



Neutral citation [2026] CAT 42

Case Nos: 1517/11/7/22 (UM)

1441-4/7/7/22

1266/7/7/16

**IN THE COMPETITION APPEAL TRIBUNAL**

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

6 May 2026

Before:

THE HONOURABLE MR JUSTICE MICHAEL GREEN  
(Chair)  
BEN TIDSWELL  
PROFESSOR MICHAEL WATERSON

Sitting as a Tribunal in England and Wales

BETWEEN:

**UMBRELLA INTERCHANGE FEE CLAIMANTS**  
(1) THE STEPHENSON HARWOOD CLAIMANTS  
(2) THE SCOTT + SCOTT CLAIMANTS

The “Merchant Claimants”

- v -

**UMBRELLA INTERCHANGE FEE DEFENDANTS**  
(1) MASTERCARD INCORPORATED & OTHERS  
(2) VISA INC. & OTHERS

Defendants

AND BETWEEN:

**CICC CLAIMANTS**  
(1) COMMERCIAL AND INTERREGIONAL CARD CLAIMS I LIMITED  
(2) COMMERCIAL AND INTERREGIONAL CARD CLAIMS II LIMITED

The “CICC Claimants”

- v -

**CICC DEFENDANTS**  
(1) MASTERCARD INCORPORATED & OTHERS  
(2) VISA INC. & OTHERS

The “CICC Defendants”

AND BETWEEN:

**WALTER HUGH MERRICKS, CBE**

- v -

**MERRICKS DEFENDANTS**  
(1) MASTERCARD INCORPORATED  
(2) MASTERCARD INTERNATIONAL INCORPORATED  
(3) MASTERCARD EUROPE SA

The “Merricks Defendants”

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**REASONED ORDER (PERMISSION TO APPEAL TRIAL 2 JUDGMENT)**

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**UPON** the Judgment of the Tribunal dated 18 February 2026 [2026] CAT 11 (“Trial 2 Judgment”)

**AND UPON** the applications for permission to appeal the Trial 2 Judgment by the Visa Defendants (“Visa”) and the Mastercard Defendants (“Mastercard”) dated 17 and 18 March 2026 respectively (the “PTA Applications”)

**AND UPON** the responsive submissions of the Merchant Claimants to the PTA Applications dated 1 April 2026

**AND UPON** the Judgment of the England and Wales Court of Appeal in *Granville Technology Group Limited (in Liquidation) & Ors v LG Display Co Limited & Anor* [2026] EWCA Civ 409 (“*Granville CA*”) and the further submissions of the Merchant Claimants dated 2 and 9 April 2026 and Mastercard dated 8 April 2026 regarding the applicability of *Granville CA* to the PTA Applications

**IT IS ORDERED THAT:**

1. The PTA Applications are refused.

## **REASONS**

1. Mastercard has applied for permission to appeal on the following grounds:
  - a. that the Tribunal erred in law because it failed to apply the correct test for factual causation (Ground 1);
  - b. that it was not open to the Tribunal as a matter of law to adopt the test on factual causation that it did at trial and/or it was procedurally unfair for it to do so (Ground 2);
  - c. that the Tribunal misdirected itself as to the relevant considerations for the drawing of adverse inferences (Ground 3).
  
2. Visa has applied for permission to appeal on the following grounds:
  - a. that the Tribunal erred in law in its interpretation and/or application of the test for causation (Grounds 1A and 1B);
  - b. that the Tribunal's application of the test for causation was procedurally unfair (Ground 1C and Grounds 2A-C);
  - c. that the Tribunal erred in law in holding that its merchant pass-on findings could stand as a finding of the extent of pass-on for the purposes of exemption under Article 101(3) of the Treaty on the Functioning of the European Union (Ground 3).
  
3. The Tribunal is required to consider whether an appeal would have a real prospect of success, or if there is some other compelling reason why the appeal should be heard by the Court of Appeal.

### **The test for causation**

4. In its Ground 1, Mastercard submitted that the Tribunal was incorrect to say the test for factual causation required a "direct causative link" and that it was not possible to establish pass-on through "indirect causative links". Visa, in its Ground 1A, similarly submitted that the Tribunal erred in holding that there was such a requirement for directness and that it had wrongly conflated factual

causation with legal causation. Visa also submitted that factual causation could be established using indirect channels. Both Mastercard and Visa appear to allege that the correct test for factual causation in mitigation of loss is a “but for” one rather than a direct causal connection, as the Tribunal found.

