



Neutral citation [2026] CAT 15

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

Case Nos: 1441-1444/7/7/22

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

2 March 2026

Before:  
BEN TIDSWELL (Chair)  
WILLIAM BISHOP  
TIM FRAZER

Sitting as a Tribunal in England and Wales

BETWEEN:

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS I LIMITED**

Class Representative

- v -

- (1) MASTERCARD INCORPORATED
- (2) MASTERCARD INTERNATIONAL INCORPORATED
- (3) MASTERCARD EUROPE SA
- (4) MASTERCARD/EUROPAY UK LIMITED
- (5) MASTERCARD UK MANAGEMENT SERVICES LIMITED
- (6) MASTERCARD EUROPE SERVICES LIMITED

Defendants

AND BETWEEN:

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS II LIMITED**

Class Representative

- v -

- (1) MASTERCARD INCORPORATED
- (2) MASTERCARD INTERNATIONAL INCORPORATED
- (3) MASTERCARD EUROPE SA

- (4) **MASTERCARD/EUROPAY UK LIMITED**
- (5) **MASTERCARD UK MANAGEMENT SERVICES LIMITED**
- (6) **MASTERCARD EUROPE SERVICES LIMITED**

Defendants

AND BETWEEN:

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS I LIMITED**

Class Representative

- v -

- (1) **VISA INC.**
- (2) **VISA INTERNATIONAL SERVICE ASSOCIATION**
- (3) **VISA EUROPE SERVICES LLC**
- (4) **VISA EUROPE LIMITED**
- (5) **VISA UK LTD**

Defendants

AND BETWEEN:

**COMMERCIAL AND INTERREGIONAL CARD CLAIMS II LIMITED**

Class Representative

- v -

- (1) **VISA INC.**
- (2) **VISA INTERNATIONAL SERVICE ASSOCIATION**
- (3) **VISA EUROPE SERVICES LLC**
- (4) **VISA EUROPE LIMITED**
- (5) **VISA UK LTD**

Defendants

Heard at Salisbury Square House on 16 December 2025

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**JUDGMENT (OPT-IN APPLICATION)**

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## APPEARANCES

Kieron Beal KC and Flora Robertson (instructed by Marcus Parker Limited) appeared on behalf of the Class Representatives

Matthew Cook KC and Hugo Leith (instructed by Freshfields LLP and Jones Day) appeared on behalf of the Mastercard Defendants

Brian Kennelly KC and Emily Neill (instructed by Linklaters LLP and Milbank LLP) appeared on behalf of the Visa Defendants

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## A. INTRODUCTION

1. This is the Tribunal’s Judgment on a joint application dated 24 July 2025 by the Mastercard and Visa Defendants (together the “Defendants”) seeking to establish which legal entities have validly opted in to these proceedings (the “Opt-In Application”)<sup>1</sup>.
2. The Opt-In Application originally identified a purely legal question of whether an ‘undertaking’ could validly opt in to collective proceedings, or whether only natural persons or individual corporate entities could do so. This was on the basis that the Class Representative had prepared an initial opt-in class register comprised of undertakings (for example, corporate groups) rather than specifying all legal entities within those undertakings which were said to be class members in the opt-in proceedings.
3. However, by the time the Opt-In Application was heard, the opt-in class register had evolved to identify distinct corporate entities within each undertaking which were said to have opted in. Ahead of the hearing, the Defendants accepted that 81 corporate entities had validly opted in, but challenged the inclusion of 127 legal entities named in the register. Those challenges were based on various grounds, with the main reasons being that: the legal entities had not taken any steps to opt in in their own right; were said to have opted in by way of actions taken by individuals who were not necessarily authorised to take that step; or there were otherwise defects in the process by which opting in had taken place.
4. On 18 November 2025, the Class Representative applied for permission under Rules 4, 19 and 82(2) of the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”) for those legal entities which had not completed an online registration form by the opt-in deadline to be given permission to opt in after the deadline (the “Permission Application”). The Permission Application was filed on a protective basis, in the event that we were not to find that all corporate entities have validly opted in.

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<sup>1</sup> The opt-in proceedings are those brought by Commercial and Interregional Card Claims I Limited against each of the Mastercard Defendants and the Visa Defendants. Where we refer in the singular to the Class Representative, we mean this entity.

5. On 28 November 2025 the Class Representative filed a further application seeking specific permission for entities in the Saga group and American Express Global Business Travel group to opt in to the proceedings after the opt-in deadline under Rule 82(2) of the Tribunal Rules (the “Saga and Amex GBT Application”).<sup>2</sup> The Saga and Amex GBT Application was made because:
  - a) the Class Representative accepts that the individual who completed the relevant opt-in notification for Saga Travel Group (UK) Limited did not have authority to opt in other entities in the group at that time; and
  - b) American Express has sought permission to opt in further entities after acquiring CWT UK Group Limited, which had already opted in to the proceedings prior to its acquisition.

## **B. RELEVANT HISTORY OF THE PROCEEDINGS**

### **(1) Certification of the proceedings**

6. These proceedings concern recovery, on behalf of a class of merchants, of an alleged overcharge comprising all, or part, of the multilateral interchange fee (the “MIF”) for commercial cards, which acquirers paid to issuers in accordance with the scheme rules of the Defendants, and which acquirers charged merchants. It is alleged that, by putting in place scheme rules specifying the MIFs to be charged on commercial cards, the Defendants have infringed the Chapter I Prohibition of the Competition Act 1998 (“CA 1998”) and/or Article 101 of the Treaty on the Functioning of the European Union (“TFEU”).
7. The Tribunal initially refused to grant the Class Representatives’ applications for collective proceedings orders by its judgment dated 8 June 2023 ([2023] CAT 38). The Class Representatives were allowed a further period to address

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<sup>2</sup> The application was made in relation to:

- (a) Saga Services Limited, Saga Cruises Limited, ST&H Limited and Saga Publishing Limited (together the “Saga Entities”); and
- (b) Chartwell Travel Limited, Egencia Holdings UK Limited, Egencia UK Limited, GBT Travel Services UK Limited, Hogg Robinson (Travel) Limited, Hogg Robinson Limited, KDS UK Limited, Ovation Travel Group Limited, and GBT III B.V. trading as American Express Global Business Travel (together the “Amex GBT Entities”).

the defects in their initial applications, and the revised applications were granted by the Tribunal in its judgment dated 7 June 2024 ([2024] CAT 39) (the “Second Certification Judgment”).

8. Collective Proceedings Orders were made and drawn up on 9 August 2024 (together the “CPOs”). The CPOs comprise four orders allowing both opt-in and opt-out proceedings against each of the Mastercard and Visa Defendants. The CPOs are identical in all relevant respects as between the Class Representatives and the Mastercard and Visa Defendants, with certain differences as between the CPOs for the opt-in and opt-out proceedings. Further details concerning the CPOs will be discussed in due course but, at a high level, claimants which are part of an undertaking with annual turnover of less than £100 million will be part of the opt-out proceedings (unless they opt out) and claimants which are part of an undertaking with a turnover of more than £100 million per annum are only eligible to take part in the opt-in proceedings (once they have opted in). This Judgment concerns the opt-in proceedings only and references to the CPOs are, unless otherwise specified, to the two orders granting permission for opt-in collective proceedings to be brought against Mastercard and Visa respectively.

**(2) Issues already determined**

9. Since the deadline for opting in to these proceedings passed on 10 February 2025, at least two significant events have occurred in the proceedings:
  - a) the Class Representatives participated in a trial in the Umbrella Proceedings<sup>3</sup> during March 2025 concerning the issue of whether, and to what extent, acquirers passed on MIFs to merchants. The Tribunal has now (on 18 February 2026) delivered its judgment, thereby determining the issue of acquirer pass-on in these proceedings; and
  - b) by Order of the Chair dated 7 October 2025 (by consent), the judgment of the Tribunal in *Umbrella Interchange Fee Claimants v Umbrella*

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<sup>3</sup> The Umbrella Proceedings (Tribunal Case 1517/11/7/22 (UM)) are the procedural mechanism by which the Tribunal is managing large numbers of individual claims under section 47A CA 1998 against various Mastercard and Visa entities.

*Interchange Fee Defendants* [2025] CAT 37 will apply in the determination of these proceedings, subject to the outcome of any appeals. In that judgment, the Tribunal found that (among other things) MIFs charged on commercial card transactions infringed Chapter I CA 1998 and Article 101(1) TFEU.

## **C. THE OPT-IN PROCESS**

### **(1) Legal requirements**

10. The key provisions setting out the process for opting in to collective proceedings are contained in Rules 80 to 83 of the Tribunal Rules. Briefly:

a) Rule 80 specifies the matters that must be included in a collective proceedings order, including most importantly for this Judgment:

“A collective proceedings order shall ...

