

Made on behalf of: Applicant/Proposed Class Representative
Name of witness: Anthony John Maton
Number of statement: 1
Exhibits: AJM1 – AJM3
Date: 10 December 2019

IN THE COMPETITION APPEAL TRIBUNAL

Case Number: []

BETWEEN:

PHILLIP EVANS

Applicant/Proposed Class Representative

and

- (1) BARCLAYS BANK PLC
- (2) BARCLAYS CAPITAL INC.
- (3) BARCLAYS PLC
- (4) BARCLAYS EXECUTION SERVICES LIMITED
- (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) JPMORGAN CHASE BANK, N.A.
- (12) JPMORGAN CHASE & CO
- (13) NATWEST MARKETS PLC
- (14) THE ROYAL BANK OF SCOTLAND GROUP PLC
- (15) UBS AG

Proposed Defendants

FIRST WITNESS STATEMENT OF ANTHONY JOHN MATON

I, **ANTHONY JOHN MATON**, of Hausfeld & Co LLP, 12 Gough Square, London, EC4A 3DW, **WILL SAY AS FOLLOWS:**

Introduction

1. I am a solicitor of the Senior Courts of England and Wales and Managing Partner of Hausfeld & Co LLP in London (“**Hausfeld**”).

2. I make this statement in support of Phillip Evans’ application before the Competition Appeal Tribunal (the “**Tribunal**”) for a Collective Proceedings Order (“**CPO**”) to pursue collective proceedings on behalf of two classes of person who entered into certain types of foreign exchange (“**FX**”) transactions in the European Economic Area between 18 December 2007 and 31 January 2013 (the “**CPO Application**”). Together with David Lawne, I am the partner at Hausfeld with oversight of the CPO Application.
3. I confirm that, unless otherwise stated, the contents of this witness statement are within my own knowledge, and are true to the best of my knowledge, information and belief. Where the facts are not within my own knowledge, I have indicated my sources of information or belief.
4. I also confirm that, for the avoidance of doubt, in giving this statement I do not disclose any information that is subject to legal professional privilege, nor is any waiver of such privilege intended by this statement.
5. There is now produced and shown to me exhibits **AJM1 – AJM3** which I refer to below and which I exhibit to this statement.
6. I adopt the defined terms used in the Collective Proceedings Claim Form and the Litigation Plan below.

Background

7. As explained in the Claim Form, Mr Evans seeks the Tribunal’s permission to bring “opt-out” collective proceedings under section 47B of the Act, in respect of the Proposed Defendants’ breaches of Article 101 TFEU and Article 53 of the EEA Agreement. Those breaches are established in the following decisions made by the European Commission (the “**Commission**”) on 16 May 2019 (the “**Decisions**”):
 - a. Commission Decision in Case AT.40135-FOREX (Three Way Banana Split) C(2019) 3631 final (the “**Three Way Banana Split Decision**” or “**TWBS Decision**”); and
 - b. Commission Decision in Case AT.40135-FOREX (Essex Express) C(2019) 3621 final (the “**Essex Express Decision**” or “**EE Decision**”).
8. As explained at paragraph 65 of the Collective Proceedings Claim Form, Michael O’Higgins FX Class Representative Limited has also filed an application for a CPO before the Tribunal that proposes to represent broadly similar class members in respect of the same or similar claims (the “**O’Higgins Application**”).

9. In view of this overlap, it is expected that the Tribunal may wish to case manage the applications together and, in due course, will determine which applicant would be the most suitable class representative under Rule 78(2)(c).
10. Paragraph 6.32 of the Guide identifies three factors that are likely to be relevant to this assessment: the proposed class definition and scope of the claims; the quality of the litigation plan; and the experience of the lawyers of the competing class representatives.