5. After a thorough review of the authorities, the Tribunal concluded that they showed clearly the distinction between legal causation and factual causation, and that the Tribunal was only concerned with factual causation, as there were no issues of legal causation. In §89-92 of the Trial 2 Judgment, the Tribunal explained the distinction between legal causation and factual causation. This had been clearly set out by the Court of Appeal in *Royal Mail Group Ltd v DAF Trucks Ltd and ors* [2024] EWCA Civ 181 (“*Royal Mail CA*”). This has again been specifically endorsed by Males LJ in *Granville CA*. There is no real prospect of the Court of Appeal revisiting that issue.
6. As for the test for factual causation, the Tribunal specifically considered whether it was a “straight “but for” test” or whether there was a “further requirement of proximity...or directness or closeness that the Defendants have to establish” in §93 of the Trial 2 Judgment. In reliance on the Supreme Court decision in *Fulton Shipping Inc v Globalia Business Travel SAU* [2017] UKSC 43 [2017] 1 WLR 2581, the Tribunal decided that there was more than a “but for” test of causation, the Defendants being required to establish a “direct causative link” between the overcharge and downstream prices – see §§93-102.
7. The Court of Appeal in *Granville CA* appears to have come to the same conclusion. At §78, Males LJ said the following:

“78. Drawing the threads together so far as relevant for the purpose of this appeal, the legal test for factual causation in the context of an issue about downstream pass on is whether there is a direct and proximate causative link between the overcharge suffered by the claimant and the prices charged by the claimant to its downstream customers. In other words, it is necessary to focus on why a claimant’s prices to its customers are as they are. A defendant must prove that those prices are higher than they would otherwise have been and that this is (in whole or in part) because of the overcharge which the claimant has incurred. If that is proved on the balance of probabilities, the loss will to that extent have been avoided and the defence of downstream pass on will to that extent have been made good. The necessary direct and proximate causative link will have been established.”

8. Mastercard submitted that *Granville CA* in §78-79, even though it was supporting a test for factual causation of a “direct and proximate causative link”, nevertheless adopted a “but for” test of factual causation. However, nowhere in Males LJ’s judgment does he refer to a “but for” test of causation and the whole point of this part of the judgment is to confirm that something more than “but for” causation is required in a mitigation defence, namely a “direct causative link”.
9. In its Ground 1B, Visa submitted that the Tribunal erred in law in deciding what amounted to a sufficiently close and direct causal connection. But as set out in §98-102 of the Trial 2 Judgment, the Tribunal explained how the test was to be applied to the factual evidence and how directness needed to be proved. This was consequential on the finding that it would be insufficient merely to prove “but for” causation. There is no real prospect of overturning those findings on the law.
10. The Tribunal therefore does not grant permission to appeal in relation to Visa’s Ground 1A and 1B and Mastercard’s Ground 1.

### **Res judicata**

11. Visa’s Ground 1C asserts that the Tribunal had already determined the question of directness in its previous decisions of [2022] CAT 31 (the “*July 2022 Judgment*”) and [2024] CAT 21 (the “*March 2024 Ruling*”). It says that the Claimants were bound by those earlier decisions and barred by issue estoppel as a form of *res judicata* from raising again the issue of directness that had been found against them. Mastercard said the same in its Ground 2 and said that it was procedurally unfair to adopt a different test at trial.
12. However this falls into the trap of failing to distinguish between legal causation and factual causation. As stated above, the Tribunal’s approach to the distinction both followed *Royal Mail CA* and has now been effectively approved in *Granville CA*. As explained in §87-92 of the Trial 2 Judgment, the earlier decisions of the Tribunal were both, when properly analysed, concerned with legal causation, the *July 2022 Judgment* itself dealing with the distinction and the *March 2024 Ruling* was titled “*Ruling (Legal Causation)*”. There was no

finding constituting any form of *res judicata* in relation to the requirement to prove directness in the context of factual causation.

13. Visa and Mastercard were well aware that the Claimants' case on factual causation was that they had to prove a direct causal connection. They argued against that, but also suggested that, if necessary, they could establish via the factual and expert evidence, that there was sufficient directness or proximity. As explained in §42-45 of the Trial 2 Judgment, Visa nailed its colours to the mast very early on in wanting only to rely on the expert evidence of Mr Holt and ignoring what was happening in the real world. It had never properly formulated an alternative if it was wrong on the legal test for factual causation and qualitative evidence was required. While complaining about unfairness, Visa specifically did not ask for an adjournment to obtain more evidence.
14. Therefore there is no basis for saying that the requirement to prove directness as part of the test for factual causation had been ruled against the Claimants in prior rulings of the Tribunal. Nor can it be suggested that it was procedurally unfair to allow the Claimants to run that point. Accordingly there is no real prospect of success on appeal on these grounds.
15. The Tribunal therefore does not grant permission to appeal in relation to Visa's Ground 1C and Mastercard's Ground 2.

