, they should be able to recover all of their costs reasonably incurred in dealing with the Merricks' evidence insofar as it affected their claims against Mastercard and Visa, they should be able to recover those costs as a result. However, I do not think that that covers the situation wholly.
4. Mr Woolfe attempted to support that position by saying that, if the Tribunal were minded to accede to Mr Merricks's application that there be no order as to costs as between Mr Merricks and the other parties, the Tribunal should rule that any costs incurred by a party should not be treated as irrecoverable solely by reason of the fact that they were incurred in consequence of Mr Merricks's inclusion in the Merchant Interchange Fee Umbrella Proceedings.
5. I think that that suggestion by Mr Woolfe on behalf of the Merchant Claimants does not really get over the fact that I am being asked to decide at this preliminary stage, well before costs would normally be decided, that those costs were effectively reasonably incurred by the other parties in dealing with Mr Merricks's evidence.
6. I cannot say at this stage that those costs were reasonably incurred and I cannot rule out any possibility of other parties seeking to recover their costs from Mr Merricks. That is the effect of what Mr Merricks is asking us to do at this stage and I am not prepared to do it.
7. As to the distribution to the class, Mr Williams says that it would be prejudicial and detrimental to the class and indeed the other stakeholders on Mr Merricks's side, namely the funders, to ring fence monies (£2m has been suggested) for such a small contingency.
8. I am not convinced about the suggested timing of events, namely that there will be a distribution by the end of the year, and I would hope in any event that we would have produced our judgment by that time on the issues from Trial 2A and 2B. I therefore think it unlikely that there is any real prejudice to be incurred in relation to the recipients of the distribution by deferring any decision in relation to costs. Even though there would, of course, be a benefit to Mr Merricks's side to be completely out of these

proceedings with no risk of any liability for costs, I do think it really is premature for us to say that they have no such liability.

9. There were certain policy issues relating to class distribution that were raised by Mr Williams in Mr Merricks's application but again, I am not in a position to decide those policy issues and insofar as they might affect future class actions, I do not think those are strong enough to require us to grasp the nettle at this stage and I decline to do so.
10. There is also the point that it may be, at the end of the day, there is not a clear winner and there is also the issue of the costs of trial 2B having to be taken into account, although they are probably relatively insignificant in the overall scheme of things.

C. CONCLUSION

11. In summary, costs are still very much at large in relation to these proceedings and I am not going to pre-empt what the costs outcome will be and so I decline the application of Mr Merricks to make no order as to costs at this stage.

Mr Justice Michael Green
Chair

Charles Dhanowa CBE, KC (Hon)
Registrar

Date: 10 March 2025