



## COMPETITION APPEAL TRIBUNAL

### **NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998**

**CASE NO. 1336/7/19**

Pursuant to Rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Tribunal Rules”), the Registrar gives notice of the receipt on 11 December 2019 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Mr Phillip Evans (the “Applicant/Proposed Class Representative” or “Mr Evans”) against Barclays Bank PLC, Barclays Capital Inc., Barclays PLC, Barclays Execution Services Limited, Citibank N.A., Citigroup Inc., MUFG Bank, Ltd., Mitsubishi UFJ Financial Group, Inc., J.P. Morgan Europe Limited, J.P. Morgan Limited, JPMorgan Chase Bank, N.A., JPMorgan Chase & Co., NatWest Markets Plc, The Royal Bank of Scotland Group Plc and UBS AG (together, “the Respondents/Proposed Defendants”). The Applicant/Proposed Class Representative is represented by Hausfeld & Co. LLP, 12 Gough Square, London EC4A 3DW (Reference: David Lawne/William Widdess).

The Applicant/Proposed Class Representative makes an application for a collective proceedings order (“CPO”) permitting him to act as the class representative bringing opt-out collective proceedings (“the Application”).

The proposed collective proceedings would combine follow-on claims for damages under section 47A of the Act caused by the Respondents/Proposed Defendants’ breaches of statutory duty in infringing Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) and Article 53 of the Agreement on the European Economic Area (“EEA Agreement”), as determined by the European Commission (“the Commission”) in two infringement decisions adopted on 16 May 2019 (Case AT.40135-FOREX (Three Way Banana Split) (“the TWBS Decision”) and Case AT.40135-FOREX (Essex Express) (“the EE Decision”)) (together “the Decisions”).

The Decisions concern a single and continuous infringement of Article 101 TFEU and Article 53 EEA Agreement in foreign exchange spot trading of a group of currencies known as the “G10 Currencies”. The periods covered by the Decisions are: (i) 18 December 2007 to 31 January 2013 in respect of the TWBS Decision; and (ii) 14 December 2009 to 31 July 2012 in respect of the EE Decision. Each of the Respondents/Proposed Defendants is an addressee of one or both of the Decisions. The infringement which is the subject matter of the Decisions comprised the exchange of commercially sensitive information about trading activities in relation to foreign exchange (“FX”) spot trading, and coordination of trading activities through private chatrooms.

The proposed collective proceedings are brought on behalf of two classes of persons, Class A and Class B (together “the Proposed Classes”). The Application states, in overview, that Class A encompasses the direct harm caused by the infringements, as identified in the Decisions, in transactions entered into with the Respondents/Proposed Defendants (during the periods that they participated in the infringements), whereas Class B comprises persons making claims for losses suffered as a result of the “umbrella” effects of the infringements. The persons it is intended to include in the Proposed Classes (other than certain excluded persons) are customers who have entered into certain types of foreign exchange transaction and will include entities such as hedge funds, pension funds, asset managers, corporations, investment banking firms and other banks.

According to the Application, the claims raise common issues which comprise: (i) whether the Tribunal has jurisdiction to hear the claims; (ii) what the relevant substantive law(s) applicable to the claims is/are; (iii) what the relevant limitation period(s) applicable to the claims is/are; (iv) what the scope is of the infringements of the Decisions; (v) whether the infringements caused or materially contributed to wider bid-ask spreads on FX Spot Transactions and/or FX Outright Forward Transactions (as defined in the

Application) entered into by members of Class A; (vi) what the aggregate volume of commerce is for Class A affected by the infringements; (vii) whether the infringements caused or materially contributed to wider bid-ask spreads on FX Spot Transactions and/or FX Outright Forward Transactions entered into by members of Class B; (viii) what the aggregate volume of commerce is for Class B affected by the infringements; (ix) what are the total amounts of any aggregate award of damages for Class A and Class B; (x) the level of interest to be awarded to the proposed class members; and (xi) whether interest should be awarded on a simple or compound basis.

