

Mastercard, the Next Installment. The Retailer Strikes Back

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The previous four episodes of the *Mastercard* saga (as detailed in our previous blog posts) focussed on a number of legal battles between Mastercard and both consumers and retailers.

These disputes have centred on Mastercard's alleged "uncompetitive" interchange fees and restrictive rules on cross-border acquiring. The latest claim by retailers follows a class action brought on behalf of consumers under the Consumer Rights Act 2015 in relation to the same charges.

Retailers including Nando's, the Cooperative Group and Harvey Nichols have launched a new claim worth approximately £300 million (plus interest and costs), on the basis that Mastercard allegedly breached EU and UK regulations through the setting of "*unlawful and anti-competitive*" fees. This follows Humphries Kerstetter's announcement in June 2017 that it would be bringing the claim on behalf of 27 high street retailers.

In addition to arguing that Mastercard's service charges are anti-competitive, the claimants allege that Mastercard has abused its dominant position in the market. The claimants say that Mastercard credit cards are such a popular payment mechanism that retailers view them as "must-take". The claimants are also seeking a declaration that the interchange fees are (and always were) void and unenforceable.

In 2007, the EU found that Visa and Mastercard's high interchange fees breached Article 101 of the Treaty on the Functioning of the European Union, thus inviting the consumer class action referred to above (led by Walter Merricks and discussed in a previous blog post) followed by several similar claims by retailers.

Until recently, it would have been forgivable to think that the retailer's current claim (and the consumer class action claim) would be bound not to succeed. This is because in Sainsbury's' unsuccessful claim against Visa in respect of their high interchange fees, Mr Justice Phillips ruled that the credit card giant's fees were not inherently anti-competitive (however, Sainsburys is still expected to appeal this decision).

In light of the legal developments since 2007, the outcome of the retailer's claim and the consumer class action are far from predictable. We therefore look forward to the next instalment in the long

running Mastercard saga.

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