COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER SECTION 47B OF THE COMPETITION ACT 1998

CASE NO. 1329/7/7/19

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) ("the Rules"), the Registrar gives notice of the receipt on 29 July 2019 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 ("the Act"), by Michael O'Higgins FX Class Representative Limited (the "Applicant/Proposed Class Representative") against Barclays Bank PLC, Barclays Capital Inc., Barclays Execution Services Limited, Barclays PLC, Citibank N.A., Citigroup Inc., JPMorgan Chase & Co., JPMorgan Chase Bank National Association, J.P. Morgan Europe Limited, J.P. Morgan Limited, NatWest Markets Plc, The Royal Bank of Scotland Group plc and UBS AG (together, "the Respondents/Proposed Defendants"). The Applicant/Proposed Class Representative is represented by Scott+Scott Europe LLP, St. Bartholomew House, 90-94 Fleet Street, London, EC4Y 1DH (Reference: Belinda Hollway).

The Applicant/Proposed Class Representative makes an application for a collective proceedings order permitting it to act as the class representative bringing opt-out collective proceedings ("the Application").

The proposed collective proceedings would combine follow-on claims for damages under section 47A of the Act caused by the Respondents/Proposed Defendants' breach of statutory duty in infringing Article 101(1) of the Treaty on the Functioning of the European Union ("TFEU") and Article 53 of the Agreement on the European Economic Area ("EEA Agreement"), as determined by the European Commission ("the Commission") in two separate infringement decisions both adopted on 16 May 2019 (Case AT.40135 FOREX (Three Way Banana Split) and Case AT.40135 FOREX (Essex Express)) (each a "Settlement Decision" and together "the Settlement Decisions").

The Application states that the central finding of the Commission in the Settlement Decisions is that there were two cartels in the spot foreign exchange market. The first cartel involved all of the Respondents/Proposed Defendants and operated between 18 December 2007 and 31 January 2013. The second cartel involved three of those undertakings (as well as Bank of Tokyo-Mitsubishi) and operated between 14 December 2009 and 31 July 2012. The Commission therefore found that the anticompetitive conduct lasted from 18 December 2007 to 31 January 2013 ("the Relevant Period"). The anti-competitive conduct that the Respondents/Proposed Defendants were engaged in and which is the subject matter of the Settlement Decisions comprised the exchange of commercially sensitive information and trading plans in relation to ongoing foreign exchange ("FX") trades, as well as the coordination of trading strategies. The anti-competitive conduct was coordinated through interbank chatrooms.

The proposed class includes all persons (other than certain excluded persons) who during the Relevant Period entered into one or more Relevant Foreign Exchange Transactions (as defined in the Application) in the European Economic Area (other than as an intermediary). The Application states that the proposed class definition is, in summary, intended to capture all the varieties of "main customers" of FX traders referred to in the Commission's press release of 16 May 2019 (summarising the key findings reached in the Settlement Decisions), namely, "asset managers, pension funds, hedge funds, major companies and other banks".

According to the Application, the claims raise common issues which comprise: (i) whether the Tribunal has jurisdiction over the claims; (ii) what relevant substantive law(s) is/are applicable to the claims; (iii) what the relevant limitation period(s) is/are; (iv) whether and to what extent the infringements of Article 101(1) of the TFEU and Article 53(1) of the EEA Agreement identified in the Settlement Decisions had an impact on the price at which Relevant Foreign Exchange Transactions were concluded in the Relevant Period (the extent of the "Price Impact"); (v) the aggregate volume of commerce affected by the Price Impact; (vi) the rate of

interest to be awarded to the proposed class members; and (vii) whether interest should be awarded on a simple or compound basis.

The Applicant/Proposed Class Representative submits that it is just and reasonable for it to act as class representative because:

1. The Applicant/Proposed Class Representative will act fairly and reasonably in the interests of the class members:

   (a) The Applicant/Proposed Class Representative has been incorporated as a special purpose vehicle ("SPV") for the purpose of the proposed collective proceedings which shields Mr O'Higgins himself from personal risk and allows for a clear succession mechanism in the unlikely event that he was unable to continue to act.

