



**IN THE COMPETITION APPEAL TRIBUNAL**

Case Nos: 1517/11/7/22 (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”**)

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**AMENDED CONFIDENTIALITY RING ORDER (TRIAL 2)**

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**UPON** the Tribunal listing a trial to address acquirer and merchant pass on to take place in two parts, with the first part to commence on 18 November 2024 and run until 20 December 2024 and the second part to commence on a date yet to be determined but likely to fall between March and May 2025 (“**Trial 2**”)

**AND UPON** the Order of the President made and drawn on 28 February 2024 establishing a confidentiality ring in respect of certain documents disclosed by the parties in the context of Trial 2 (“**Trial 2 CRO**”)

**AND UPON** the Trial 2 CRO being binding upon all Parties in the Merchant Interchange Fee Umbrella Proceedings and the Merricks Collective Proceedings

**AND UPON** an application by the Visa Defendants dated 17 October 2024 to amend the Trial 2 CRO

**AND UPON** the Parties having agreed to the terms of this Order

**IT IS ORDERED BY CONSENT THAT:**

1. The Trial 2 CRO is varied and replaced with the orders set out in the **Annex** to these orders.
2. There be liberty to apply.
3. Costs be reserved.

**Mr Ben Tidswell**

Chair of the Competition Appeal Tribunal

Made: 21 October 2024

Drawn: 21 October 2024



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**ANNEX TO AMENDED CONFIDENTIALITY RING ORDER (TRIAL 2)**

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1. For the purposes of this Order:
  - 1.1 “**Active Umbrella Party**” or “**Active Umbrella Parties**” shall mean the Umbrella Interchange Fee Claimants represented by Scott+Scott UK LLP and Stephenson Harwood LLP, the Primark claimants, the Ocado claimant, the Allianz claimants, HMRC and the Umbrella Interchange Fee Defendants.
  - 1.2 “**Card Scheme**” shall mean either Mastercard or Visa.

- 1.3 **“CAT Rules”** shall mean the Competition Appeal Tribunal Rules 2015.
- 1.4 **“Individual 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, and the Merricks Collective Proceedings.
- 1.5 **“Party”** or **“Parties”** shall mean any Active Umbrella Party and any party to the Merricks Collective Proceedings.
- 1.6 **“Permitted Persons”**: shall mean:
- (i) Those persons listed in Schedule A (as amended from time to time pursuant to the terms of this Order and/or by the Tribunal) that have provided signed confidentiality undertakings in the form set out in Schedule B to the Tribunal and to all Parties (and any other relevant Trial 2 Designating Party).
  - (ii) 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(i) above for the purpose of the Proceedings, provided that such personnel have been informed of the confidential nature of the Trial 2 Confidential Documents and the terms of Schedule B to this Order.
  - (iii) Any external eDiscovery or litigation support provider engaged by any Party for the purpose of the Proceedings to provide eDiscovery or similar services in support of those persons identified at paragraph 1.5(i) above, who may have access to the Trial 2 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 Trial 2 Confidential Documents and the terms of Schedule B to this Order.
- 1.7 **“Positive Case”** shall mean a position statement (or equivalent legal submissions) and any expert or factual evidence filed in accordance with paragraph 3 of the Tribunal’s Order made on 30 January 2024.
- 1.8 **“Responsive Case”** shall mean a position statement (or equivalent legal submissions) and any expert or factual evidence filed in accordance with paragraph

4 of the Tribunal's Order made on 30 January 2024.

