

High Court rules on applicable law in competition damages claims

09/03/2018 (EU/Competition)

Mr Justice Barling has today given judgment in *Deutsche Bahn v Mastercard* following a preliminary issues trial on questions of applicable law.

The claimants are retailers trading in a range of European countries. They contend that Mastercard's multilateral interchange fees, and other rules of the Mastercard scheme, contravene Article 101 TFEU. It is alleged that the fees and the other scheme rules resulted in the retailers paying higher fees to their banks in order to accept payments made by their customers on Mastercard cards, and that they therefore suffered loss. The claims seek damages for the fees paid on card transactions over the period 1992 to date.

The parties agreed for the applicable law to be determined through a preliminary issues trial, focussing at this stage on claims in four countries: Germany, Italy, Poland and the United Kingdom.

Over the period 1992 to the present, the rules for ascertaining the law applicable to claims in tort changed, twice. For the period up to 30 April 1996, the common law rule of double actionability determined the applicable law; from 1 May 1996 to 10 January 2009, the governing law was identified under the Private International Law (Miscellaneous Provisions) Act 1995 ('the 1995 Act'); thereafter, the applicable law is identified under the Rome II Regulation.

The Judge accepted Mastercard's submissions in respect of each period:

- For the period 11 January 2009 onwards, the law applicable under Rome II was the law of the place of establishment of the merchant;
- For the period 1 May 1996 – 10 January 2009, the law applicable under the 1995 Act was the law of the place of the establishment of the merchant;
- For the period 1992 – 30 April 1995, the *lex loci delicti* under the double actionability rule was the law of the place of the establishment of the merchant.

The judgment is [here](#).

Mark Hoskins QC and Hugo Leith (instructed by Jones Day) represented Mastercard.

BRICK COURT CHAMBERS

BARRISTERS

RELATED BARRISTERS

- Mark Hoskins QC
- Hugo Leith