



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 -

BARCLAYS BANK PLC AND OTHERS

Respondents/ Proposed Defendants

MITSUBISHI UFJ FINANCIAL GROUP, INC. AND ANOTHER

Proposed Objectors

AND BETWEEN:

PHILLIP EVANS

Applicant/ Proposed Class Representative

- v -

BARCLAYS BANK PLC AND OTHERS

Respondents/ Proposed Defendants

ORDER

UPON the proposed collective proceedings under section 47B of the Competition Act 1998 relating to foreign exchange rates with case number 1329/7/7/19 (as however amended) commenced by Michael O’Higgins FX Class Representative Limited (the “**O’Higgins PCR**”) on 29 July 2019 (the “**O’Higgins Proceedings**”)

AND UPON the proposed collective proceedings under section 47B of the Competition Act 1998 relating to foreign exchange trading with case number

1336/7/7/19 (as however amended) commenced by Mr Phillip Evans on 11 December 2019 (the “**Evans Proceedings**”)

AND UPON reading the applications of: (i) the O’Higgins PCR filed on 29 July 2019 in the O’Higgins Proceedings; and (ii) Mr Evans filed on 11 December 2019 in the Evans Proceedings for a collective proceedings order pursuant to section 47B of the Competition Act 1998 and Rule 75 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “**Tribunal Rules**”) (individually, a “**CPO Application**”; together, the “**CPO Applications**”)

AND HAVING REGARD TO the terms of: (a) the Tribunal’s Order in the O’Higgins Application made on 6 November 2019 (the “**O’Higgins Directions Order**”); and (b) the Tribunal’s Confidentiality Ring Order in the O’Higgins Application made on 6 November 2019 (the “**O’Higgins Confidentiality Ring Order**”)

AND UPON the application by the Seventh and Eighth Proposed Defendants in the Evans Application (together, “**MUFG**”) to be admitted as parties with an interest in the O’Higgins Application pursuant to Rule 76(10)(c) of the Tribunal Rules by letter dated 5 February 2020

AND UPON hearing counsel for the parties at a case management conference on 13 February 2020

AND UPON the Tribunal being informed by counsel for the Proposed Defendants in the O’Higgins Application that, subject to certain reservations of rights, there are no issues relating to the identity and/or funding of the O’Higgins PCR that would preclude it from being authorised as a suitable Class Representative pursuant to Rule 78 of the Tribunal Rules for determination as preliminary issues pursuant to paragraph 13 of the O’Higgins Directions Order

AND UPON the Proposed Defendants in the O’Higgins Application reserving their rights to apply for security for costs and to raise issues relating to the identity and/or funding of the O’Higgins PCR at a later stage

AND UPON the O’Higgins PCR agreeing to treat any documents disclosed to it from the Evans Proceedings in accordance with Rule 102 of the Tribunal Rules as if it were a party to the Evans Proceedings

AND UPON Mr Evans agreeing to treat any documents disclosed to him from the O’Higgins Proceedings in accordance with Rule 102 of the Tribunal Rules as if he were a party to the O’Higgins Proceedings

AND UPON the parties to this Order (“**All Parties**”): (a) agreeing under Rule 102(2)(c) of the Tribunal Rules; and (b) insofar as documents have been disclosed into a confidentiality ring, seeking the Tribunal’s permission under Rule 102(3) of the Tribunal Rules, that, subject to and in accordance with the terms of this Order (and any further order):

- i. documents that have been or are provided (including, for the avoidance of doubt, documents that have been disclosed, served or filed) in the O’Higgins Proceedings may be used by All Parties for the purpose of the Evans Proceedings;
- ii. documents that have been or are provided (including, for the avoidance of doubt, documents that have been disclosed, served or filed) in the Evans Proceedings may be used by All Parties for the purpose of the O’Higgins Proceedings; however
- iii. All Parties shall have liberty to apply to vary this in accordance with paragraph 8 of this Order.

IT IS ORDERED THAT:

Forum of the Evans Proceedings

1. Pursuant to Rules 18, 52 and 74 of the Tribunal Rules, the Evans Proceedings be treated as proceedings in England and Wales.

MUFG’s application to be admitted as parties with an interest in the O’Higgins Application

2. MUFG be admitted in the O’Higgins Application as parties with an interest seeking to object to the CPO Application pursuant to Rule 76(10)(c) of the Tribunal Rules and hereafter be referred to as the Proposed Objectors in respect of the O’Higgins Application. For the avoidance of doubt, Rule 102 is applicable to documents disclosed to MUFG as a Proposed Objector in the O’Higgins Application subject to paragraphs 6 and 7 of this Order below.

