



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1517/11/7/2 (UM)
1266/7/7/16

BETWEEN:

THE UMBRELLA INTERCHANGE FEE CLAIMANTS

- v -

THE UMBRELLA INTERCHANGE FEE DEFENDANTS

(the “Merchant Interchange Fee Umbrella Proceedings”)

AND BETWEEN:

WALTER HUGH MERRICKS CBE

Class Representative

“the Merricks Class Representative”

- v -

(1) MASTERCARD INCORPORATED

(2) MASTERCARD INTERNATIONAL INCORPORATED

(3) MASTERCARD EUROPE S.P.R.L

The Merricks Defendants

(the “Merricks Collective Proceedings”)

(together, the “Proceedings”)

CONFIDENTIALITY RING ORDER

UPON paragraph 6 of the Order of the Tribunal made on 23 December 2022, as varied by the Order of the Tribunal made by consent on 10 May 2023 (the “**Future Conduct Order**”), providing that a

six-week liability trial in the Merchant Interchange Fee Umbrella Proceedings (“**Trial 1**”) shall take place in the first quarter of 2024

AND UPON paragraph 9 of the Future Conduct Order providing that a seven-week trial (“**Trial 2**”) to address all issues relating to acquirer and retail pass-on in the Merchant Interchange Fee Umbrella Proceedings and the Merricks Collective Proceedings shall commence in October or November 2024

AND UPON the Tribunal holding in its ruling dated 5 October 2023 (Disclosure of Requested Information from the Payment Systems Regulator) [2023] CAT 59 (the “**Ruling**”), that there is no statutory requirement or obligation on the Payment Systems Regulator (the “**PSR**”) to withhold inspection of the PSR Materials (as defined below)

AND UPON the Order of the Tribunal dated 7 November 2023 (the “**PSR Disclosure Order**”) providing that the PSR shall disclose and provide simultaneous inspection of the materials described in paragraph 3 of that Order (the “**PSR Materials**”) to the individual listed in the Annex to that Order (the “**Receiving Person**”)

AND UPON the parties who have indicated that they intend to participate actively in Trial 1, being (i) the Umbrella Interchange Fee Claimants represented by Scott+Scott UK LLP (the “**SSU Claimants**”) (ii) the Umbrella Interchange Fee Claimants represented by Stephenson Harwood LLP (the “**SH Claimants**”) and (iii) the Umbrella Interchange Fee Defendants (together, the “**Current Trial 1 Active Parties**”), having agreed to the terms of this Order

AND UPON the letter from Hausfeld & Co. LLP to the Tribunal (copied to the Current Trial 1 Active Parties and the Merricks Class Representative) dated 13 October 2023 indicating that the Primark claimants in claim numbers 1575/5/7/22 (T) and 1492/5/7/22 (T) represented by Hausfeld & Co. LLP (the “**Primark Claimants**”) will participate in Trial 2, and those claimants accordingly being Trial 2 Active Parties (as defined below)

AND UPON the Primark Claimants having agreed to the terms of this Order

AND UPON the Merricks Class Representative having agreed to the terms of this Order

AND UPON the PSR having agreed to the terms of this Order

AND UPON the Current Trial 1 Active Parties, the Primark Claimants, the Merricks Class Representative and the PSR agreeing that the PSR Materials shall be disclosed or shared between them for the purposes of Trial 1 and Trial 2 in accordance with the terms of this Order

AND UPON the Current Trial 1 Active Parties, the Primark Claimants, the Merricks Class Representative and the PSR agreeing that the PSR Materials contain confidential information which shall be marked up and protected in accordance with the terms of this Order

AND UPON such confidentiality markings being without prejudice to (i) any disputes as to whether confidential treatment should be accorded which may need to be determined by the Tribunal; and (ii) the right of the Current Trial 1 Active Parties, the Primark Claimants, the Merricks Class Representative and the PSR to make further requests for confidential treatment

AND UPON the Tribunal considering that an Order is appropriate to deal efficiently with confidentiality issues for the purpose of the disclosure of the PSR Materials

