



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

Case No: 1523/7/7/22

BETWEEN:

**BSV CLAIMS LIMITED**

Applicant / Proposed Class Representative

- v -

**(1) BITTYLICIOUS LIMITED**

**(2) PAYWARD LIMITED**

**(3) SHAPESHIFT GLOBAL LIMITED**

**(4) PAYWARD, INC.**

**(5) SHAPESHIFT AG**

**(6) BINANCE EUROPE SERVICES LIMITED**

Respondents / Proposed Defendants

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**REASONED ORDER (PERMISSION TO APPEAL)**

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**UPON** the Applicant's application dated 29 July 2022, and amended on 6 October 2023 in Case No. 1523/7/7/21 BSV Claims Limited v Bittylicious & Others for a collective proceedings order pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015

**AND UPON** the Sixth Proposed Defendant, Binance Europe Services Limited's application dated 16 February 2024 for strike out and/or reverse summary judgment in respect of the main category of loss claimed for Proposed Sub-Class B

dated 16 February 2024 for strike out and/or reverse summary judgment in respect of the main category of loss claimed for Proposed Sub-Class B

**AND UPON** hearing counsel for the parties at an CPO Application and strike out/summary judgment hearing on 5 June 2024

**AND UPON** the Tribunal's judgment granting the application for certification of the proposed claims, subject to the strike out of the loss of chance claim for Sub-Class B dated 26 July 2024 ([2024] CAT 48) (**the Judgment**)

**AND UPON** considering the Applicant's application dated 13 September 2024 for permission to appeal the Judgment

**IT IS ORDERED THAT:**

1. The Applicant is refused permission to appeal the Judgment.

**REASONS**

1. The grounds on which permission to appeal is sought are as follows:
  - (a) That the Tribunal erred in law in concluding prior to trial that the 'market mitigation rule' renders the foregone growth effect irrecoverable subject only to the question of BSV holders' awareness of the delisting events, in particular by proceeding without further evidence at trial as to whether investments in other cryptocurrencies were sufficiently substitutable for the purposes of the application of the market mitigation rule (**Ground 1**).
  - (b) That the Tribunal erred in law in striking out the loss of a chance claim for Sub-Class B, in particular by confining the parameters of a loss of chance claim to circumstances of a specific opportunity dependent on the actions of a particular third party (**Ground 2**).

2. The Tribunal does not consider that either ground has a real prospect of success, or that there is any other compelling reason for the appeal to be heard.
3. In relation to Ground 1, as the Tribunal found at paragraphs 64–65 of the Judgment, the PCR’s own evidence confirmed that there was an available market on which substitutable cryptocurrency investments could have been made, and there was no suggestion in the evidence that a different picture might emerge at trial on that point.
4. As to Ground 2, the Tribunal’s decision was supported by an established line of authorities set out at paragraphs 81–85 of the Judgment. The Applicant has not sought to explain why it considers that case-law to have been either wrong or incorrectly applied by the Tribunal.
5. The Tribunal does not consider that the fact that the claims concern cryptocurrencies represents a compelling reason for an appeal to be heard, in relation to the application of established legal principles in the form of the market mitigation rule and loss of a chance doctrine.

**The Hon. Mrs Justice Bacon**  
Chair of the Competition Appeal Tribunal

Made: 24 September 2024  
Drawn: 24 September 2024