- 1.9 **“Trial 2 Confidential Documents”** are documents containing Trial 2 Confidential Information (whether in whole or in part). For the avoidance of doubt, wherever “documents” are referred to in this Order such reference shall include datasets. For the avoidance of doubt, any notes, copies, reports, submissions or other documents containing, reproducing or reflecting the content of Trial 2 Confidential Documents are themselves Trial 2 Confidential Documents unless all Trial 2 Confidential Information contained in them has been redacted. Documents that use Trial 2 Confidential Information in Trial 2 Confidential Documents (for example, to provide an aggregation of Trial 2 Confidential Information) but which do not reveal the content of Trial 2 Confidential Information shall not be Trial 2 Confidential Documents.
- 1.10 **“Trial 2 Confidential Information”** means: information the disclosure of which by one Party to another and/or to third parties: (i) is contrary to the public interest; (ii) would reveal commercially sensitive information, which might significantly harm the legitimate business interests of the undertaking(s) to which it relates (which, for the avoidance of doubt, may include undertaking(s) other than the Trial 2 Designating Party); and/or (iii) would reveal information relating to the private affairs of an individual, the disclosure of which might significantly harm that individual's interests. Trial 2 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 Permitted Person.
- 1.11 **“Trial 2 Designating Party”** shall mean, in relation to any Trial 2 Confidential Document and subject to paragraph 4 below, the Party that produced, disclosed, otherwise provided, or filed that document in any Individual Proceeding.
- 1.12 **“Tribunal”** shall mean the Competition Appeal Tribunal.
2. This Order shall apply to all documents and information produced, disclosed, or otherwise provided by the Parties (including orally), or filed with the Tribunal in the Proceedings for the purpose of Trial 2. In respect of documents and information that are subject to this Order, the restrictions in Rule 102 of the CAT Rules shall not apply to prevent any Party from using those documents and that information in any Individual Proceeding for the purpose of Trial 2. For the avoidance of doubt, this disapplication of Rule 102 shall not extend to documents

or information produced, disclosed or otherwise provided or filed in any Individual Proceeding outside of Trial 2.

3. Trial 2 Confidential Information and Trial 2 Confidential Documents shall be provided by one Party to another only in accordance with this Order.
4. Whilst the terms of this Order contemplate the designation of documents as Trial 2 Confidential Documents by the Parties, to the extent that any claimant in the Merchant Interchange Fee Umbrella Proceedings who is not a Party produces, discloses or otherwise provides or files documents in the Merchant Interchange Fee Umbrella Proceedings for the purpose of Trial 2, it may designate them as Trial 2 Confidential Documents in accordance with paragraph 5 below, and, if it does so, must comply with paragraph 6 below as if it were a “Party” for those purposes, and shall then be considered a “relevant Trial 2 Designating Party” in accordance with the terms of this Order.

#### **Designation of Trial 2 Confidential Documents**

5. Any Trial 2 Confidential Document(s) shall be designated as such by the Party that produces, discloses or otherwise provides or files it in the Proceedings. Any designation of a document as a Trial 2 Confidential Document may be subject to challenge in accordance with paragraph 7 of this Order.
6. Each Party shall be responsible, in respect of any document containing Trial 2 Confidential Information belonging to them which is produced, disclosed or otherwise provided or filed with the Tribunal, for labelling and highlighting any Trial 2 Confidential Documents and Trial 2 Confidential Information in the following ways:
  - 6.1 Save as set out in paragraph 6.3 below, each Trial 2 Confidential Document shall be marked as “Confidential” on each page of the document and will identify the Party or Parties to which the Trial 2 Confidential Information in that Trial 2 Confidential Document relates.
  - 6.2 Save as set out in paragraph 6.3 below, any text and/or extract which contains Trial 2 Confidential Information will be highlighted in yellow or some other prominent colour (that does not obscure the information underneath it).
  - 6.3 To the extent that any Trial 2 Confidential Document cannot readily be labelled and highlighted as set out in paragraphs 6.1 and 6.2 above (for example, datasets), the relevant Trial 2 Designating Party shall make as clear as possible to anyone receiving and/or using the document that the document contains Trial 2 Confidential Information, the identity of the Party or Parties to which the Trial 2 Confidential

Information in that document relates and which information in the document is Trial 2 Confidential Information.

