



GCR

Ius Omnibus v Mastercard
4 de Dezembro de 2020

Ex-MEP leads Portuguese class action against Mastercard

[Charley Connor](#)
04 December 2020



A specially-formed consumer group has filed Portugal's first-ever opt-out antitrust damages claim, aiming to compensate all of the country's consumers for overcharges allegedly passed on by Mastercard's anticompetitive interchange fees.

Led by Portuguese presidential candidate and former Member of European Parliament Ana Gomes, the proposed class seeks at least €400 million in damages from the credit card company. The group filed its complaint before Portugal's Competition, Regulation and Supervision Court on 2 December.

The case is the first opt-out class action claim filed since Portugal transposed the EU Damages Directive into law and the second to be launched against Mastercard in the EU. The first case, brought by Walter Merricks in the UK, is currently stuck at the class certification stage as it [awaits](#) a decision from the UK's Supreme Court.

The Portuguese complaint was filed by Ius Omnibus, a consumer-focused nonprofit formed in March of this year that has financial backing from leading litigation funder Nivalion. Gomes, who served as an MEP for the European Socialist Party from 2004 to 2019 and announced her bid for the Portuguese presidency in September, is the group's president.

The complaint asks the Competition Court to find that Mastercard's multilateral interchange fee scheme infringed both EU and Portuguese competition law from the start of the millennium. These fees are charged by a cardholder's bank to a merchant's bank when a cardholder makes a purchase at the latter's store.

The European Commission [ruled](#) in January 2019 that Mastercard's payment scheme – which set the default rates for those transactions – limited competition among banks by preventing them from offering low fees available in some parts of the EU to retailers based in other member states, where the fees were higher.

Ius Omnibus claims that retailers passed on the costs of the inflated interchange fees to Portuguese consumers, which was reflected in increased prices across the entire retail market. Until 2015, when the EU regulated interchange fees, Portugal had one of the highest rates in the bloc, it said in a press release.

The group estimates that Mastercard's interchange fees caused Portuguese consumers to overpay for products by at least €400 million between 2000 and 2019. This would compensate each consumer around €40, although the group noted that individual damage awards would depend on the number of purchases that a consumer made during the period.

Miguel Sousa Ferro, counsel to Ius Omnibus, said this is the first opt-out action to be filed before the Competition Court under Portugal's Antitrust Private Enforcement Act, which came into effect in 2018.

The act transposes the EU Damages Directive into law by allowing those injured by anticompetitive conduct to obtain monetary relief, and states that consumer protection associations have standing to bring such claims on behalf of victims.

Luis Miguel Romão, a partner at CMS Rui Pena & Arnaut in Lisbon, said there is a "good chance" that this action will succeed, even if the damages awarded are not as high as those sought by Ius Omnibus.

The Portuguese opt-out regime is somewhat generous and there have been a couple of successful opt-out class actions on non-competition related matters, he explained.

Romão said the Competition Court mainly houses young judges, who seem to have a "more open mind" and rely heavily on EU case law and commission practice. Meanwhile, the claimants' counsel is "one of the top specialists in the country" in competition law damages actions, he added.

This case is a "really exciting start-off" for opt-out actions brought under competition law in Portugal, as this is an area that needs "spicing up" for the benefit of everyone, Romão said.

“Competition law enforcement in this country really needs more boosts like this to make everyone aware of just how important it is and the severe and extensive consequences that may result from its infringement,” Romão said.

However, he added that this case could be seeking “other advantages and publicity” alongside its concern about harm to consumers, especially as Ana Gomes is a formal candidate to become Portugal’s next president.

Mastercard did not respond to a request for comment.

Counsel to Lus Omnibus

Sousa Ferro & Associados

Partner Miguel Sousa Ferro in Lisbon

Pais de Vasconcelos & Associados

Partner Pedro Pais de Vasconcelos in Lisbon