COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

CASE NO. 1266/7/7/16

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) ("the Rules"), the Registrar gives notice of the receipt on 8 September 2016 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 ("the Act"), by Mr Walter Hugh Merricks CBE (the "Applicant/Proposed Class Representative" or "Mr Merricks") against MasterCard Incorporated, MasterCard International Incorporated and MasterCard Europe S.P.R.L (together, "the Respondents /Proposed Defendants" or "MasterCard"). The Applicant/Proposed Class Representative is represented by Quinn Emanuel Urquhart & Sullivan UK LLP, One Fleet Place, London, EC4M 7RA (Reference: Boris Bronfentrinker / Kate Vernon).

The Applicant/Proposed Class Representative makes an application for a collective proceedings order permitting him to act as the class representative bringing opt-out collective proceedings ("the Application").

The proposed collective proceedings would combine follow-on actions for damages under section 47A of the Act arising from a decision of the European Commission (the "Commission") (COMP/34.579 MasterCard, COMP/36.518 EuroCommerce and COMP/38.580 Commercial Cards) of 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 ("EEA") ("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 Respondents/Proposed Defendants, had infringed Article 101 TFEU by in effect setting a minimum price which merchants had to pay to their acquiring bank for accepting payment cards in the EEA, by means of the Intra-EEA fallback interchange fees for MasterCard branded consumer credit and charge cards and for MasterCard or Maestro branded debit cards (Article 1 of the Decision). The Respondents/Proposed Defendants brought an unsuccessful application for annulment of the Decision before the General Court of the European Union[1], followed by an unsuccessful appeal to the Court of Justice of the European Union ("CJEU")[2]. Judgment was given by the CJEU on 11 September 2014.

The proposed class comprises individuals who between 22 May 1992 and 21 June 2008 purchased goods and/or services from businesses selling in the UK that accepted MasterCard cards, at a time at which those individuals were both: (1) resident in the UK for a continuous period of at least three months, and (2) aged 16 years or over.

According to the Application, the issues arising in the proposed collective proceedings are common to the proposed class. The proposed collective proceedings are concerned with a single infringement of Article 101 TFEU that caused charges to be imposed upon businesses, which charges are said to have been higher than they would have been had it not been for the infringement and to have been passed on by businesses to all individuals who purchased goods and/or services from them.

The Applicant/Proposed Class Representative submits that it is just and reasonable for him to be appointed as class representative because:

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

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

(a) Although Mr Merricks is a class member, he is acting in the public interest, following a lifetime of professional service dedicated to legal and consumer interest affairs.

(b) Mr Merricks is well-suited to manage the proceedings, in particular, due to his legal training, his previous experience of large-scale consumer affairs and financial services litigation, his knowledge of consumer affairs issues, and his numerous positions of public responsibility, including as Chief Ombudsman of the Financial Ombudsman Service.

(c) Mr Merricks, together with his legal and expert team, has prepared a plan for the collective proceedings in accordance with Rule 78(3)(c) of the Rules.

(d) Mr Merricks does not have a material interest that is in conflict with the interest of class members.

(e) Mr Merricks has sufficient funding arrangements in place to ensure that he will be able to pay the Respondents/Proposed Defendants' recoverable costs, if ordered to do so.

The Application states that the claims are suitable to be brought in collective proceedings because:

1. The number of potential members of the proposed claimant class is so numerous that it would be inefficient to require each claim to be brought individually.

2. Although the aggregate claim value is substantial, the anticipated per capita recovery makes individual claims uneconomic to pursue, relative to the costs of bringing the claim.

3. The common issues to be resolved are issues of mixed law, fact and expert evidence. For instance, the determination of (i) the counterfactual, and (ii) pass-on of damage to the members of the proposed class are likely to be substantial and costly exercises that consumers could not reasonably be expected to undertake individually.

4. The Applicant/Proposed Class Representative knows of no other claim made by consumers (as opposed to claims by businesses).

5. The class is likely to be extremely large (estimated at 46,200,000 individuals) and is made up of consumers many of whom, individually, have modest value claims, and many of whom are unlikely to have the knowledge or wherewithal to bring individual claims.

6. The class definition has been formulated in a manner so as to ensure that any person can easily determine whether s/he is or is not a member of the proposed class.

7. The claims are suitable for an aggregate award of damages.

8. The Respondents/Proposed Defendants have had a final and binding finding of infringement against them since 11 September 2014 and they have taken no steps to propose any form of voluntary redress scheme to compensate individual consumers.

According to the Application, this action should be an "opt-out" action. The large size of the class, the comparatively modest value of damages that are likely to be recovered on a per capita basis, and the complexity of the issues which require determination, mean that proceeding on an opt-out basis is the only practicable means by which consumers can recover in respect of their losses.

The relief sought in these proceedings is:

(1) Damages, to be assessed on an aggregate basis;
(2) Interest;
(3) Further or alternatively, costs; and/or
(4) Such further or other relief as the Tribunal may think fit.

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
Published 21 September 2016