



Neutral citation [2026] CAT 68

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

IN THE COMPETITION
APPEAL TRIBUNAL

12 August 2026

Before:

THE HONOURABLE MRS JUSTICE BACON
(President)

Sitting as a Tribunal in England and Wales

BETWEEN:

THE UMBRELLA INTERCHANGE FEE CLAIMANTS

Claimants

- and -

THE UMBRELLA INTERCHANGE FEE DEFENDANTS

Defendants

RULING (CUT-OFF APPLICATION)

1. The defendants seek an order varying the Umbrella Proceedings Order of 4 July 2022 so as to provide a cut-off date of 1 September 2026 for participation by claimant entities in the process leading up to Trial 3. Trial 3 is listed to take place over ten weeks commencing on 11 October 2027, and will determine the question of exemption under Article 101(3) TFEU and section 9 Competition Act 1998.
2. The defendants say that a cut-off date for claimant participation is necessary for two reasons:
 - (a) In order to ensure that the best available evidence can be put before the Tribunal in an orderly way.
 - (b) As a matter of basic fairness, so that the defendants are aware of the extent of the claims they are facing in good time before Trial 3 commences and to prevent future claimants “free riding” on the proceedings without facing the usual risks and burdens of litigation (in particular, the exposure to orders for disclosure).
3. The claimants say that no cut-off date is required, but that if any date is imposed it should be 1 January 2027 and should only apply to claimant entities who wish to take an active role in Trial 3 (as opposed to claimant entities whose claims have been stayed).
4. The Umbrella Proceedings are a procedural mechanism which is designed to achieve the efficient determination of a large volume of individual claims, while ensuring proceedings remain fair for all parties. It is a process of joint case management with flexibility to allow future claims, where appropriate and fair, to participate in the Umbrella Proceedings and to receive the benefit of judgments as and when issues are determined between the parties: see [2022] CAT 14, which explained the Tribunal’s approach, at §§25 and 26.
5. That does not mean that the ability of future claimants to join and take the benefit of the Umbrella Proceedings is unlimited. In particular, the procedural flexibility offered by the Umbrella Proceedings mechanism should not be permitted to override sensible case management or the integrity of the process that has been ordered.

6. The preparatory arrangements for Trial 3 contemplate the selection of a sample of claimants by the parties' economic experts (which has already taken place) and the provision of disclosure by that sample (to take place by 23 October 2026). The sample has been chosen on the basis of questionnaires completed by the current claimants (active and stayed).
7. It could undermine the integrity of this process if further claimants were able to become Host Cases and participate in Trial 3 (either on an active or a stayed basis) without some form of cut-off. For example, the addition of a material number of new claimant entities could make the sample identified by the experts less representative. Imposing a cut-off date ought also to encourage the early participation of a greater number of claimants, increasing the pool of available evidence.
8. Fairness considerations also support the imposition of a cut-off date. There is merit in the defendants' point that the absence of a cut-off date will allow future claimants to obtain the benefit of Trial 3 without exposing themselves to any obligations to provide information or documentary evidence, leaving the defendants exposed to claims which they cannot properly test. While it is correct that Trial 3 will determine exemption at the level of the defendants' card schemes on an economy-wide basis, there are evidential matters which are specific to merchants, and the arrangements for sampling claimants and obtaining disclosure and witness evidence are aimed at facilitating that.
9. It is therefore apparent that a cut-off of some sort is warranted. While this might result in the outcome of Trial 3 binding fewer claimants than would otherwise be the case, that consequence is justified by the need to preserve the integrity of the Trial 3 sampling process, and to ensure that the defendants are not faced with claims which they have had no proper opportunity to test.
10. The suggestion by the claimants that the cut-off should only apply to active claimants misses the point that all claimants (active and stayed) are exposed to requests for information and disclosure. It also ignores the potential for unfairness from future stayed claimants "free riding" on the proceedings. The cut-off therefore needs to apply to all future claimants, not just those who seek to take an active role in the proceedings.

11. The question then becomes the appropriate cut-off date. The defendants' primary position of 1 September 2026 seems unnecessarily early, and risks unfairly affecting those claimants who are about to issue proceedings or are in the process of having claims transferred from the High Court to this Tribunal. The claimants' counter-proposal of 1 January 2027 does not sit comfortably with the date for expert reports to be exchanged, which is 23 April 2027. If the experts were to think that further information from new claimants was desirable, then there would be insufficient time for that to be provided so that the experts could properly take it into account.
12. In order to ensure an orderly process leading up to Trial 3, the cut-off date for new claimants to apply to become Host Cases under the Umbrella Proceedings Order for the purposes of Trial 3 should be 23 October 2026. In relation to any claimants who seek to become Host Cases after the date of this order:
 - (a) The defendants are directed to respond promptly to applications by claimants for transfer from the High Court to the Tribunal and for designation as Host Cases. When seeking to agree wording for a draft Host Cases order, the parties should have regard to previous orders and the wording the Tribunal has found acceptable in those.
 - (b) All claimants who apply to be Host Cases by 23 October 2026 should file and serve questionnaires, in the form identified by the Tribunal's order of 29 April 2026, within seven days of applying to be designated as a Host Case, if not before this date.

The Honourable Mrs Justice Bacon
President of the Competition Appeal Tribunal

Made: 12 August 2026
Drawn: 12 August 2026