



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

ORDER

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 and 11 December 2020

AND UPON considering the written submissions of the parties filed in advance of a case management conference (“**CMC**”)

AND UPON hearing counsel for the parties at a CMC held remotely on 15 January 2021

IT IS ORDERED THAT:

Publicity

1. The O’Higgins PCR and the Evans PCR shall endeavour to agree a joint publicity notice (the “**Joint Publicity Notice**”) and submit a version or versions to the Tribunal by 4pm on 29 January 2021 for approval.
2. Within one week of approval by the Tribunal of the Joint Publicity Notice, the O’Higgins PCR and the Evans PCR shall publicise the CPO Applications using the approved Joint Publicity Notice.

Pleadings

3. The Proposed Defendants and Proposed Objectors shall file and serve their response(s) to each of the O’Higgins Application and the Evans Application, including any evidence in support, by 4pm on 26 February 2021.
4. By 4pm on 23 April 2021:
 - a. the O’Higgins PCR shall file and serve any reply, including any evidence in support, to the Proposed Defendants’ and Proposed Objectors’ response(s) to the O’Higgins Application;
 - b. the Evans PCR shall file and serve any reply, including any evidence in support, to the Proposed Defendants’ response(s) to the Evans Application; and
 - c. the O’Higgins PCR and the Evans PCR shall file and serve their submissions, including any evidence in support, regarding which of them would be the most suitable to act as class representative for the purposes of rule 78(2)(c) of the Tribunal Rules (the “**Carriage Issue**”).
5. If either the O’Higgins PCR or the Evans PCR seeks to apply for a direction (a “**Closed Material Direction**”) that any document (or part thereof) they seek to rely on in support of the Carriage Issue (the “**Closed Material**”) shall be disclosed only to the Tribunal and the other Proposed Class Representative, and shall not be disclosed to the Proposed Defendants and Proposed Objectors, the following procedure shall apply:
 - a. The party seeking a Closed Material Direction shall file and serve on all parties to the O’Higgins Application and the Evans Application by 4pm on 23 April 2021:
 - i. a statement of grounds for seeking a Closed Material Direction, in schedule form. The schedule shall include: (i) a summary or “gist” of the Closed Material; (ii) an explanation of the relevance of the Closed Material to the issues before the Tribunal; and (iii) an explanation of why disclosure of the Closed Material is said to require limitation; and

- ii. submissions identifying the power of the Tribunal to make a Closed Material Direction.
- b. The Closed Material itself shall be filed with the Tribunal (appropriately labelled as Closed Material) and not served on the Proposed Defendants and Proposed Objectors.¹
- c. Following receipt of any application for a Closed Material Direction, any other party to the Evans Application and the O’Higgins Application who wishes to do so shall file submissions in response within 14 days.
- d. Thereafter, the Tribunal shall hear argument (in a manner to be determined) on whether it has the power to make a Closed Material Direction, and shall decide whether it has such power.
- e. If the Tribunal decides that it does have such power, it shall give such further directions as it considers appropriate for determining whether it should make the Closed Material Direction sought. This may (without prejudice to any question of the power of the Tribunal to make any such directions) include directions as to: (i) the service of the Closed Material; and (ii) the right of the party seeking a Closed Material Direction to withdraw any Closed Material filed with the Tribunal in the event that the Tribunal decides that it should not in the circumstances make a Closed Material Direction.
- f. For the avoidance of doubt:
 - i. Any party seeking a Closed Material Direction shall ensure that the Closed Material is as limited as possible; and
 - ii. Nothing in this paragraph permits a party not to disclose or give inspection of a document that it is obliged or ordered to disclose or give inspection of.

¹ For the avoidance of any doubt, the question of whether and when to consider any Closed Material filed is a judicial decision for the Tribunal. That decision will be made independently of the filing of such Closed Material.

6. By 4pm on 4 May 2021:
 - a. Any person with an interest (including any member of the proposed class(es), an “**Interested Person**”) may object to either or both of the CPO Applications or the authorisation of either or both of the Proposed Class Representatives by writing to the Tribunal stating their reasons for objecting.
 - b. Any Interested Person who seeks permission to make written and/or oral submissions at the hearing of the CPO Applications, is to make such an application to the Tribunal, supported by reasons. For the avoidance of any doubt, any written submissions and/or evidence sought to be adduced must be filed with the application for permission.

The Tribunal shall ensure that any such interventions are appropriately notified to the O’Higgins PCR, the Evans PCR, the Proposed Defendants and the Proposed Objectors. The participation of such Interested Persons notified by the Tribunal to the parties of the O’Higgins Application and Evans Application shall be in accordance with the procedure which the Tribunal thinks fit to secure that the proceedings are dealt with justly and at proportionate cost.

7. The Proposed Defendants and Proposed Objectors shall file and serve any reply to the material served by the O’Higgins PCR and the Evans PCR (and any Interested Person, if any), including any evidence in support, by 4pm on 4 June 2021.
8. The O’Higgins PCR and the Evans PCR shall file and serve any reply, including any evidence in support, by 4pm on 11 June 2021.

CPO hearing and hearing preparation

9. The O’Higgins PCR and the Evans PCR shall jointly file six hard copies and an electronic version of an agreed joint hearing bundle (liaising in advance with the Tribunal Registry) by 4pm on 16 June 2021.
10. A hearing shall be listed for 21 June 2021, with a time estimate of a day, to be vacated if not needed. The purpose of the hearing shall be to hold: (i) a “teach in”; and/or (ii) a pre-hearing review (“**PHR**”). The parties shall endeavour to

agree a proposed agenda for the “teach in” and any PHR. They shall file an agreed proposed agenda or, in default of agreement, proposed agendas and brief written submissions in support by 4pm on 24 May 2021.

11. The parties shall file and exchange skeleton arguments by 4pm on 2 July 2021.
12. The O’Higgins PCR and the Evans PCR shall jointly file six hard copies and an electronic version of an agreed joint authorities bundle (liaising in advance with the Tribunal Registry) by 4pm on 7 July 2021.
13. The hearing of the CPO Applications shall be listed to commence on 12 July 2021 with a time estimate of five days.

Miscellaneous

14. Costs be reserved.
15. There be liberty to apply.

M. A. Smith.

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

Made: 15 January 2021
Drawn: 10 February 2021