

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

Commercial and Interregional Card Claims II Limited and Visa Inc. & Others

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

FURTHER NOTICE OF THE COLLECTIVE PROCEEDINGS APPLICATION

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

- A proposed collective claim against various entities in the Visa payment organisation (Visa) brought by Commercial and Interregional Card Claims II Limited (“CICC II Limited”) has been provisionally approved by the Competition Appeal Tribunal, subject to any representations which would cause the Tribunal to re-consider its present intention. 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 initially 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 subsequently applied to the Tribunal to amend its application for a Collective Proceedings Order in December 2023. 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 continues 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 for the processing of card transactions.
- 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.
- The Tribunal heard the revised application for collective proceedings at a hearing on 17-18 April 2024 to decide whether the proposed collective claim should proceed. The hearing concerned this proposed “opt-out” collective claim against Visa, the proposed other “opt-in” proceedings against Visa, as well as parallel proposed collective

proceedings against Mastercard. The joint hearing lasted for two days and took place at the Competition Appeal Tribunal, 8 Salisbury Square, London, EC4Y 8AP.

- Visa opposed the application for a Collective Proceedings Order and intends to defend the claim.
- The Tribunal, following the hearing, issued a Judgment on 7 June 2024 finding that the proposed collective action is eligible to proceed. The Tribunal also directed CICC I to publish this notice given that the class definition that has been approved is different to the class definition that had been proposed when the claim was previously publicised. Subject to any representations filed by 5 July 2024 that would cause the Tribunal to re-consider its present intention, the Tribunal will grant a formal Collective Proceedings Order. Following the Judgment, the proposed class of persons who will be able to join the claim are (briefly):

Merchants who paid a Merchant Service Charge in respect of one or more Commercial Card Transactions during the Claim Period.

- 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 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. 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). See more at <https://commercialcardclaim.co.uk>.
- To learn more about the collective claim visit commercialcardclaim.co.uk or <https://www.catribunal.org.uk/cases/14447722-commercial-and-interregional-card-claims-i-limited-cicc-i>.

| 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 before the grant of a Collective Proceedings Order For further information on how to do this, see section 9 below. | 4pm on 5 July 2024 |

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| <p>Apply to make written submissions to the Tribunal</p> | <p>Any third party with an interest (including any proposed class member) may also apply to the Tribunal to make written submissions before the grant of a Collective Proceedings Order</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 5 July 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 Judgment of the Tribunal provisionally approving the collective action proposed by CICC II Limited or the **Proposed Class Representative** and prior to the grant of a Collective Proceedings Order.

The Tribunal has assessed the Collective Proceedings Order Application and in principle, approved the claim: (i) is brought on behalf of an identifiable proposed class of persons - merchants who paid a Merchant Service Charge in respect of one or more Commercial Card Transactions during the Claim Period; (ii) raises common issues; and (iii) is suitable to be brought in collective proceedings.

Subject to any representations from the public on or before 5 July 2024, the Tribunal will issue formal orders for the grant of a Collective Proceedings Order providing that the collective action should proceed.

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 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.

Upon the grant of a Collective Proceedings Order, the Proposed Class Representative will 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 would 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 Commercial Card Transactions during the Claim Period

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

| Term | Explanation |
|-------------------------------------|---|
| 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 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. |

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. 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 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 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 5 July 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 interest (including any proposed class member) may also apply to the Tribunal to make written submissions before the grant of a Collective Proceedings Order.

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 5 July 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.