AND UPON this Order being binding upon all parties in the Proceedings, including for the avoidance of doubt all parties to the Merricks Collective Proceedings and those Claimants in the Merchant Interchange Fee Umbrella Proceedings (i) whose claims are stayed pursuant to an Order of the Tribunal and (ii) who are not Current Trial 1 Active Parties but whose claims are not stayed by Order of the Tribunal

IT IS HEREBY ORDERED BY CONSENT THAT:

1. For the purposes of this Order:
 - 1.1. **“Active Party”** or **“Active Parties”** shall mean any Trial 1 Active Party and any Trial 2 Active Party.
 - 1.2. **“Individual Interchange Proceeding”** shall mean each of the proceedings designated as a Host Case for the purpose of case number 1517/11/7/22 (UM), as amended from time to time.
 - 1.3. **“Party”** or **“Parties”** shall mean any party to any Individual Interchange Proceeding and any party to the Merricks Collective Proceedings.
 - 1.4. **“PSR Confidential Documents”** are documents which contain PSR Confidential Information (whether in whole or in part). For the avoidance of doubt, any notes, copies, reports, submissions or other documents containing, reproducing or reflecting the content of PSR Confidential Documents are themselves PSR Confidential Documents unless all PSR Confidential Information contained in them has been redacted. Documents that use PSR Confidential Information in PSR Confidential Documents (for example, to provide an aggregation of PSR Confidential Information)

but which do not reveal the content of PSR Confidential Information shall not be PSR Confidential Documents.

1.5. **“PSR Confidential Information”** means information derived from the PSR Materials (or any part of the PSR Materials) the disclosure of which by one Party to another and/or to third parties would: (i) in the Tribunal’s view be contrary to the public interest; (ii) reveal commercially sensitive information, and would in the Tribunal’s view significantly harm the legitimate business interests of the undertaking(s) to which it relates; and/or (iii) reveal information relating to the private affairs of an individual, and would in the Tribunal’s view significantly harm that individual’s interests. PSR Confidential Information shall exclude information which is, at the time of disclosure, already published or generally available to the public or, after the time of disclosure, is published or becomes generally available to the public, other than through the act or omission of a receiving Party or a PSR Permitted Person (as defined below).

1.6. **“PSR Permitted Persons”** shall mean:

1.6.1. Those persons listed in Schedule A (as amended from time to time pursuant to the terms of this Order and/or by the Tribunal), each being an external legal or other professional adviser to an Active Party who has provided a signed confidentiality undertaking in the form set out in Schedule B to (i) the Tribunal, (ii) each of the Active Parties, and (iii) the PSR.

1.6.2. Necessary secretary, business services or other support personnel, including internal providers of eDiscovery or litigation support services (not including trainee solicitors or paralegals), IT, reprographics staff and clerks, acting under the supervision and/or instructions of the persons identified at paragraph 1.6.1 above for the purposes of Trial 1 or Trial 2, provided that such personnel have been informed of the confidential nature of the PSR Confidential Documents and the terms of Schedule B to this Order.

1.6.3. Any external eDiscovery or litigation support provider engaged by any Active Party for the purpose of Trial 1 or Trial 2 to provide eDiscovery or similar services in support of those persons identified at paragraph 1.6.1 above, who may have access to the PSR Confidential Documents as a necessary consequence of the provision of their services, provided that such providers have been informed of the confidential nature of the PSR Confidential Documents and the terms of Schedule B to this Order.

