Neutral citation [2026] CAT 71

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

21 August 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 INTERNATIONL INCORPORATED
(3) MASTERCARD EUROPE SA

The "Merricks Defendants"

RULING (TRIAL 2 COSTS)

A. INTRODUCTION

1. This ruling concerns costs arising from the Judgment of the Tribunal dated 18 February 2026 [2026] CAT 11 (**Trial 2 Judgment**). In the Trial 2 Judgment, the Tribunal found that:

a) Acquirers passed on the Multilateral Interchange Fees (**MIFs**) they incurred in relation to transactions processed for Merchant Claimants to the relevant Merchant Claimant at a rate of:

(i) 100% where the relevant Merchant Claimant was on an IC+ or IC++ contract at the time of the transaction in question; and

(ii) 85% where the relevant Merchant Claimant was on a Blended Contract at the time of the transaction in question.

This finding relates to the issue of Acquirer pass-on (**APO**), which was considered in Trial 2B.

b) The Umbrella Interchange Fee Defendants had not proved that any of the Merchant Claimants passed on any of the MIFs they incurred (as part of the MSC they paid to Acquirers) to their suppliers or via their prices to their customers, save in respect of three subsectors and the subsectors matched to them in respect of which the Tribunal found that MIFs were passed on via prices to customers at the rates set out below:

(i) Cash services – 100% pass-on;

(ii) Insurance underwriting – 47% pass-on; and

(iii) Travel agents and online intermediaries – 47.5% pass-on.

This finding relates to the issue of Merchant pass-on (MPO), which was considered in Trial 2A.

2. Following the Trial 2 Judgment, the parties were invited to provide submissions on the appropriate order as to costs. By Order of the Chair dated 27 March 2026, costs submissions were also required to address any costs orders sought against Mr Merricks in respect of Trial 2. While Mr Merricks participated in Trial 2A, during the course of that portion of the trial, Mr Merricks reached a settlement with Mastercard, which was approved by the Tribunal in its judgment reported at [2025] CAT 28. Mr Merricks has previously filed an application seeking that I make no order as to costs as between him and each of Visa and the Merchant Claimants, which I refused in a Ruling dated 10 March 2025, reported at [2025] CAT 21 (the **Merricks Costs Ruling**). However, I considered it desirable to fully resolve any remaining costs liabilities that Mr Merricks may have in relation to Trial 2 at this time.

3. I further note at the outset that the CICC Claimants did not participate in Trial 2A concerning MPO, and were only admitted into these Umbrella Proceedings in relation to the issue of APO, and so participated in Trial 2B.

4. The costs positions in relation to the Trial 2 Judgment are therefore not straightforward given the different levels of participation by different party groups on different issues.

B. ORDERS SOUGHT BY THE PARTIES

5. Visa does not seek any costs in relation to Trial 2A, and has agreed to pay its share of the Merchant Claimants' reasonable costs in relation to the issues on which they succeeded. However, Visa maintains that the Merchant Claimants' Trial 2A costs should be discounted to reflect issues on which they were not successful, and to disallow the costs of Mr Economides, who gave expert evidence in Trial 2A. Visa also suggests that it should not be liable for any costs occasioned by the participation of Mr Merricks in Trial 2A. Visa also claims that it was substantially successful in Trial 2B and seeks its costs against the Merchant Claimants and the CICC Claimants.

6. Mastercard did not initially apply for a costs order against any party in respect of either Trial 2A or Trial 2B. It has also settled all costs with Mr Merricks. Although Mastercard accepts that it should pay the Merchant Claimants'

reasonable and proportionate costs of Trial 2, in its responsive submissions, Mastercard adopted Visa's submissions regarding discounts to the Merchants' costs for issues on which they were not successful, and Mr Economides' evidence. Mastercard also seeks an order "*clarifying that it is not liable for any costs of and occasioned by the participation of Mr Merricks in Trial 2A, without inviting the Tribunal to prejudge the position either way.*" Finally, while Mastercard has not sought its costs from the Merchant Claimants on Trial 2B, in its responsive submissions, it advanced a case that the CICC Claimants should pay Mastercard's costs of Trial 2B because Mastercard was the successful party on APO.

7. Mr Merricks is seeking "*no order as to costs*" in relation to his participation in Trial 2. Mr Merricks does not seek costs from any party arising from Trial 2, however he does seek his costs of, and occasioned by, this application on the basis that he has consistently maintained that he should have no liability as to costs.

C. ISSUES FOR DETERMINATION

8. In order to resolve the orders sought by the parties, the following questions fall for determination:

- Question 1: Should the Merchant Claimants' costs in relation to Trial 2A be discounted to reflect a lack of success in relation to certain sub-sectors?

