Neutral citation [2026] CAT 63

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

IN THE COMPETITION APPEAL TRIBUNAL

28 July 2026

Before:

BEN TIDSWELL
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

THE UMBRELLA INTERCHANGE FEE CLAIMANTS

Claimants

- and -

THE UMBRELLA INTERCHANGE FEE DEFENDANTS

Defendants

Heard at Salisbury Square House remotely on 8 July 2026

RULING

APPEARANCES

Kieron Beal KC, Philip Woolfe KC, Flora Robertson, Oscar Schonfeld and Oliver Jackson (Instructed by Scott and Scott UK LLP and Harcus Parker Limited) on behalf of the Merchant Claimants

Matthew Cook KC and Jagoda Klimowicz (Instructed by Freshfields LLP and Jones Day) on behalf of Mastercard

Brian Kennelly KC and Daniel Cashman (Instructed by Linklaters LLP and Milbank LLP) on behalf of Visa

1. INTRODUCTION AND VISA'S APPLICATION

1. This ruling concerns Trial 3 in the Umbrella Proceedings litigation, which is scheduled to commence in October 2027 and to run for 10 weeks. The purpose of Trial 3 is to determine whether the Defendant Schemes are entitled to the exemption under Article 101(3) TFEU and/or section 9, Chapter I of the Competition Act 1998.

2. Visa has raised a concern about the treatment of merchant pass on in the exemption analysis. Essentially this is as follows:

   (a) It may be necessary to determine merchant pass on (**MPO**) at an economy-wide level (**EMPO**), to work out what harm has been suffered by merchants as a consequence of the payment of the MIF. That is likely to be necessary by reason of the "fair share" condition in the test for exemption.

   (b) While Trial 2 ([2026] CAT 11) in these proceedings addressed the question of MPO for merchants who were Host Cases in the Umbrella Proceedings at that stage, it did not determine EMPO.

   (c) While the Tribunal has decided in the Trial 2 judgment that there is a direct and proximate requirement for factual causation for individual MPO, it was not decided that this requirement applies to EMPO.

   (d) There are now newly filed cases (**New Host Cases)** who did not participate in Trial 2, and the Schemes are not bound vis-à-vis the New Host Cases by the findings in Trial 2.

   (e) If direct and proximate causation might be a required element of EMPO for the purpose of exemption, then the Schemes are entitled to examine the operations of the claimants in the New Host Cases in order to determine (i) their MPO rates and (ii) the consequence of those pass on rates for any EMPO finding in Trial 3.

3. Visa says it is important to resolve this issue in advance of Trial 3, by way of a preliminary issue which will decide whether direct and proximate causation is a required element of EMPO for exemption purposes. Otherwise, the parties will not know what type of evidence is necessary in order to determine MPO for the purpose of EMPO.

4. In the alternative, Visa seeks:

   (a) The adjournment of any assessment of EMPO to Trial 4, which will in any event be dealing with MPO for non-UK and non-Irish claims.

   (b) Alternatively, disclosure from the claimants in the New Host Cases which would allow the Schemes to test MPO for those merchants on a "direct and proximate basis".

5. Visa applies for these outcomes in the alternative. Mastercard supports Visa's application, with a preference for the adjournment option, noting other pass on issues will have to be considered in Trial 4 for the purpose of quantum. The application was heard at a CMC on 8 July 2026. The parties were invited to, and did, file supplemental submissions to address an indication from the Tribunal as to its preferred approach (which differed from the options put forward in the application).

2. THE POSITION OF THE CLAIMANTS

6. The Claimants opposed all aspects of the application at the CMC, largely on the basis that the application was misconceived, given the effect of the Trial 2 judgment. The Claimants said that, to the extent that direct and proximate causation for the purpose of EMPO was an issue for Trial 3, that had essentially been decided by the finding in the Trial 2 judgment, and it would not be open to the Schemes to reopen the point (including for New Host Cases). The Claimants submitted that the Tribunal should not contemplate reaching different conclusions on exemption on the basis of EMPO between the claimants that participated in Trial 2 and the New Host Cases. The Claimants also expressed concern about the potential for Trial 3 to be derailed.

7. Following the CMC, during which I indicated a preference for adjourning to Trial 4 any factual evidence relating to direct and proximate pass on as a necessary input into EMPO, the Claimants (as invited by the Tribunal) made further submissions in which they resisted the notion that the factual questions relating to direct and proximate pass on for EMPO purposes should be hived off to Trial 4. They said that would unfairly delay the resolution of the claims of UK and Irish claimants, some of which were filed many years ago, and that it would also unduly complicate Trial 4, making the outcome of Trial 3 less valuable as an input into Trial 4. They also repeated their submissions about the extent to which it is open to the Schemes to relitigate the question of MPO, given the Trial 2 findings.

