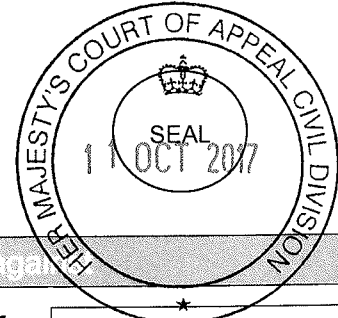


# Appellant's notice

(All appeals except small claims track appeals and appeals to the Family Division of the High Court)

For Court use only	
Appeal Court Ref. No.	2017/2778
Date filed	11 <sup>th</sup> October 2017

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.



## Section 1

Details of the claim or case you are appealing against

Claim or Case no.  Fee Account no. (if applicable)

Help with Fees - Ref no. (if applicable)    -    -

Name(s) of the  Claimant(s)  Applicant(s)  Petitioner(s)

Walter Hugh Merricks CBE

Name(s) of the  Defendant(s)  Respondent(s)

(1) Mastercard Incorporated; (2) Mastercard International Incorporated; (3) Mastercard Europe S.P.R.L

### Details of the party appealing ('The Appellant')

Name

Walter Hugh Merricks CBE

Address (including postcode)

32 Cholmeley Crescent  
London  
N6 5HA

Tel No.

Fax

E-mail

### Details of the Respondent to the appeal

Name

Mastercard Incorporated

Address (including postcode)

2000 Purchase Street  
Purchase  
New York 10577  
United States of America

Tel No.

Fax

E-mail

Details of additional parties (if any) are attached

Yes  No

**Section 2** Details of the appeal

From which court is the appeal being brought?

The County Court at

The Family Court at

High Court  
 Queen's Bench Division  
 Chancery Division  
 Family Division

Other (please specify)

What is the name of the Judge whose decision you want to appeal?

What is the status of the Judge whose decision you want to appeal?

<input type="checkbox"/> District Judge or Deputy	<input type="checkbox"/> Circuit Judge or Recorder	<input checked="" type="checkbox"/> Tribunal Judge
<input type="checkbox"/> Master or Deputy	<input type="checkbox"/> High Court Judge or Deputy	<input type="checkbox"/> Justice(s) of the Peace
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

S What is the date of the decision you wish to appeal against?

Is the decision you wish to appeal a previous appeal decision?  Yes  No

**Section 3 Legal representation**

Are you legally represented?

 Yes  No

If Yes, is your legal representative (please tick as appropriate)

- a solicitor
- direct access counsel instructed to conduct litigation on your behalf
- direct access counsel instructed to represent you at hearings only

Name of your legal representative

Quinn Emanuel Urquhart &amp; Sullivan UK LLP

The address (including postcode) of your legal representative

90 High Holborn  
London  
WC1V 6LJ

Tel No.	020 7653 2090
Fax	020 7653 2100
E-mail	borisbronfentrinker@quinnemanuel.com
DX	
Ref.	BB/NCH/JWB/07078-00001

Are you, the Appellant, in receipt of a Civil Legal Aid Certificate?

 Yes  No

Is the respondent legally represented?

 Yes  No

If 'Yes', please give details of the respondent's legal representative below

Name and address (including postcode) of the respondent's legal representative

Freshfields Bruckhaus Deringer LLP  
65 Fleet Street  
London  
EC4Y 1HS

Tel No.	020 7936 4000
Fax	020 7832 7001
E-mail	jon.lawrence@freshfields.com
DX	
Ref.	168071-0001

**Section 4** Permission to appeal

Do you need permission to appeal?

Yes  No

Has permission to appeal been granted?

Yes (Complete Box A)

No (Complete Box B)

**Box A**

Date of order granting permission <input type="text"/>
Name of judge granting permission <input type="text"/>

**Box B**

I Boris Bronfentrinker
the Appellant's legal representative seek permission to appeal.

If permission to appeal has been granted **in part** by the lower court, do you seek permission to appeal in respect of the grounds refused by the lower court?

Yes  No

**Section 5** Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal against

The Appellant seeks permission to appeal the judgment of the Competition Appeal Tribunal in case 1266/7/7/16 ([2017] CAT 16) refusing his application for a collective proceedings order under section 47B of the Competition Act 1998.

Pursuant to section 49 of the Competition Act 1998 and Rule 107 of the Tribunal Rules, an appeal from the Tribunal is from a decision of the Tribunal rather than from an order. Where a decision of the Tribunal is dispositive, it is not generally the practice of the Competition Appeal Tribunal to issue a separate order as well as giving judgment. As the judgment that the Appellant seeks to appeal is dispositive, no order has been made in this case.

Have you lodged this notice with the court in time?  
(There are different types of appeal - see Guidance Notes N161A)

Yes  No

If 'No' you must complete  
**Part B of Section 10 and Section 11**

**Section 6****Grounds of appeal**

Please state, in numbered paragraphs, **on a separate sheet** attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

I confirm that the grounds of appeal are attached to this notice.

**Section 7****Arguments in support of grounds for appeal**

I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out **on a separate sheet** and attached to this notice.

**OR** (in the case of appeals other than to the Court of Appeal)

I confirm that the arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice. A skeleton argument should only be filed if appropriate, in accordance with CPR Practice Direction 52B, paragraph 8.3.

**Section 8****Aarhus Convention Claim**

For applications made under the Town and Country Planning Act 1990 or Planning (Listed Buildings and Conservation Areas) Act 1990

I contend that this claim is an Aarhus Convention Claim  Yes  No

If Yes, and you are appealing to the Court of Appeal, any application for an order to limit the recoverable costs of an appeal, pursuant to CPR 52.19, should be made in section 10.

