

Merchants who were charged fees for commercial card transactions and consumer card inter-regional transactions set by Mastercard 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: 3-5 APRIL 2023

- A proposed collective claim against various entities in the Mastercard payment organisation (**Mastercard**) has been filed with the Competition Appeal Tribunal. This claim was filed by Commercial and Interregional Card Claims II Limited (**CICC II Limited**), a company registered in England and Wales, which was created specifically to bring the claim.
- Mr Stephen Allen, a 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 “class” of persons who it is alleged have each suffered losses owing to Mastercard’s conduct.
- CICC II Limited has applied to the Tribunal 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. It is alleged that two separate categories of Multilateral Interchange Fees (**MIFs**) set by Mastercard 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 to consumer card inter-regional transactions concluded at merchants located in the European Economic Area (**EEA**) with consumer debit, credit and prepaid cards issued by an issuer located outside the EEA (for example, a sale conducted in the UK using a card issued in the USA) (described as **Inter-regional MIF**); and
 - The MIF applicable to commercial card transactions in the UK and EEA, whether UK MIF, intra-regional MIF and/or inter-regional MIF (described as **Commercial Card MIF**).
- It is alleged that, as a consequence of the Inter-regional MIF and Commercial Card MIF, which CICC II Limited says in its claim are unlawful, the Merchant Service Charge paid by merchants was higher than it would otherwise have been. CICC II Limited claims that this alleged overcharge caused those merchants loss and damage for which Mastercard is liable.

- Subject to the Tribunal deciding that this claim can proceed, the proposed class of persons included in the claim is (briefly):

All merchants who had an annual average turnover less than £100 million during the period 2016-2019 and who paid a Merchant Service Charge in respect of one or more inter-regional card transactions and/or commercial card transactions: (i) during the claim period; and (ii) where the transaction occurred in the UK.

- Any merchant who falls within the proposed class definition is automatically included in the claim, unless it decides to opt out. 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 affected by the Mastercard scheme whose average annual turnover – during the period 2016-2019 – was £100 million or more. Such merchants may join the parallel “opt-in” proceedings against Mastercard if the Tribunal makes a Collective Proceedings Order in those proceedings (see Competition Appeal Tribunal Case No. 1441/7/7/22). Those proceedings are brought by a different proposed class representative company, Commercial and Interregional Card Claims I Limited. It can be accessed also at commercialcardclaim.co.uk.
- Mastercard opposes the application for a Collective Proceedings Order and intends to defend the claim.
- A hearing has been set for 3-5 April 2023 for the Tribunal to decide whether the proposed collective claim should proceed. The hearing will concern this proposed “opt-out” collective claim against Mastercard, the proposed parallel “opt-in” proceedings against Mastercard, as well as other proposed collective proceedings against Visa. 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 or catribunal.org.uk/cases/14427722-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 17 March 2023

<i>Apply to make oral/written submissions to the Tribunal</i>	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. 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.	4pm on 17 March 2023
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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 consumer card and commercial card payments under the Mastercard scheme; and (ii) CICC II Limited to act as the class representative.

To read a summary of the collective proceedings claim form please visit catribunal.org.uk/cases/14427722-commercial-and-interregional-card-claims-ii-limited-cicc-ii. To request a copy of the collective proceedings claim form please visit 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 Mastercard payment organisation:

- (a) Mastercard Incorporated;
- (b) Mastercard International Incorporated;
- (c) Mastercard Europe SA (formerly known as Mastercard Europe SPRL);
- (d) Mastercard/Europay UK Limited;
- (e) Mastercard UK Management Services Limited; and
- (f) Mastercard Europe Services Limited.

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 a breach of section 2 of the Competition Act 1998 and/or for breach of Article 101 of the Treaty on the Functioning of the European Union.

The claim relates to two separate categories of Multilateral Interchange Fees (**MIFs**), namely:

- (a) MIFs applicable to consumer card inter-regional transactions concluded at merchants located in the European Economic Area (or, following 1 January 2021, the UK) with a consumer debit, credit and prepaid card issued by an issuer located in a different region (**Inter-regional MIF**); and
- (b) MIFs applicable to commercial card transactions (**Commercial Card MIF**).

The Proposed Class Representative asserts that the relevant rules, under which the Inter-regional MIF and the Commercial Card MIF were and are set, and the implementation of those MIFs, constituted, and continue to constitute, an agreement between the Proposed Defendants and other participants in the Mastercard 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 certain Mastercard-branded consumer and commercial credit, debit and prepaid cards issued under the Mastercard scheme.

As a consequence of the Inter-regional MIF and Commercial Card MIF, which the Proposed Class Representative alleges are unlawful, the Merchant Service Charges paid by merchants, including 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 Mastercard is liable.

On behalf of the 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 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 class about the claim on the website commercialcardclaim.co.uk and through the media.

WHAT DOES THE CLAIM ASK FOR?

6. Who are 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 all 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 paid a **Merchant Service Charge** in respect of one or more **Inter-regional Transactions** and/or **Commercial Card Transactions**:

- (a) During the **Claim Period**; and
- (b) Where the transaction occurred in the UK.

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

Term	Explanation
Claim Period	This means: <ul style="list-style-type: none"> (a) As regards claims in respect of Inter-regional Transactions, the period beginning on 1 June 2016 through to the date of judgment; and (b) As regards the claims in respect of Commercial Card Transactions, the period commencing on 1 June 2016 through to the date of judgment.
Commercial Card Transactions	A transaction involving a Mastercard payment card to which a Commercial Card MIF applies under the Mastercard Scheme Rules, from time to time in force.
Excluded Merchants	Merchants with an average annual turnover – during the period 2016-2019 – of £100 million or more.
Inter-regional Transactions	A transaction involving a Mastercard payment card to which an Inter-regional MIF applies under the Mastercard Scheme Rules from time to time in force.
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 Mastercard payment card at the Merchant’s point of sale.
Merchants	A person which accepts payments by means of payment card and which has a contractual relationship, typically known as a Merchant Services Agreement, with a bank that provides services to the Merchant enabling the acceptance of a Mastercard payment card by the Merchant in accordance with applicable rules laid down by Mastercard, and in consideration of payment of a Merchant Service Charge by the Merchant to their bank.

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 proposed class members for 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, if allowed to proceed, 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 £7,180,000 for the Proposed Class Representative to bring the claim against Mastercard. Eligible 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 claim;
- an amount equal to any amounts paid out by an insurer to pay for interim adverse costs in the proposed collective claim; and
- 32% of any other proceeds in the proceedings.

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 it 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, 8 Salisbury Square, London, EC4Y 8AP so it is received no later than **4pm on 17 March 2023**.

When writing to the Tribunal you must include the reference "*Case No. 1442/7/7/22 CICC II Limited v Mastercard Incorporated & 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 3-5 April 2023, 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 **17 March 2023**.

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.