

## Antitrust – National Courts

Wm Morrison Supermarkets plc and Others / MasterCard Incorporated and Others

High Court of Justice (UK)

### Summary

On 05 May 2014, the European Commission issued an Opinion in answer to the questions of the High Court of Justice, Commercial Court, Judiciary of England and Wales.

In the context of a damages action in relation to MasterCard's Intra-EEA interchange fees, the Court asked the Commission several questions regarding the disclosure by MasterCard of documents which the latter sent to or obtained from the Commission, including the confidential version of its decision, or through the access to its file.

The Commission gave general guidance on the factors that are to be taken into account when a national court considers ordering a party the disclosure of such documents. The Commission considered that in order not to jeopardise its investigatory powers, national courts are asked to refrain from ordering disclosure where such disclosure could undermine an ongoing investigation. With regard to the disclosure of confidential information, the Commission stated that this is in principle possible provided that the national courts provide appropriate protection of such information. The Commission gave general guidance on the factors that should be taken into account when protecting confidential information, leaving the specific assessment in the case at hand to the national court.