Matters addressed in this witness statement

11. This witness statement sets out evidence relating to four matters:
 - a. Paragraphs 14 – 15 of the Collective Proceedings Claim Form and paragraph 118 of the Litigation Plan explain that Mr Evans has obtained disclosure of the Decisions from the Commission before filing the CPO Application. This witness statement summarises the steps taken by Mr Evans and his legal advisers to obtain this disclosure.
 - b. Paragraphs 114 - 117 of the Litigation Plan refer to other proceedings in respect of infringements of competition law concerning FX trading and the steps taken by Mr Evans and his legal advisers to obtain documents relating to those proceedings. In support of this, I explain below the steps taken to identify and collate information and materials from similar claims.
 - c. I summarise the pre-action correspondence with the Proposed Defendants and their legal representatives prior to filing the CPO Application, including our correspondence with the Tribunal and the parties to the O’Higgins Application before the first case management conference in that action.
 - d. Finally, as identified above, part of the Tribunal’s determination of the suitability of Mr Evans’ application will include an assessment of the experience of his legal representatives. I therefore provide information about the relevant experience of Mr Evans’ legal advisers.

A. Mr Evans’ efforts to obtain disclosure of the Decisions

12. When the Commission announced its Decisions on 16 May 2019, it issued a press release summarising the infringing behaviour identified in the Decisions, a copy of which is located at Annex 2 of the Claim Form. This press release remains the only information that has been publicly released by the Commission that documents the contents of the Decisions.

13. As Mr Evans explains in his witness statement, in view of the limited descriptions of the infringements in the press release, it was desirable to obtain copies of the Decisions before filing the Proposed Collective Proceedings. Accordingly, Mr Evans instructed Hausfeld to write to the Commission to request copies under the EU's Access to Documents Regulation (the "**Regulation**").¹ This requires the Commission to respond to such requests within 15 business days,² so it was not expected that taking this step should cause undue delay.
14. Unfortunately, it took much longer than expected to receive the Commission's final response to this request. Non-confidential versions of the Decisions were not made available to us until 1 October 2019. Since then, Mr Evans and his legal advisers have been working to prepare his CPO Application on the basis of the Decisions.
15. I summarise below the steps taken on Mr Evans's behalf to obtain disclosure of the Decisions. The correspondence referred to in this paragraph is exhibited in the paginated bundle at **AJM1** and page numbers are indicated in square brackets, below.
- a. On 5 July 2019, Hausfeld wrote to the Commission, for the attention of the Directorate-General for Competition ("**DG Competition**"), requesting disclosure of the non-confidential versions of each of the Decisions, under Article 6 of the Regulation (the "**Request**"). The Request relied on the decision of the General Court in *Schenker AG v Commission* EU:T:2014:854, which provides, in summary, that: (a) the Commission must release a non-confidential version of its decisions in antitrust cases where such a request is made under the Regulation; (b) the fact that a decision may be subject to outstanding confidentiality requests should not prevent disclosure of part of the decision which was not the subject matter of any requests for confidentiality; and (c) in such circumstances disclosure should be made of those parts of a decision without waiting for all requests for confidentiality to be finally settled. A copy of this letter is exhibited at **AJM1[1 - 6]**.
- b. The same day, we received an acknowledgement of receipt email from the DG Competition Access to Documents team, stating that our request for access to documents had been registered and that we would receive a reply within 15 business days, by 26 July 2019. A copy of this email is exhibited at **AJM1[7]**.

¹ Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2011 regarding public access to European Parliament, Council and Commission Documents. OJ L 145, 31.5.2001, pp.43-48.

² Article 7 of the Access to Documents Regulation.

- c. On 29 July 2019, we received an email from a representative of DG Competition stating, in relevant part:

“As DG Competition and the companies involved are in the process of establishing a public version of both settlement decisions that do not contain any business secrets or other confidential information, no public versions of these tests [sic] are currently available. DG Competition is trying to settle this issue as soon as possible with a view to a quick publication”. A copy of this email is exhibited at **AJM1[8]**.

- d. We responded by letter the same day (29 July 2019), noting that the email did not state that it had refused total or partial access to the documents covered by the Request. In the circumstances, we explained that we were treating the Commission’s email of 29 July 2019 as a total refusal of the Request and stated that we were making a confirmatory application Under Article 8 of Regulation 1049/2001 and requesting that the Commission reconsider its position (the **“Confirmatory Application”**). We further noted that, under Article 8(1) of the Regulation, the Commission’s response was due within 15 business days. A copy of this letter is exhibited at **AJM1[9-15]**.