(f) state whether the collective proceedings are opt-in or opt-out collective proceedings;

(g) specify the domicile date;

(h) specify the time and the manner by which—

(i) in the case of opt-in collective proceedings, a class member may opt in;...”

b) Rule 81 requires a class representative to provide notice to class members of the collective proceedings order. The notice is to be approved by the Tribunal and Rule 81 sets out the matters that must be addressed in the notice.

c) Rule 82 is the key rule setting out the process for opting in. It provides that:

(i) Class members are permitted to opt in to collective proceedings on or before the time and in the manner specified in the collective proceedings order.

(ii) If a prospective class member seeks to opt in after the opt-in deadline, Rule 82 requires them to seek the permission of the Tribunal, and provides that, when deciding whether to grant permission, the Tribunal should consider all the circumstances, including:

(a) whether the delay was caused by the fault of that class member; and

(b) whether the defendant would suffer substantial prejudice if permission were granted.

d) Rule 83 then requires the preparation of a class register to record the names of class members who have opted in to the proceedings. This must be produced upon request for inspection by, among others, the defendant.

11. The CPOs were made on 9 August 2024 and contained the following definitions:

a) “Class Definition” means:

“Merchants who paid a Merchant Service Charge in respect of one or more Commercial Card Transactions during the Claim Period in the UK

The Class does not include Excluded Merchants.”

b) “Merchants” means:

“a person which accepts payments by means of payment cards and which has a contractual relationship, typically known as a Merchant Services Agreement, with an Acquirer that provides services to the Merchant enabling the acceptance of a Mastercard payment card by the Merchant in accordance with applicable rules laid down by the Mastercard Scheme Rules, and in consideration of payment of a Merchant Service Charge by the Merchant to the Acquirer.”

c) “Excluded Merchants” means:

“any undertakings with a turnover of, on average, less than £100 million per annum in the period between 2016-2019.”

12. The CPOs also set out the following procedure for opting into the proceedings:

“Any person domiciled in the United Kingdom on the Domicile Date that falls within the Class as defined above shall not be included in these collective proceedings unless they opt-in. If a person wishes to opt-in to these collective proceedings, they must:

(a) Follow the procedure set out in the Collective Proceedings Order Notice, which is attached to this Order at Annex A; and

(b) Notify their decision to opt-in to these collective proceedings by 4pm on six months after the date of this Order.”

13. The CPOs set a deadline for opting in of 16.00 on 10 February 2025 (the “Opt-In Deadline”).

**(2) The process followed in these proceedings**

14. In his statement dated 8 September 2025 (“Robinson 1”), Mr Robinson of Harcus Parker, who represent the Class Representative, described the ‘bookbuilding’ process that took place for the opt-in proceedings:

- a) Harcus Parker first sought to gauge interest by large corporate groups to participate in the proceedings in advance of the CPOs being made.
- b) After the CPOs were made, Harcus Parker and the Class Representative re-engaged with businesses which had previously expressed an interest in the proceedings and instructed third parties to assist in engagement with other businesses which might have a claim.
- c) Throughout this process, Mr Robinson explains that Harcus Parker and the Class Representative were engaging with businesses at the group level, and that the representatives of those businesses generally held senior positions in finance, legal and/or management.
- d) Under the CPO Notices, opting in could be achieved by completing and submitting a form online, or by sending a letter opting in by post. In this case, no opt-in notifications were received by post, and all notifications were submitted online.

e) When a business decided in principle to opt in, it was directed to the claim website where it could complete the documentation necessary to opt in. The individual opting the business in was required to fill in a webform (the “Opt-In Notification”) with fields including:

- (i) the main business activity of the business;
- (ii) whether between 2016-2019, business turnover was on average above or below £100 million;
- (iii) the name of the person opting the business into the proceedings and their position;
- (iv) the name of the business opting in; and
- (v) email and phone contact details.

f) Data contained in the Opt-In Notification submitted through the claims website was maintained by a third-party settlement and noticing company called Angeion (this data, which reflects the contents of the Opt-In Notifications submitted, will be referred to as “Angeion Data” in this Judgment).

g) After a business submitted an Opt-In Notification, it was contacted by Marcus Parker and required to enter into a Damages Based Agreement (“DBA”) to engage Marcus Parker to act on its behalf in these proceedings. Each DBA identified the business (or businesses) that was (or were) party to the agreement.

15. Following the Opt-In Deadline, the Defendants’ solicitors wrote to Marcus Parker requesting the names of the class members that had opted in, in the form of the class register contemplated by Rule 83 of the Tribunal Rules. The Class Representative did not produce a class register in response to this initial request. Instead, it sought to impose conditions on disclosure of the class register before agreeing to produce it.

16. Following correspondence with the Tribunal, the Tribunal directed on 12 March 2025 that the class register should be disclosed without conditions. On 14 March 2025, the Class Representative provided a class register to the Defendants. The register was, at that time, comprised largely of business names, rather than identifying the specific legal entities that were said to have opted into the proceedings.
17. The Defendants immediately challenged this position, in a letter from Visa’s solicitors of 19 March 2025. After further correspondence, the Defendants issued the Opt-In Application on 24 July 2025.
18. Since the filing of the Opt-In Application, three further versions of the class register have been provided to the Defendants, culminating in a final version of 28 November 2025. Both the number and description of entities included on the various class registers has varied over time. The 28 November register comprised 208 distinct legal entities that the Class Representative says have validly opted into the proceedings.<sup>4</sup> These legal entities are drawn from 94 corporate groups that have submitted Opt-In Notifications.
19. In October 2025, the Class Representative wrote to each of the 94 corporate groups seeking confirmation that the person who had filled out the Opt-In Notification “*was authorised, or has now been authorised*” to opt in all legal entities within the corporate group. We shall refer to the responses received by the Class Representative as the Authority Confirmations when we discuss the legal significance of this confirmation process below.

**D. CATEGORIES OF OPT-IN CLASS MEMBERS**

20. The legal entities that the Class Representative submits have validly opted in to the proceedings can be divided into the following categories:
  - a) Accepted Entities: Entities that the Defendants accept have validly opted in to the proceedings. This category comprises entities named in the

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<sup>4</sup> Note that this does not include the Saga and American Express entities the subject of the Saga and Amex GBT Application.

Angeion Data that match or closely match, in an easily identifiable way, a specific legal entity.

- b) Late Entities: A small number of legal entities failed to submit an Opt-In Notification by the Opt-In Deadline but did so on the same day, within hours after the 16.00 deadline.<sup>5</sup>
- c) Opt-Out Notification Entities: Two businesses failed to submit Opt-In Notifications at all, and instead, in advance of the Opt-In Deadline, expressed their interest on the claims website in joining the opt-out proceedings.<sup>6</sup> Both businesses have global turnover exceeding £100 million and would therefore only be eligible to participate in the opt-in proceedings.
- d) EasyJet: EasyJet engaged in correspondence with Marcus Parker regarding its interest in participating in the opt-in proceedings ahead of the Opt-In Deadline. However, EasyJet did not submit an Opt-In Notification ahead of the Opt-In Deadline, or afterwards.
- e) Other Corporate Group Entities: these are all the legal entities in the 28 November register that do not fall into categories (a) to (d) above. They are legal entities that the Class Representative claims have opted in despite the fact that there is no individual Opt-In Notification or corresponding Angeion Data for that specific legal entity. On the Class Representative's case, these entities are entitled to be treated as having opted in because they are in the same corporate group as another entity for which there is Angeion Data (i.e. there is an Accepted Entity in the corporate group).
- f) Non-UK Domiciled Entities: The Defendants further object to entities opting in to the proceedings where their place of domicile is outside the

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<sup>5</sup> Opt-In Notifications were submitted by Aer Lingus at 16.25 and Aer Lingus Limited at 17.20. Opt-In Notifications for Flight Centre Travel Group (European Holdings) Ltd and Flight Centre (UK) Limited were submitted at 20.13 and 20.15 respectively.

<sup>6</sup> These businesses are Oriflame and Suit Supply.

UK. Entities in this category will also fall into categories (a), (b) or (e) above.

21. For non-UK domiciled entities, we are first required to determine whether non-UK domiciled companies were entitled to opt in to these proceedings. If we find that non-UK domiciled companies were entitled to opt in then our conclusions in relation to other categories will determine their opt-in status, unless they would otherwise be Accepted Entities.
22. For categories (b) to (e) above, we are required to determine (i) whether the entities have validly opted into the proceedings by the Opt-In Deadline, and (ii) if not, whether to grant permission for them to opt in late under Rule 82(2).
23. In addition to the categories described above are the Saga and Amex GBT Entities, which are the subject of the separate Saga and Amex GBT Application. For most of these entities<sup>7</sup>, we are only required to determine whether to grant permission under Rule 82(2), as there is no question of valid opt-in by the Opt-In Deadline.

## **E. THE PARTIES' SUBMISSIONS**

24. Much of the argument advanced at the hearing concerned key issues of principle that influence the outcome for several of the categories described above.

