

Mastercard And Visa Served Class Action Lawsuit Over Multilateral Card Fees

VIXIO speaks to the litigators bringing the latest class action lawsuit against Visa and Mastercard concerning their commercial card and cross-border fees.

Commercial litigation law firm Harcus Parker has brought the claim at the Competition Appeal Tribunal (CAT), the UK's specialist judicial body responsible for hearing competition cases.

"We want to make sure that businesses across the UK economy are properly compensated. We are making a stand against unlawful interchange fees, which should be abolished," said Jeremy Robinson, competition litigation partner at Harcus Parker.

Robinson pointed out that both the Court of Justice of the European Union and the United Kingdom Supreme Court have condemned this practice for consumer credit and debit cards. "The UK courts should now clamp down on commercial card and inter-regional fees."

The class action [seeks](#) compensation for UK businesses, which were charged multilateral interchange fees (MIFs) for accepting payments using corporate credit cards, and credit and debit cards from overseas visitors. The CAT has published the claim on its website.

The suit claims that Visa and Mastercard have forced banks to agree to a level of MIFs set by the two giants, which are "anti-competitive and unlawful".

Since 2015, EU law has capped MIFs at 0.3 percent on consumer credit card transactions and 0.2 percent on consumer debit cards. However, this cap does not apply to corporate credit and debit cards or for inter-regional transactions.

According to Tom Ross, a fellow partner at Harcus Parker, "gaps in the patchwork of regulation and litigation have allowed Mastercard and Visa to continue to exploit" the fee structure.

"They have been litigating for decades in different jurisdictions. At the moment, they make more money from fees they are charging than they lose from settling," he said. "This balance needs to change. We don't see our case as the only solution and believe regulators should be looking at this issue as well."

For Ross, the drivers for this case are that Mastercard and Visa-branded consumer cards have been regulated in the EEA at no more than 0.3 percent through the Interchange Fee Regulation (IFR). "Yet, no action has been taken on commercial cards, where interchange fee is levied at five to six times the domestic interchange fee on consumer cards, and this level is outrageous," he said.

This means that UK businesses in the travel, hospitality, retail and luxury sectors are particularly hurt by Mastercard and Visa's multilateral interchange fees, according to Robinson.

"Changes to the Competition Appeal Tribunal mean that we have been able to bring this case as a collective action," said Ross.

This means representing all affected merchants at the same time, he pointed out.

"The collective action regime in the CAT is still relatively new. The first case was certified only last year and no case has yet gone to trial," said Robinson.

"We believe it is important to use the regime for its intended purpose, to fight for wide scale collective redress. We have an extremely strong case and this route allows us to pursue it with maximum efficiency."

The class action is open to all businesses, including large international companies and local businesses, as well as some non-UK companies.

UK businesses with an annual pre-COVID turnover of £100m or more are invited to opt-in to the claim.

Meanwhile, businesses with a turnover under this threshold will be automatically included unless they choose to opt out.

The CAT is expected to hear the first round of the case in late 2022 or early 2023, when it will decide whether the case can be certified to go forward to trial.

The topic of the case is pertinent, considering the concerns expressed by trade associations in the UK and EU, as well as action from the Payment Systems Regulator (PSR) and the cross-party group of parliamentarians, the Treasury Select Committee, who wrote to both card schemes over the summer looking for answers.

The firm did reveal that they have written to the PSR on this issue, complaining that it believes the investigation into cross-border interchange fees is too narrow, considering it is looking solely at the effect of actions that Mastercard and Visa took after Brexit.

"It does not take into account the full effect of actions that Mastercard and Visa took after Brexit, such as interregional fees beyond Europe," said Ross. "However, we are very glad that the PSR is looking at this issue, and believe that there is a groundswell of concern about the level of card fees."

There are a few differences between regulatory action and class action litigation, explained Robinson. "The latter is important to bring about damages, which regulators cannot do."

The second distinction is between the overall merchant service charge and the multilateral interchange fee, which is its largest component, he suggested. "We are targeting the Multilateral Interchange Fee. We recognise that regulatory action can take a long time. We believe in taking action now to reclaim losses for merchants."

Right to refuse

Despite these claims of anti-competitive behaviour, the IFR does enable merchants to either surcharge or decline acceptance of card payments not regulated by the IFR, such as commercial cards.

In addition, findings from the Edgar Dunn 2020 review of IFR revealed that merchants are aware of their right to not accept certain payment card types, such as commercial cards, and are exercising this right when they feel the value proposition of accepting non-regulated cards is too low.

Yet, the study also revealed that the majority of merchants do not choose to reject the acceptance of non-regulated card products.

This may be due to the type of customer and the type of spending used with commercial cards, which suggests that many merchants see the value in continuing to accept these cards.

However, Marcus Parker argues that "the card schemes have not demonstrated that the interchange fees are necessary to achieve benefits to the merchants".

"But equally, it has not been shown why a higher fee is required to achieve the benefits to merchants from accepting a commercial card, as opposed to a consumer card."

As things stand, the level of multilateral interchange fees varies according to several criteria, including type of card and geography, Robinson pointed out. "Unfortunately, regulators and the courts have dealt with the interchange issues in a piecemeal fashion."

For example, the EU decision on interchange fees in 2007 covered EEA interchange fees on consumer cards, but not commercial cards. "There was a separate investigation into inter-regional interchange fees on consumer cards, while litigation in the UK to date has focused on UK interchange fees on consumer cards."

And for Robinson, now the UK is outside the EU's regulatory orbit, the card schemes have increased the interchange fees applicable to cross-border transactions. "This is an example of why a comprehensive solution to interchange fees is now needed."

When approached by VIXIO, Visa declined to comment; however, a spokesperson for Mastercard told us: "This claim has not been certified and therefore isn't approved to move forward as a collective action."

"We firmly believe that businesses of all size gain real value from the acceptance of cards issued on our network, and we are committed to helping our merchant partners grow their businesses and encourage the adoption of ever more convenient, safe

and secure ways to pay and get paid,” the spokesperson continued.

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