- 6.4 To the extent that any Trial 2 Confidential Document is included in a hearing bundle, the bundle index shall state which documents are Trial 2 Confidential Documents, and shall identify the Party or Parties to which the Trial 2 Confidential Information in those Trial 2 Confidential Documents relates.

#### **Challenge to Trial 2 Confidential Document Designation**

7. The designation of a Trial 2 Confidential Document by a Party may be challenged in accordance with the following terms:
- 7.1 If a Party wishes to challenge the designation of a Trial 2 Confidential Document, that Party shall do so by providing written notice to the Trial 2 Designating Party, specifying (i) the relevant document(s)/information concerned; and (ii) why it considers that the designation of the document(s)/information should be removed. The Parties shall make reasonable endeavours to ensure that any such challenges are brought, insofar as possible, in manageable batches and with reasonable expedition.
- 7.2 In the event that a challenge is made pursuant to paragraph 7.1, the Trial 2 Designating Party may respond in writing to the challenge, providing a written explanation as to why the document has been designated a Trial 2 Confidential Document, or confirming that the designation will be removed. Such response shall be given as soon as reasonably possible but in any event within seven (7) business days of receipt of the notice.
- 7.3 Absent a response in accordance with paragraph 7.2, each document in question shall be deemed not to be a Trial 2 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 7.5.
- 7.4 If the Party challenging confidentiality wishes to maintain its challenge following receipt of the Trial 2 Designating Party's response pursuant to paragraph 7.2, it shall provide written notice to the Trial 2 Designating Party setting out its reasons for doing so within seven (7) business days of receipt of the Trial 2 Designating Party's response. The Party challenging confidentiality may apply to the Tribunal for determination of whether or not the document qualifies as a Trial 2 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 the Trial 2

Designating Party's response pursuant to paragraph 7.2. A document in respect of which an application is made shall continue to be designated a Trial 2 Confidential Document unless and until the challenge is upheld by the Tribunal.

- 7.5 The deadlines in this paragraph 7 may be extended by agreement between the challenging Party and Trial 2 Designating Party. Consent to a request for an extension shall not be unreasonably withheld.
- 7.6 To the extent that the Tribunal asks for submissions as to why a document qualifies as a Trial 2 Confidential Document, it will be a matter for the Trial 2 Designating Party to address this.

### **Disclosure and inspection of Trial 2 Confidential Documents**

8. The Party receiving Trial 2 Confidential Documents shall permit those documents to be inspected only by Permitted Persons and only on the basis that:
- 8.1 the recipient Permitted Person has provided to the Trial 2 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(ii) or 1.6(iii) above;
- 8.2 the Trial 2 Confidential Documents will be treated by each such Permitted Person as confidential and will be used by each such person solely for the purpose of the proper conduct of the Proceedings;
- 8.3 no such Permitted Person will, save as expressly provided for below at paragraph 9, discuss, disclose, copy, reproduce or distribute any Trial 2 Confidential Document (or any Trial 2 Confidential Information contained therein);
- 8.4 save as otherwise agreed in writing, in respect of any Permitted Person who is an internal lawyer of a Card Scheme, that Permitted Person shall not be permitted to receive or otherwise to access Trial 2 Confidential Documents which relate to a Card Scheme other than the Card Scheme which that Permitted Person is advising (but, for the avoidance of doubt and subject to paragraph 8.5, shall be permitted to receive and access Trial 2 Confidential Documents relating to any other Party);
- 8.5 save as otherwise agreed in writing, in respect of any Permitted Person who is the Merricks Class Representative or an internal lawyer of a Card Scheme, that Permitted Person shall not be permitted to receive or otherwise to access Trial 2 Confidential Documents which relate to a Claimant in Cases 1483/5/7/22 (T) and 1504/5/7/22 (T) ("the Allianz Claimants"), or a Claimant in Cases 1492/5/7/22 (T)



and 1575/5/7/22 (T) (“the Primark Claimants”), unless the Trial 2 Confidential Document (i) is referred to in a Positive Case; (ii) is referred to in a Responsive Case; (iii) is referred to in any other factual or expert evidence filed on behalf of any of the parties; (iv) is otherwise included in the bundle for Trial 2; (v) is referred to in a written submission prepared in connection with a hearing in the Proceedings; or (vi) is referred to in a transcript of a hearing in the Proceedings; and