### **(1) The Undertaking Issue**

25. The undertaking issue is whether it is permissible for an 'undertaking'<sup>8</sup> to opt in to collective proceedings. The question is whether legal entities within an undertaking which has opted in by the Opt-In Deadline are validly opted in as class members through the acts of an individual representing the undertaking as a whole. The alternative is that each legal entity meeting the definition of a class

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<sup>7</sup> There are two Saga entities which are potentially within the Other Corporate Group Entities.

<sup>8</sup> In this context we exclude any form of undertaking that exists only as a legal entity and therefore could opt-in on that basis.

member is required to opt in individually and cannot do so through the acts of an undertaking such as a corporate group of which it is a part.

26. The Defendants' position is that, while an assessment of turnover at the undertaking level may have been a necessary first step to determine whether a legal entity met the Class Definition, it was then necessary for each individual legal entity to opt in separately. The Defendants contended that businesses that are not unique legal persons cannot legally opt in to collective proceedings because undertakings and corporate groups do not have the separate legal personalities which are required to make claims.

27. The Defendants placed reliance on the language of section 47A CA 1998 to support their position:

a) Although section 59 CA 1998 refers to "persons" as including undertakings,<sup>9</sup> section 47A CA 1998 was said to narrow this position. This is because section 47A provides that:

"(1) A person may make a claim to which this section applies...

(2) This section applies to a claim of a kind...which a person who has suffered loss or damage may make in civil proceedings."

As only a natural or legal person could make claims in civil proceedings, it was submitted that an undertaking could not bring a claim under section 47A.

b) Claims by undertakings could not be brought in opt-in proceedings under section 47B CA 1998 because this section is capable only of aggregating claims that could otherwise be brought under section 47A CA 1998. This result was said to flow from the language of section 47B(1) which refers to the combination of "*two or more claims to which section 47A applies*" and section 47B(10) CA 1998, which refers to "*collective proceedings which are brought on behalf of each class member.*" In the Defendants' submission, therefore, only a natural or legal person with a claim under

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<sup>9</sup> A point made by the Class Representatives as set out in paragraph 30 below.

section 47A CA 1998 could be included in collective proceedings as a class member.

28. Mr Kennelly KC for Visa also made a number of further points regarding the inaptness of the concept of an undertaking being able to opt in. He submitted that:

a) Rule 83 of the Tribunal Rules requires the preparation of a class register so that the Tribunal and any defendants to opt-in proceedings have clarity about the identity of participating claimants. Since only natural and legal persons can bring claims, it was suggested that the class register must also be comprised of these entities rather than undertakings. Mr Kennelly KC submitted that any class register would need to be prepared at approximately the same time as the opt-in deadline in order to achieve this statutory purpose.

b) The concept of undertaking is too fluid to provide the Tribunal and defendants with any certainty about who has opted into collective proceedings. This is because the identity of an undertaking depends on links of ascertainable control, and may include entities across multiple corporate groups, depending on their governance arrangements.

c) An undertaking is not capable of having a domicile, as contemplated by the Tribunal Rules, and is not capable of entering into a contract, which is part of the method for identifying whether a merchant is included in the Class Definition under the CPOs.

d) Even if the definition of Excluded Merchant required calculation of turnover at an undertaking level, this definition is not capable of altering the position under section 47A CA 1998 that only natural or legal persons can validly bring claims, and that these entities are required to opt in as the process for bringing their claims under section 47B CA 1998.

29. The Class Representative submitted that the proper construction of the legislative framework does allow for entities to opt in at the undertaking level.

Mr Beal KC took us through a series of propositions that sought to give primacy to the language of the CPOs, which he suggested should be interpreted consistently with the legislative framework. He submitted that:

- a) The CPOs define Merchants as the “person” that accepts payments by means of payment cards and has the relevant contractual relationship qualifying an entity to be a Class Member.
- b) Section 59 CA 1998 provides that the definition of “person” includes any undertaking. In this context, Mr Beal KC submitted that it would be consistent with section 59 CA 1998 to interpret “Merchants” under the CPO as including undertakings.
- c) The words “any person” in section 26 CA 1998 were interpreted by the Court of Appeal in *Competition and Markets Authority v Volkswagen AG* [2023] EWCA Civ 1506, CA (“*Volkswagen*”) to include undertakings in the context of determining who could be the recipient of a notice served under that section. Further, under Schedule 1 of the Interpretation Act 1978, the word “person” means “a body of persons corporate or unincorporate”, such that the Court of Appeal in *Volkswagen* held at [12] that “person” includes a body of persons corporate or unincorporate and an undertaking.”
- d) The interpretation of the term Merchant to include undertakings is a purposive way of construing the CPOs as a whole. The Class Representatives were required to assess the eligibility of a prospective class member at the undertaking level when determining whether it was an Excluded Merchant. This required an assessment of whether annual turnover was below £100 million at the undertaking level. Interpreting the term “Merchant” as including undertakings would have the consistent, practical result of also allowing the Class Representatives to determine whether an undertaking as a whole had contractual relationships with an acquirer under a Merchant Services Agreement.
- e) It is appropriate to consider loss at the undertaking level because a “TopCo” controlling other companies within a corporate group may

allocate merchant service charge liabilities through internal budgetary processes such that the relevant loss has been suffered by a company other than the legal entity with the relevant Merchant Services Agreement. The flexibility of such budgetary processes was said to justify a broader, undertaking-wide approach to the definition of Merchants.

f) Consistent with *Volkswagen*, an undertaking can occupy premises, commit infringements, give commitments to regulatory authorities, provide documents and pay penalties. Even if an undertaking can be further broken down into constituent companies, that does not stop the operative provisions of competition law from having effect in relation to an undertaking as a whole. Mr Beal KC submitted that an undertaking can have a domicile in the same way that it can occupy a premises and that there is no difficulty in applying the concept of an undertaking in this case to determine class membership.

30. On this basis, it was submitted by the Class Representative that all legal entities identified in the 28 November register had opted into these proceedings validly through the actions of an undertaking in submitting an Opt-In Notification. On the Class Representative's case, it was not necessary for each legal entity in the 28 November register to submit a separate Opt-In Notification.

31. On the question of whether section 47A CA 1998 has the effect of narrowing the wide concept of "person", so as to limit the types of entities that can be class members to legal entities, Mr Beal KC submitted that:

a) Section 47B(1) sets out a procedure for bringing collective claims before the Tribunal that is different from the procedure set out in section 47A CA 1998. This process involves the interstitial use of a class representative to bring the relevant claims.

b) Section 47B(10) provides that "*Opt-in collective proceedings*" are *collective proceedings which are brought on behalf of each class member who opts in by notifying the representative, in a manner and by a time specified, that the claim should be included in the collective proceedings.*"

It was submitted that “class member” is therefore defined by reference to the CPOs made by the Tribunal and could be an undertaking in this case for the reasons described in paragraph 30 above.

- c) the CPOs therefore define the class, rather than the scope of section 47A CA 1998.

32. It was suggested to Mr Beal KC by the Tribunal that there is established case law to the effect that section 47B CA 1998 only allows the combination of extant section 47A claims, which might be seen as inconsistent with the interpretation for which he was advocating. Mr Beal KC accepted that section 47A(2) requires loss or damage to crystallise in the hands of an identified legal or natural person to perfect the tort of breach of statutory duty. However, he submitted that the identification of a legal or natural person for the purpose of loss or damage need only occur later in proceedings and was analytically distinct from the earlier requirement to identify class members that have opted in.

## **(2) Inferences as to Intent to Opt In**

33. As already explained, the Class Representative received Opt-In Notifications which are said to correspond to 94 corporate groups, and now contends that 205<sup>10</sup> legal entities included in the 28 November register have opted in to these proceedings by way of those Opt-In Notifications.

34. Essentially, the Class Representative invites us to infer, from the submission of each Opt-In Notification and the surrounding circumstances, that there was an intention to opt-in all entities which met the definition of Class Member within each undertaking that completed an Opt-In Notification. The surrounding circumstances are set out in Robinson 1. First, Mr Robinson explains that he was interacting with businesses as a whole, rather than specific legal entities when conducting the bookbuilding phase of the claim. Secondly, Mr Robinson explains that his day-to-day interactions were with senior individuals at

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<sup>10</sup> This number does not include those entities who are said to have intended to opt in but never completed an Opt-In Notification – namely EasyJet and the two Opt-Out Notification Entities.

businesses within a group, and that his impression was that claims were being made on behalf of businesses as a whole.

