



Neutral Citation [2025] CAT 7

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

Case No: 1266/7/7/16

BETWEEN:

**WALTER HUGH MERRICKS CBE**

**Class Representative**

- and -

**(1) MASTERCARD INCORPORATED**

**(2) MASTERCARD INTERNATIONAL INCORPORATED**

**(3) MASTERCARD EUROPE S.A. (formerly Mastercard Europe S.P.R.L)**

**Defendants**

**INNSWORTH CAPITAL LIMITED**

**Proposed Intervener**

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**ORDER (INTERVENTION)**

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**UPON** the Class Representative and the Defendants (the “**Parties**”) entering into a proposed settlement agreement on 3 December 2024 by which they agreed to settle the proceedings between them (the “**Collective Proceedings**”)

**AND UPON** the joint application by the Parties filed on 17 January 2025 for a collective settlement approval order (the “**CSAO Application**”) pursuant to Rule 94 of the Competition Appeal Tribunal Rules 2015 (“**the Rules**”)

**AND UPON** the application dated 16 December 2024 by Innsworth Capital Ltd (“**ICL**”) the Proposed Intervener, the Class Representative’s litigation funder, for permission to intervene in the Collective Proceedings so as to oppose the CSAO Application

**AND UPON** reading the letters from the solicitors for the Defendants dated 8 January 2025, the solicitors for the Class Representative dated 21 January 2025, and the solicitors for ICL dated 21 January 2025 regarding the legal basis on which the Proposed Intervener’s application to intervene was made and the scope of its role in the settlement approval process

**IT IS ORDERED THAT:**

1. ICL is granted permission pursuant to rule 16 of the Rules to intervene in the Collective Proceedings, limited to the determination of the CSAO Application.
2. ICL shall file its statement of intervention (limited to 20 pages) and any evidence on which it wishes to rely by 4pm on 3 February 2025.

**REASONS:**

1. I consider that in the circumstances arising from this CSAO Application, ICL has a sufficient interest in the determination of the application. That arises from a number of particular features of the application:
  - a. the proposed distribution arrangements under the settlement directly affect ICL, since they will determine how much is paid or available for payment to ICL;
  - b. the overall level of the proposed settlement, since it is so far below the original estimate of the aggregate damages claimed, means that the total amount available for distribution is far below the return to ICL provided for in the litigation funding agreement;
  - c. the Class Representative in his evidence in support of the CSAO Application relies, in part, on the basis on which ICL was prepared to continue to fund the litigation. The stance adopted by ICL may therefore be a material consideration, and insofar as ICL does not accept that account, it has an interest in explaining its position to the Tribunal.

2. Rule 94(4)(c) provides that the application may be supported by a report by an independent expert on the question whether the terms of the proposed settlement are just and reasonable, and under rule 94(9)(e) the Tribunal would have to take that report into account in deciding whether to approve the settlement. In the present case, unlike previous applications for collective settlement approval orders, the parties have not provided any such independent report. Therefore, absent intervention, or opposition from any class members, the only submissions to the Tribunal would be from the parties who are, by definition, supporting the deal. Since the CSAO Application was filed on 17 January 2025 and is being heard as a matter of urgency on 19-20 February 2025 because of the imminence of the resumed trial of the MIF Umbrella Proceedings, there is no time in this case for the Tribunal itself to appoint an independent expert to review the proposed settlement: see Rule 53(2)(e). It will therefore be of assistance to the Tribunal to hear submissions challenging the proposed settlement, albeit not from an independent expert.
3. Insofar as there are factual disputes between the Class Representative and ICL as to the basis on which funding was or would be provided, neither the Class Representative nor ICL will be permitted to turn the hearing of the CSAO Application into a mini-trial to determine such disputes.

**The Honourable Mr Justice Roth**  
Acting President of the Competition Appeal Tribunal

Made: 23 January 2025  
Drawn: 23 January 2025