- 1.7. “**Trial 1 Active Party**” or “**Trial 1 Active Parties**” shall mean any party or parties to any Individual Interchange Proceeding who indicate that they intend to participate in Trial 1.
 - 1.8. “**Trial 2 Active Party**” or “**Trial 2 Active Parties**” shall mean (i) any party or parties to any Individual Interchange Proceeding who indicate that they intend to participate in Trial 2 and (ii) any party or parties to the Merricks Collective Proceedings who indicate that they intend to participate in Trial 2.
 - 1.9. “**Tribunal**” shall mean the Competition Appeal Tribunal.
2. This Order shall apply to all documents forming part of the PSR Materials produced, disclosed or filed with the Tribunal in the Proceedings for the purposes of Trial 1 or Trial 2. In respect of documents that are subject to this Order, the restrictions in Rule 102 of the CAT Rules shall not apply to prevent any Party from using the PSR Confidential Documents (or any part of the PSR Confidential Documents) in any Individual Interchange Proceeding for the purposes of Trial 1 or Trial 2.
 3. PSR Confidential Information and PSR Confidential Documents provided by one Party to another for the purpose of Trial 1 or Trial 2 shall only be provided in accordance with this Order.
 4. Whilst the terms of this Order contemplate the designation of documents as PSR Confidential Documents by the Receiving Person in accordance with paragraph 5 below, to the extent that any other Party produces, discloses or files any PSR Confidential Document(s) with the Tribunal for the purposes of Trial 1 or Trial 2, it must designate them as PSR Confidential Documents in accordance with paragraph 6 below, and shall then be considered a “relevant Designating Party” in accordance with the terms of this Order.

1. DISCLOSURE OF THE PSR MATERIALS

5. Upon receipt of the PSR Materials from the PSR in accordance with paragraph [6] of the PSR Disclosure Order, the Receiving Person shall file the PSR Materials with the Tribunal in the Proceedings for the purpose of Trial 1 and Trial 2, designating all such material as PSR Confidential Documents.
6. Any PSR Confidential Document(s) produced, disclosed or filed with the Tribunal for the purposes of Trial 1 or Trial 2 shall be designated as such by the Party that produces, discloses or files it for those purposes.

7. Any designation of a document as a PSR Confidential Document may be subject to challenge in accordance with paragraph 9 of this Order.
8. Each Party shall be responsible, in respect of any PSR Confidential Document or any document containing PSR Confidential Information which is produced, disclosed or filed with the Tribunal by that Party for the purposes of Trial 1 or Trial 2, for labelling and highlighting any PSR Confidential Documents and PSR Confidential Information in the following ways:
 - 8.1. Each PSR Confidential Document shall be marked as “PSR Confidential” on each page of the document and will identify: (i) the Party or Parties which produced, disclosed or filed that document with the Tribunal; and (ii) where appropriate, the Party or Parties to which the PSR Confidential Information in that PSR Confidential Document relates.
 - 8.2. Any text and/or extract which contains PSR Confidential Information will be highlighted in yellow or some other prominent colour (that does not obscure the information underneath it), and square brackets must be inserted around the PSR Confidential Information.
 - 8.3. To the extent that any PSR Confidential Document is included in a hearing bundle, the bundle index shall state which documents are PSR Confidential Documents, and shall identify the Party or Parties which produced, disclosed or filed that document with the Tribunal.

2. CHALLENGE TO PSR CONFIDENTIAL DOCUMENT DESIGNATION

9. The designation of a PSR Confidential Document by a Party (a relevant “**Designating Party**”) may be challenged in accordance with the following terms:
 - 9.1. If an Active Party wishes to challenge the designation of a PSR Confidential Document, that Active Party shall do so by providing written notice to the other Active Parties and the PSR, specifying: (i) the relevant document(s)/information concerned; (ii) the designation the Active Party considers to be appropriate; and (iii) why it considers that the designation of the document(s)/information should be altered. The Active Parties shall make reasonable endeavours to ensure that any such challenges are brought, insofar as possible, in manageable batches and with reasonable expedition.
 - 9.2. In the event that a challenge is made pursuant to paragraph 9.1, the Designating Party and the PSR may each respond in writing to the challenge, providing a written explanation as to why the document ought to be designated a PSR Confidential Document, or otherwise consenting to the modification of the designation. Such

response shall be given as soon as reasonably possible but in any event within seven (7) business days of receipt of the notice.