- e. DG Competition’s Access to Documents team responded by email the following day (30 July 2019), stating (in relevant part):

“We hereby acknowledge receipt of your confirmatory application for access to documents which was registered on 30/07/2019...

Your application will be handled within 15 working days (21/08/2019). In case this time limit needs to be extended, you will be informed in due course.”

A copy of this email is exhibited at **AJM1[16]**.

- f. On 21 August 2019 we received a further email from the Access to Documents team in which it advised:

“Your confirmatory applications are currently being handled. Unfortunately, we have not yet been able to gather all the elements needed to carry out a full analysis of your requests and to take a final decision. Therefore, we are not in a position to reply to your confirmatory requests within the prescribed time limit which expires on 21 August 2019.

Consequently, we have to extend this period by another 15 working days in accordance with Article 8(2) of Regulation (EC) No 1049/2001. The new deadline expires on 11 September 2019.

However, I can assure you that we are doing our utmost to provide you with a final reply within the next 15 working days.

I regret this additional delay and sincerely apologise for any inconvenience this may cause”.

A copy of this email is exhibited at **AJM1[17-18]**.

- g. The Access to Documents team provided a further update by email dated 12 September 2019, in which it stated:

“I regret to have to inform you that we were not able to respond within the extended time-limit, as we have not yet finalised internal consultations. I can assure you that we are doing our utmost to provide you with a final reply as soon as possible”.

A copy of this email is exhibited at **AJM1[19]**.

- h. We responded on 16 September 2019 noting our disappointment with the extended delay and putting the Commission on notice that if a satisfactory response to the Confirmatory Application was not received by 20 September 2019, Mr Evans intended to make a complaint to the European Ombudsman and commence proceedings before the General Court of the European Union, without reverting to DG Competition.

A copy of this letter is exhibited at **AJM1[20-24]**.

- i. DG Competition responded by email on the next day (17 September 2019) stating,

“We are pleased to inform you that the decision-making process has been engaged and that the Commission decision is currently being finalised. We are sorry for the delay which is due to the external and internal consultations regarding this file. I can assure you that we are doing our utmost to provide you with a final reply as soon as possible”.

A copy of this email is exhibited at **AJM1[25]**.

- j. A member of the Hausfeld team, William Widdess, called the Access to Documents team on 24 September 2019 to chase for a response to our letter of 16 September 2019. They

were not able to provide an answer on the call but promised to revert later in the day, which was provided by email in which they stated:

“We thank you for getting in touch with us today for the follow-up of your file.

As mentioned in our email of 17 September 2019, the decision-making process has been engaged and the Commission decision is currently being finalised. Save exceptional circumstances, we expect the decision to be adopted at the end of the month or first week of October”.

A copy of this email is exhibited at **AJM1[26]**.

- k. On 30 September 2019, Hausfeld wrote to the Commission to draw its attention to a development in the *Claim HC-2018-000840 Allianz Global Investors GmbH and others v Barclays Bank Plc and others*, in which a non-confidential version of the “Three Way Banana Split” Decision had been disclosed to the Claimants by Citibank on 20 September 2019 (as reported in the Claimants’ Reply). We requested disclosure of, at least, the non-confidential version of that Decision as a matter of urgency. A copy of this letter is exhibited at **AJM1[27-31]**.

- l. The Access to Documents team responded by email the same day as follows:

“The confirmatory decision is expected to be adopted today or tomorrow. We will be in a position to send you an advanced copy by email shortly after”.

A copy of this email is exhibited at **AJM1[32]**.

- m. By letter dated 30 September 2019, emailed to Hausfeld on 1 October 2019, the Commission provided its response to the Confirmatory Application, advising that *“full access is granted”* to non-confidential versions of the Decisions, copies of which were enclosed. A copy of this letter is exhibited at **AJM1[33-34]**.

B. Information about similar claims

16. Hausfeld is aware of three other FX collective actions: in the United States, Canada and Australia.

17. In addition, certain institutional investors including Allianz Global Investors, PIMCO and Brevan Howard have opted out of the US class action and issued separate proceedings relating to FX manipulation in the US District Court in the Southern District of New York and, in parallel, the English Commercial Court (*Allianz Global Investors GmbH and others v Barclays Bank Plc and*

others). Hausfeld's efforts to obtain publicly available documents and information in relation to these proceedings are detailed below.

