

Competition Appeal Tribunal Case No. 1444/7/7/22

Commercial and Interregional Card Claims II Limited and Visa Incorporated & Others

Merchants who were charged fees for commercial card transactions set by Visa could benefit from this proposed collective action

NOTICE OF THE COLLECTIVE PROCEEDINGS APPLICATION AND HEARING

This is a legal notice that has been issued at the direction of the Competition Appeal Tribunal

HEARING DATE: 17-19 APRIL 2024

- A proposed collective claim against various entities in the Visa payment organisation (**Visa**) has been filed by Commercial and Interregional Card Claims II Limited (“**CICC II Limited**”) at the Competition Appeal Tribunal. CICC II Limited, a company registered in England and Wales, was created specifically to bring the claim.
- Mr Stephen Allen, the company director with experience in the travel and hospitality industry, is the sole director and sole member of CICC II Limited. This entity proposes to act as the class representative, on behalf of a proposed “class” of persons, some of whom it is alleged have suffered losses owing to Visa’s conduct.
- CICC II Limited’s proposed claim was assessed by the Tribunal at a hearing from 3-5 April 2023. Following that hearing, the Tribunal declined to grant authorisation to CICC II Limited to act as the class representative and found that the claims were not ‘eligible’ and ‘suitable’ for inclusion in collective proceedings.
- CICC II Limited has now applied to the Tribunal to amend its application for a Collective Proceedings Order, which if granted would authorise CICC II Limited to act as the class representative and allow the claim to proceed. The claim (in the form it would take following the amendment) alleges that one category of Multilateral Interchange Fee (**MIF**) set by Visa restricted, and continue to restrict, competition by effectively fixing a minimum price floor for the “Merchant Service Charge”, that is the charge that merchants must pay to their bank on each card transaction.
- The claim relates to the MIF applicable and applied to transactions involving commercial cards where the transaction takes place in the United Kingdom, regardless of where the commercial card has been issued (described as the **Commercial Card MIF**).
- The claim alleges that, as a consequence of the Commercial Card MIF, which CICC II Limited argues is unlawful, the Merchant Service Charge paid by merchants who accepted such transactions was higher than it would otherwise have been. CICC II Limited claims that this alleged overcharge caused those particular merchants loss and damage for which Visa is liable.
- Subject to the Tribunal deciding whether this claim can proceed, the proposed class of persons who may join the claim is (briefly):

All Merchants who, at any point during the Claim Period, had in place a Merchant Agreement with an Acquirer which enabled the Merchant to accept Commercial Cards as a means of payment for transactions in the UK.

- The Proposed Class does not include Excluded Merchants. Any merchant who falls within the proposed class definition is automatically included in the claim, unless it decides to opt out.
- To learn more about the application to bring the proposed collective proceedings, details about how to register your business' interest in the claim, and how to opt out are available at commercialcardclaim.co.uk. Your business will be included in the claim or able to formally opt out only if the Tribunal decides that the claim may proceed, and subject to any modifications to the proposed class definition which the Tribunal may direct.
- The proposed class does not include merchants which would fall within the class definition if their average annual turnover – during the period 2016-2019 – was £100 million or more. Such merchants may join the parallel “opt-in” proceedings against Visa if the Tribunal makes a Collective Proceedings Order in those proceedings. Those proceedings are brought by a different proposed class representative company, Commercial and Interregional Card Claims I Limited (see Competition Appeal Tribunal Case No. 1443/7/7/22). A notice of the collective proceedings application and hearing in those “opt-in” proceedings has also been issued. It can be accessed also at <https://commercialcardclaim.co.uk>.
- Visa opposes the application for a Collective Proceedings Order and intends to defend the claim.
- A hearing has been set for 17-19 April 2024 for the Tribunal to decide whether the proposed collective claims should proceed in light of the amendments proposed by CICC II Limited to its claim. The hearing will concern this proposed “opt-out” collective claim against Visa, the proposed parallel “opt-in” proceedings against Visa, as well as other proposed collective proceedings against Mastercard. The joint hearing will last for two to three days and will take place at the Competition Appeal Tribunal, 8 Salisbury Square, London, EC4Y 8AP.
- To learn more about the application to bring the collective claim, which is known as a Collective Proceedings Order Application, visit [commercialcardclaim.co.uk](https://www.catribunal.org.uk/cases/14447722-commercial-and-interregional-card-claims-ii-limited-cicc-ii) or <https://www.catribunal.org.uk/cases/14447722-commercial-and-interregional-card-claims-ii-limited-cicc-ii>

You may	Your legal rights and choices explained	Deadline
Object to the application or the proposed class representative	Any person with an interest (including any proposed class member) may object to the Collective Proceedings Order Application or the authorisation of the proposed class representative by stating their reasons for objecting in writing to the Tribunal. For further information on how to do this, see section 9 below.	4pm on 3 April 2024

<p>Apply to make oral/written submissions to the Tribunal</p>	<p>Any third party with an interest (including any proposed class member) may also apply to the Tribunal for permission to make oral and/or written submissions at the hearing.</p> <p>Any such application must be made in writing to the Tribunal, supported by reasons. For further information on how to do this, see section 9 below.</p>	<p>4pm on 3 April 2024</p>
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GENERAL INFORMATION

1. Why has this notice been issued?

The Tribunal has directed that this notice be issued following the application by Commercial and Interregional Card Claims II Limited (“**CICC II Limited**”) or the **Proposed Class Representative** for a Collective Proceedings Order.