35. The Class Representative also makes a practical point about the process required to effect the opt-in of class members. It contends that a two stage process was required as a matter of logic and practicality. That involved first determining whether a corporate group met the turnover threshold at the undertaking level before going through a secondary process of “weeding out” the entities that did not have valid claims. The Class Representative put much weight on the complexity of this “weeding out” process, and Robinson 1 stated that the use of a dedicated forensics team was necessary to identify the specific entities with claims. This process is said to have involved mapping transaction data back to corporate groups. It was also suggested that some prospective class members delayed their decision on whether to opt in until the last few days before the Opt-In Deadline. Given the lateness of opt-in decisions and the complexity and intensiveness of the secondary “weeding out” process, the Class Representative submitted that it would not have been feasible to identify all entities within a corporate group that met the class definition ahead of the Opt-In Deadline.
36. In the context of the CPOs and the practical requirements of the opt-in process, the Class Representative submitted that all that was required was for corporate groups to express their intention to opt in by the Opt-In Deadline. The Class Representative would then go on to determine which legal entities within each undertaking/corporate group could be Class Members, as it has now done through production of the 28 November register. The Class Representative therefore invites us to infer an intention to opt in, on behalf of all individual entities with claims within an undertaking, from the factual circumstances and the practical realities of the opt-in process.
37. As set out in paragraph 26 above, the Defendants’ position is that it is necessary for each individual legal person to opt in individually. The CPO Notices provided that this could be done by “*completing the online opt-in form.*” The Defendants’ starting point was that, as a matter of law, a company or other legal person can only act, and so can only opt in to collective proceedings, through officers or agents authorised to do so by that legal person.

38. In the Defendants' submission, on the evidence before the Tribunal as reflected in the Angeion Data, valid Opt-In Notifications were only submitted on behalf of the Accepted Entities and there is no mention of other legal entities in the Opt-In Notifications. According to the Defendants, the Tribunal cannot therefore infer that an individual who has submitted an Opt-In Notification is acting on behalf of multiple legal entities within a group. This is because, the Defendants submit, there is no evidence that there was an act of opting in on behalf of legal entities other than the Accepted Entities before the Opt-In Deadline.
39. In support of this position, Mr Kennelly KC took us to *Armagas Ltd v Mundogas SA* [1986] AC 717 at 777 (per Lord Keith of Kinkel) to establish the proposition that before an individual could be said to have ostensible authority, it is first necessary to identify the principal on whose behalf the relevant representation is made. Here, that meant first identifying the legal entities purporting to opt in to the proceedings, which were the relevant principals. Such legal entities could authorise an individual to act on their behalf to submit an Opt-In Application. However, the lack of any representation by, or on behalf of, legal persons other than the Accepted Entities ahead of the Opt-In Deadline was said to preclude additional legal entities having opted in.
40. During the hearing, when pressed on the role of inference in establishing whether a company had opted in, Mr Kennelly KC submitted that there was no basis for the use of inferences in circumstances where the legal entities said to be opting in had not been specifically identified, as was the case here. Mr Kennelly KC went on to say that, even if there was room for inference, contrary to the above, the evidence referred to in Robinson 1 is extraordinarily vague and unspecified and is insufficient to support the inferences suggested by the Class Representative.
41. There is a further complication that applies to the Late Entities, the Opt-Out Notification Entities and EasyJet, each of which failed to submit an Opt-In Notification by the Opt-In Deadline. The Class Representative says that these entities had a clear intention to opt in to the litigation by the Opt-In Deadline and that this was sufficient for them to have opted in, because:

- a) The Late Entities each submitted Opt-In Notifications within hours of the Opt-In Deadline, clearly showing their intention to opt in. An Opt-In Notification was submitted by Aer Lingus at 16.25 and Aer Lingus Limited, at 17.20. Opt-In Notifications for Flight Centre Travel Group (European Holdings) Ltd and Flight Centre (UK) Limited were submitted at 20.13 and 20.15.
  - b) EasyJet engaged in correspondence with Marcus Parker and sent an executed engagement letter, litigation management agreement and DBA at 10.44 on 10 February 2025, in advance of the Opt-In Deadline. Even though EasyJet did not submit an Opt-In Notification, it is clear that it intended to do so at the time and its failure was an administrative error only.
  - c) While the Opt-Out Notification Entities failed to submit Opt-In Notifications, they did express their interest in joining the opt-out proceedings on the claims website in advance of the Opt-In Deadline. This is said to evidence a clear intention on behalf of both the Oriflame and Suit Supply businesses to participate in these proceedings. It is now clear that this must be through the opt-in proceedings rather than as part of the opt-out class.
42. In response, the Defendants submit that the acknowledged failure of the Late Entities, Opt-Out Notification Entities and EasyJet to submit an Opt-In Notification by the Opt-In Deadline is determinative of their failure validly to opt in. Any intention to opt-in is insufficient. Having missed the Opt-In Deadline, these entities were required to seek permission to opt in late and it is not open to the Tribunal to treat them as having validly opted in without providing such permission.
43. The Defendants suggest that it does not matter that the Late Entities missed the Opt-In Deadline by only a short period, or that there is other evidence that EasyJet may have wanted to opt in.

**(3) Agency**

44. A further area of dispute, which seemed to narrow by the time of the hearing, concerned the ability of individuals that had submitted the Opt-In Notification to act as agents for companies other than the specific legal entities named in the Angeion Data (i.e. the Accepted Entities). Although we were taken through the authorities on the law of agency, the Class Representative's position was essentially that:

- a) the person who submitted the Opt-In Notification had actual authority to opt in the entity named in the Angeion Data;
- b) Marcus Parker was entitled to rely on the ostensible authority of that person to opt in each entity within the corporate group which the individual represented;<sup>11</sup>
- c) that ostensible authority was ratified and confirmed through the signing of a DBA and the ongoing prosecution of the claims on the part of the eligible claimants within the group; and
- d) even if there was some defect in authority contrary to the above, express ratification has now been received in the form of the Authority Confirmations.

45. As set out in the discussion above about inferences, the Defendants' primary position is that there can be no ostensible authority to act in these circumstances, because there was no identification of the legal entities on behalf of which the person submitting each Opt-In Notification was acting. It was further said that a corporate group or undertaking cannot authorise a natural person to act on its behalf.

46. The Tribunal put to Mr Kennelly KC that, even if the Defendants were correct about the above, any defect in agency could be cured through ratification. Mr

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<sup>11</sup> The Saga Entities are an exception because it subsequently transpired that the individual did not in fact have authority to opt-in all of the Saga Entities.

Kennelly KC accepted that a lack of authority could be cured, but maintained that it had not been so cured on the facts of this matter. This was on the basis that the language in the Authority Confirmations (that the signatory “*was authorised, or has now been authorised*”) was deliberately vague and did not assist in determining whether the signatory was authorised when submitting the Opt-In Notification.

**(4) Permission to Opt In Late under Rule 82(2)**

47. In the event that we consider that any entities have not validly opted in, we are asked by the Class Representative to provide permission for those potential class members to opt in late under Rule 82(2) of the Tribunal Rules. We also need to decide whether or not to allow the Saga and Amex GBT Application.
48. The Defendants submitted that the applications for permission to opt in late are deficient because they do not address the factors that the Tribunal is required to consider under Rule 82(3) of the Tribunal Rules. In particular, the applications do not directly address whether the delay was caused by the fault of the class member, or the prejudice the Defendants say would arise from the grant of permission. The Defendants asserted that they would suffer substantial prejudice through the deprivation of accrued limitation defences, if permission to opt in were granted now. The position on limitation is considered separately below. The Defendants invited us to dismiss the applications for permission to opt-in late because of these defects.
49. We also note that, in its skeleton argument, Visa submitted that granting permission to entities to opt in late would result in Visa facing additional claims that might not have been brought on a standalone basis. In other words, Visa expects that some claimants would abandon their claims rather than bringing them separately.<sup>12</sup> Visa’s skeleton argument submitted that this was an additional source of prejudice. There were no oral submissions on this point and no response from the Class Representative.

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<sup>12</sup> This would likely involve applying to participate in the Umbrella Proceedings in Tribunal Case 1517/11/7/22 (UM) along with other merchants bringing their claims on a standalone basis.

50. In relation to the Late Entities and EasyJet, the Defendants accept that there had been an explanation of why they did not submit an application by the Opt-In Deadline. However, it was suggested that each of these entities should have applied for permission to opt in very soon after the Opt-In Deadline and that there was no justification or adequate explanation for why it had taken them so long to do so.
51. Even though the potential for prejudice to accrued limitation rights was not addressed in the initial Rule 82(2) application, it was addressed by the Class Representative in its skeleton argument and at the hearing. Again, this is discussed in further detail below, but the Class Representative's overall submission was that the limitation implications did not materially change the scope of the relevant claims. Alternatively, any prejudice could be addressed through a direction from the Tribunal imposing conditions on the grant of permission.
52. In relation to the reasons for delay, Mr Beal KC explained at the hearing that the Class Representative had initially taken the view that it had followed a valid opt-in process and that there was no need to apply for permission to opt in late. It had made the decision to seek permission under Rule 82(2) only on a protective basis.
53. In relation to the Late Entities, the Opt-Out Notification Entities and EasyJet, the Class Representative submitted that the failure to submit an Opt-In Notification by the Opt-In Deadline has been explained, was *de minimis* and no prejudice is caused to the Defendants from the grant of permission to opt in late.
54. The Saga and Amex GBT Application provided a more comprehensive explanation of why the relevant entities had not opted in by the Opt-In Deadline and why permission was being sought at this stage.
  - a) In respect of Saga, the Class Representative discovered during the process of obtaining the Authority Confirmations that the individual who submitted the Opt-In Notification for Saga Travel Group (UK) Limited did not have authority to opt in other companies within the Saga group.

