

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Claim No.: CL-2018-000840



CL-2018-000840

BEFORE: The Honourable Mr Justice Butcher

DATED: 15 December 2021

BETWEEN:—

ALLIANZ GLOBAL INVESTORS GmbH and others

Claimants/
Respondents

-and-

BARCLAYS BANK PLC and others

Defendants/
Applicants

CONSENT ORDER
(AMENDMENT APPLICATION AND ANNEX A DISPUTE)

UPON the Claimants' claim against the Defendants (the "**Claim**");

AND UPON the Defendants' application made orally at the remote Case Management Conference on 20 October 2021 (the "**CMC**") to amend paragraph 37.3 of the Defendants' Joint Further Particulars of Avoided Loss, Mitigation and Pass-on dated 21 May 2021 (the "**Joint Further Particulars**") by substituting "35" for "35.3" (the "**Amendment Application**");

AND UPON the dispute between the parties as to the terms of paragraph 4 of Annex A to the Draft Composite Order dated 18 October 2021 (as set out at Annex B to the CMC Order referred to below) (the "**Annex A Dispute**");

AND UPON the parties having agreed that the Claim, insofar as brought in reliance on section 2 of the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the European Union, should be transferred to the Competition Appeal Tribunal (the “**Tribunal**”) and the Court having indicated at the CMC that the Claim should be transferred by Order of this Court;

AND UPON the order of His Honour Judge Pelling QC dated 25 October 2021 made following the CMC providing directions for the hearing of the Amendment Application and the Annex A Dispute (the “**CMC Order**”);

AND UPON a hearing being listed on 20 December 2021 in front of His Honour Judge Pelling QC to determine (if necessary) the Amendment Application and the Annex A Dispute (among other things) (the “**Hearing**”);

AND UPON the Defendants having notified the Claimants in correspondence dated 29 November 2021 that they intend to amend paragraph 35.1 of the Joint Further Particulars;

AND UPON the Claimants having agreed in correspondence (i) the Amendment Application and (ii) to disclose the documents and information that are the subject of the Annex A Dispute;

AND UPON the Claimants being required to disclose certain documents and information by 21 January 2022, pursuant to paragraphs 1 to 3 of Annex A to the CMC Order;

AND UPON the Defendants having consented to an extension of the deadline for disclosure pursuant to paragraphs 1 to 3 of Annex A to the CMC Order, to 1 March 2022

IT IS ORDERED BY CONSENT THAT:—

Amendment Application

1. The Defendants have permission to amend paragraph 37.3 of the Joint Further Particulars by substituting “35” for “35.3”.

Annex A Dispute

2. By **1 March 2022** the Claimants shall provide:
 - a. A statement setting out all Service Providers engaged by the Claimants who were remunerated by way of a fee that was linked to the net asset value and/or otherwise connected to performance;

- b. Simultaneous disclosure and inspection of documents to substantiate how these Service Providers were remunerated, including all agreements with such Service Providers; and
 - c. Either (i) a statement (which can be in the same document as the statement referred to at paragraph 2(a) above) setting out any payment of incentive or other performance-related fees with these Service Providers or (ii) simultaneous disclosure and inspection of documents evidencing such payments. For the avoidance of doubt, each Claimant is at liberty to choose which of option (i) or (ii) it wishes to avail itself of.
3. Paragraphs 1 to 3 of Annex A to the CMC Order be varied such that the words “1 March 2022” be substituted in place of the words “21 January 2022”.

Transfer to the Tribunal

4. The Claim, insofar as brought in reliance on section 2 of the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the European Union (“**the Transferred Proceedings**”), will be transferred to the Tribunal pursuant to sections 16(1) of the Enterprise Act 2002 and regulation 2(a) of the Section 16 Enterprise Act 2002 Regulations 2015 SI 2015/1643 and/or section 16(4) of the Enterprise Act 2002.
5. Pursuant to paragraph 3 of Practice Direction 30 of the CPR, this Order shall take effect from the date of the making of this Order.
6. The sending of this Order to the parties and to the Tribunal shall constitute notice to them of the transfer of the Transferred Proceedings for the purposes of paragraphs 8.5 and 8.12 of Practice Direction 30 and CPR Rule 30.4(1).
7. The Claim excepting the Transferred Proceedings is stayed pending the final determination of the Transferred Proceedings by the Tribunal, including any appeal or further appeal from the Tribunal.
8. For the avoidance of doubt:
 - a. neither this Order giving effect to the said transfer, nor the transfer itself, is intended to alter, limit or exclude in any respect any element of the Claimants’ Claim as constituted in this Court prior to the transfer taking effect;

- b. if, and to the extent that, any element of the Claim as constituted in this Court prior to the transfer taking effect is not capable of falling within the jurisdiction of the Tribunal on a transfer or would be altered, limited or excluded by this Order or the transfer, it is not subject to this Order and remains within the jurisdiction of this Court;
- c. the Claim was and shall continue to be regarded as having been commenced in this Court. Any further statements of case or amendments to a statement of case shall be made in accordance with the Civil Procedure Rules and the Commercial Court Guide, and not with the Competition Appeal Tribunal Rules 2015 (or any other rules applicable in the Tribunal);
- d. any appeal to the Court of Appeal against the determination by the Tribunal of the issues transferred or an Order of the Court giving effect to that determination shall be treated for all purposes as an appeal from a judgment of this Court and, accordingly, shall be governed by the rules in CPR Part 52; and
- e. this Court may give such further directions or make such further Order as it thinks fit in connection with the transfer and/or with any such element referred to above.

Final matters

- 9. The Hearing be vacated.
- 10. References in this Order to dates are to 4pm on that date.
- 11. Costs in the case.
- 12. This Order shall be served by the First Defendant (on behalf of all Defendants) upon the Claimants.