



Neutral citation [2026] CAT 81

IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1441/7/7/22

1443/7/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

29 October 2026

Before:
BEN TIDSWELL (Chair)

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 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

Heard at Salisbury Square House on 27 October 2026

RULING (CLASS DEFINITION AND DISCLOSURE)

APPEARANCES

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

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

Brian Kennelly KC, Rayan Fakhoury and Aislinn Kelly-Lyth (instructed by Linklaters LLP and Milbank LLP) appeared on behalf of the Visa Defendants

1. In these opt-in collective proceedings, the Defendants have applied for disclosure from class members of documents (1) identifying the value of commerce reflecting the Merchant Service Charges which each class member has paid its acquirer and (2) evidencing the existence of a contractual relationship between the class member and the acquirer. While there are various reasons why the Defendants say that it would be useful for this disclosure to be provided now, the application has focused attention on the class definition in the collective proceedings and the question of whether all the entities registered on the opt-in class register meet that definition.
2. That question is the latest chapter in a longstanding set of challenges mounted by the Defendants in relation to the opt-in class composition, which has resulted in a significant number of entities being removed from the register. See *CICC v Mastercard and Visa* [2026] CAT 15 (**Opt-In Judgment**) for further background.
3. The class definition has two relevant components for present purposes. First, the definition provides that the class includes only:

“Merchants who paid a Merchant Service Charge in respect of one or more Commercial Card Transactions during the Claim Period in the UK”.
4. Secondly, “Merchant” is defined as:

“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”.
5. It is common ground that the effect of these definitions is to create two conditions which must both be fulfilled for an entity to be entitled to join the class:
 - a) The entity must have paid a commercial card MIF (the Defendants accept that this would meet the requirement of paying a Merchant Service Charge).

- b) That same entity must have a contractual relationship with an acquirer.
6. The application by the Defendants is intended, at least in part, to test whether class members on the opt-in class register satisfy each of these conditions, by establishing whether the entity has in fact paid commercial card MIFs and whether it also has a contract in place with an acquirer for the purposes of those payments.
7. In advance of a CMC on 27 October 2026 at which the application was listed, the parties seemed to advance quite different approaches to the proper construction of the class definition, which meant that there was a dispute about the need for and proportionality of the disclosure. The difference in view also led to the Class Representative issuing its own application to amend the class definition. However, in oral submissions it became apparent that there was a substantial measure of agreement between the parties as to the proper construction of the class definition, and in particular the meaning of the words “contractual relationship”. The Class Representative’s position at the CMC was to accept that this expression required some form of contractual arrangement, but that that was not limited to the class member being a signatory to or named party in a written Merchant Services Agreement with an acquirer. It would instead extend to cover any form of contractual arrangement recognised in law.
8. That would include, for example, the class member being the disclosed or even undisclosed principal of another group company which was the party executing a written contract with the acquirer. In support of this proposition, Mr Beal KC for the Class Representative relied on a Privy Council case, *Siu Yin Kwan v Eastern Insurance Co.* [1994] AC 199, as authority for the potential for undisclosed agency to arise in analogous circumstances.
9. The Class Representative submitted that a contractual relationship would also encompass a contract evidenced by a course of dealing. For example, I was shown a Merchant Services Agreement which incorporated by express reference four entities of a retail group, while a fifth entity (not referred to in the Merchant Services Agreement) was the addressee of an invoice from the same acquirer for Merchant Service Charges. The obvious inference, the Class Representative

submitted, was that there was a contract between the fifth entity and the acquirer by which acquiring services were provided in consideration of the payment of the Merchant Service Charge, notwithstanding that the fifth entity was not a signatory to the written agreement.

10. Mr Beal KC acknowledged that the factual material based on which class members asserted that they met the class definition would need to be provided at some stage, so that the Defendants could test both conditions of class membership (whether the class member has paid a commercial card MIF and whether it has a contractual relationship with an acquirer).
11. The Class Representative had already agreed in an earlier part of the CMC that it would provide schedules of loss for each opt-in class member by May 2027, and Mr Beal KC noted that this would satisfy any requirement to identify that a class member had paid a Merchant Service Charge in respect of a commercial card transaction. He offered to supplement that with the documentary and witness evidence that the Class Representative would seek to rely on for each class member in order to meet the requirement of a contractual relationship with an acquirer.
12. Mr Cook KC, instructed by Mastercard and making submissions on behalf of both Defendants, accepted that the words “contractual relationship” would encompass any form of contract which the law recognised as existing between the class member and the entity. In other words, he did not dispute that, at least as a matter of principle, the means of contractual formation which Mr Beal KC identified could amount to “contractual relationships”. He expressed considerable scepticism that the facts would support the existence of a contract, but he also accepted that the facts were a matter for consideration at a later stage.
13. There was some disagreement between the parties about the significance of the words “typically known as a Merchant Services Agreement” in the definition of “Merchant”. It was also noted by the Defendants that the Class Representative had relied at the certification stage of these proceedings on the requirement for a class member to have entered into a Merchant Services Agreement in order to satisfy the Tribunal that the class was readily identifiable, which is a condition

for granting a Collective Proceedings Order. However, it was (rightly in my view) not submitted by the Defendants that these points altered the proper construction of the class definition as described above.

14. Once this question of construction of the class definition was therefore resolved, it became unnecessary to consider the Class Representative's application for amendment of the class definition, and I will say no more about that.
15. Against that background, the remaining issue was whether Mr Beal KC's offer of material in May 2027 was sufficient and timely. Mr Cook KC argued that it was neither, as it would only be what the Class Representative chose to put forward and it would be useful to have the material earlier.
16. The question, which the class definition raises, of whether there is both a relevant payment and a relevant contractual relationship, is, as a result of the agreement on the construction point, essentially one of fact. Ordinarily, one would expect questions as to whether a class member has suffered a loss to be determined as part of the assessment of quantum, which will take place for many of the opt-in class members in Trial 4 in early 2029.
17. It will be open to the Defendants, once they have the material promised by the Class Representative, to seek further disclosure or information about the facts relevant to the existence of a contractual relationship between a particular class member and an acquirer. If the Defendants then wish to maintain a challenge to class membership for that class member, it may be sensible, depending on the nature of the dispute, to deal with that challenge at the same time as the quantum assessment. Accordingly, the Defendants are not required to make any such challenge in advance of the quantum assessment for a particular class member. If they wish to make such a challenge prior to that time, they will need to justify the commitment of resources of the Tribunal and the other parties which any application will require.
18. In the meantime, I can discern no reason why the Defendants need the material sought in their application in advance of the process which the Class

Representative has committed to complete by May 2027. The Defendants' application is therefore refused.

Ben Tidswell
Chair

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

Date: 29 October 2026