   (b) The structure of the SPV means that, in his role as sole member and director of the Applicant/Proposed Class Representative, Mr O'Higgins will have complete control over the decisions of the SPV. As such, the proposed class will receive the benefits of Mr O'Higgins' experience and expertise in the proposed collective proceedings.

   (c) Mr O'Higgins is well suited to managing the proposed collective proceedings due to his experience in competition law, his experience in the field of financial services and the numerous and varied positions of public responsibility which he has held.

   (d) The Applicant/Proposed Class Representative has instructed a team of legal and expert advisers comprising of highly experienced competition litigators, including the use of Scott+Scott Attorneys at Law LLP who are acting as co-lead counsel in the US class action relating to collusion in the FX market ("the US Proceedings").

   (e) The Applicant/Proposed Class Representative has developed a comprehensive litigation plan as required by Rule 78(3)(c).

   (f) The Applicant/Proposed Class Representative has entered into a financing agreement to fund the costs of the proposed collective proceedings subject to the claim reaching various procedural stages.

2. The Applicant/Proposed Class Representative does not have a material interest that is in conflict with the interests of class members and is committed to managing the proposed collective proceedings in the best interest of all class members.

3. The Applicant/Proposed Class Representative has sufficient funding arrangements in place to pay the Respondent/Proposed Defendants' recoverable costs if ordered to do so.

4. At the time of filing the Application, the Applicant/Proposed Class Representative is not aware of any other applicant seeking approval to act as the class representative in respect of the same claims.

The Application states that the Claims are suitable to be brought in collective proceedings because:

1. The proposed collective proceedings are an appropriate means for the fair and efficient resolution of the common issues. The likely size of the proposed class is such that it would be inefficient to require each claim to be brought individually.

2. Although the costs associated with the proceedings are substantial, the amounts which the proposed class collectively stands to gain by the proceedings are substantial, such that the costs should properly be regarded as proportionate.

3. The Applicant/Proposed Class Representative is not aware of any separate proceedings being commenced in respect of either Settlement Decision.

4. The claims are suitable for an aggregate award of damages because it is possible to extrapolate an aggregate figure from the detailed transaction data which the Respondents/Proposed Defendants will have in their possession and which they will have to provide, by way of disclosure in due course. An aggregate award of damages will enable victims of the Respondents/Proposed Defendants' anti-competitive conduct to recover damages where they might otherwise not be able to.

5. It does not appear to the Applicant/Proposed Class Representative that there are any other means available for resolving the dispute.

6. The US Proceedings are a class action based upon collusion in the FX market in a similar period and relating to the same and other similar cartels in the FX market. By final judgments entered on 6 August 2018 by the US District Court for the Southern District of New York in the US Proceedings, fifteen of the sixteen banks/banking groups who were defendants in that litigation, including those banking groups of each of the Respondents/Proposed Defendants, agreed to pay a total of over USD 2.3 billion in civil settlements. The US Proceedings continue against a further banking group (Credit Suisse).

7. A Plan of Distribution has been approved in the US ("US Plan of Distribution"), notices were disseminated to potential US class members, their claims were assessed by administrators and some funds have already been distributed. The US Plan of Distribution and administrative scheme appear to be a sound starting point for developing a distribution model for any aggregate damages which may ultimately be awarded in the proposed collective proceedings.

8. In order to promote efficiencies and costs savings, the Applicant/Proposed Class Representative has engaged the same claims administrator as used for the US Plan of Distribution.

According to the Application, the proposed collective proceedings should proceed on an opt-out basis because the claims have a real prospect of success and it is impracticable for the proceedings to be brought solely on an opt-in basis

The relief sought in these proceedings is:

(1) An aggregate award of damages (including compound interest by way of damages) on behalf of the proposed class;
(2) Further interest on any damages awarded, pursuant to Rule 105(3), at such rate(s) and for such period(s) as the Tribunal deems fit; and
(3) The Applicant/Proposed Class Representative's costs, pursuant to Rule 104 of the Rules.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Victoria House, Bloomsbury Place, London WC1A 2EB, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar
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