8. Instead, the Claimants propose to give disclosure from 33 merchants who are already identified as subjects for disclosure for the purposes of the exemption issues, extending that so as to encompass material relevant to MPO. Where these disclosing merchants fall into sectors which were considered in the Trial 2 judgment, the Claimants proposed that these merchants should only be required to provide a witness statement with key documents in support to evidence the relevant pass on issues. The Schemes would be entitled to further, targeted disclosure if warranted. This would allow the Tribunal to determine any and all questions of EMPO in Trial 3, regardless of whether there is a direct and proximate causation requirement for pass on in that context.

3. THE TRIBUNAL'S VIEW

9. I am not comfortable with the proposal put forward by the Claimants. First and foremost, it anticipates the introduction of factual material in an area which is likely to be hotly disputed between the parties. Quite apart from the expense and distraction that will cause leading up to Trial 3, it seems impossible to contemplate that those factual issues can be properly dealt with in the course of a ten-week trial which is already likely to be heavily laden with factual issues relating to other exemption issues.

10. Put simply, I do not believe that Trial 3 can maintain its current listing if the question of MPO for New Host Cases needs to be determined on the basis of the direct and proximate causation test established in Trial 2. The MPO issues in Trial 2 occupied some 18 sitting days (not including closing submissions) and it seems quite likely that

a similar time commitment might be required to deal with the sample merchants proposed by the Claimants. The current listing could not in my view accommodate that.

11. The Claimants' proposals are therefore unrealistic, if the Trial 3 listing is to be maintained. No party has suggested that an adjournment of Trial 3 was a good idea, and I would be extremely reluctant to contemplate that outcome.

12. In any event, I do not consider the arguments put forward by the Claimants to carry much weight. The claims of UK and Irish merchant claimants will not in any event be determined at the end of Trial 3, as there are quantum issues that will probably need to be decided in Trial 4. It may be that it would be helpful to have a final finding on EMPO before Trial 4, but I think that is a relatively minor problem in the greater scheme of things. While there is of course room for inconsistency in findings between Trial 3 and Trial 4, that is an inevitable consequence of the way these proceedings are being managed and continuity in the Tribunal panel membership goes some way to ameliorating that risk.

13. As for the question of the extent to which the Schemes are bound by the findings in Trial 2, that may well depend on what issues are contested by the Schemes. However, as a basic proposition, it seems to me that the Schemes must at the very least be entitled to challenge the position of the New Host Cases, who do not directly have the benefit of the Trial 2 findings, where it is said that their factual circumstances are different from those merchants who participated in Trial 2. It is obviously not possible to determine in the abstract whether or not that applies for these issues. Beyond that, it does not seem necessary or appropriate to get into the question of the extent to which Trial 2 findings prevent the Schemes from contesting direct and proximate causation for MPO, either on a standalone basis or as it might apply to EMPO.

14. I am also not attracted to Visa's application for a preliminary issue. The answer to Visa's question seems much more suited to resolution in the context of the full discussion about the exemption issues, rather than being decided in isolation. In order to decide what role EMPO has in the "fair share" condition, and the correct way of assessing EMPO if it is relevant, it seems highly desirable to have the full exemption landscape set out for the Tribunal. That can only happen at Trial 3.

15. Instead, it seems to me that removing from Trial 3 the factual questions associated with direct and proximate causation as it may be relevant to EMPO is a convenient and sensible way to maintain the Trial 3 process and to determine the relevance of EMPO, and the proper basis for its assessment if relevant, without restricting any rights which the Schemes may have to contest such issues.

16. That is partly because all questions of law relating to the relevance of EMPO to exemption, including the proper basis for assessing EMPO, if it is relevant, would be dealt with in Trial 3. I emphasise that it is not at all clear to me that direct and proximate causation of MPO will, as a matter of law, turn out to have any relevance to exemption. That remains an open question for Trial 3, but it does seem to me quite possible that the Tribunal will conclude that the relevant harm to be considered in determining the "fair share" condition does not need to take account of EMPO assessed on a direct and proximate causation basis for specific merchants. To the extent that EMPO assessed on some other basis (for example, economy-wide econometric evidence of the sort advanced in Trial 2) is thought to be relevant by the parties, that can be accommodated in the Trial 3 timetable.

17. In those circumstances, there seems to be a reasonable chance that it will never be necessary to address the factual issues in relation to EMPO assessed on a basis of direct and proximate causation and no need to include those in Trial 4. If, however, that becomes necessary, then I consider the potential for disruption or delay to be considerably less for Trial 4 than including the issue would be for Trial 3.

4. DISPOSITION

18. On that basis, I will order that all factual questions relating to EMPO assessed on a direct and proximate causation basis for specific merchants should be adjourned from Trial 3 to Trial 4.

19. The parties will be expected to address in Trial 3 all legal questions about the relevance of EMPO in the test for exemption and the proper legal basis for assessing EMPO, if it is relevant. It is also open to the parties in Trial 3 to adduce expert evidence about the

assessment of EMPO at some aggregate level, for example by reference to economy-wide data.

20. The parties should seek to agree an order to reflect this Ruling to be filed at the Tribunal within 14 days of the date of this Ruling.

Ben Tidswell	Made: 28 July 2026
Chair of the Competition Appeal Tribunal	Drawn: 28 July 2026