



COMPETITION APPEAL TRIBUNAL

NOTICE OF A CLAIM UNDER SECTION 47A OF THE COMPETITION ACT 1998

CASE NO. 1236/5/7/15

The Registrar of the Competition Appeal Tribunal (“the Tribunal”) gives notice of the receipt of a claim for damages (“the Claim”) on 11 February 2015¹, under section 47A of the Competition Act 1998 (the “Act”), by DSG Retail Limited (the “First Claimant”) and Dixons Retail Group Limited (the “Second Claimant”) (together, the “Claimants”) against (1) MasterCard Incorporated; (2) MasterCard International Incorporated; and (3) MasterCard Europe SPRL (together, the “Defendants”). The Claimants are represented by Gowling WLG (UK) LLP, 4 More London Riverside, London, SE1 2AU (Reference: Bernardine Adkins).

Up until or around 6 August 2014, the Second Claimant was the ultimate parent company of a number of wholly owned subsidiaries (owned directly or via the Second Claimant’s wholly owned holding companies or subsidiaries) (together, the “Dixons retail group”). The retail trading subsidiaries forming part of the Dixons retail group are specialist electrical retailers selling products including consumer electronics, personal computers, domestic appliances, photographic equipment, communications products and related services. The First Claimant is the subsidiary of the Second Claimant operating in the United Kingdom.

The Claim arises from a decision of the European Commission (the “Commission”) (Cases COMP/34.579 MasterCard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards) dated 19 December 2007 relating to a proceeding under Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union (“TFEU”)) and Article 53 of the Agreement on the European Economic Area (the “EEA Agreement”) (“the Decision”).

In the Decision, the Commission found that, from 22 May 1992 until 19 December 2007, the MasterCard payment organisation and the legal entities representing it, that is, the Defendants, had infringed Article 81 of the EC Treaty and, from 1 January 1994 until 19 December 2007, Article 53 of the EEA Agreement. In each case, the infringement was found to arise, in essence, by virtue of a decision by the Defendants as an association of undertakings and/or collective agreement between the Defendants and their member banks that restricted competition in the fees which merchants must pay to banks that accept the Defendants’ branded payment cards in the EEA (the “EEA MIF”). The Decision was upheld by the General Court of the European Union on 24 May 2012² and by the Court of Justice of the European Union on 11 September 2014³.

According to the Claim, by virtue of the infringement of Article 101 TFEU identified in the Decision, the Claimants have sustained and continue to sustain loss and damage. Between 22 May 1992 and 21 June 2008, the multilateral interchange fee applicable to a given transaction was passed on in full to the Claimants and their foreign subsidiaries as part of the relevant merchant service charge (“MSC”). The effect of the infringement as found in the Decision was unlawfully to inflate the MSCs which the Claimants and their foreign subsidiaries paid to acquiring banks in respect of transactions involving MasterCard-branded consumer cards between 22 May 1992 and 21 June 2008. In consequence, the Claimants and their foreign subsidiaries paid higher MSCs than would otherwise have been the case but for the anti-competitive conduct.

Further, the infringements found by the Commission in the Decision have had and continue to have on-going effects on the MSCs the Claimants paid and have to pay on transactions involving MasterCard-branded consumer cards. Those on-going effects include as to: (a) the existence of any EEA MIF, whatever its level,

¹ The Claim was amended on 16 June 2016 pursuant to an order of the President dated 22 April 2015:

http://www.catribunal.org.uk/files/1236_DSG_Order_220415.pdf.

² Case T-111/08, *MasterCard Inc., MasterCard International, Inc. and MasterCard Europe v Commission*, ECLI:EU:T:2012:260.

³ Case C-382/12 P, *MasterCard Inc., MasterCard International Inc. and MasterCard Europe S.p.r.l. v Commission*, ECLI:EU:C:2014:2201.

following 21 June 2008, since such existence is a function of the decision to include the EEA MIF in the Defendants' network rules, which decision was not fundamentally altered after 21 June 2008; and/or (b) the continuing effects of the EEA MIF on MSCs to the extent that those MSCs did not fully reflect changes in the EEA MIF because: (i) in so far as the MSCs related to transactions to which the EEA MIF applied directly, the MSCs did not pass on the changes in the EEA MIF; and/or (ii) in so far as the MSCs related to transactions to which domestic MIFs applied, those domestic MIFs had already been inflated by the EEA MIF and were not adjusted to reflect subsequent changes in the EEA MIF.

The Claimants claim:

- (1) Damages;
- (2) In the alternative, an account of profits and/or such other restitutionary relief in relation to the sums overpaid by the Claimants as the Tribunal determines appropriate;
- (3) Compound interest;
- (4) In the alternative, interest pursuant to Rule 56(2) of the Competition Appeal Tribunal Rules 2003 or otherwise pursuant to any other applicable law at such rate and for such period as the Tribunal determines appropriate;
- (5) Costs; and/or
- (6) Such further or other relief as the Tribunal may determine as appropriate.

In addition to this Claim, companies forming part of the Dixons retail group have also brought a claim against the Defendants in the Chancery Division of the High Court in respect of all of the Defendants' infringements of competition law which fall outside the follow-on jurisdiction and/or the jurisdiction of the Tribunal as it was at the time the Claim was made (the "High Court Claim").

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Victoria House, Bloomsbury Place, London WC1A 2EB, or by telephone (020 7979 7979), fax (020 7979 7978) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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