



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

Case: 1329/7/7/19

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

---

**ORDER**

---

**UPON** reading the application filed on 29 July 2019 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**”) (the “**CPO Application**”)

**AND UPON** reading the material submitted by the parties

**AND UPON** hearing counsel for the parties at a case management conference on 6 November 2019

## **IT IS ORDERED THAT:**

### **Forum**

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

### **Confidentiality**

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

### **Disclosure of funding arrangements**

3. Within one business day of the Confidentiality Ring being established by separate order of the Tribunal, the Proposed Class Representative shall disclose into the Confidentiality Ring Schedule 1 to the Litigation Funding Agreement reproduced at Exhibit NAP1 to the First Witness Statement of Neil Andrew Purslow dated 28 July 2019.
4. By 4pm on 13 November 2019 or within one business day of the Confidentiality Ring being established (whichever is later), the Proposed Class Representative shall disclose into the Confidentiality Ring any after-the-event insurance policy (including any schedules and endorsements) applicable to its Proposed Collective Proceedings.

### **Disclosure of Commission Decisions and amendment of the CPO Application**

5. By 4pm on 4 December 2019, the Proposed Defendants shall:
  - (a) agree the minimum scope of redactions to the two Decisions of the European Commission in Case COMP/4.013 – Forex dated 16 May 2019 which they consider are required in respect of legal professional privilege, leniency, *Pergan* and/or settlement material; and

- (b) seek comments and any necessary approval from the European Commission in order to disclose the consequent text to the Proposed Class Representative.
- 6. The Proposed Defendants shall, as soon as reasonably practicable following receipt of any comments and approval from the European Commission, consider the comments and approval, agree between them any changes to redactions which they consider are required in respect of legal professional privilege, leniency, *Pergan* and/or settlement material based on the comments and/or approval, and disclose the redacted text into the Confidentiality Ring.
- 7. Pursuant to Rule 32 of the Tribunal Rules, the Proposed Class Representative shall have permission to amend the CPO Application in consequence of sight of the redacted Commission Decisions, and shall file and serve the amended CPO Application within six weeks following the disclosure referred to in paragraph 6 above.

**Disclosure of contracts**

- 8. By 4pm on 4 December 2019, each of the Proposed Defendants which entered into contracts with customers for spot and/or outright forward foreign exchange transactions concluded through an office in the EU or Switzerland in the period from 18 December 2007 to 31 January 2013 (the “**Claim Period**”) shall:
  - (a) provide into the Confidentiality Ring 100 of such of its contracts (or, if a Proposed Defendant has fewer such contracts, those that it has), which are not to be selected according to any design (which may be redacted to remove any client identifying information);
  - (b) file and serve on the Proposed Class Representative a short statement:
    - (i) describing how the sample contracts disclosed were obtained; and
    - (ii) identifying the standard form contracts which that Proposed Defendant preferred counterparties to sign up to during the Claim Period in relation to such transactions.

### **Issues and materials for preliminary issues hearings**

9. By 4pm on 13 December 2019, the Proposed Defendants shall file and serve any statement of case and evidence on which they intend to rely at the hearing described in paragraph 13 below.
10. By 4pm on 31 January 2020, the Proposed Class Representative shall file and serve any statement of case and any evidence in reply on which it intends to rely at the hearing described in paragraph 13 below.
11. By 4pm on 4 February 2020, the Proposed Class Representative shall inform the Proposed Defendants and the Tribunal in writing whether the Proposed Class Representative seeks to have any further preliminary issue that arises out of the disclosure referred to in paragraph 8 above determined at the provisional hearing referred to in paragraph 14 below and, if so, shall state what the issue is.
12. By 4pm on 7 February 2020, the parties shall file and serve by simultaneous exchange skeleton arguments for the hearing described in paragraph 13 below.

### **Preliminary issues hearings**

13. There be a hearing on 13 and 14 February 2020 for the purposes of determining whether there is anything about the identity and/or funding of the Proposed Class Representative that would preclude it from being authorised as a suitable Class Representative pursuant to Rule 78 and to determine whether any issue identified by the Proposed Class Representative should be heard as provided for in paragraph 14 below.
14. A further preliminary issues hearing be provisionally listed to commence on 13 July 2020, with a provisional time estimate of five days, for the purpose of determining any issues identified pursuant to paragraph 11 above that the Tribunal decides should be determined prior to the CPO Application hearing referred to in paragraph 16 below.

### **Further CMC**

15. A Case Management Conference be listed for one day on 23 October 2020. If by 16 October 2020 the Supreme Court has not handed down its judgment in

*Merricks v Mastercard Inc*, the hearing shall be vacated and the parties shall instead by 23 October 2020 file brief written submissions on what, if any, orders the Tribunal should make, including as to the date of hearing of the CPO Application.

### **Hearing of CPO Application**

16. The hearing of the CPO Application be listed to commence on 1 March 2021, with a provisional time estimate of ten days.

### **General**

17. Costs be in the CPO Application.
18. There be liberty to apply.

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

Made: 6 November 2019  
Drawn: 26 November 2019