- Question 2: Should the Merchant Claimants be permitted to recover the costs of, and in relation to, Mr Economides' evidence in Trial 2A?

- Question 3: What is the appropriate costs order, if any, in relation to Mr Merricks' participation in Trial 2?

- Question 4: What is the appropriate costs order in relation to Trial 2B?

9. Each question is addressed in turn below. Following the exchange of costs submissions, it appears that the parties agree that as a matter of principle, Visa's and Mastercard's reasonable and proportionate costs of an earlier application

regarding legal causation can be set off against their respective liabilities to the Merchant Claimants in respect of Trial 2 costs. Accordingly, I do not make any further ruling on this issue.

Question 1

10. As set out in paragraph 1(b) above, the Tribunal found that the Defendants did not establish MPO, except in relation to cash services, insurance underwriting and travel agents and online intermediaries.

11. A number of Merchant Claimants settled either before or during Trial 2. The Merchant Claimants who remain are represented by Scott+Scott UK LLP (the **SSU Claimants**). The SSU Claimants did not have any claimants in the three subsectors where the Tribunal found that some level of pass-on had been established. The SSU Claimants therefore claim that they were entirely successful in Trial 2A and are therefore entitled to all of their reasonable and proportionate costs in respect of MPO.

12. Visa suggests that the issue of MPO was litigated by all parties and determined on a sector-by-sector basis. Since the Tribunal found that some level of pass-on had been established for three out of sixteen subsectors, any costs order against Visa should reflect its success in proving MPO in these sub-sectors. Visa also suggests that there is an inconsistency in the SSU Claimants' position that they should be able to recover their costs of litigating these subsectors, while at the same time suggesting that they did not lose on these issues because there are no SSU Claimants that fall within the relevant subsectors. Visa submits that an appropriate level of discount on the SSU Claimants' costs would be 15%.

13. Mastercard adopted Visa's submissions in its responsive submissions and also seeks a 15% discount.

14. In their responsive submissions, the SSU Claimants clarified that they instructed their counsel and expert team jointly with the Stephenson Harwood Claimants (who have now all settled their claims) to put forward a case on MPO. This included the three subsectors where some MPO was established, in which only Stephenson Harwood Claimants were present. The SSU and Stephenson Harwood Claimants apportioned disbursements between them by reference to

total claim value rather than separately accounting for work done on a sector-by-sector basis, which they suggest was a reasonable approach.

15. There is little dispute that the Merchant Claimants were broadly the successful party in relation to MPO. That is why the Defendants do not claim their costs in relation to the three subsectors in which MPO was proved; they only seek an appropriate discount to the costs of Trial 2A that they accept they will have to pay.

16. I recognise that under r.104(4) of the Tribunal Rules, it could be said that the fact that the Merchant Claimants lost on three subsectors does not affect the overall result that they were the overwhelmingly successful parties. But it is the case that the Tribunal tends to be more willing than the High Court to make issues-based orders – see Lady Rose JSC's observation in *Competition and Markets Authority v Flynn Pharma Ltd and Pfizer Inc* [2022] 1 WLR 2972 at §140.

17. As noted above, the Merchant Claimants' main answer to this is that there were no SSU Claimants in those three subsectors and all the Stephenson Harwood Claimants, which included some claimants in those subsectors have now settled. That is not a very persuasive argument as there was a costs sharing agreement between the two groups of claimants and the SSU Claimants are seeking to recover their share of the costs of litigating those issues on which they lost. The fact is that both the SSU Claimants and the Stephenson Harwood Claimants shared the costs of a joint legal and expert team and they pursued all arguments without reference to which subsectors were relevant to the particular claimant group.

18. I therefore consider that there should be a percentage reduction in the costs recovery to reflect this. However I do not think 15% is the correct percentage. The Defendants were only partially successful on insurance underwriting and travel agents with found MPO rates of 47% and 47.5% respectively, way below what the Defendants had been arguing for. Furthermore, the insurance underwriting and cash services subsectors were much smaller in claim value and so were not even analysed by Dr Trento on behalf of the Merchant Claimants.

19. In the circumstances, I will direct a 5% deduction from the reasonable and proportionate costs that the Merchant Claimants can claim from the Defendants to reflect a more realistic assessment of the relative impact of MPO being established by the Defendants in those three subsectors.

Question 2

20. Mr Economides, a Senior Partner at L.E.K. Consulting, was instructed by the Merchant Claimants. According to the Merchant Claimants, his primary task was to identify the most appropriate costs incurred by claimants for Dr Trento to use as proxies for the MSC in his economic analysis of MPO. However, Dr Trento was unable to carry out reliable econometric analysis using all but one of the proxies identified by Mr Economides. Mr Economides also conducted a sectorisation exercise to match claimants in unanalysed sectors to one of the sectors analysed by Dr Trento by reference to features relevant to the pricing practices in such sectors.

