



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1286/5/7/18

BETWEEN:

**SAINSBURY'S SUPERMARKETS LTD**

Claimant

- v -

**(1) MASTERCARD INCORPORATED**  
**(2) MASTERCARD INTERNATIONAL INCORPORATED**  
**(3) MASTERCARD EUROPE S.P.R.L.**

Defendants

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**ORDER**

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**UPON** the Order of the Court of Appeal dated 4 July 2018 remitting these proceedings to the Competition Appeal Tribunal (i) for reconsideration of whether the domestic multilateral interchange fees (“**UK MIFs**”) of the Defendants (“**Mastercard**”) satisfy the conditions for exemption pursuant to Article 101(3) TFEU, section 9 of the Competition Act 1998 and/or Article 53(3) EEA (“**the exemption issue**”) and (ii) for assessment of the quantum claim of the Claimant (“**Sainsbury’s**”) (“**the quantum issue**”)

**AND UPON** the Order of the Supreme Court dated 17 June 2020, varying the Order of the Court of Appeal

**AND UPON** reading the skeleton arguments of Sainsbury’s and Mastercard and hearing leading counsel for Sainsbury’s and leading counsel for Mastercard at the remote case management conference on 24 February 2021

**AND UPON** Sainsbury’s application to amend its Amended Particulars of Claim to delete paragraphs 51-58 of its Amended Particulars of Claim and Schedule 1 and claim damages based on an averment (at paragraph 50A of Sainsbury’s draft Re-Amended Particulars of Claim) that damages should be assessed on the basis that no Mastercard

MIF could be exempted under Article 101(3) TFEU and therefore that no Mastercard MIF was payable

**AND UPON** Mastercard confirming that Mastercard was not pursuing paragraphs 94-96 of its Re-Amended Defence dated 24 July 2015 (referred to as the second quantum point or the benefits point) and paragraphs 98-101 of the Re-Amended Defence (the bilateral counterfactual point); but that Mastercard was pursuing the averments in paragraphs 102-109 of the Re-Amended Defence (“**the switching point**”)

**IT IS ORDERED THAT:**

1. Sainsbury’s application to amend its Amended Particulars of Claim is refused.
2. Sainsbury’s is bound by its concession that a MIF of 0.15% for Mastercard credit cards and 0.17% for Mastercard debit cards could be exempted.
3. As to paragraphs 102-109 of the Re-Amended Defence Mastercard may argue on remittal of the quantum issue (and Sainsbury’s may contest the argument), that Sainsbury’s damages fall to be assessed taking into account such switching from Mastercard credit cards to American Express cards (if any) as would have taken place if Mastercard had set its MIFs at the rates exempted by the Tribunal. Mastercard is not permitted to argue that there would have been switching from Mastercard to Visa on the basis of an asymmetrical counterfactual.
4. Costs in the case.
5. There be liberty to apply.

**The Hon Mr Justice Roth**  
President of the Competition Appeal Tribunal

Made: 7 June 2021  
Drawn: 7 June 2021