- 9.3. Absent any response from the Designating Party or the PSR in accordance with paragraph 9.2, each document in question shall be deemed not to be a PSR Confidential Document after the expiry of the seven (7) business day period, or any extension to that time limit that has been agreed in accordance with paragraph 9.6.
- 9.4. If the Active Party challenging confidentiality wishes to maintain its challenge following receipt of a response from the Designating Party and/or the PSR pursuant to paragraph 9.2, it shall provide written notice to the Designating Party and the PSR, setting out its reasons for doing so within seven (7) business days of receipt of any response pursuant to paragraph 9.2.
- 9.5. The Active Party challenging confidentiality may apply to the Tribunal for determination of whether or not the document qualifies as a PSR Confidential Document. Any such application must be made as soon as reasonably possible but in any event within fourteen (14) business days following receipt of a response from the Designating Party or the PSR (whichever is later) pursuant to paragraph 9.2. A document in respect of which an application is made shall continue to be designated a PSR Confidential Document unless and until the challenge is upheld by the Tribunal.
- 9.6. The deadlines in this paragraph 9 may be extended by agreement between the challenging Active Party, the Designating Party and the PSR. Consent to a request for an extension shall not be unreasonably withheld.
- 9.7. To the extent that the Tribunal asks for submissions as to why a document qualifies as a PSR Confidential Document, that will be a matter for the Designating Party and/or the PSR to address.

3. DISCLOSURE AND INSPECTION OF PSR CONFIDENTIAL DOCUMENTS

10. The Active Party receiving PSR Confidential Documents shall permit those documents to be inspected only by the PSR Permitted Persons and only on the basis that:
 - 10.1. the recipient PSR Permitted Person has provided to the Designating Party a signed copy of the confidentiality undertaking at Schedule B, or otherwise falls within the category of persons identified at paragraphs 1.6.2 or 1.6.3 above;

- 10.2. the PSR Confidential Documents will be treated by each such PSR Permitted Person as confidential and will be used by each such person solely for the purpose of the proper conduct of Trial 1 or Trial 2; and
- 10.3. no such PSR Permitted Person will, save as expressly provided for below at paragraph 11, discuss, disclose, copy, reproduce or distribute any PSR Confidential Document or any PSR Confidential Information contained therein.
11. Provided it is for the purpose of the proper conduct of Trial 1 or Trial 2, nothing in this Order shall prohibit any such PSR Permitted Person from:
 - 11.1. making notes or copies of, or preparing reports, submissions or other documents concerning, containing or reflecting any PSR Confidential Document or its content (which notes, copies, reports, submissions or other documents would themselves be PSR Confidential Documents); and/or
 - 11.2. disclosing any PSR Confidential Document or PSR Confidential Information to any other person who is a PSR Permitted Person, provided that no PSR Confidential Document or PSR Confidential Information shall be otherwise directly or indirectly disclosed in the conduct of Trial 1 or Trial 2 beyond the relevant PSR Permitted Persons.
12. During any hearing in respect of Trial 1 or Trial 2, each Active Party wishing to refer to a PSR Confidential Document shall be responsible for indicating to the Tribunal that the document contains PSR Confidential Information and asking the Tribunal to put in place arrangements for the maintenance of any such PSR Confidential Information.
13. Nothing in this Order shall prevent or prohibit a receiving Active Party from taking any action (including in particular disclosing PSR Confidential Information and/or PSR Confidential Documents to a person who is not a PSR Permitted Person and/or referring to such documents or information in open court) which has been authorised in writing by the PSR and the Designating Party, or which an Active Party in receipt of PSR Confidential Documents is required to take by applicable law or by a court of competent jurisdiction.
14. In the event that a regulatory or legal requirement requires a PSR Permitted Person to disclose a PSR Confidential Document to any person or entity who is not a PSR Permitted Person, the Party that has engaged the PSR Permitted Person as an external adviser will inform the PSR without delay by email to CAMRdisclosure@psr.org.uk (unless that Party or the PSR Permitted Person is prohibited from doing so by any legislation, court order or legal or regulatory requirement).

15. In the event of any disclosure of PSR Confidential Information and/or PSR Confidential Documents other than in a manner authorised by this Order, including any unintentional or inadvertent disclosure, solicitors for the improperly disclosing Party shall notify the improper recipient(s), the PSR, and the solicitors for the Designating Party, and the improperly disclosing Party shall use all reasonable endeavours to prevent further unauthorised disclosure including (to the extent possible) seeking to retrieve all copies of the PSR Confidential Information and/or PSR Confidential Documents from the improper recipient(s) thereof and seeking to secure the agreement of such recipient(s) not to further disseminate the PSR Confidential Information and/or PSR Confidential Documents in any form.