Confidentiality

3. A confidentiality ring (the “**Joint Confidentiality Ring**”) be established by separate order (the “**Joint Confidentiality Ring Order**”) which differentiates between “**Inner Confidentiality Ring Information**” and “**Outer Confidentiality Ring Information**” (as there defined). Information disclosed into the Joint Confidentiality Ring pursuant to this Order is to be disclosed as Outer Confidentiality Ring Information unless otherwise stated, subject to and in accordance with the Joint Confidentiality Ring Order.

Exchange of documents provided to date in each CPO Application

4. By 4pm on 21 February 2020, or within one business day of the Joint Confidentiality Ring being established (whichever is later), the exchange of documents provided (which includes, for the avoidance of any doubt, documents disclosed, served or filed) to date in the CPO Applications (excluding all correspondence, unless that correspondence has already been provided to the Tribunal) shall take place as follows:
 - a. All documents provided (including, for the avoidance of any doubt, documents disclosed, served or filed) to date, to or by the Proposed Defendants to the O’Higgins Application, including the two Decisions of the European Commission in Case COMP/40135 – FOREX dated 16 May 2019, which were disclosed pursuant to paragraphs 5 and 6 of the O’Higgins Directions Order (the “**Decisions**”), shall be provided by the party that provided the document(s) (hereafter the “**Providing Party**”) to Mr Evans and MUFG. Any document (or part thereof) which contains Confidential Information as defined in the O’Higgins Confidentiality Ring Order shall be provided to Mr Evans and MUFG by way of disclosure into the Joint Confidentiality Ring (this includes, for the avoidance of doubt, the Decisions).
 - b. All documents provided (including, for the avoidance of any doubt, documents disclosed, served or filed) to date, to or by the Proposed Defendants to the Evans Application shall be provided by the Providing Party to the O’Higgins PCR. The following documents shall

be provided to the O’Higgins PCR by way of disclosure into the Joint Confidentiality Ring:

- i. The Litigation Funding Agreement which appears as Exhibit PGE4 to the First Witness Statement of Phillip Gwyn James Evans dated 10 December 2019; and
 - ii. The after-the-event insurance policy applicable to the Evans Application, which appears as Exhibit PGE5 to the First Witness Statement of Phillip Gwyn James Evans dated 10 December 2019.
- c. Mr Evans shall serve the documents referred to in paragraphs 4.b.i and 4.b.ii of this Order on the Proposed Defendants to the Evans Application by way of disclosure into the Joint Confidentiality Ring.

Future provision of documents on all parties to the O’Higgins Proceedings and the Evans Proceedings

5. While both the O’Higgins Proceedings and the Evans Proceedings remain extant and neither has been stayed, unless either the Tribunal directs otherwise or All Parties agree otherwise:
- a. All documents filed after the date of this Order in either the O’Higgins Proceedings or the Evans Proceedings shall be provided by the party filing the document(s) to All Parties (subject to and in accordance with the Joint Confidentiality Ring Order, where appropriate); and
 - b. All documents otherwise provided after the date of this Order (including for the avoidance of any doubt, documents disclosed or served) to all parties to either the O’Higgins Proceedings or the Evans Proceedings shall be provided by the Providing Party to All Parties (subject to and in accordance with the Joint Confidentiality Ring Order, where appropriate).

Use of documents provided pursuant to this Order

6. Pursuant to Rule 102(2) and (3) of the Tribunal Rules, All Parties are permitted to use all documents provided (including, for the avoidance of any

doubt, documents disclosed, filed or served) to date and in future in the O'Higgins Proceedings for the purposes of the Evans Proceedings, subject to paragraph 8 below.

7. Pursuant to Rule 102(2) and (3) of the Tribunal Rules, All Parties are permitted to use all documents provided (including, for the avoidance of any doubt, documents disclosed, filed or served) to date and in future in the Evans Proceedings for the purposes of the O'Higgins Proceedings, subject to paragraph 8 below.
8. All Parties shall have liberty to apply to vary the terms of paragraphs 6 and 7 above, including (for the avoidance of any doubt) where one of the O'Higgins Proceedings or the Evans Proceedings is dismissed or stayed but the other continues.

Permission to amend the Evans Application

9. Pursuant to Rule 32 of the Tribunal Rules, Mr Evans shall have permission to amend the Evans Application in consequence of disclosure of the Decisions pursuant to paragraph 4.a above, and shall file and serve the amended Evans Application within four weeks of such disclosure.

General

10. Costs be reserved.
11. There be liberty to apply.

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

Made: 18 March 2020
Drawn: 19 March 2020