The application to opt in late was made when this irregularity was discovered.

- b) In respect of Amex, CWT UK Group Ltd submitted a valid Opt-In Notification. It was subsequently acquired by Amex. Following the acquisition, Amex identified that other businesses within its Global Travel Business Group had not opted in by the Opt-In Deadline and so sought permission to opt-in late.

- 55. The Defendants submitted that the Saga and Amex GBT Application also failed to address the Rule 82(3) factors and so should be dismissed. They also relied on the substantial prejudice that they said would arise in relation to accrued limitation rights.

**(5) Limitation**

- 56. Entities that validly opted in by the Opt-In Deadline may have claims going back as far as 6 June 2016, which is the date six years before the claim form was filed by the Class Representatives on 6 June 2022. However, there is a dispute about the extent of prejudice that the Defendants would suffer in the event that permission to opt in were granted, by reference to their accrued limitation defences. The dispute arises from the operation of section 47E CA 1998 (as in force on 6 June 2016) in determining the date from which limitation is to be assessed.

- 57. The argument was explained by Mr Cook KC for the Mastercard Defendants in the following way:

- a) By operation of section 47E(4) CA 1998, the limitation period for these claims was suspended on 6 June 2022 when the claim form was filed.
- b) By operation of section 47E(5)(d) CA 1998, the limitation period resumed on 10 February 2025 because this was the Opt-In Deadline set by the Tribunal, by which time persons were required to choose whether to have their claims included in the collective proceedings.

- c) Section 47E(6) CA 1998 provides for a six month “grace period” after the Opt-In Deadline for entities that have not opted in to decide how to proceed with their claims without any adverse limitation consequences.
- d) The correct operation of section 47E(6) CA 1998 was said by the Defendants to be that where a limitation period would expire in the six months following the Opt-In Deadline, all limitation consequences that would have applied during that period are “rolled up” and are taken to apply at once, at the end of that six month period.
- e) For example, a claimant that issued proceedings five months and 27 days after the Opt-In Deadline would not lose any portion of their claim due to limitation through the operation of section 47E(6) CA 1998. On the other hand, where a claimant issued proceedings six months and 3 days after the Opt-In Deadline, time would be taken to have started to run again on 10 February 2025.
- f) Accordingly, since the applications for permission to opt in late have been brought after the six month period referred to in section 47E(6) CA 1998, the relevant prejudice to the Defendants is the period of the claim that would have been barred by the limitation period running between 10 February 2025 and 28 November 2025 (the date of the application for permission to opt in late).<sup>13</sup> This amounts to around nine and a half months of prejudice to the Defendants.

58. The Class Representative’s position is that section 47E(6) provides a further six month extension after the Opt-In Deadline during which limitation consequences are deferred ahead of a resumption of limitation. Following the end of that six month period (in this case on 10 August 2025) the limitation period begins to run again in the usual way. Thus, the relevant prejudice arises from the running of limitation during the period between 10 August 2025 (the date six months after the Opt-In Deadline) and 28 November 2025 (the date of

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<sup>13</sup> We note that Visa’s Skeleton Argument at [6] suggested that limitation should run from the date that permission is granted rather than the date of the application for permission but, given the adoption by Visa of Mastercard’s submissions at the hearing, we understand that this argument is not being pursued.

the application for permission to opt-in late) and amounts to around three and a half months.

59. The Class Representative submitted that, if there is prejudice to the Defendants in relation to accrued limitation defences, either:
- a) that is limited to a period of less than four months, so there is no “significant prejudice” to the Defendants; or
  - b) the Tribunal can make a direction to remove any limitation prejudice as a pre-condition of granting permission to opt in.

**(6) Non-UK Domiciled Entities**

60. As already described, Rule 80(1)(g) of the Tribunal Rules requires that collective proceedings orders specify a domicile date. Paragraph 21 of the Opt-In CPOs provides that the domicile date is 6 June 2022. Paragraph 22 then goes on to state that “*Any person domiciled in the United Kingdom on the Domicile Date that falls within the Class as defined above shall not be included in these collective proceedings unless they opt-in*” [emphasis added]. The Defendants submit that, given the explicit reference to persons domiciled in the UK, it is not possible for any non-UK domiciled entities to opt in to these proceedings.
61. The Class Representative’s primary submission was that there is nothing in the Opt-In CPOs that suggests that non-UK domiciled entities cannot opt in to these proceedings. Even if paragraph 22 of the Opt-In CPOs does refer to persons domiciled in the UK, it does not go on to state that non-UK domiciled persons may not opt in. Further, the Tribunal Rules contemplate that non-domiciled claimants will always need to opt in to collective proceedings, including where they would be part of an opt-out class if not for their non-domiciled status.<sup>14</sup>
62. The Class Representative also submitted that it was always contemplated that the opt-in class would include non-UK domiciled entities. We were referred to

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<sup>14</sup> See Rule 82(1)(b)(ii).

oral submissions made by Michael Bowsher KC at the second certification hearing in the context of the proposed methodology for differentiating between transactions undertaken by non-UK domiciled entities with UK and non-UK based acquirers.<sup>15</sup> The Class Representative also referred to [120] to [122] of the Second Certification Judgment, which is said clearly to contemplate that the opt-in class would include non-UK domiciled entities:

“120. The Proposed Defendants say that there is no methodology put forward to deal with non-UK domiciled merchants who may choose to join the opt-in claim. This applies to the calculation of the value of their claims and the question of the location of their acquirer.

121. The PCRs say that there is no uncertainty regarding the location of acquirers and no need for a developed methodology as the point only affects “card present” transactions, which will be of immaterial value.

122. In our judgment, this is a point of detail which is not central to the claim and which does not need a fleshed out methodology at this stage of the proposed proceedings.”

63. In the alternative, the Class Representative has applied under Rule 114(3) of the Tribunal Rules (the “Slip Rule Application”) to:

- a) delete paragraph 21 of the Opt-In CPOs (setting out the domicile date);  
and
- b) amending paragraph 22 to remove the words “*domiciled in the United Kingdom on the Domicile Date*”.

64. The Defendants criticise the lateness of the Slip Rule Application (coming some 15 months after the CPOs were made) and also submit that the changes proposed by the Class Representative are not of the clerical nature contemplated by the language of Rule 114(3).

## **F. ANALYSIS**

65. We will deal with the issues under the same headings which we have used to summarise the arguments of the parties.

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<sup>15</sup> Transcript (Revised CPO Hearing – Day 2), 18 April 2024, page 199 line 9 to page 202 line 21.

**(1) The Undertaking Issue**

66. In our judgement, the Defendants are clearly right in their analysis of the requirement that only legal entities can bring claims under section 47A. While we accept the submissions of the Class Representative about the breadth of the term “person” so as to include undertakings in other contexts under CA 1998 (including for the purposes of section 26, as is clear from *Volkswagen*), section 47A(2) has the effect of qualifying that broad approach so as to include only those persons who could bring a claim for loss or damage in civil proceedings. That can obviously only be done by a natural or legal person.
67. It is not surprising that section 47A should seek to narrow what has otherwise been given an expansive meaning. The broad concept of an undertaking in competition law is useful to ensure that infringers cannot avoid scrutiny through the use of corporate structures – as the Court in *Volkswagen* recognised in [59]. However, section 47A has an entirely different focus, which is to define who can commence proceedings in the courts against infringers. It is understandable that this definition is narrower than that of a “person”, as defined by section 59, especially when one considers the potential for such claims to be aggregated under section 47B so that defendants might face many tens or even hundreds of claims in one proceeding.
68. It is therefore beside the point that the CPOs and the CPO Notices refer to persons in a way that might include an undertaking, or that the concept of an undertaking is used as part of a definition of the boundaries between the opt-in and opt-out proceedings. None of those things can override the narrowing of the class of persons that section 47A(2) provides for and the consequent combination of claims which could be brought under section 47A by way of the provisions of section 47B.
69. Mr Beal KC tried valiantly to construe section 47B as allowing a broader set of persons to be a class member, but we do not think that any wording in section 47B can alter the fundamental point that only section 47A claims can be combined under section 47B. That position is now well established as a matter of the Tribunal’s approach to collective proceedings – see for example *Neill v*

*Sony* [2023] CAT 73 at [62] – [71]. The requirement in section 47A(2) is not a matter which can be overlooked or postponed to some later point in proceedings. It is the legislative foundation on which a collective proceeding must operate.

