



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1266/7/7/16

BETWEEN:

WALTER HUGH MERRICKS CBE

Class Representative

- and -

(1) MASTERCARD INCORPORATED

(2) MASTERCARD INTERNATIONAL INCORPORATED

(3) MASTERCARD EUROPE S.A. (formerly Mastercard Europe S.P.R.L)

Defendants

- and -

INNSWORTH CAPITAL LIMITED

First Intervener

-and-

THE ACCESS TO JUSTICE FOUNDATION

Second Intervener

ORDER (REDACTIONS)

UPON the Class Representative and the Defendants (the “**Settling Parties**”) entering into a proposed settlement agreement on 3 December 2024 by which they agreed to settle the proceedings between them (the “**Collective Proceedings**”)

AND UPON the Settling Parties filing an application for a collective settlement approval order (“**CSAO**”) on 17 January 2025

AND UPON the First Intervener serving its Statement of Intervention together with a witness statement of Mr Ian Michael Garrard and an expert report of Mr Mark Humphries on 3 February 2025 (together, “**the ICL Documents**”) pursuant to the Tribunal’s Order of 23 January 2025, incorporating redactions on account of legal professional privilege, and filing confidential versions with the Tribunal; and then re-serving the first two documents on 7 February 2025 incorporating amended redactions (“**the Redactions**”)

AND UPON the Tribunal’s Order of 4 February 2025 directing, inter alia, that the Settling Parties file their responses to the First Intervener’s Statement of Intervention, including any evidence in reply, by 4pm on 11 February 2025 (“**the 4 February 2025 Order**”)

AND UPON the application by the Defendants by letter dated 7 February 2025 for disclosure to it of the ICL Documents without many of the Redactions

AND UPON reading the letters dated 10 February 2025 from the solicitors for the First Intervener and from the solicitors for the Defendants

IT IS ORDERED THAT:

1. The First Intervener shall forthwith re-serve its Statement of Intervention and Mr Garrard’s witness statement, removing the Redactions as specified in the Appendix to this Order.
2. Nothing in the service of the ICL Documents pursuant to this Order shall constitute a waiver of privilege by the First Intervener.
3. Save as aforesaid, the Defendants’ application is dismissed.
4. The deadline in paragraph 1 of the 4 February 2025 Order is varied, such that the Settling Parties shall file their responses to the First Intervener’s Statement of Intervention, including any evidence in reply, by 4pm on 12 February 2025.

REASONS :

1. It is in the nature of an application under s. 49A of the Competition Act 1998 that the Tribunal will be provided with material that is subject to legal professional privilege as between the applicants, including advice and opinions from their respective legal advisers. Since the proceedings will continue if a CSAO is not made, it is essential that this privilege is protected and that the Settling Parties are not held to waive privilege unless they expressly intend to do so.
2. The First Intervener is entitled to take its own legal advice, in which it similarly holds privilege. Under the arrangements between the First Intervener and the Class Representative, the advice which they receive regarding the Collective Proceedings (as opposed to advice regarding any independent dispute between them) is shared between them. However, since the First Intervener is funding the Collective Proceedings for the Class Representative, it is similarly essential that its privilege is protected as against the Defendants.
3. Having reviewed the Redactions, I am satisfied that, save as set out in the Appendix to this order, the passages have been properly redacted from disclosure to the Defendants.
4. Although the Defendants will not be able to make observations on those passages, just as they will not be able to make observations on the redacted passages in the materials served by the Class Representative, this does not mean that the Tribunal will be denied contrary argument upon them. The Redactions do not apply to the Class Representative and he has a full opportunity to challenge the position advanced by the First Intervener.

The Honourable Mr Justice Roth
Acting President of the Competition Appeal Tribunal

Made: 11 February 2025
Drawn: 11 February 2025