- 8.6 save as otherwise agreed in writing, in respect of any Permitted Person who is an internal lawyer of the Mastercard Defendants, that Permitted Person shall not be permitted to receive or otherwise to access Trial 2 Confidential Documents which relate to the claimants in Case 1456/5/7/22 (T).
9. Subject to clause 8 above, and provided it is for the purpose of the proper conduct of the Proceedings, nothing in this Order shall prohibit any such Permitted Person from:
- 9.1 making notes or copies of, or preparing reports, submissions or other documents concerning, containing or reflecting any Trial 2 Confidential Document or its content (which notes, copies, reports, submissions or other documents would themselves be Trial 2 Confidential Documents); and/or
- 9.2 disclosing any Trial 2 Confidential Document to any other person who is a Permitted Person, or any Trial 2 Confidential Information to any other person who is a Permitted Person in respect of a document containing such information, provided that no Trial 2 Confidential Information shall be otherwise directly or indirectly disclosed in the conduct of the Proceedings beyond the Permitted Persons.
10. During any hearing in respect of the Proceedings, each Party wishing to refer to a Trial 2 Confidential Document shall be responsible for indicating to the Tribunal that the document contains Trial 2 Confidential Information and asking the Tribunal to put in place arrangements for the maintenance of any such Trial 2 Confidential Information.
11. Nothing in this Order shall prevent or prohibit a receiving Party from taking any action (including in particular disclosing Trial 2 Confidential Information and/or Trial 2 Confidential Documents to a person who is not a Permitted Person and/or referring to such documents or information in open court) which has been authorised in writing by the Trial 2 Designating Party or which a Party in receipt of Trial 2 Confidential Documents is required to take by applicable law or by a court of competent jurisdiction.
12. In the event of any disclosure of Trial 2 Confidential Information and/or Trial 2 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) and the solicitors for the Trial 2 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 Trial 2 Confidential Information and/or Trial 2 Confidential Documents from the improper recipient(s) thereof and seeking to secure the agreement of such recipient(s) not to further disseminate the Trial 2 Confidential Information and/or Trial 2 Confidential Documents in any form.

**Addition or removal of Permitted Persons**

13. A Party seeking to designate an additional person as a Permitted Person by adding that additional person to Schedule A must:
  - 13.1 request permission from the Parties (and any other claimant that is a Trial 2 Designating Party at the time of the request) in writing for the additional person to be designated as a Permitted Person and added to Schedule A;
  - 13.2 provide in such request details of that proposed Permitted Person's role and an explanation of why their designation as a Permitted Person is necessary; and
  - 13.3 upon the Parties' (and any other relevant Trial 2 Designating Parties') agreement to the designation of the additional Permitted Person, provide the Tribunal and all Parties (and any other relevant Trial 2 Designating Parties) with a copy of the Schedule B confidentiality undertaking signed by the proposed Permitted Person and an up-to-date list of the Permitted Persons in Schedule A.
14. Each Party (and any other relevant Trial 2 Designating Party), other than the Party requesting that the additional person be designated as a Permitted Person, shall confirm within five (5) business days of the request pursuant to paragraph 13.1 whether they consent to the additional person being designated as a Permitted Person. Such consent shall not be unreasonably withheld.
15. If a Party (or any other relevant Trial 2 Designating Party) refuses consent to the additional person being designated a Permitted Person in accordance with paragraph 14, then that Party must provide written reasons (copying in all Parties (and any other relevant Trial 2 Designating Parties)) for why consent is refused together with its refusal.
16. If a Party (or any other relevant Trial 2 Designating Party) neither confirms nor refuses consent in accordance with paragraphs 14 and 15 above, then following the expiry of five (5) business days, the additional person shall be designated as a Permitted Person upon

provision to the Tribunal and all Parties (and any other relevant Trial 2 Designating Parties) a copy of the Schedule B confidentiality undertaking signed by the proposed Permitted Person and an up-to-date list of the Permitted Persons in Schedule A.

