



IN THE SUPREME COURT OF THE UNITED KINGDOM

17 June 2020

Before:

Lord Reed
Lord Hodge
Lord Lloyd-Jones
Lord Sales
Lord Hamblen

Sainsbury’s Supermarkets Ltd (Respondent) v Visa Europe Services LLC and others (Appellants) (“the Visa appeal”)

Sainsbury’s Supermarkets Ltd and others (Respondents) v Mastercard Incorporated and others (Appellants) (“the Mastercard appeal”)

AFTER HEARING Counsel for the Appellants, Counsel for the Respondents and Counsel for the Intervener on 20, 21, 22 and 23 January 2020

THE COURT ORDERED that

- 1) The Visa appeal be dismissed
- 2) The Mastercard appeal be dismissed save in respect of issue (iv) as defined in paragraph 40(iv) of the judgment, in respect which the appeal be dismissed in so far as it was alleged that the Court of Appeal held that a Defendant had to prove the exact amount of loss mitigated in order to reduce damages, but allowed in so far as the Court of Appeal required a greater degree of precision in the quantification of pass-on from the Defendant than from a claimant (as stated in paragraph 226 of the judgment)
- 3) The cross-appeal by Asda Stores Ltd, Argos Ltd and others and WM Morrison Supermarkets plc (“AAM”) be allowed
- 4) As regards the order made by the Court of Appeal on 4 July 2018 (“the Court of Appeal order”):
 - (a) Paragraph 7 be set aside
 - (b) Paragraph 13(b) be varied so as to read:

“the intra-EEA, UK and Irish MIFs set by Mastercard which are subject to claims herein brought by AAM were restrictive of competition within the meaning of, as the case may be, Article 101(1)

TFEU, section 2 of the Competition Act 1998, Article 53(1) of the Agreement on the European Economic Area (“EEA”) and (in relation to the MIFs subject to the claims herein set by Mastercard in Ireland) section 4(1) of the Irish Competition Act 2002. Mastercard has failed to prove in relation to the MIFs subject to the claims herein brought by AAM that a relevant MIF set at any positive level would have satisfied the conditions of exemption in, as the case may be, Article 101(3) TFEU, section 9 of the Competition Act 1998, Article 53(3) EEA and/or section 4(5) of the Irish Competition Act 2002.”

(c) Paragraph 15 be varied so as to read:

“The claims brought by Sainsbury’s against each of Mastercard and Visa shall be remitted to the Competition Appeal Tribunal for re-consideration, not retrial, in accordance with the Judgment, of Mastercard’s and Visa’s cases advanced in the Court/Tribunal below that the MIFs subject to these claims satisfy the conditions for exemption pursuant to Article 101(3) TFEU, section 9 of the Competition Act 1998, Article 53(3) EEA and/or section 4(5) of the Irish Competition Act 2002. The *Sainsbury’s v Mastercard* proceedings shall also be remitted for assessment of the quantum claim. The two sets of proceedings will be heard together, by a Tribunal chaired by a High Court Judge. It will not be open to any party to advance a new case or to adduce any fresh evidence on the remittals for reconsideration and assessment of quantum in *Sainsbury’s v Mastercard*. However, the parties to each of the Sainsbury’s proceedings may rely on evidence from the other set of Sainsbury’s proceedings if and only to the extent that it is relevant to the case on exemption advanced in the proceedings in question.”

- 5) The AAM proceedings proceed to trial on the issue of the quantum of damages if not agreed
- 6) The sums which each of the AAM parties paid to Mastercard by way of interim payment in relation to costs, pursuant to paragraph 7 of the Order of Popplewell J made on 16 February 2017, be repaid by Mastercard to AAM within 14 days of the sealing of this Order
- 7) The parties file written submissions on the costs of these proceedings, including submissions that all or part of any other orders in respect of costs, such as paragraphs 4, 8 and 12 of the Court of Appeal order, should be set aside, by 14 August 2020.



Registrar
17 June 2020