21. As the Tribunal noted in the Trial 2 Judgment at §§ 286 – 288:

a) the Tribunal placed little reliance on Mr Economides' evidence;

b) any useful material within Mr Economides' reports was an analysis of factual evidence that the Tribunal was in just as good a position to analyse for itself;

c) Mr Economides had limited or no relevant expertise in economics or accountancy and the admissibility of his evidence on many issues on which he opined was therefore questionable; and

d) insofar as Mr Economides was put forward as an expert on the pricing practices of merchants in different sectors, his direct experience of many sectors was slim and therefore largely unhelpful.

22. The Defendants referred to the above comments in the Trial 2 Judgment to support the submission that Mr Economides' costs should be disallowed.

23. Parties to litigation must carefully consider the expertise of the individuals that they instruct and cannot expect to recover the costs of evidence that is clearly outside a purported expert's sphere of expertise. While it may often be difficult to predict the precise utility of evidence ahead of trial, parties can be assured that the Tribunal is unlikely to take much assistance from expert evidence that goes beyond the deponent's expertise. The mismatch between Mr Economides' expertise and the evidence he was seeking to provide would have been apparent in advance of his instruction.

24. Given the serious issues with Mr Economides' expertise and the very limited utility of his evidence, I consider that all of the costs of Mr Economides' evidence were not proportionately or reasonably incurred, and all the costs associated with his evidence should not be recovered from the Defendants.

Question 3

25. Mr Merricks seeks an order of no order for costs in respect of Trial 2 against him. The primary reason that he seeks such an order is to obtain finality and certainty in respect of the class that he represents. Following settlement of his claims against Mastercard, the settlement monies need now to be distributed in accordance with the plan approved by the Tribunal. Mr Merricks has recently succeeded in the judicial review proceedings brought by his litigation funder in relation to the distribution of the settlement proceeds – *R (Innsworth Capital Ltd) v Competition Appeal Tribunal* [2026] EWHC 1393 (Admin). Any costs liability of Mr Merricks needs to be taken account of in the proposed distribution and Mr Merricks has suggested that there would be negative implications on distribution if either a portion of the settlement must be reserved to meet Trial 2 costs in the future, or if distribution is delayed until a concrete application for Trial 2 costs is made by the parties in these proceedings. Essentially, Mr Merricks says that there is a public interest in allowing full settlement distribution to commence as soon as possible.

26. These are not points that Mr Merricks makes for the first time now, and he relies on the submissions that he made in support of his earlier application on 6 March 2025, which was refused in the Merricks Costs Ruling. Mr Merricks says that his application is significantly strengthened by the fact that no other party has

identified any costs or categories of costs incurred by the Merchant Claimants that are solely attributable to Mr Merricks' involvement in Trial 2. He also says that he was not an unsuccessful party in relation to the issue of MPO and so there is no basis for costs to be ordered against him.

27. The primary position of the Merchant Claimants is that they have incurred all of their costs for the purpose of pursuing their claims against Mastercard and Visa, and all such costs should therefore be recoverable from Mastercard and Visa. At a high level, this is because Mr Merricks was largely aligned with Visa in relation to MPO, and so any costs incurred by the Merchant Claimants in relation to Mr Merricks (for example cross-examining his expert economist, Mr Coombs) were incurred in pursuing their claims against the Defendants. The Merchant Claimants also say that the substantial majority of the Trial 2A costs would have been incurred irrespective of Mr Merricks' participation.

28. Following the exchange of submissions, the Merchant Claimants now say that they do not oppose Mr Merricks' application for no order as to costs against him provided that the Tribunal also orders the Defendants to pay their costs on a standard basis, without any deductions incurred as a result of Mr Merricks' involvement in Trial 2. They alternatively apply for an order that Mr Merricks pay their costs caused by his involvement in Trial 2.

29. Mastercard and Visa do not seek any of their own costs from Mr Merricks. A dispute between the parties only arises in circumstances where any of the Merchant Claimants' costs resulting from Mr Merricks' involvement in Trial 2 are not recoverable from Visa or Mastercard. Visa and Mastercard claim that they should not be liable to pay any such costs to the Merchant Claimants.