70. It follows that only a natural or legal person can opt in to collective proceedings. An undertaking other than a legal person would not be capable of bringing proceedings under section 47A, so it cannot opt in.

**(2) Inferences as to Intent to Opt In**

71. We also agree with the Defendants that the circumstances do not permit any inference about the intention of legal entities who were not identified in an Opt-In Notification. This is for the following reasons:

- a) For the most part, it was entirely unclear at the time of the Opt-In Notification that any particular legal entity other than the express signatory of the Opt-In Notification was intending to opt in.
- b) There remains very little evidence about what was intended by the person giving the Opt-In Notification. The material set out in Robinson 1 is generalised and vague and there is no indication from the entities themselves, other than the Authority Confirmations which are ambiguous as to whether authorisation was given at the time of the Opt-In Notification or at a later date.
- c) The CPOs set out, in accordance with Rule 80(1)(h), a process for opting in which was set out clearly in the CPO Notices. That required submission of a form (online or by post) with certain information by a certain date by (we have held) an entity that could bring a section 47A claim. It seems highly undesirable to undermine that process by allowing for inferences about the intentions of entities which have not complied with the specified procedure.
- d) That proposition is well illustrated by the suggestion that entities which were late in submitting their forms, or failed to do so despite indicating an

intention, or otherwise failed to follow the process properly, can be inferred to have opted in. In those cases, it is tolerably clear that there was an intention to opt in, but it is equally clear that the failure to follow the process means that the opt-in had not taken place effectively. The correct procedure to deal with that problem is an application for permission under Rule 82, not some inference which effectively ignores the failure.

72. We therefore reject the Class Representative's arguments that some form of inference can cure the problems associated with seeking to opt in at the undertaking level or otherwise failing to meet the requirements of the CPOs and the CPO Notices.

**(3) Agency**

73. Having reached these conclusions, it is not necessary to deal with the arguments about agency. We would simply say that, were this the only issue preventing an effective opt-in by an entity, we would have expected the problem to be readily resolved by retrospective ratification, to the extent that this had not already properly taken place.

**(4) Permission to Opt In Late under Rule 82(2)**

74. This issue involves a balancing process. The collective proceedings regime has been created to facilitate the aggregation of claims, creating considerable efficiency and access to justice which might not otherwise be available. It therefore makes sense for the collective proceedings to encompass as many class members as possible, provided they meet the requirements of the class.

75. On the other hand, as the minority judgment of Lord Sales and Lord Leggatt JSCs in *Mastercard v Merricks* observed,<sup>16</sup> and as is confirmed in the Supreme Court's recent judgment in *Evans v Barclays Bank*,<sup>17</sup> collective proceedings, including opt-in proceedings, can impose a heavy burden on defendants. There is a structure which is designed to ensure that these proceedings can be and are

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<sup>16</sup> See *Mastercard v Merricks* [2020] UKSC 51 at [98].

<sup>17</sup> *Evans v Barclays Bank* [2025] UKSC 48 at [89].

fairly managed. One aspect of that structure is the process by which opt-in claimants are identified by a certain point in the proceedings. That means that the defendant can have a degree of certainty about what claims it is facing, which in turn will inform the commercial significance of the case and, no doubt, the way in which the defendant approaches the proceedings generally.

76. The failure to abide by this structure also has other potential effects which may be unfair to the defendant. By way of example:
  - a) There are (as discussed already in this Judgment) potential limitation consequences of allowing late opt in.
  - b) If there is a material gap between the deadline and any application for permission to opt in late, events in the litigation may create an unfair basis for decision making by all parties. For example, decisions by the Tribunal might alter the risk analysis for the parties, allowing potential claimants to make decisions about participating with a different appreciation of the risk than the appreciation other class members had when opting in. Conversely, defendants might make decisions about the conduct of the litigation which are based on a risk analysis which assumes a certain character of the opt-in proceedings (such as the likely size of their financial exposure), which could be affected by allowing entities to opt in later.
77. More generally, there is a need for all concerned to take the provisions in the Tribunal Rules, and the orders made and notices implementing those, seriously and to comply with them unless there is a good reason not to do so. If the parties know that the Tribunal Rules are not strictly enforced, there may be a temptation not to take them seriously. On the other hand, if it is known that excusing non-compliance is difficult, then the parties will no doubt take steps to avoid being in that position.
78. Against that background, we are asked to exercise our discretion in relation to the categories of merchants set out in section D above:

- a) Late Entities.
- b) Opt-Out Notification Entities.
- c) EasyJet.
- d) Other Corporate Group Entities.
- e) Non-UK Domiciled Entities.
- f) The Saga and Amex GBT Entities.

79. In each case, we need to consider all of the circumstances including in particular whether the delay was the fault of the class member and whether the Defendants would suffer substantial prejudice if permission were granted. When considering the delay, we are interested in both the reasons why opt-in did not take place at the required time and also the promptness with which the class member has moved to remedy the position.

**(a) *Late Entities***

80. These are entities which submitted Opt-In Notifications on the day of the Opt-In Deadline, but between one and five hours late. They are:

- a) Aer Lingus (two entries in the Angeion Database, one for “Aer Lingus” and one for “Aer Lingus Limited”, submitted at 16.25 and 17.20 respectively).
- b) Flight Centre (two entries in the Angeion Database, one for “Flight Centre Travel Group (European Holdings) Ltd” and one for “Flight Centre (UK) Limited”, submitted at 20.13 and 20.15 respectively).

81. Ordinarily, one might think this was a simple issue, given that a submission a few hours after a deadline is likely to be a relatively minor administrative error and unlikely to cause material prejudice to the Defendants.

82. In fact, we have no explanation at all for the late submission by Aer Lingus. In relation to Flight Centre, the late submission is said to have been due to an “administrative error”, but no further details have been given. We have no witness evidence from either Aer Lingus or Flight Centre, which seems surprising in the circumstances.
83. More concerningly, the application for permission by these entities to opt in after the Opt-In Deadline was not made until 18 November 2025. That is despite:
- a) The 14 March opt-in class register disclosing on its face the late submission by Aer Lingus. There is no explanation at all for the delay between 14 March and 18 November 2025. It seems reasonable to infer that Aer Lingus was aware that it had missed the deadline, but that is not confirmed by any evidence before us.
  - b) Marcus Parker’s explanation of the position of Flight Centre in their 31 October 2025 letter. That letter said: *“In the event, Flight Centre asked this firm to complete the online registration for them, and we did so”*, which suggests that the Class Representative (and, we infer, the Flight Centre entities themselves) were aware of the missed deadline at the time (that is, on 10 February 2025). There is no explanation at all for the delay between 10 February 2025 and 18 November 2025.
84. In the meantime, the Class Representative has participated in a trial (the acquirer pass on trial in the Umbrella Proceedings) and Class Members in these proceedings have become, by the consent of the Defendants, the beneficiaries of the Tribunal’s findings from the liability judgment in the Umbrella Proceedings.
85. It seems to us that the delay by the Late Entities in making the Permission Application is simply unacceptable. Once it was known that there was a problem with the late submission of Opt-In Notifications for these entities, there should have been a prompt application to regularise the position. At that stage the Defendants might have consented to that application. It is understandable that

they will not now do so, given the dilatory way in which the matter has been approached.

86. In terms of the prejudice to the Defendants, this is said to come in two forms:
- a) The adjustment of the class to include a greater number and value of claims than the Defendants thought they were facing. This includes the point made by Visa that entities who are not given permission might not bring alternative claims at all.
  - b) The limitation consequences, which involve class members joining after the deadline potentially getting the benefit of an earlier date for accrued limitation defences than the date on which they have applied to be permitted to opt in.
87. We do not give much weight to the point that entities which are refused permission might not bring claims at all. It seems more appropriate to assume a counterfactual situation where claims are brought in other ways (for example, in the Umbrella Proceedings). It does however seem to us that there is force in the point that the Defendants are entitled to a degree of certainty about the nature and extent of the claims they are facing. The longer the uncertainty goes on, the greater the risk will be of unfairness to them, given that risks will be assessed and decisions will be made on the basis of an understanding of the class composition. In that regard, we note that the Defendants have consented to the application of the liability findings in a trial in the Umbrella Proceedings during the period of delay in the making of the Permission Application.
88. There is also a point about the fairness of allowing late applications in circumstances where the entity applying to opt in late has a greater understanding of the litigation risk involved in participating in the proceedings than they would have had if they had opted in on or before the Opt-In Deadline. Here, for example, the Late Entities know that the issue of liability has been resolved. As a matter of principle, adherence to a deadline by which class members are to confirm their participation avoids that potential unfairness.

Having said that, the Late Entities have apparently been consistent in their intention to opt in.