United States Class Action

18. There is an ongoing US class action lawsuit in respect of manipulation of the FX market, which was filed in the United States District Court, Southern District of New York in 2014 (Re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-cv- 07789-LGS) (the "**US FX Action**").
19. The defendants in the US FX Action were certain entities in the following banking groups: Bank of America, Bank of Tokyo Mitsubishi, Barclays, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Morgan Stanley, RBC, RBS, Société Générale, Standard Chartered and UBS. The Proposed Defendants in the CPO Application are all members of banking groups that were named as defendants in the US FX Action.
20. The US FX Action alleges that the defendants conspired to fix prices in the FX market in violation of Sections 1 and 3 of the Sherman Antitrust Act, 15 U.S.C. §§1, 3 and engaged in manipulation of the FX market in violation of the Commodity Exchange Act, 7 U.S.C. §§1. Specifically, the complaint alleges that the defendants conspired in Bloomberg or Reuters-based chat rooms to widen spreads in the spot market and share sensitive information about spreads, open orders and customers. The defendants denied the allegations.
21. To date, settlements in the US FX Action have since been publicly announced with all defendants apart from Credit Suisse Group AG, Credit Suisse AG and Credit Suisse Securities (USA) LLC.
22. On 3 September 2019, the court granted partial certification in respect of the claims against the remaining Credit Suisse defendants.
23. Various documents relating to the US FX Action (including redacted copies of the Plaintiffs' Consolidated Complaint, approvals of settlements, the plan of distribution and the class certification order) are publicly available on a dedicated website for the action, www.fxantitrustsettlement.com. In addition, various other publicly available documents relating to the litigation, including legal motions and expert reports filed on behalf of the plaintiffs and the Credit Suisse defendants, are available in redacted form on the US court website: <https://ecf.nysd.uscourts.gov>. Hausfeld have shared certain of these documents with the experts we have instructed on behalf of Mr Evans in relation to the CPO Application, as identified in their reports.

24. Hausfeld LLP (Hausfeld & Co. LLP's associate US firm) ("**Hausfeld US**") was appointed co-lead Counsel with Scott+Scott Attorneys at Law LLP (whose UK office is acting for the proposed class representative in the O'Higgins Application) in the US FX Action.
25. As part of the litigation and settlements reached in the US FX action, the settling banks provided discovery of documents and information to the plaintiffs ("**US Confidential Materials**"). The US Confidential Materials are subject to confidentiality provisions (including pursuant to orders of the US court) and are restricted to use only in the US FX Action. As such, no employees or members of Hausfeld & Co. LLP or Hausfeld US other than members of the Hausfeld US team working on the US FX Action have had access to or sight of the US Confidential Materials, each of whom is bound by the confidentiality obligations relating to their access.
26. Following receipt by the Hausfeld US team working on the US FX Action of the US Confidential Materials in 2016, and as Hausfeld wished to consider potential European FX claims, it was decided to document the confidentiality restrictions by creating a formal information barrier between the Hausfeld US team working on the US FX Action and the Hausfeld team working on potential European FX claims, as periodically updated, ensuring that all those involved, together with other employees of Hausfeld US and Hausfeld & Co. LLP, were and remain aware at all times of the restrictions relating to the US Confidential Materials.

Canadian FX class action

27. Class action lawsuits have been filed in the Canadian courts in the Ontario Superior Court of Justice under Court File No. CV-15-536174 and the Superior Court of Quebec under Court File No. 200-06-000189-152. As with the US FX Action, these allege an unlawful conspiracy to fix prices in the FX market.
28. There is a dedicated website for the lawsuit, www.canadianfxnationalclassaction.ca, which contains details of the action and certain court documents. The website confirms that:
 - a. The defendants in the Canadian proceedings are entities within the following banking groups: Bank of America, Bank of Montreal, Barclays Bank, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan, Morgan Stanley, MUFG,

Société Générale, Royal Bank of Canada, Royal Bank of Scotland, Toronto Dominion Bank, and UBS.

- b. Settlements have been reached with all banks apart from Bank of Montreal, Credit Suisse, Deutsche Bank, Royal Bank of Canada and Toronto Dominion Bank.