The Collective Proceedings Order Application asks the Tribunal to approve: (i) the claim as eligible to proceed as a collective claim on behalf of eligible merchants accepting commercial card payments under the Visa scheme; and (ii) CICC II Limited to act as the class representative.

To read a summary of the amended collective proceedings claim form please visit catribunal.org.uk/cases/14447722-commercial-and-interregional-card-claims-i-limited-cicc-i.

To request a copy of the amended collective proceedings claim form please visit <https://commercialcardclaim.co.uk/contact>

This notice has been issued to inform you of the details of the Collective Proceedings Order Application and your right to object to that application or the authorisation of the Proposed Class Representative. This notice explains the claim, who is affected, your rights in relation to it, how to exercise those rights, and any related deadlines. Please read this notice carefully.

2. What is the Competition Appeal Tribunal?

The United Kingdom Competition Appeal Tribunal is a specialist judicial forum with cross-disciplinary expertise in law, economics, business and accountancy which hears and decides cases involving competition or economic regulatory issues. The Tribunal publishes its Rules and Guidance, together with information about what it does, on its website catribunal.org.uk/rules-and-guidance.

3. Who is the claim against?

The claim is against the following entities in the Visa payment organisation:

- (a) Visa Inc.;
- (b) Visa International Service Association;
- (c) Visa Europe Services LLC;
- (d) Visa Europe Limited; and
- (e) Visa UK Ltd.

Collectively, these companies are the **Proposed Defendants**.

4. What is the claim about?

The claim is for damages for alleged anticompetitive conduct arising out of an alleged breach of section 2 of the Competition Act 1998 and/or for an alleged breach of Article 101 of the Treaty on the Functioning of the European Union.

The claim relates to one category of Multilateral Interchange Fee (**MIF**), namely the MIF applicable to commercial card transactions (**Commercial Card MIF**).

The Proposed Class Representative asserts that the relevant rules, under which the Commercial Card MIF was and are set, and the implementation of that MIF, constituted, and continue to constitute, an agreement between the Proposed Defendants and other participants in the Visa scheme which restricted competition by establishing an effective minimum price for the Merchant Service Charge that merchants (including the proposed class members) must pay to accept payments by means of Visa-branded commercial credit, debit and prepaid cards issued under the Visa scheme.

As a consequence of the Commercial Card MIF, which the Proposed Class Representative alleges is unlawful, the Merchant Service Charges paid by merchants who accepted such transactions, including some of the proposed class members, were, the Proposed Class Representative alleges, higher than they would otherwise have been, allegedly causing them loss and damage for which it is alleged that Visa is liable.

On behalf of the proposed class members, the Proposed Class Representative seeks an award of aggregate damages for such loss (including interest).

5. Who is the Proposed Class Representative? What is the role of the Proposed Class Representative?

The Proposed Class Representative is a limited company registered in England and Wales with the company number 13548511. It was created specifically to bring these proceedings against the Proposed Defendants on behalf of the proposed class members.

Mr Stephen Allen is the sole director and sole member of CICC II Limited, the Proposed Class Representative. He has business and management experience in the travel and hospitality sectors.

The Proposed Class Representative will be responsible for, amongst other things: (i) communicating with the proposed class and issuing formal notices to its members; (ii) instructing the lawyers and experts; (iii) making decisions on the conduct of the claim; and (iv) evaluating any offer of settlement that the Proposed Defendants may make and deciding whether to present it for the Tribunal's approval.

If the collective claim is approved, the Proposed Class Representative would update the proposed class about the claim on the website commercialcardclaim.co.uk and through the media.

WHAT DOES THE CLAIM ASK FOR?

6. Who is in the proposed class?

The Consumer Rights Act 2015 allows for a collective claim to be brought on behalf of a group of persons who are alleged to have suffered a common loss as a result of anticompetitive conduct. The group is the “class” and all individuals within the group are “class members”. Under the collective regime, groups of persons who have suffered loss do not need to each bring an individual claim to obtain redress but may instead, receive compensation through a single, collective claim brought on their behalf by a class representative.

The Collective Proceedings Order Application asks the Tribunal to allow the proposed claim to proceed on an “opt-out” basis on behalf of all Merchants who, at any point during the Claim Period, had in place a Merchant Agreement with an Acquirer which enabled the Merchant to accept Commercial Cards as a means of payment for transactions in the UK.

The Proposed Class does not include **Excluded Merchants**.