89. The limitation point is a complex one. There is a substantial dispute between the parties as to whether the impact on limitation of allowing permission for late opt in as at the date of the Permission Application (18 November 2025) is to extend the period of the claim by 3 months or 9 months. That issue arises from the construction of s47(E). We think that is a very difficult point, which was not argued in great detail before us. It is also not a point which we need to determine to resolve the issues before us. The simple answer is that it is open to us to attach conditions to any permission we give to mitigate or eliminate any limitation consequence of granting permission. For the reasons set out in the remainder of this section, it is not necessary to determine what adjustment is required to achieve that outcome.
90. Overall, we do not think the prejudice to the Defendants is likely to be substantial and, in circumstances where there was a good reason for delay and an application had been made promptly, we would not consider it likely to override the interests of allowing late opt in. However, we do not consider the relative weakness (or indeed the absence) of the prejudice to be determinative the other way. The fact that the Defendants might suffer little or no prejudice does not alter the requirement from a broader policy perspective for a relatively strict approach to be taken to late opt in applications.
91. Those broader policy considerations involve the integrity of the opt-in regime which we think will be undermined if parties do not take the opt-in deadline seriously and if they do not feel obliged seek to address any problems promptly and with proper explanations of the reasons for the problem. There is therefore good reason to insist on timely applications for permission to opt in late. If applications to opt in late are allowed without a proper explanation of the delay which justifies the exercise of discretion, the whole point of having a deadline is undermined.
92. We are not satisfied that the Class Representative and the Late Entities concerned have moved with reasonable expedition to seek permission to opt in.

There is no good reason advanced for the delay. To the extent that we have any evidence, it suggests that the entities themselves must have been aware of the delay and therefore should take responsibility for that. Given that the proceedings have been substantively active in the period of delay, it seems most unattractive to allow the Late Entities to join the proceedings now. We therefore decline to give the Late Entities permission to opt in after the Opt-In Deadline.

**(b) *Opt-Out Notification Entities***

93. This category concerns two entities, Oriflame and Suit Supply, who are said mistakenly to have selected an option to register their interest for the opt-out proceedings rather than to give an Opt-In Notification. That information is contained in a letter of 31 October 2025<sup>18</sup> from the Class Representative to the Defendants, but there is no witness statement from the entities explaining the position.
94. Again, one might think this was a simple issue, given that a mistake in the nature of a relatively minor administrative error has apparently taken place, which is unlikely to cause material prejudice to the Defendants.
95. However, once again there has been a considerable and unexplained delay between the time of the mistake and the Class Representative's application of 18 November 2025. It is not entirely clear when the Class Representative first learnt of the problem (the 31 October 2025 letter refers to "subsequent discussions and investigation" but gives no details of that). However, the Oriflame entities and the Suit Supply entities appear in the version of the opt in register which the Class Representative provided to the Defendants on 12 June 2025, indicating that the issue had been identified by that date at least, presumably in discussion with Oriflame and Suit Supply, as the 31 October 2025 letter explains.
96. Once again, it seems to us that this delay is simply unacceptable. Once it was known (no later than June 2025) that there was a problem with the opt-in process

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<sup>18</sup> The first page of this letter is incorrectly dated as 1 October 2025.

for these entities, there should have been a prompt application to regularise the position.

97. The points about prejudice to the Defendants and the broader policy points described above in relation to Late Entities arise in the same way here.
98. We are therefore not satisfied that the Class Representative and the Oriflame and Suit Supply entities concerned have moved with reasonable expedition to seek permission to opt in. There is no good reason advanced for the delay. To the extent that we have any evidence, it suggests that the entities themselves must have been aware of the delay and therefore should take responsibility for that. Given that the proceedings have been substantively active in the period of delay, it seems most unattractive to allow the entities to join the proceedings now. We therefore decline to give these entities permission to opt in after the Opt-In Deadline.

*(c) EasyJet*

99. It is said by the Class Representative that EasyJet failed to make an Opt-In Notification due to an administrative error, which was not picked up until after midnight on 10 February 2025. However, EasyJet had been in correspondence with the Class Representative about its intention to opt in and had executed a DBA during the day on 10 February 2025.
100. There was no witness evidence before us from EasyJet about the reason for failing to opt in properly or the delay which occurred between 11 February 2025 (by which time it appears that EasyJet and the Class Representative knew about the problem) and 18 November 2025.
101. We are therefore not satisfied that the Class Representative and EasyJet have moved with reasonable expedition to seek permission to opt in. EasyJet clearly knew about the problem and should take responsibility for that. There is no good reason advanced for the delay. Given that the proceedings have been substantively active in the period of delay, it seems most unattractive to allow the entities to join the proceedings now. For the same reasons as set out in

relation to the Late Entities above, we decline to give EasyJet permission to opt in after the Opt-In Deadline.

**(d) Other Corporate Group Entities**

102. This group comprises the entities which the Class Representative argued were effectively opted in by way of an Opt-In Notification made at an undertaking level on or before 10 February 2025. It is therefore a protective application (made on 18 November 2025) against the possibility that we would not accept the undertaking argument. We have not accepted the Class Representative's position on that point, so the Class Representative seeks to regularise the position for all of the legal entities within those undertakings which are said to have claims.
103. The Defendants' solicitors wrote to Harcus Parker on 19 March 2025, raising their concern that the 14 March 2025 opt-in register did not provide the names of the legal persons who have opted into the opt-in claims. It was therefore clear to the Class Representative from that date (if not before) that there was a material issue about the adequacy of its approach to the opt-in process and the opt-in register.
104. We accept, and have some sympathy for, the extent and complexity of the task faced by the Class Representative and their advisers in "building the book" of opt-in class members. The Tribunal allowed six months for this exercise in the CPOs. At the time those orders were made, the Class Representatives sought a nine month period between the CPOs and the deadline for opting in. It may be that the exercise did require more than six months in practice, but it was also open to the Class Representatives to apply to extend that time if they thought that necessary.
105. It appears however that the timing set out in the CPOs was not itself the primary problem with the process, which was instead the mistaken approach taken to the exercise by the Class Representative, by allowing for opt-in at the level of undertakings, not legal entities.

106. We have recorded above the arguments which the Class Representative has deployed to justify that position. Although we have decided these arguments are wrong, they are not so hopeless that the Class Representative should have realised they could not succeed. However, they are also not arguments with sufficient strength that the Class Representative should be excused from considering a “plan B”, such as making a protective application for permission under Rule 82.
107. The Permission Application was finally made on 18 November 2025. The question that concerns us is why it was not made earlier. By 19 March 2025, the Class Representative knew there was a potential problem. The initial response was that undertakings could opt in to collective proceedings as class members, which position was abandoned in the Class Representative’s Response of 8 September 2025 to the Defendants’ Opt-In Application. It was only then that the Class Representative adopted the alternative argument that was run before us. At least at that stage, one might have expected the Class Representative to have had serious concerns about the validity of its position.
108. It may be the case that the Class Representative needed some time after 19 March 2025 to identify the legal entities who would be the subject of any protective application. The letter of 12 June 2025 from Marcus Parker, attaching the latest version of the opt-in register, described it as an “interim list” and also noted that work on verifying the quantum of the claims of individual entities was ongoing. However, the 12 June 2025 version of the opt-in register did include a significant number of the legal entities which are the subject of the 18 November 2025 Permission Application.
109. In our view, the Class Representative has delayed making the 18 November 2025 application in relation to the Other Corporate Group Entities, and it should have been made at an earlier date, in the vicinity of 12 June 2025. At that stage it was clear there might be a problem that needed to be regularised and there was also a substantial body of entities who were subject to that potential problem. It is no answer to say that other entities with the same problem were still to be identified. They could have been added to the application as and when they were identified.

110. We have not been provided any good reason for the delay. It appears to be the consequence of the position taken by the Class Representative on the legal question, without sufficient consideration being given to the possibility that this position might be wrong. There is no evidence before us about the involvement of the legal entities in question in decisions about the timing of the Permission Application.
111. We have found this issue to be a difficult one. On the one hand, the Other Corporate Group Entities are in the same position as the Late Entities, in that a mistake has been made and not addressed in a prompt way. The consequence of allowing the Permission Application for the Other Corporate Group Entities would be to expose the Defendants to a much larger group of Class Members, in circumstances where material decisions have been made by the Defendants about the proceedings in the intervening period.
112. On the other hand, if we reject the Permission Application for the Other Corporate Group Entities then we will be reducing the effectiveness of the opt-in collective proceedings by preventing a large number of substantial entities from joining them. While the Other Corporate Group Entities comprise a large number of substantial entities, the Defendants were aware of claims at the corporate group level shortly after the Opt-In Deadline and have probably had in mind the possible size of the claims against them, despite the uncertainty about actual participating entities. We have no evidence about the responsibility of the entities themselves for the delay (although we get the distinct impression that it is the inflexibility of the Class Representative and its lawyers that has delayed the making of the Permission Application, rather than anything else).
113. We have on balance concluded that we should not give permission to opt in for the Other Corporate Group Entities. That is because:
- a) In the absence of any evidence about the involvement of those entities in the decision about the timing of the Permission Application, we think it would be wrong to give those entities the benefit of the doubt as far as responsibility for delay is concerned. If any inferences are to be drawn from the lack of evidence explaining the delay, we think we should

proceed on the basis that the entities were or should have been aware of the potential problems raised by the Defendants' solicitors as long ago as March 2025.