- 29. As part of the work preparing the CPO Application, Hausfeld have considered these materials and in particular the plan of distribution adopted in the Canadian settlements reached to date.

Australian FX class action

- 30. The third FX class action that Hausfeld is aware of was issued by originating application made on 27 May 2019 in the Federal Court of Australia (*J Wiseby & Associates Pty Ltd v UBS AG & Ors*). This action alleges cartel conduct causing loss to FX customers in Australia by artificially increasing the cost of buying certain currencies and artificially decreasing the price received when selling certain currencies. The respondents to the application are UBS AG, Barclays Bank plc, Citibank NA, JPMorgan Chase Bank NA and NatWest Markets plc.

- 31. Hausfeld has obtained copies of the Originating Application, Statement of Claim and various Court orders from the Federal Court of Australia's online portal at www.comcourts.gov.au and will continue to monitor progress in the Australian class action.

Allianz Global Investors GmbH and others v Barclays Bank Plc and others

- 32. Hausfeld is also monitoring these proceedings and obtained the statements of case (Particulars of Claim, Defence, and Reply) in the ongoing Commercial Court proceedings.

C. Pre-Action correspondence with the Tribunal, the parties to the O'Higgins Application and the Seventh and Eighth Proposed Defendants

- 33. On 6 November 2019, the first case management conference in the O'Higgins Application was heard before Mr Justice Marcus Smith, with the purpose of setting directions to the hearing of the CPO application and hearings for any preliminary issues.

- 34. Although the CPO Application had not been issued at that stage, Mr Evans considered it would be prudent to give notice to the Tribunal and parties to the O'Higgins Application of his impending application, so that it could be taken into account (if deemed appropriate) by the Tribunal when setting directions. Accordingly, on 4 November 2019 Hausfeld wrote to the Tribunal and the parties as well as to MUFG (which is not a party to the O'Higgins Application) to provide brief details of the CPO Application. Copies of these letters are exhibited at **AJM2[1-**

22]. Certain of Mr Evans' legal representatives (including myself) also attended the hearing, but did not participate.

35. In our letters to the Proposed Defendants, we asked them to advise whether they had instructed a firm of solicitors to accept service on their behalf. We also confirmed that Mr Evans would be amenable to any appropriate proposals as to exchange of correspondence or other means of ADR, once the CPO Application was filed.
36. We received responses from solicitors acting for each of the Proposed Defendants, in which they confirmed that they were instructed to accept service, with the exception of Barclays Capital Inc (the Second Proposed Defendant), Citigroup Inc (the Sixth Proposed Defendant) and JP Morgan Chase & Co (the Twelfth Proposed Defendant), which are all domiciled in the United States. Copies of the responses received are exhibited at **AJM2[23-30]**. Accordingly, Mr Evans seeks the Tribunal's permission to serve the CPO Application on these entities out of the jurisdiction, as set out in the application filed with the CPO Application.
37. In our letter dated 4 November 2019, we advised that we expected to file the CPO Application by the end of November. However, due to the need to finalise certain aspects of Mr Evans' funding arrangements, there was a short delay in filing. Accordingly, on 29 November 2019 we wrote to the Tribunal, copying the parties to the O'Higgins Application and the solicitors to the Seventh and Eighth Defendants to update them of this delay and confirm that we expected to file the application no later than Friday 13 December 2019. A copy of this letter is exhibited at **AJM2[31-32]**.

D. Relevant experience of Mr Evans' legal advisers

38. As identified at the beginning of this witness statement, paragraph 6.32 of the Guide indicates that where there is more than one applicant seeking approval to act as class representative in respect of the same or overlapping claims, the Tribunal's assessment as to who would be the most suitable representative is likely to include the experience of the lawyers of the competing class representatives.
39. To assist the Tribunal in this regard, at **AJM3** I exhibit a Hausfeld firm profile setting out the firm's relevant experience, together with the professional biographies of each member of the barrister team, who are Aidan Robertson QC, Victoria Wakefield QC, Joanne Box and Aaron Khan, all of Brick Court Chambers.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true:

Signed:

Date: 10 December 2019