Term	Explanation
Acquirer	A bank or other financial institution with which the Merchant has a contractual relationship which enables the acceptance of a Mastercard payment card by the Merchant in accordance with scheme rules laid down by Mastercard.
Commercial Card Transactions	A transaction involving a Visa payment card to which a Commercial Card MIF applies under the Visa Scheme Rules, from time to time in force.
Claim Period	This means: The period commencing on 6 June 2016 through to the date of the filing of the original Collective Proceedings Claim Form in these proceedings (i.e. 6 June 2022), seeking damages continuing to date of judgment in the present claim (subject to claims under Article 101 TFEU being limited to the period prior to 1 January 2021)
Excluded Merchants	Means any undertaking the turnover of which is, on average, equal to or greater than £100 million per annum in the period 2016 – 2019
Merchants	A person who accepts payments by means of payment cards.
Merchant Agreement	This means an agreement between a Merchant and an Acquirer that provides services to the merchant enabling the acceptance of a Visa payment card by the merchant in accordance with the Visa Scheme Rules, and in consideration of payment of a Merchant Service Charge (defined below) by the Merchant to the Acquirer. Pursuant to Merchant Agreements, the Acquirer typically credits the Merchant’s bank account with the amount of the transaction between the merchant and customer, after deduction of a Merchant Service Charge. A Merchant Agreement is often referred to as a ‘Merchant Services Agreement’ but is referred to as a Merchant Agreement in the Visa Scheme Rules.
Merchant Service Charge	The fee payable by Merchants per transaction to their bank in consideration, <i>inter alia</i> , for acceptance by their bank of a Visa payment card at the Merchant’s point of sale.

The Tribunal will assess the Collective Proceedings Order Application to determine whether the collective claim: (i) is brought on behalf of an identifiable class of persons; (ii) raises common issues; and (iii) is suitable to be brought in collective proceedings.

7. How much money does the claim ask for?

The collective claim seeks damages to compensate some of the proposed class members for alleged overcharges suffered as a result of the allegedly unlawful imposition of Commercial Card MIFs and Inter-regional MIFs. It is too early to quantify the value of the claim as this will be subject to expert evidence at a later stage of the case.

The recovery of any money through the claim is not guaranteed and, if the Tribunal approves the Collective Proceedings Order, the Proposed Class Representative will need to prove its case at trial in due course.

8. Who is funding the claim?

The Proposed Class Representative has entered into a litigation funding agreement with Bench Walk Advisors, a third-party litigation funder, whereby its fee will be capped at the total amount of any undistributed damages. Under the litigation funding agreement, the funder has agreed to provide funding of up to £6,321,687.50 for the Proposed Class Representative to bring the claim against Visa. Merchants will not have to pay any money up front to join the claim. If a Collective Proceedings Order is made and the claim is ultimately successful, the class representative will seek permission from the Tribunal for Bench Walk to be paid a fee out of any unclaimed compensation, consisting of:

- an amount equal to Bench Walk's capital outlay at the point of any successful outcome of the proposed collective proceedings;
- an amount equal to any amounts paid out by an insurer to pay for interim adverse costs in the proposed collective proceedings;
- the amount of the success fees due to the solicitors under their conditional fee agreements; and
- an amount equal to the Capital Outlay multiplied by 200% (such percentage increasing by 50% on 1 January and 1 July in each year, starting on 1 January 2024), and will stop increasing on the earlier of: (i) the date of a final judgment of the CAT that brings the collective proceedings to a final resolution by way of an award of damages, and following the determination of any appeals from that Judgment; (ii) the date of a settlement that brings the Claim proceedings to a final resolution; or (iii) an event of default by the class representative or funder.

As well as the funding arrangements in place, the Proposed Class Representative has obtained "After The Event" insurance, pursuant to which the insurer has agreed to indemnify the Proposed Class Representative (up to the policy limit) for the liability they may incur to pay money towards the Proposed Defendants' legal costs.

HOW TO OBJECT TO THE COLLECTIVE PROCEEDINGS ORDER APPLICATION OR TO THE PROPOSED CLASS REPRESENTATIVE

9. Who can object and what can be objected to?

Any person with an interest (including any proposed class member) may object to the Collective Proceedings Order Application or the authorisation of the Proposed Class Representative.

If you wish to file an objection, you must write to the Tribunal stating your reasons for objecting and send it **by email** to registry@catribunal.org.uk or **by post** to The Registrar, Competition Appeal Tribunal, Salisbury Square, 8 Salisbury Square, London EC4Y 8AP, so it is received no later than **4pm** on **3 April 2024**.

When writing to the Tribunal you must include the reference "*Case No. 1444/7/7/22 CICC II Limited v Visa Inc & Others*".

Any third party with an interest (including any proposed class member) may also apply to the Tribunal for permission to make oral and/or written submissions at the hearing on 17-19 April 2024, in addition to making written objections.

Any applications to make submissions must be made in writing, supported by reasons, and sent to the Tribunal **by email** to registry@catribunal.org.uk or **by post** to The Registrar, Competition Appeal Tribunal, Salisbury Square, 8 Salisbury Square, London EC4Y 8AP, so it is received no later than **4pm** on **3 April 2024**.

GETTING MORE INFORMATION

10. How can I stay updated on the progress of the claim?

You can visit commercialcardclaim.co.uk for updates on the claim.