



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case Nos: 1329/7/7/19  
1336/7/7/19

BETWEEN:

**MICHAEL O'HIGGINS FX CLASS REPRESENTATIVE LIMITED**

Applicant / Proposed Class Representative

- v -

- (1) BARCLAYS BANK PLC
- (2) BARCLAYS CAPITAL INC.
- (3) BARCLAYS EXECUTION 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

- (1) MUFG BANK, LTD
- (2) MITSUBUSHI UFJ FINANCIAL GROUP, INC.

Proposed Objectors

AND BETWEEN:

**PHILLIP EVANS**

Applicant / Proposed Class Representative

- v -

- (1) BARCLAYS BANK PLC
- (2) BARCLAYS CAPITAL INC.
- (3) BARCLAYS EXECUTION SERVICES LIMITED
- (4) BARCLAYS PLC
- (5) CITIBANK N.A.
- (6) CITIGROUP INC.
- (7) MUFG BANK, LTD

- (8) MITSUBISHI UFJ FINANCIAL GROUP, INC.
- (9) J.P. MORGAN EUROPE LIMITED
- (10) J.P. MORGAN LIMITED
- (11) JP MORGAN CHASE BANK, N.A.
- (12) JPMORGAN CHASE & CO
- (13) NATWEST MARKETS PLC
- (14) THE ROYAL BANK OF SCOTLAND GROUP PLC
- (15) UBS AG

Respondents / Proposed Defendants

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**ORDER**

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**UPON** the respective applications for a collective proceedings order pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (the “**Tribunal Rules**”) of: (i) Michael O’Higgins FX Class Representative Limited (the “**O’Higgins PCR**”) filed on 29 July 2019 (the “**O’Higgins Application**”); and (ii) Phillip Evans (the “**Evans PCR**”) filed on 11 December 2019 (the “**Evans Application**”) (together the “**CPO Applications**”)

**AND UPON** the Tribunal’s Orders dated 6 November 2019, 18 March 2020, 16 November 2020, 11 December 2020 and 10 February 2021

**AND UPON** considering the written submissions of the parties filed in advance of a pre-hearing review (“**PHR**”)

**AND UPON** hearing counsel for the parties at the PHR on 21 June 2021

**IT IS ORDERED THAT:**

**Neutral statements**

1. By 5pm on 29 June 2021, the O’Higgins PCR and the Evans PCR shall each file and exchange (and serve on the Proposed Defendants and Proposed Objectors):
  - (a) A neutral statement covering the merits (i.e., how each PCR intends to make good its case); and
  - (b) A neutral statement covering funding, in particular the benefit to be returned to the class if the case is successful.

2. Each neutral statement shall be up to 20 pages in length and shall conform with the formatting requirements of paragraph 2 of the Tribunal's Practice Direction 1/2021. The neutral statements shall be provided to the other parties in Word.
3. By 5pm on 5 July 2021, the O'Higgins PCR and the Evans PCR shall each file and exchange (and serve on the Proposed Defendants and Proposed Objectors) annotated versions of each other's neutral statements. The annotated neutral statements shall be provided to the other parties in Word. The annotated text shall be clearly distinguished from the original text, for example via the use of text boxes or redlining.
4. By 5pm on 7 July 2021, the Proposed Defendants and the Proposed Objectors shall file and serve: (i) one annotated version of each of the O'Higgins PCR's neutral statements; and (ii) one annotated version of each of the Evans PCR's neutral statements. Such annotations shall be added to the previously annotated versions to be served in accordance with paragraph 3 of this Order and shall be provided to the other parties in Word. The Proposed Defendants' and Proposed Objectors' annotated text shall be clearly distinguished from the previous annotated text and from the original text, for example via the use of text boxes or redlining.

### **Skeleton arguments**

5. Paragraph 11 of the Tribunal's Order of 10 February 2021 is varied as follows:
  - (a) The parties shall file and exchange skeleton arguments by 5pm on 5 July 2021.
  - (b) The skeleton argument page limits shall be as follows:
    - i. The certification skeleton arguments of the O'Higgins PCR and the Evans PCR shall each have a page limit of 25 pages.
    - ii. The carriage dispute skeleton arguments of the O'Higgins PCR and the Evans PCR shall each have a page limit of 20 pages.
    - iii. The certification skeleton argument(s) of the Proposed Defendants and the Proposed Objectors shall have a page limit of 60 pages in total.

### **The hearing of the CPO Applications**

6. The determination of the issues of (i) compound interest and (ii) defunct companies and deceased persons (the “**Deferred Issues**”) shall be deferred pending anticipated judgments on those topics in the *Merricks* and *Trucks* proceedings. The Deferred Issues shall not be addressed at the hearing of the CPO Applications listed to commence on 12 July 2021 (the “**CPO Hearing**”), on the basis that the Tribunal will determine all other issues in the CPO Applications (including as to the carriage dispute) prior to determining the Deferred Issues.
7. An indicative timetable for the CPO Hearing is approved in accordance with the Annex hereto. The total time for oral submissions at the CPO Hearing shall be allocated as follows: (i) 5 hours for the O’Higgins PCR; (ii) 5 hours for the Evans PCR; and (iii) 7 hours for the Proposed Defendants and Proposed Objectors. Those time allocations shall be applied flexibly. The parties shall be entitled to use their allocated time as they wish.

### **Miscellaneous**

8. Costs be reserved.
9. There be liberty to apply.

**The Honourable Mr Justice Marcus Smith**  
Chairman of the Competition Appeal Tribunal

Made: 21 June 2021  
Drawn: 7 July 2021

## ANNEX

### Indicative timetable for the CPO Hearing

<b>DAY 1 (12 July)</b>
<i>Morning (10.30am-1pm)</i>
PCRs' opening "hot tub", to include a presentation of up to 15 minutes from each PCR
<i>Afternoon (2pm-4.30pm)</i>
O'Higgins opening (1 hour 15 minutes) Evans opening (1 hour 15 minutes)
<b>DAY 2 (13 July)</b>
<i>Session 1 (10.30am-1pm)</i>
<b><u>Evans expert evidence (experts called simultaneously)</u></b> Up to one hour of questions from the Respondents Up to one hour of questions from the O'Higgins PCR Up to 30 minutes of re-examination
<i>Session 2 (2pm-4.30pm)</i>
<b><u>O'Higgins expert evidence (experts called simultaneously)</u></b> Up to one hour of questions from the Respondents Up to one hour of questions from the Evans PCR Up to 30 minutes of re-examination
<b>DAY 3 (14 July)</b>
<i>All day (10.30am-1pm; 2pm-4.30pm)</i>
Proposed Defendants' response to the CPO Applications (5 hours)
<b>DAY 4 (15 July)</b>
<i>Morning (10.30am-1pm)</i>
Proposed Defendants' response to the CPO Applications (2 hours) O'Higgins closing submissions (30 minutes)
<i>Afternoon (2pm-4.30pm)</i>
O'Higgins closing submissions (2 hours) Evans closing submissions (30 minutes)
<b>DAY 5 (16 July)</b>
<i>Morning (10.30am-1pm)</i>
Evans closing submissions (2 hours 30 minutes)
<i>Afternoon (2pm-4.30pm)</i>
Evans closing submissions (45 minutes) O'Higgins reply (1 hour 15 minutes) 30 minutes for wrap-up