The Applicant/Proposed Class Representative submits that it is just and reasonable for him to act as class representative because:

1. The Applicant/Proposed Class Representative will act fairly and reasonably in the interests of the class members:
  - (a) The Applicant/Proposed Class Representative is not a member of Class A or Class B, and would be able to act impartially in the interests of all members of the Proposed Classes.
  - (b) Mr Evans is well-suited to managing the proposed collective proceedings due to his substantial professional experience in the field of competition law, and extensive experience in managing substantial inquiries as part of his role as an Inquiry Chair in a number of major cases for the Competition and Markets Authority.
  - (c) The Applicant/Proposed Class Representative has appointed a Consultative Panel, which has been carefully assembled in order to ensure that he has access to the necessary expertise to enable him to effectively manage the proposed collective proceedings in the best interest of the Proposed Classes.
  - (d) The Applicant/Proposed Class Representative has developed a comprehensive litigation plan in accordance with Rule 78(3)(c) of the Tribunal Rules.
2. The Applicant/Proposed Class Representative does not have a material interest that is in conflict with the interests of the Proposed Classes.
3. While Mr Evans is aware that a CPO application was registered at the Tribunal on 29 July 2019 by Michael O'Higgins FX Class Representative Limited ("the O'Higgins Application"), Mr Evans submits that he is the most suitable to be appointed as class representative in respect of the claims covered by these proposed collective proceedings.
4. The Applicant/Proposed Class Representative has sufficient funding arrangements in place to ensure that he will be able to pay the Proposed Defendants' recoverable costs if ordered to do so.
5. The Applicant/Proposed Class Representative does not seek interim injunction in the proposed collective proceedings.

The Application states that the Claims are suitable to be brought in collective proceedings because:

1. The proposed collective proceedings present the most appropriate means for the fair and efficient resolution of the common issues considering: (i) the number of potential members of the Proposed Classes; (ii) the issues raised include a number of highly technical matters which will require expert evidence in multiple fields; (iii) the common issues to be resolved are issues of mixed fact, law and expert evidence and are likely to be substantial and costly exercises that members of the Proposed Classes could not reasonably be expected to undertake individually; (iv) the aggregate value of the claim will be substantial which makes collective proceedings economically viable relative to the costs of bringing the claim; (v) some individual claims by members of the Proposed Classes for comparatively small amounts would be uneconomic when considering the costs of those proceedings; and (vi) the impact of the infringements can be estimated based upon well established methodologies which can be applied across all members of Class A and Class B respectively.

2. The proposed collective proceedings represent the most appropriate approach in terms of costs/benefits to determining the claims.
3. The costs associated with bringing the collective proceedings and administering the claims on behalf of the Proposed Classes are proportionate in view of the value of the claims advanced. Further, they are outweighed by the benefits to the members of the Proposed Classes from being able to pursue compensation for losses suffered due to the infringements.
4. Neither the O'Higgins Application or an individual claim commenced in the Commercial Court (CL-2018-000840: Allianz Global Investors GmbH and others v Barclays Bank Plc and others) impact on the appropriateness of bringing the proposed collective proceedings.
5. Considering the size of the Proposed Classes it would be more appropriate to bring the individual claims by way of the proposed collective proceedings.
6. The definition of the Proposed Classes has been formulated in a manner so as to ensure that any person can clearly identify whether they are a member of either or both classes.
7. There is a credible and plausible methodology, and available data, for calculating the losses suffered by the Proposed Classes on a class-wide basis. To assess the overcharge incurred by each member of the Proposed Classes on an individual basis would be impracticable and disproportionate. Furthermore, individual assessment of harm suffered by members of Class B would not be possible as the Applicant/Proposed Class Representative will not have access to transaction records from the relevant financial institutions.

Accordingly, the Applicant/Proposed Class Representative considers that the only practicable, efficient and effective approach to the proposed collective proceedings is for them to be brought on an opt-out basis.

The relief sought in the proposed collective proceedings is:

- (1) An aggregate award of damages for each of the Proposed Classes;
- (2) Interest;
- (3) Costs; and
- (4) Such further and other relief as the Tribunal may think fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*

Registrar

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