17. If there are any disputes which cannot be resolved by the Parties, the Party seeking to include the additional person as a Permitted Person may apply to the Tribunal to have the issue determined, provided written notice of such application is given to the Parties (and any other relevant Trial 2 Designating Parties). The additional person will become a Permitted Person if the Tribunal so orders and upon provision to the Tribunal and all Parties (and any other relevant Trial 2 Designating Parties) a copy of the Schedule B confidentiality undertaking signed by the proposed Permitted Person and an up-to-date list of the Permitted Persons in Schedule A.
18. If a Party wishes a Permitted Person to be removed from the Confidentiality Ring, they shall inform the representatives of the Parties (and any other relevant Trial 2 Designating Parties) and provide the Parties (and any other relevant Trial 2 Designating Parties) with an up-to-date list of the Permitted Persons in Schedule A. For the avoidance of doubt, a Party may only remove a Permitted Person that was added by that Party.
19. There shall be no requirement to amend this Order upon the addition or removal of Permitted Persons.

#### **Destruction of documents**

20. At the conclusion of a claimant's respective claims (including the Merricks Collective Proceedings), or for the Merchant Interchange Fee Defendants the Merchant Interchange Fee Umbrella Proceedings generally, the Parties shall use reasonable endeavours to ensure that all hard copies or extracts of the Trial 2 Confidential Documents or Trial 2 Confidential Information in the possession or control of any of that Party's Permitted Persons who are not also Permitted Persons for another Party who remains a party to the Proceedings are destroyed. The relevant Party shall then provide confirmation of such destruction to the Tribunal Registry by email.
21. At the conclusion of either a Party's respective claims (including the Merricks Collective Proceedings), or for the Merchant Interchange Fee Defendants the Merchant Interchange Fee Umbrella Proceedings generally, the Parties shall use reasonable endeavours to ensure that any copy or extract of the Trial 2 Confidential Documents or Trial 2 Confidential Information in the possession or control of any of that Party's Permitted Persons who are not also Permitted Persons for another Party who remains a party to the Proceedings 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 Trial 2 Confidential Documents or Trial 2 Confidential Information 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.

22. For the avoidance of doubt, paragraph 21 shall not require any 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 21 shall not prevent any Permitted Person from complying with any regulatory requirement of their profession, professional indemnity insurance or requirement under law, regulation or court order.

#### **General provisions**

23. The production of further copies of the Trial 2 Confidential Documents shall be limited to those required by the Permitted Persons to whom the Trial 2 Confidential Documents have been provided.
24. The confidentiality terms in this Order are intended to apply unless or until superseded by a subsequent order of the Tribunal.
25. The Parties (and any other Trial 2 Designating Parties) may agree and/or any Party may apply to the Tribunal to vary the terms of this Order or vary the lists of Permitted Persons in Schedule A (in accordance with paragraph 17 of this Order, as appropriate). Any Trial 2 Designating Party may on written notice to all of the (other) Parties revoke a designation they have made pursuant to paragraph 5 above. On receipt of such notice, the (other) Parties shall no longer be required to treat the document(s) in question as Trial 2 Confidential Documents or the information they contain as Trial 2 Confidential Information.
26. Nothing in this Order or the terms of the Schedule B confidentiality undertaking shall prevent or prohibit any Permitted Persons (as may be extended from time to time) from acting in other interchange fee related proceedings.
27. The costs of drafting this Order and complying with it shall be costs in the case.
28. There shall be liberty to apply.