4. ADDITION OR REMOVAL OF PSR PERMITTED PERSONS

16. An Active Party seeking to designate an additional person as a PSR Permitted Person by adding that additional person to Schedule A must:
 - 16.1. request permission from the PSR, the Active Parties, and any other relevant Designating Party in writing;
 - 16.2. provide in such request details of that proposed PSR Permitted Person's role and an explanation of why their designation as a PSR Permitted Person is necessary; and
 - 16.3. upon the agreement of the PSR, the Active Parties, and any other relevant Designating Party to the designation of the additional PSR Permitted Person, provide the Tribunal, the PSR, the Active Parties and any other relevant Designating Parties with a copy of the Schedule B confidentiality undertaking signed by the proposed PSR Permitted Person and an up-to-date list of the PSR Permitted Persons in Schedule A.
17. The PSR, each Active Party (other than the Active Party requesting that the additional person be designated as a PSR Permitted Person), and any other relevant Designating Party, shall confirm within five (5) business days of receipt of the request pursuant to paragraph 16.1 whether they consent to the additional person being designated as a PSR Permitted Person. Such consent shall not be unreasonably withheld.
18. If the PSR, an Active Party, or any other relevant Designating Party refuses consent to the additional person being designated a PSR Permitted Person in accordance with paragraph 17, then they must provide written reasons (copying in the PSR, all Active Parties and any other relevant Designating Parties) for why consent is refused together with its refusal.
19. If the PSR, an Active Party or any other relevant Designating Party neither confirms nor refuses consent in accordance with paragraphs 17 and 18 above, then following the expiry of

five (5) business days from the receipt of the request, the additional person shall be designated as a PSR Permitted Person upon provision to the Tribunal, the PSR, the Active Parties and any other relevant Designating Parties of a copy of the Schedule B confidentiality undertaking signed by the proposed PSR Permitted Person and an up-to-date list of the PSR Permitted Persons in Schedule A.

20. If there are any disputes which cannot be resolved by the PSR and the Parties, the Active Party seeking to include the additional person as a PSR Permitted Person may apply to the Tribunal to have the issue determined, provided written notice of such application is given to the PSR, the Active Parties and any other relevant Designating Parties. The additional person will become a PSR Permitted Person if the Tribunal so orders and upon provision to the Tribunal, the PSR, the Active Parties and any other relevant Designating Parties a copy of the Schedule B confidentiality undertaking signed by the proposed PSR Permitted Person and an up-to-date list of the PSR Permitted Persons in Schedule A.
21. If the PSR or an Active Party wishes a PSR Permitted Person to be removed from Schedule A, they shall (as necessary) inform the PSR, the Active Parties and any other relevant Designating Parties and provide those persons with an up-to-date list of the PSR Permitted Persons in Schedule A. For the avoidance of doubt, a Party may only remove a PSR Permitted Person that was added by that Party.
22. There shall be no requirement to amend this Order upon the addition or removal of PSR Permitted Persons.

5. DESTRUCTION OF DOCUMENTS

23. At the conclusion of either a Claimant's respective claims (including the Merricks Collective Proceedings), or for the Defendants the Merchant Interchange Fee Umbrella Proceedings generally, the Parties shall use reasonable endeavours to ensure that all hard copies or extracts of the PSR Confidential Documents in the possession or control of any of that Party's PSR Permitted Persons are destroyed. The relevant Party shall then provide confirmation of such destruction to the Tribunal Registry by email.
24. At the conclusion of either a Party's respective claims (including the Merricks Collective Proceedings), or for the Defendants the Merchant Interchange Fee Umbrella Proceedings generally, the Parties shall use reasonable endeavours to ensure that any copy or extract of the PSR Confidential Documents in the possession or control of any of that Party's PSR Permitted Persons is securely deleted or rendered inaccessible from any computer systems, disk or device so that the material is not available to any person (save where the relevant copy or extract of the PSR Confidential Documents is contained in an electronic file created pursuant

to any routine backup or archiving procedure so long as such file is not generally accessible beyond the need for disaster recovery or similar operations). The relevant Party shall then provide confirmation of such destruction to the Tribunal Registry by email.