### **Procedural unfairness**

16. In its Ground 2A, Visa submits that it was procedurally unfair to say it failed to establish direct causation – if that was required – when the evidence before the Tribunal was so limited, where there was no comprehensive disclosure process and where Visa did not have a fair opportunity to ensure it addressed all relevant matters. In its Ground 2B, Visa claims that the Tribunal erred in considering that those claimants who gave disclosure (the “Analysed Claimants”) were representative of their respective sector (the “Analysed Sectors”). In its Ground 2C, Visa claims it was procedurally unfair to find that the Defendants had failed to prove pass-on in respect of sectors where there was no claimant who gave disclosure.

17. Considering Ground 2A, the Tribunal explained the procedural background to Trial 2, including the process for disclosure, in §§29-39 of the Trial 2 Judgment. The Tribunal notes that Visa made a similar argument in Trial 2 as it is currently advancing in Ground 2A. The Tribunal rejected this argument for the reasons given in §§39-46, noting that Visa had not suggested: (i) the Claimants breached any disclosure order; (ii) that there were any outstanding requests that remained unanswered; or (iii) that there needed to be an adjournment of Trial 2 as a lack of disclosure meant it could not fairly advance its case. The Tribunal thus rejects Ground 2A for the same reasons.
18. Considering Grounds 2B and 2C, in the Trial 2 Judgment at §§357-366, the Tribunal explained how it approached the process of sectorisation and extrapolation. The Tribunal noted the inevitable difficulties in such a process but that the approach of the Claimants was credible and appropriate. The Tribunal also noted the possibility of an “exception process” by which a particular Claimant could argue it should be treated differently from its relevant sector. As explained above, if Visa considered that disclosure from the Claimants was inadequate, it could have made further disclosure requests, claimed that existing disclosure requests had not been complied with or sought an adjournment of Trial 2. It did not do so. Visa does not explain how the Tribunal erred in the approach it adopted; nor does it identify any error of law.
19. The Tribunal therefore rejects Grounds 2B and 2C.

### **Application to Article 101(3)**

20. In its Ground 3, Visa submits that “insofar” as the Tribunal intended to preclude any argument for how pass-on is to be calculated for the purposes of determining the application of Article 101(3) in Trial 3, this would be an error of law. The Tribunal rejects this ground of appeal as the Tribunal did not make a finding on calculating a UK economy wide pass-on rate or the test to be applied in determining whether the Article 101(3) exemption was fulfilled, as made clear in §§478-481 of the Trial 2 Judgment. Visa is able to argue in Trial 3 that a different test of causation might apply to assessing the benefits and detriments to merchants for the purposes of Article 101(3).

### **Adverse inferences**

21. Mastercard's Ground 3 submits that the Tribunal should have drawn adverse inferences from the Claimants allegedly not disclosing relevant documents despite having ample opportunity to do so. Mastercard's Ground 3, however, does not state with any particularity what relevant considerations the Tribunal failed to take account of or what irrelevant considerations it took account of in relation to the drawing of adverse inferences. It is difficult to understand how the Tribunal is said to have misdirected itself.
22. Likewise, as stated above and as recorded in §39 and 49 of the Trial 2 Judgment, prior to Trial 2 there were no outstanding disclosure requests and the Claimants had complied with what they were required to disclose. For these reasons, the Tribunal rejects Mastercard's Ground 3.

### **Disposition**

23. For the reasons set out above, the Tribunal is satisfied that the proposed appeals do not have a real prospect of success and there is no other compelling reason why the appeals should be heard by the Court of Appeal. It is also pointed out that the issues raised by the Defendants' applications have been recently and comprehensively looked at by the appellate courts in *Royal Mail CA*, *Granville CA*, as well as the Supreme Court in *Sainsbury's Supermarkets Ltd v Visa Europe Services LLC and ors* [2020] UKSC 24 and *NTN corp v Stellantis NV* [2022] EWCA Civ 16. It should therefore be for the Court of Appeal to decide if it wishes to revisit these issues again.
24. We therefore unanimously refuse to grant the PTA Applications.

Mr Justice Michael Green  
Chair

Ben Tidswell

Professor Michael Waterson

Charles Dhanowa CBE, KC (Hon)  
Registrar

Date: 6 May 2026