30. Visa and Mastercard have provided some non-exhaustive illustrative examples of costs incurred by the Merchant Claimants that are solely attributable to the participation of Mr Merricks in Trial 2A, including:

a) the exchange of correspondence regarding expert meetings in the period before Mr Merricks was included in the Umbrella Proceedings;

b) the costs of preparing for a hearing at which Mr Merricks applied to be included in the Umbrella Proceedings for Trial 2;

c) considering whether to take a position on an unsuccessful application by Mr Merricks to disallow Mastercard's reliance on the evidence of Ms Webster, on the basis that Mastercard had engaged in expert shopping;

d) correspondence from Stephenson Harwood to the Tribunal regarding the addition of material by Mr Merricks to the trial bundle and the alleged disruptive conduct of Mr Merricks in the proceedings;

e) a dispute between the Merchant Claimants and Mr Merricks about access to materials referred to by counsel during Trial 2A cross-examination. The relevant material was from the earlier Trial 1 in these proceedings; and

f) Mastercard more generally refer to the confrontational and cost accretive way that Mr Merricks' legal team pursued the proceedings and engagement with other parties.

31. Overall, the Defendants submit that they should not be made to bear costs that they have not played a part in generating. They also assert that the cost schedule provided by the Merchant Claimants is not sufficiently granular to allow them to take a view on the reasonableness of the costs incurred. The Defendants seek an order clarifying that they are not liable for any costs occasioned by Mr Merricks' participation in Trial 2A, save to the extent that such costs were reasonably and proportionately incurred in any event by the SSU Claimants in advancing their claims against the Defendants.

32. The Tribunal has a broad discretion to make any costs order that it thinks fit to achieve overall justice in the proceedings. In the unusual situation in this case, which engages a public policy element of requiring finality so that an approved distribution to the class can be effected, I consider it highly desirable for Mr Merricks' costs liability to be determined at this stage and not be left open in any way.

33. Given the high degree of overlap between the position taken by Mr Merricks and Visa on MPO, it is likely that the majority, if not all, of the costs incurred by the Merchant Claimants would have been incurred anyway in relation to their claims against the Defendants. I cannot rule definitively on that now and it will have to be left to the detailed assessment to work out if all the Merchant Claimants' claimed costs against the Defendants were reasonably and proportionately incurred and should be paid by the Defendants.

34. The Merchant Claimants want me to leave open the possibility that if any of their costs are ultimately disallowed as being solely occasioned in relation to Mr Merricks' participation in the proceedings, that these would then be recoverable from Mr Merricks. As I consider that these are likely to be relatively limited in scope, and may not arise at all, the overall justice of the case, taking into account the public interest and the need for finality, leads me to conclude that it is appropriate to order that there be no order for costs as between Mr Merricks and all other parties in respect of Trial 2. Such an order seems to me to be fair in the circumstances to all parties and will enable the distribution of the Merricks' settlement proceeds to be made in full, without having to wait until a detailed assessment is complete.

35. Mr Merricks should also have his costs of, and occasioned by, this application given that he has consistently maintained his position on this issue.

Question 4

36. Rather unusually, Visa, Mastercard and the Merchant/CICC Claimants each claim that they were the successful party in relation to the issue of APO at Trial 2B.

37. Visa suggests that it was the successful party because the Tribunal's finding of 85% APO on blended contracts was significantly more aligned with Visa's position than the Claimants. By the time of Trial 2B, Visa invited the Tribunal to adopt Mr Holt's estimate of 75% APO for smaller merchants (with annual turnover below £50m) and 100% for larger merchants, yielding an average rate of 81% across the economy as a whole.

38. Mastercard only seeks its costs of Trial 2B against the CICC Claimants. It has agreed that it should be liable for the SSU Claimants' Trial 2B costs. However, it was putting forward lower rates of APO than Visa, including in particular in respect of the CICC Claimants.

39. The Merchant Claimants and the CICC Claimants claimed that APO was complete or near complete for blended contracts and relied on the estimate of Dr Trento that APO was between 75-100%, with a mid-point of 87.5% which was very close to the Tribunal's finding of 85% APO.

40. This question can be dealt with relatively briefly. The Merchant and CICC Claimants were the overall successful parties on APO. The Claimants are correct to point out that both Visa and Mastercard sought to establish different APO rates for different categories of merchants, whether on the basis of their size, or the nature of their contracts respectively. They were unsuccessful in establishing these parts of their cases. The Merchant and CICC Claimants successfully established a high level of APO squarely within the range suggested by Dr Trento. The Merchant and CICC Claimants should therefore be entitled to recover from the Defendants all of their reasonable and proportionate costs in respect of Trial 2B.

D. DISPOSITION

41. The parties are to file an agreed draft order giving effect to this ruling by 4pm on 4 September 2026 for the Tribunal's approval.

Mr Justice Michael Green
Chair

Charles Dhanowa CBE, KC (Hon) | Date: 21 August 2026
Registrar