25. For the avoidance of doubt, paragraph 23 shall not require any PSR Permitted Person to destroy any documents insofar as they have reasonable need to retain those documents for the purposes of compliance with the professional regulatory requirements of their profession, managing professional liability exposures or as required under law, regulation or court order. Paragraph 23 shall not prevent any PSR Permitted Person from complying with any regulatory requirement of their profession, professional indemnity insurance or requirement under law, regulation or court order.

6. GENERAL PROVISIONS

26. The production of further copies of the PSR Confidential Documents shall be limited to those required by the PSR Permitted Persons to whom the PSR Confidential Documents have been provided.
27. The confidentiality terms in this Order are intended to apply unless or until superseded by a subsequent order of the Tribunal.
28. The PSR and the Active Parties may agree and/or may apply to the Tribunal to vary the terms of this Order, remove any document from the category of PSR Confidential Documents, or vary the lists of PSR Permitted Persons in Schedule A (in accordance with paragraph 20 of this Order, as appropriate).
29. Nothing in this Order or the terms of the Schedule B confidentiality undertaking shall prevent or prohibit any PSR Permitted Persons (as may be extended from time to time) from acting in other interchange fee related proceedings.
30. If any Party becomes aware of, or suspects that there has been, a breach of any Schedule B confidentiality undertaking, that Party shall notify the PSR immediately by email to CAMRdisclosure@psr.org.uk.
31. The costs of drafting this Order and complying with it shall be costs in the case.

32. There shall be liberty to apply.

Sir Marcus Smith
President of the Competition Appeal Tribunal

Made: 16 November 2023
Drawn: 16 November 2023

SCHEDULE A PSR PERMITTED PERSONS

SSU Claimants' PSR Permitted Persons

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Primark Claimants' PSR Permitted Persons

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Visa Defendants' PSR Permitted Persons

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<i>VE Member Representative</i>
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Merricks Class Representative's PSR Permitted Persons

PSR Permitted Persons
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Joanna Hornik (Compass Lexecon)
Megha Ranjan (Compass Lexecon)
Adrien Damade (Compass Lexecon)

SCHEDULE B - CONFIDENTIALITY UNDERTAKING

The terms used but not defined in this document shall have the meaning given in the Order for the proceedings that this document is attached to or accompanies.

I, [NAME], of [ORGANISATION], being a PSR Permitted Person [and regulated so far as my professional conduct is concerned by [insert regulatory body]], undertake to the PSR, to the Parties and to the Tribunal that:

1. I have read a copy of the Order and understand the implications of the Order and the giving of this undertaking.
2. I will treat all PSR Confidential Documents and/or any PSR Confidential Information made available to me for the purpose of the proceedings as secret and confidential and will use any such PSR Confidential Documents and/or PSR Confidential Information only for the purpose of the proper conduct of the proceedings.
3. Except as expressly permitted by the Order, I will not use, disclose, discuss, copy, reproduce or distribute any such PSR Confidential Documents and/or their content or authorise, enable or assist any person to do so.
4. The PSR Confidential Documents containing the PSR Confidential Information will remain in my custody or the custody of another PSR Permitted Person at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
5. I will take all such steps as may be necessary or expedient on my part to comply with any request made under or pursuant to the terms of the Order.
6. I will otherwise comply with the terms of the Order and/or, as the case may be, take all steps within my power to ensure that the terms of the Order are complied with (including by not disclosing, other than to other PSR Permitted Persons, any PSR Confidential Documents and/or any information contained in such PSR Confidential Documents, or assisting or enabling any person to do so).
7. The present proceedings for these purposes shall include any further appeal from the Tribunal to a higher court, save in so far as that higher court orders otherwise.

8. Save that none of the requirements listed above shall prevent PSR Permitted Persons from disclosing PSR Confidential Documents to persons who have already legitimately seen it.

PROVIDED ALWAYS that nothing in this document shall prevent or prohibit me from taking any action which has been authorised in writing by the PSR or the Designating Party or which I am required to take by applicable law or by a court of competent jurisdiction.

Signed:

Dated:
