



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1266/7/7/16

**B E T W E E N :**

**WALTER HUGH MERRICKS CBE**

Applicant /  
Proposed Class Representative

**- and -**

**(1) MASTERCARD INCORPORATED**  
**(2) MASTERCARD INTERNATIONAL INCORPORATED**  
**(3) MASTERCARD EUROPE S.P.R.L.**

Respondents /  
Proposed Defendants

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**ORDER**

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**UPON** the application of the Applicant dated 6 September 2016 for a collective proceedings order (the “CPO Application”) pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”)

**AND UPON** reading the material submitted by the parties

**AND UPON** hearing counsel for the Applicant and counsel for the Respondents at a case management conference on 21 November 2016

**IT IS ORDERED THAT:**

**Forum**

1. Pursuant to Rules 18, 52 and 74 of the Tribunal Rules, the proceedings be treated as proceedings in England and Wales.

### **Exclusion of certain persons from the proposed class**

2. The following categories of persons (as constituted from time to time) shall be excluded from the proposed class:
  - a. officers, directors or employees of the Respondents;
  - b. officers, directors or employees of any entities in which any of the Respondents has a controlling interest;
  - c. all members of the Respondents' legal team;
  - d. all experts instructed on behalf of the Respondents and the staff assisting them;
  - e. all members of the Applicant's legal team;
  - f. all experts instructed on behalf of the Applicant and the staff assisting them;
  - g. all employees of Epiq/Hilsoft engaged in advising and assisting the Applicant and any other professional adviser who may be engaged by the Applicant for the purposes of these proceedings; and
  - h. all members of the Tribunal panel assigned to these proceedings.

### **Clarification of matters in the CPO Application**

3. The Applicant file and serve a list of the common and any individual issues he says arise in the proposed collective proceedings by 4pm on 25 November 2016.
4. The Applicant file and serve a version of the third party litigation funding agreement that is exhibit WHM4 to the First Witness Statement of Mr. Walter Merricks, with markings to highlight information over which confidentiality is claimed, by 4pm on 25 November 2016.
5. The Applicant file and serve an updated costs budget that is exhibit WHM6 to the First Witness Statement of Mr. Walter Merricks, setting out the assumptions and rates relied upon, by 4pm on 5 December 2016.

## **Response and reply to the CPO Application**

6. The Respondents file and serve their response to the CPO Application by 4pm on 30 November 2016.
7. The Applicant file and serve any reply to the Respondents' response by 4pm on 13 December 2016.

## **Publicity**

8. The Applicant publicise the CPO Application by 24 November 2016 according to the proposal set out in paragraphs 5.1-5.13 of the Epiq/Hilsoft Plan that is exhibited at WHM6 to the First Witness Statement of Mr Walter Merricks, amended to reflect the directions of the Tribunal to:
  - a. make known the categories of persons that are excluded from the definition of the proposed class, in accordance with paragraph 2 of this Order;
  - b. make known that (on request) copies of the following be provided: a non-confidential version of the First Witness Statement of Mr. Walter Merricks and exhibits thereto, including a non-confidential version of the litigation funding agreement as provided in accordance with paragraph 4 of this Order; and
  - c. make known the total level of funding of £43 million available to the Applicant and that this includes adverse costs cover in the amount of £10 million.
9. The Applicant publicise by 24 November 2016, in accordance with paragraphs 8, 11 and 12 of this Order, the right under Rule 76(10)(c) of persons with an interest to object to the CPO Application or the authorisation of the Proposed Class Representative.
10. The Applicant publicise by 24 November 2016, in accordance with paragraphs 8 and 11 of this Order, the right under Rule 79(5) of members of the proposed class to make an application to the Tribunal for permission to make oral submissions at the hearing of the CPO Application.

## **Objections to the CPO Application and applications for permission to make observations**

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

writing to the Tribunal stating their reasons for objecting by 4pm on 22 December 2016. Any member of the proposed class may also seek permission to make oral observations at the CPO Application hearing, by making an application for such permission, with reasons, as part of his/her written objections.

12. Any third party with a legitimate interest (who is not a member of the proposed class) who seeks permission to make written and/or oral observations at the CPO Application hearing is to make such application, supported by reasons, to the Tribunal by 4pm on 12 December 2016.

### **Skeleton arguments and bundles**

13. The parties file and exchange skeleton arguments by 4pm on 11 January 2017.
14. The Applicant file five copies of an agreed hearing and authorities bundle by 4pm on 13 January 2017.

### **Hearing**

15. The hearing of the CPO Application be listed for hearing on 18 January 2017 with a time estimate of 2 days and with a day in reserve.
16. The limitation issues raised by the Respondents be dealt with by way of a separate hearing if the CPO Application is granted.

### **General**

17. Costs be reserved.
18. There be liberty to apply.

**The Hon Mr Justice Roth**  
President of the Competition Appeal Tribunal

Made: 21 November 2016  
Drawn: 24 November 2016