



IN THE COMPETITION
APPEAL TRIBUNAL

Case: 1329/7/7/19

B E T W E E N:

MICHAEL O’HIGGINS FX CLASS REPRESENTATIVE LIMITED

Applicant/
Proposed Class Representative

- v -

- (1) BARCLAYS BANK PLC**
- (2) BARCLAYS CAPITAL INC.**
- (3) BARCLAYS EXECUSION SERVICES LIMITED**
- (4) BARCLAYS PLC**
- (5) CITIBANK N.A.**
- (6) CITIGROUP INC.**
- (7) JPMORGAN CHASE & CO.**
- (8) JP MORGAN CHASE BANK, NATIONAL ASSOCIATION**
- (9) J.P. MORGAN EUROPE LIMITED**
- (10) J.P. MORGAN LIMITED**
- (11) NATWEST MARKETS PLC**
- (12) THE ROYAL BANK OF SCOTLAND GROUP PLC**
- (13) UBS AG**

Respondents/
Proposed Defendants

ORDER

UPON reading the Proposed Class Representative’s application dated 16 August 2019 pursuant to Rule 31(2) of the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”) for permission to serve the collective proceedings claim form (and related documents) out of the jurisdiction on the Second, Sixth and Seventh Proposed Defendants

IT IS ORDERED THAT:

1. The Proposed Class Representative be permitted to serve the Second, Sixth and Seventh Proposed Defendants outside the jurisdiction.

2. This Order is without prejudice to the rights of the Second, Sixth and Seventh Proposed Defendants to apply pursuant to Rule 34 of the Tribunal Rules to dispute the jurisdiction.

REASONS

1. The claims which the Proposed Class Representative proposes to combine in collective proceedings are for damages for loss alleged to have been suffered by persons who entered into one or more relevant foreign exchange transaction in the European Economic Area during the period from 18 December 2007 to 31 January 2013. There is a reasonable prospect of success in the substantive claims against the Second, Sixth and Seventh Proposed Defendant in that the claims sought to be combined in collective proceedings are follow-on claims based on two settlement decisions of the European Commission of 16 May 2019 in case AT.40135 – FOREX, which have not been appealed. All Proposed Defendants save for the Second Proposed Defendant were addressees of the “FOREX – Three Way Banana Split” settlement decision, and the First to Fourth and Eleventh to Thirteenth Proposed Defendants were addressees of the “FOREX – Essex Express” settlement decision.
2. The Proposed Class Representative has served its collective proceedings claim form (and supporting documents) on the First, Third to Fifth and Eighth to Thirteenth Proposed Defendants (the “UK Proposed Defendants”). I am satisfied that there is between the Proposed Class Representative and the UK Proposed Defendants a real issue to try and that the Second, Sixth and Seventh Proposed Defendants are proper parties to the follow-on claims being pursued against the UK Proposed Defendants in that (a) the Second Proposed Defendant is an addressee of the “FOREX – Essex Express” settlement decision and the Sixth and Seventh Proposed Defendants are addressees of the “FOREX – Three Way Banana Split” settlement decision; and (b) the Proposed Class Representative alleges that the Proposed Defendants are jointly and severally liable for loss suffered in the UK by the proposed class members from breaches of statutory duty that appear to have been committed within the UK.
3. It appears likely that, as the Proposed Class Representative submits, the proceedings will be treated as taking place in England and Wales under Rule 18 of the Tribunal Rules.

The Honourable Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 16 August 2019
Drawn: 16 August 2019