If Yes, indicate in the following box if you do not wish the costs limits under CPR 45 to apply. If you have indicated that the claim is an Aarhus claim set out the grounds below

**Section 9****What are you asking the Appeal Court to do?**

I am asking the appeal court to:-  
(please tick the appropriate box)

- set aside the order which I am appealing
- vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

1. The judgment ([2017] CAT 16) of the Competition Appeal Tribunal in case 1266/7/7/16 be set aside.
2. The Appellant's application for a collective proceedings order under section 47B of the Competition Act 1998 be granted.
3. The Respondents pay the Appellant's costs of the appeal.

- order a new trial

**Section 10****Other applications**

Complete this section **only** if you are making any additional applications.

**Part A**

- I apply for a stay of execution. (You must set out in Section 11 your reasons for seeking a stay of execution and evidence in support of your application.)

**Part B**

- I apply for an extension of time for filing my appeal notice. (You must set out in Section 11 the reasons for the delay and what steps you have taken since the decision you are appealing.)

**Part C**

- I apply for an order that:

Whilst the Appellant does not presently bring any additional applications, by way of advance notice, the Appellant intends to seek permission to rely on a supplemental expert report (pursuant to CPR 52.21(2)(b)). Despite the Appellant's best efforts, the supplemental expert report could not be completed by the date on which this Notice is required to be filed. The supplemental report is being completed as expeditiously as possible and the Appellant anticipates that it will be ready by no later than by 20 October 2017. Once the supplemental expert report has been finalised, the Appellant will apply for permission to amend this Appellant's Notice (pursuant to CPR 52.17) to include an application to rely on the supplemental expert report, supported by a witness statement from his solicitor, Boris Bronfentrinker of Quinn Emanuel Urquhart & Sullivan UK LLP.

(You must set out in Section 11 your reasons and your evidence in support of your application.)

[Large empty rectangular box for evidence in support]

**Statement of Truth** – This must be completed in support of the evidence in Section 11  
I believe (The appellant believes) that the facts stated in this section are true.

Full name

Name of appellant's legal representative firm

signed  position or office held

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

**In the County Court or High Court:**

- three copies of the appellant's notice for the appeal court and three copies of the grounds of appeal;
- one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- one copy of the sealed (stamped by the court) order being appealed;
- a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- a copy of the Civil Legal Aid Agency Certificate (if legally represented).

**In the Court of Appeal:**

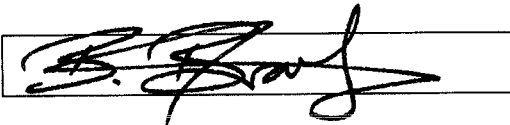
- three copies of the appellant's notice and three copies of the grounds of appeal on a separate sheet attached to each appellant's notice;
- one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondents;
- one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of appeal against that order;
- in a claim for judicial review or a statutory appeal a copy of the original decision which was the subject of the application to the lower court;
- one copy of the skeleton arguments in support of the appeal or application for permission to appeal;
- a copy of the approved transcript of judgment; and
- a copy of the Civil Legal Aid Certificate (if applicable).
- where a claim relates to an Aarhus Convention claim, a schedule of the claimant's financial resources



Reasons why you have not supplied a document and date when you expect it to be available:-

Title of document and reason not supplied	Date when it will be supplied
Witness statement of Boris Bronfentrinker	By no later than 20 October 2017
Supplemental Expert Report	By no later than 20 October 2017

**Section 13** The notice of appeal must be signed here

Signed 

Appellant's legal representative

**Details of Additional Respondents to the Appeal**

Name of Second Respondent:

Mastercard International Incorporated

Address:

2000 Purchase Street  
Purchase  
New York 10577  
United States of America

Name of Third Respondent:

Mastercard Europe S.P.R.L

Address:

Chausée de Tervuren 198A  
B-1410  
Waterloo  
Belgium

ON APPEAL FROM THE  
COMPETITION APPEAL TRIBUNAL

(Mr Justice Roth (President), Professor Colin Mayer CBE and Clare Potter)

Neutral citation: [2017] CAT 16

WALTER HUGH MERRICKS CBE

Appellant

- and -

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

Respondents

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GROUPS OF APPEAL

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**Ground One: The Tribunal erred in law in its approach to the issue of pass-on of the MSC.**

In particular, the Appellant says that: first, the Tribunal erred in applying too stringent a test to the sufficiency of data at the stage of considering whether to grant a Collective Proceedings Order ("CPO"); secondly, the Tribunal erred in its related finding that the test it should apply was higher than on a strike-out application; thirdly, the Tribunal erred in failing to place any weight on Mastercard's position in relation to pass-on in the many merchant claims that are pending against it; and fourthly the Tribunal adopted an unfair procedure at the CPO hearing in relation to pass-on.

**Ground Two: The Tribunal erred in law in its approach to distribution.**

In particular, the Appellant says that: first, the Tribunal erred in law in holding that distribution must be compensatory on an individual basis; secondly, the Tribunal erred by holding that there was “...no plausible way of reaching even a very rough-and-ready approximation of the loss suffered by each individual claimant...” (para 84); and thirdly, the Tribunal erred in failing to give the Appellant an opportunity to address any of the deficiencies identified by the Tribunal.

**Ground Three: The Tribunal erred in law in its assessment of the degree to which the claims raise common issues.**

In particular, the Appellant says that: first, the Tribunal wrongly failed to identify volume of commerce as a common issue; and secondly the Tribunal wrongly concluded that the issue of pass-on of MSC was not a common issue.