- b) It is therefore reasonable, in the absence of any evidence from any of them about their part in the decision making, to attribute to the entities themselves a degree of responsibility for the delay. We are fortified in this view by the fact that all of the entities have, in some way or another, become party to a DBA with Harcus Parker, which means that there is a relationship between them and Harcus Parker which one would expect to extend to the provision of advice about such an important issue. Further, many of them are large and sophisticated entities who have had dealings at the level of senior management or in-house counsel with Harcus Parker and the Class Representative. One would expect such people to be alert to the need to take protective action in case the legal position adopted by the Class Representative was wrong.
- c) While there may have been legitimate arguments which the Class Representative could advance to justify the approach of allowing opt-in at the undertaking level, they were not so strong that it would be reasonable to view a plan B, in the form of a protective application, to be unnecessary. The sensible and prudent thing to do would have been to make the application, or at least to signal that it would be made, at a much earlier stage than 18 November 2025. There is therefore no good reason advanced for the delay. In the absence of evidence from them to the contrary, the Other Corporate Group Entities should be taken to have some responsibility for the failure to take this course.
- d) The size of the group means that any prejudice to the Defendants is considerably magnified. While we expect the Defendants might have had a good idea of the size and extent of the claims of the Other Corporate Group Entities, that is different from having the certainty which the opt-in process and the opt-in register are supposed to provide to defendants in opt-in collective proceedings.

- e) It is also possible for the Other Corporate Group Entities to issue standalone proceedings and to join the Umbrella Proceedings if they wish to pursue their claims against the Defendants. While this is less efficient, from the Tribunal's point of view, than having them in the opt-in collective proceedings, it is the case that all these claims (standalone claims in the Umbrella Proceedings and the opt-in collective proceedings) are being managed more or less together.
- f) Finally, and perhaps most importantly, the size of the group means that the grant of permission risks sending a substantial message that the deadline for opting in is a flexible one, when it should be treated as a hard edged one. We are also concerned to send a clear signal that any delay in making an application under Rule 82(2) needs to be properly supported with evidence which explains whether or not the delay is the responsibility of the entity concerned. In the absence of such evidence, applicant entities cannot just assume that the Tribunal will grant their applications.

114. We therefore decline to grant permission to the Other Corporate Group Entities to opt in late.

*(e) Non-UK Domiciled Entities*

115. The Defendants' argument about non domiciled entities is based on the construction of the CPOs, which set a domicile date and then provided in paragraph [22] of the CPOs that any person domiciled in the UK on the domicile date would not be included in the proceedings unless they opted in.
116. However, there is nothing in the CPOs which expressly provides that non-UK domiciled entities cannot opt in. Further, the operative provision in paragraph [22], which explains the requirements for opting in, makes no reference to domicile.
117. Ordinarily, we would accept that the references to domicile in the CPOs should be given substantive meaning, as one would assume that they are there to serve a purpose. However, in this case the reference to domicile date seems to be a

matter of compliance with Rule 80(1)(g), which does not distinguish between opt-in and opt-out proceedings in requiring a CPO to include a domicile date.

118. There is in fact no reason why a domicile date is necessary for opt-in proceedings (as opposed to opt-out proceedings, where domicile is an important feature of the structure of the collective proceedings). We therefore conclude that, while inclusion of the domicile date in the CPOs was necessary for compliance with Rule 80(1)(g), it has no substantive effect in the CPOs or in these proceedings generally.
119. We also agree with the Class Representative that it is plain from submissions at the second certification hearing, as well as paragraphs [120] to [122] of the Second Certification Judgment, that the intention of the Class Representatives was to include such non-UK domiciled class members as chose to opt in.
120. We therefore reject the Defendants' contention that non-UK domiciled claimants are not eligible for the opt-in class. We do not consider that any amendment to the CPOs is required in this respect, as they do not in terms prevent such an outcome.

*(f) Saga and Amex GBT Entities*

121. We can deal with these applications relatively quickly and without unnecessary repetition of the points made above. In respect of both these groups of entities, the position is that there has been a decision at a date substantially after the Opt-In Deadline to seek to include group companies which were not originally included in decisions to participate in the opt-in proceedings. That led to a supplemental application for permission to opt in dated 28 November 2025, supported by a second witness statement from Mr Robinson.
122. In the case of Saga, a change in the management team has led to a request to include a company from the part of the business which was not previously the subject of any intention to opt in (there are also two entities which are Other Corporate Group Entities, with the complication that there is a question about the authority of the executive who asked for them to be included. It follows that

permission is not granted for them for the reasons set out in the section relating to Other Corporate Group Entities).

123. In relation to Amex, an acquisition of a group of companies which included a validly opted in entity led Amex to decide to seek to opt in other group companies. That was first raised with Marcus Parker on 25 November 2025.
124. There is no suggestion that the late applications arise from any error or misunderstanding on the part of the entities involved. The application arises simply because, following a change in ownership or management personnel, it is now seen as desirable to include these entities in the opt-in proceedings. Given that at least one entity from each group had opted in before the Opt-In Deadline (and was therefore aware of the requirements of the CPO Notice), that is not a sufficient basis for us to grant permission, nine months after the Opt-In Deadline. If the process for opt in is to have any integrity, it must operate with an effective deadline for opt-in claims in order to determine the class. Otherwise, the class will be potentially open-ended and subject to applications to opt in at any time simply on the basis that the entity involved now wishes to participate.
125. In those circumstances, we consider that there is no good explanation for the delay, which is clearly the responsibility of Saga and Amex. We therefore decline to grant permission to the Saga and Amex GBT Entities to opt in late.

## **G. CONCLUSION AND DISPOSITION**

126. It is an unfortunate feature of the applications before us that the Class Representative has been slow to recognise at least the possibility of a defect in the approach to the opt-in process. That has prolonged the dispute between the parties and has also apparently delayed the Class Representative and potential class members themselves from acting promptly to regularise any defect. The Late Entities, Opt-Out Notification Entities and EasyJet are the most obvious examples of that, as it should have been plain that there was a problem that needed to be addressed by way of an application under Rule 82. Despite that,

no such application was made for months (at least five months for the Opt-Out Notification Entities and more like 10 months for the Late Entities and EasyJet).

127. Compliance with any Tribunal deadline is mandatory, not discretionary. That is all the more so for the important process of identifying the class for the purpose of opt-in collective proceedings. The process to specify a fixed date for opting in serves the important purposes of creating certainty in the proceedings and providing the defendant with an understanding of its legal exposure. It cannot be approached with the casualness displayed in the process in these proceedings.
128. That leads to the unfortunate consequence that a number of entities which would in ordinary circumstances be proper candidates to opt in to the proceedings have been excluded because of their failure not only to follow the requirements in the CPOs and CPO Notices for the opt-in process, but also because they have largely disregarded the seriousness of that failure and the consequences that follow from delay. In those circumstances, we have had no option but to refuse their applications for permission to opt in, in order to preserve the integrity of the collective proceedings regime, including the protections built into that for defendants.
129. In this regard, we note that the Tribunal in *Road Haulage Association Limited v Man SE and others* has recently considered applications for permission to opt in late. In its reasoned order ([2026] CAT 6), the Tribunal refused permission to opt in late where no valid reason was given for the delay in making the application. This reasoned order post dates the hearing of the Permission Application in these proceedings and we do not therefore rely on it. We simply observe that our approach is consistent with the approach taken in the reasoned order.
130. We have found that opt-in can only take place at the level of a legal entity which could bring a claim under section 47A(2) CA 1998, and cannot take place at an undertaking level.
131. We have also determined that non-UK domiciled entities are eligible to opt in as a matter of principle.

132. As a consequence of our analysis in section F above, we have decided that the Late Entities, the Opt-Out Notification Entities, EasyJet and the Other Corporate Group Entities have all delayed unreasonably in making the Permission Application and should take responsibility for that delay, so that permission to opt in late is refused.
133. In relation to the Saga and Amex GBT Application, we have decided that there is no good reason for the delay in making the application and that the applicants should take responsibility for that delay. Permission to opt in late is refused.
134. This decision is unanimous.

Ben Tidswell  
Chair

Tim Frazer

William Bishop

Charles Dhanowa C.B.E., K.C. (*Hon*)  
Registrar

Date: 2 March 2026